THE ABOLITION OF BONDED LABOUR AND SLAVERY IN INDIA

From 'Poor Law' to a Fundamental Right – the Gradual Changes of an Institution, 1843-1990

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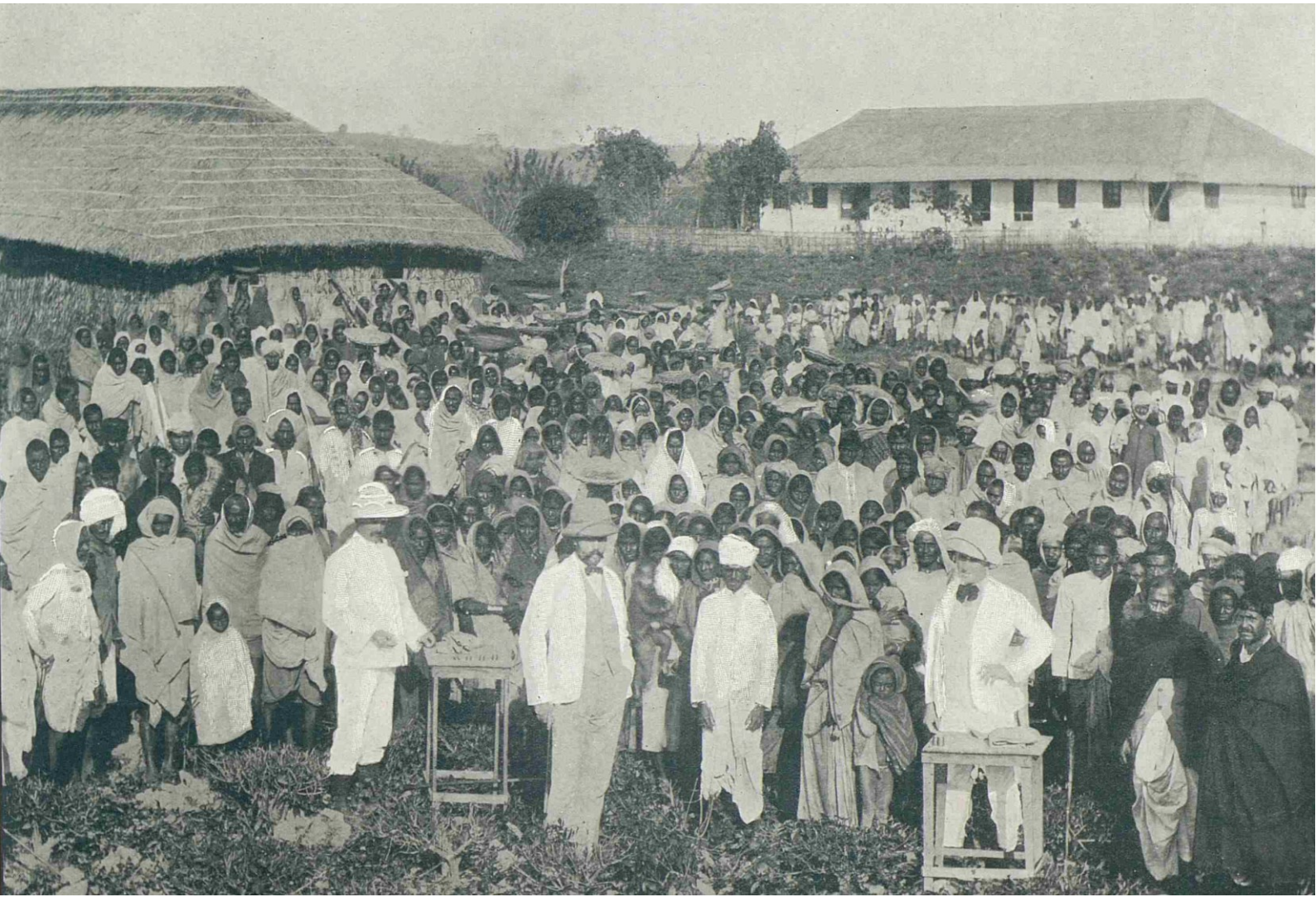

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From 'Poor Law' to a Fundamental Right – the Gradual Changes of an Institution, 1843-1990

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Figure 1. Purveyors of the British Breakfast Table, 1910

Title page: Representational image, (c) Illustrated London News/Mary Evans Picture Library. *Scenes on an Assam Tea Plantation*, original caption: "Purveyors of the British Breakfast Table: Pay-Day on an Indian Tea Plantation." Source: Author unknown/The Graphic, p. 573, available at: British Library/findmypast. Discussion of the illustration in chapter 3.

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Glossary

Adivasi	Umbrella term for indigenous tribes of India
Anglo-Indian	Term used for British nationals working in India[1]
1 lakh	100,000
ayah	Nanny or wet nurse of Indian origin
begar/begaree	Unpaid compulsory labour, exacted by the state (often also used in the context of slavery or forced labour exacted by private individuals)
bonded labour	Slavery in the form of debt bondage, also referred to as debt bondage
British Raj	Period of British rule between 1859 and 1947—after the Indian Mutiny in 1856-7, when India became the crown colony
coolie	Unskilled wage labourer of Chinese or Indian origin (often used pejoratively)
Dalit	(Sanskrit: scattered, broken), self-designation, particularly used by Ambedkar instead of 'untouchable;' in the *Constitution of India* Dalits are given special protection as Scheduled Castes (SC)
dhobi	Term for the profession of a washer man for cloths
garibi hatao	(Hindi: remove poverty) slogan of the election campaign of the Indian National Congress under Indira Gandhi in 1971
hali	(Hindi: handler of the plow), term for agricultural bonded labourer in Bihar and Gujarat[2]
Harijan	(Hindi: children of the God Hari Vishnu), used by Mohandas K. Gandhi as denotation for Dalits or 'untouchables'
jamadar	headman or supervisor of a labour gang
sirdar	licensed labour recruiter
kamiauti	Regional Indian term for agricultural bonded labourer
lathials	Group of men armed with heavy sticks (lathi)
Lok Sabha	(House of the people) lower house of the Indian Parliament
malik	master, proprietor
mookhtears	head of a village
Munsif	Judge at the lowest court level
pundits	religious scholars
rasad	Forced supply of materials, such as wood, or grain
Rajya Sabha	(Council of States) upper house of the Indian Parliament
Rupee/Anna/Paisa	(*I.e.* 2/8/-[3]); Indian Currency before the reform of 1957. INR/Rs. 1 = 16 anna = 64 Paise
ryot/riot/raiyat	Peasant, tenant
ryotwari system	Land revenue collection in British India by direct collection from the *ryot*
satyagraha	Hindi for 'non-violent resistance'
sepoy	Native soldiers of the East India Company
swaraj	Hindi term for political self-rule
zamindar	Landholder or landlord
zamindari	Right of the landlord to collect taxes

[1] The Editors of Encyclopaedia Britannica.
[2] BREMAN, 1974, p. 40.
[3] Cf. *Dubar Goala And Anr. v. Union of India (Uoi) Representing*, Calcutta High Court, August 13 1951.

Abbreviations

AISPC	All India States Peoples' Conference
AITUC	All India Trade Union Congress
APD	American political development
BC	Before Christ
BLSA	*Bonded Labour System (Abolition) Act* of 1976
CA	Constituent Assembly
CAT	(United Nations) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (in force: June 26 1987)
Cf.	confer, compare
ECOSOC	(United Nations) Economic and Social Council
EEOC	(US) Equal Employment Opportunity Commission
EIC	(British) East India Company
GDR	German Democratic Republic
GSI	Global Slavery Index
HI	Historical Institutionalism
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
ILO ROAP	ILO Regional Office for Asia and the Pacific
INC	Indian National Congress
INR/Rs.	Indian rupees
IOR	India Office Records, British Library
IR	International Relations
LN	League of Nations
MP	Member of parliament
NAAPC	National Association for the Advancement of Colored People
NEFA	North-East Frontier Agency (political division until January 1972)
NFP	Northwest Frontier Province
NGO	Non-governmental organisation
NHRC	(Indian) National Human Rights Commission
NWP	North-Western Provinces
OECD	Organisation for Economic Co-operation and Development
PIL	Public interest litigation
SC	Supreme Court
SCs	Scheduled Castes, based on the qualification of a person as SC or ST certain quotas apply in education, election, administration, etc.
STs	Scheduled Tribes
TIP	Trafficking in Persons
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations Commission on Human Rights
UP	United Provinces
US/ USA	United States/ United States of America
USD	United States Dollar
WBCA	*Workman's Breach of Contract Act* of 1859

Preface

It is important that we know where we come from, because if you do not know where you come from, then you don't know where you are, and if you don't know where you are, you don't know where you're going.

—Terry Pratchett, 2010[1]

I believe that global history is not determined by a particular trajectory, such as development or modernisation, but rather by the history we remember. This memory is based on the experiences we have and the beliefs and common understandings we share with our fellow human beings. The edited narratives of the history we tell others and ourselves are often quite independent from what 'actually' happened, as for instance in the case of the abolition of slavery and bonded labour. There are many histories—histories of nations, of states, of classes, groups and individuals. These histories are closely intertwined with the two-hundred-year history of slavery and bonded labour and their abolition that transcend geographical frontiers, state borders, oceans and continents. Each morning, while writing this dissertation at my desk in Innsbruck, Austria, and in Heidelberg, Germany, I enjoy my coffee made of beans from Kenia. I try to act as a responsible consumer, choosing the fair-trade option, yet I know that consumer behaviour will not produce the fundamental change to end global exploitation of the work force, particularly in the so-called developing states.[2] I wash my hair with *shampoo*, a term that has its roots in Hindi. The ingredient coconut oil might originate from Sri Lankan coconut farms, shipped across the oceans to Europe. The raw material of the textiles I wear are probably produced by agricultural labourers on Bihari cotton farms or sewn in sweat shops in Bangladesh or in Kerala, India.[3] The newly paved ground along the Kurfürsten-Anlage that leads my way to the South Asia Institute, along the Bahnhofstraße in Heidelberg, is maybe made of stones that have been shipped from quarries in India or China.[4]

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[1] PRATCHETT, 2010, p. 421.

[2] Activists like Werner Boote or Kathrin Hartmann remind us that citizens, not consumers, can make a meaningful change through political action, BOOTE, March 9 2018; HARTMANN, 2018. The idead of activating citizens as consumers in the fight against slavery is already over two centuries old, MAJOR, April 30 2015. With more than two hundred years of consumers' action against slavery, this approach has appeared to be rather ineffective.

[3] Since global firms are still active in disguising supply chains, it is hard for consumers to know exactly where the product or its components come from. Thanks to labour activism and NGOs, some of the involvements of German firms in labour exploitation in India are revealed: BURCKHARDT/Femnet, August 2013; Oxfam Deutschland, May 2010, for a global list refer to Oxfam Deutschland.

[4] The municipality of Heidelberg has adopted a policy to make acquisitions of the town according to fair trade standards, Ministerium für Umwelt, Klima und Energiewirtschaft Baden-Württemberg, 2017, p. 7.

The extraction of the resources for these products relies on a cheap labour force. Workers are exploited in terms of payment, labour conditions, health and working hours. Some forms of these labour conditions, such as debt bondage amount to slavery. Slavery is defined in the *Slavery Convention* of 1926 as "condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[5] But the Temporary Slavery Commission that worked on the *Slavery Convention* also meant to include other forms of enslavement by calling for the abolition of "slavery in all its forms."[6] The labourers who work under such conditions, the struggles they fight, the pains they suffer and the hardships they endure to make a decent living, are part of the history of today's global work force. The regional extraction and processing of quarry stones, mica, gems, cotton, and thousands of other products are integrated into a global market. Companies and private consumers alike profit from the cheap or even free labour and are complicit in exacting these labour conditions. The history of the labourers who produce the raw materials or parts of the end products that we consume, is part of the global history.

I am aware that my scholarly work will not directly contribute to satisfying the needs of these workers. There are millions of individuals, past and present, who led lives of destitution, insecurity and hardship. Up to this very moment millions continue living difficult working lives all over the world. I hope to advance our understanding of the institutional developments that attempt to tackle the worst labour conditions. I also endeavour to contribute to ending these forms of exploitation through other means that are accessible to me: As a volunteer with *terre des hommes,* I distribute knowledge about child labour and help raise funds to support local initiatives. As weak and ineffective as these attempts may be, I try to act as a conscious consumer. But what becomes most clear from this research project is that strong political action is needed—strong laws, effective enforcement, and transparency as to where the products come from and under what conditions they have been produced. Economic interests must be curtailed and controlled vigorously. It cannot be that for the profit of some, supported by the ignorance of so many, millions of people suffer throughout their lives, and "[i]f these products cannot subsist without coercion, they must perish."[7]

[5] League of Nations, June 28 1919, Art. 1.
[6] League of Nations, June 28 1919, Art. 2.
[7] Lieutenant General E. N. Baker on indigo production in a letter to W. R. Gourlay, Director of Agriculture, Government of India, dated February 9 1909, quoted in MITTAL, 1978, p. 113.

Map of India

Figure 2. Map of India, 2006

Figure 2, Map of India, 2006. Source: Planemad/Wikimedia Commons.

Introduction

I do not think that a person who insists that another who has consented to serve him shall perform his work, unlawfully compels such person to labour, because it is the thing which he or she has agreed to do, and although if the employer assault [sic] the servant for not working to his satisfaction (...). I do not think he thereby commits an offence under Section 374.[1]
—Judge Beverly, Bench Calcutta High Court, 1892

With this judgment, the Calcutta High Court reversed the decision of the Deputy Commissioner of Nowgong,[2] Major A. Grey, who had convicted Madan Mohan Biswas for keeping Honto Lahang, Hoibori Lahingani and Bagi Musulmani "in confinement and slavery"[3] in violation of the Indian Penal Code's (IPC) Sections 370 and 374,[4] criminalising the buying and disposing of a slave and exacting compulsory labour. Biswas had employed Honto Lahang, and some other men as bonded labourers, who were tied to him by debt. Upon the deaths of the male debtors, Biswas forced the children and wives of these labourers, among them Hoibori Lahingani and Bagi Musulmani, to work off the debts of their deceased relatives.[5] According to the female victims, Biswas had punished them when they refused to work, declined compensation for their labour and confined them during the night. The Deputy Commissioner found the accused Biswas guilty of disposing of his bonded labourers as slaves. But the next higher court reversed this decision and the High Court at Calcutta agreed with the acquittal.[6] Disregarding the way in which the women and children had become bonded, the judge argued that the bonded labourers had consented to serve Biswas and that he did not agree that Biswas had violated the prohibition of slavery.

The first legislation against slavery applicable to the whole of the British Raj and the princely states under British suzerainty was the *Act V*[7] of 1843, followed by the *Indian Penal Code* (IPC), adopted in 1860.[8] Judge Stuart at the High Court of Allahabad, confronted with a case in which a labourer was transferred between two employers, gave one reason for the struggle to arrive at a decision: He admitted in 1880, that "it is exceedingly difficult to understand what is meant to be intended by s. 370."[9] The provisions of the *Act V* and the IPC

[1] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 581.
[2] Today in Madhya Pradesh, central India.
[3] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 574.
[4] *The Indian Penal Code*, Legislative Council of India, October 6 1860.
[5] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 573–577.
[6] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 573.
[7] *An Act for Declaring and Amending the Law Regarding the Condition of Slavery within the Territories of the East India Company*, Governor-General in Council, April 7 1843. Hereinafter *Act V*.
[8] The IPC came into effect in 1862.
[9] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727.

were ambiguous: In the example of the case *Madan Mohan Biswas v. Queen Empress* (1892), the executive and the judiciary, as well as the bench of judges, depicted a differing understanding of what slavery is and whether the extraction of bonded labour could be punished under respective laws.[10] Courts before and after this judgement of 1892, struggled over the question of how to treat bonded labour.[11] This legal uncertainty was also followed by contradictory judgments vis-à-vis the same legal provision in similar cases.[12]

The case of *Madan* brings us right to the heart of this dissertation. I argue that after the adoption of the *Act V* and the IPC, the abolition of slavery in India was institutionalised. This means that these Indian antislavery policies to this day

> stipulate rules that assign normatively backed rights and responsibilities to actors and provide for their 'public', that is, third party enforcement. (…) Policies (…) are institutions (…) to the extent that they constitute rules for actors other than for the policymakers themselves—rules that can and need to be implemented and that are legitimate in that they will if necessary be enforced by agents acting on behalf of the society as a whole.[13]

In the context of bonded labour, the court struggled with the interpretation of the rules. The ambiguity of the law,[14] which did not give guidance on how to define slavery or forced labour and how bonded labour fits the bill, is at the centre of this work. The tension between the spirit of the law—the abolition of slavery—and the continued extraction thereof in the form of bonded labour, evolved around the interpretation of the law at the courts and political attempts to reform the law. The discourses within the political institutions, colonial and independent, reveal not only motivations driven by the colonial imperatives, but also a dilatory process that has not been studied until now. This discourse was fuelled by repeated reports on bonded labour, which was referred to in different terms. Setting aside the definitional question to which I turn further below, and agreeing with the Commissioner of Nowgong that bonded labour constituted slavery punishable by the IPC Sec. 370 and 374, table 1 shows that the gap between the norm[15] and reality persisted throughout the past two hundred years:

[10] As this question is pertinent to the discourse on slavery and bonded labour, I use them jointly. From my definition further below, it will become clear that I am not using these terms interchangeably.
[11] Cf. *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 341–345.
[12] For example, judgments at the European Court of Human Rights or the International Criminal Tribunal for the former Yugoslavia; see ALLAIN, 2009, p. 242–243. Anderson makes the same observation towards judgments regarding cases under the WBCA, ANDERSON, 2004, p. 441.
[13] STREECK/THELEN, 2005b, p. 12.
[14] MAHONEY/THELEN, 2010b, 11, 21.
[15] A norm can be defined as "a standard of appropriate behaviour for actors with a given identity," FINNEMORE/SIKKINK, 1998, p. 891.

Table 1. Slavery and bonded labour estimates in India, 1807-2016

Date	Region	Estimate	Description	Source
1807	Malabar	96,368	"Slaves"	Logan[16]
1811	Bhaugulpore & Behar, Patna & Shahabad	42,589	"Able bodied male slaves"	Law Commission[17]
1821	Tinnevelly	324,000	"Agrestic slaves"	Law Commission[18]
1830	Lower Assam	27,000	"Slaves"	Law Commission[19]
1840	East-Indies	800,000	"Slaves"	Adam[20]
1841	British India	15,000,000	"Slaves"	Adam[21]
1857	Kanara & Malabar	284,894	"Cherumar slaves"	Madras Proceedings[22]
1873	British India	54,135,383	"Slave population"	Huback[23]
1918	Palamau	60,000	"*Kamias*"	Maude[24]
1947	Surat	123,000	"*Halis* (agricultural serfs)"	ILO Delhi Office[25]
1952	Malabar	60,000	In "semi-slavish conditions"	Shrikant[26]
1952	Bihar	5,000,000	"Agrestic serfs"	MP Nanadas[27]
1981	India	2,617,000	"Bonded labourers"	Marla[28]
2009	India	10,000,000	"Slaves"	Bales[29]
2012	Asia-Pacific region	11,700,000	"Forced labourers"	ILO[30]
2016	India	18,300,000	"Modern slavery"	GSI[31]

Source: Details are indicated separately in each footnote. Note: The terms for slave or bonded labour used in the sources were usually not defined; most likely they do not coincide and are not comparable.

[16] Number based on the Census of 1807, *Cherumars* are a low caste and "agrestic slaves," LOGAN, 1951 [1887], 147, 603, Appendix ccxxxiv. Sarkar explains that agrestic or preadial slaves are agricultural labourers, SARKAR, 1985, p. 102.
[17] Estimates provided by Buchanan between 1807-1811, referred to in Indian Law Commission, January 15 1841a, p. 6.
[18] Report of the Collector of 1832, referred to in Indian Law Commission, January 15 1841a, p. 193.
[19] Indian Law Commission, January 15 1841a, p. 152.
[20] ADAM, 1840, p. 11.
[21] Adam William at the General Anti-Slavery Convention indicated that the estimates for British India ranged between 10 and 20 million slaves, British and Foreign Anti-Slavery Society, 1841, p. 77.
[22] The numbers indicated are for Malabar: 187,812, and Kanara: 97,082; Madras Political Proceedings, January 27 1857, referred to in HJEJLE, 1967, 110, 112, 113.
[23] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department. The numbers are based on the Criminal Law Commission of 1873, National Archives of India, November 1920, Item No. 1, p. 35; the original numbers Huback gives are "one-sixth to two-fifths of the entire population." The census of 1867/8-1876/7 counted 191,018,412 heads under direct British administration, Her Majesty's Stationary Office, 1878, p. 5, therefore, one sixth to two fifths constituted between 31,863,402 and 76,407,365 people.
[24] Sir Walter Maude, Extracts from the Proceedings of the Legislative Council of Bihar and Orissa at a Meeting, held on July 30 1920, National Archives of India, November 1920.
[25] ILO Delhi Office, June 1947, p. 15; the original number indicated is "14 per cent of the population of the Surat District." The census of 1841 counted 881,058 people in Surat, DRACUP/Census Commissioner, 1942, p. 3, 14% therefore, constituted approximately 123,348 people.
[26] Shrikant describes agricultural labourers who are indebted to their landlords, SHRIKANT, 1952, p. 19.
[27] MP Nanadas refers to the report of the governmental Bihar Harijan Enquiry Committee, Lok Sabha, December 13 1952, p. 2232.
[28] MARLA, January 1981, p. 144.
[29] This includes "domestic service, forced marriages, prostitution, and debt bondage," BALES/TRODD/WILLIAMSON, 2009, p. 19.
[30] International Labour Office, 2012, p. 15.
[31] Walk Free Foundation, 2016, p. 8.

The numbers testify that observers recognised forms of labour exploitation as slavery and debt bondage; but the table depicts the terminological conflation as well. These testimonies can be read as examples of policy failure,[32] and, often enough, the Indian state was accused of failing to implement its laws.[33] Focusing on policy implementation and the "connection between the expression of governmental intention and actual results,"[34] the numbers indicated above reveal that implementation, here in the case of the abolition of slavery and bonded labour, is "the classic Achilles' heel of developing countries."[35] But perspectives on policy failure and the search for explanations thereof, often fail to acknowledge the long history of the abolition of slavery and bonded labour, as well as the role the implementation gap actually occupies in the process of policymaking and enforcement.

Campbell states that within public policy implementation research, there "is little recognition that the internal inconsistencies and contradictions of an institutional arrangement may also spawn crises that result in its transformation."[36] Within the institutionalism research only "few have incorporated this insight into an analysis of institutional change."[37] Pierson for instance identifies several reasons for the emergence of an implementation gap: Limits of institutional design that could not have been anticipated by the policymakers; or the result was actually a political compromise; or, institutions continue to be contested after they came into existence; or simply with the passage of time, a change of the environment can produce different outcomes.[38] The contributions of Mahoney and Thelen,[39] as well as of Streeck and Thelen,[40] which provide the theoretical foundation of this dissertation, take these issues into account in developing their theoretical framework of gradual institutional change. I discuss this in detail in the theoretical chapter. With Mahoney, Thelen, Streeck and Pierson's theoretical insights, I move from focusing on "the anomalies of the Indian political system,"[41] and instead ask about the development of the institution of the abolition of slavery with an eye on bonded labour.[42] Taking an institutional approach to analysing the development of human

[32] Cf. PATNAIK, 1985, p. 5; POUCHEPADASS, 2009, p. 32.
[33] Cf. KUMAR, 2005, p. 418.
[34] O'TOOLE JR, 1995, p. 43.
[35] MITRA/SINGH, 2009, p. 186.
[36] CAMPBELL, 2010, p. 92.
[37] CAMPBELL, 2010, p. 101.
[38] PIERSON, 2004, p. 14–15.
[39] MAHONEY/THELEN, 2010a.
[40] STREECK/THELEN, 2005b.
[41] BEER/MITCHELL, 2006, p. 996; cf. HATHAWAY, 2002, p. 1990; POE/TATE, 1994, p. 855–856; MERKEL, 2004.
[42] THELEN, 2009, p. 473.

rights in India contributes to highlighting the political dimension of the abolition of slavery and bonded labour.[43]

After Banaji's major publication in 1933, studies on coercive labour relations in India were conducted primarily either on particular Indian regions,[44] or focused on specific sectors.[45] Deeming forms of slavery in India, among them bonded labour, as mild[46] distracted British legislators and anti-slavery activists in the nineteenth century—this ignorance, according to Major[47] and Mann,[48] also diverted scholarly attention away from South Asian forms of slavery and its abolition.[49] Consequently, the Indian Ocean and the Indian subcontinent are relatively new areas to study slavery and its abolition.[50] Since 1985, the number of relevant publications increased[51]—studies on the slave trade, slavery, bonded labour, and human trafficking in South Asia and in India have receive growing attention.[52] But only recently do historians' publications carry titles which include the term bonded labour.[53] Yet, the issue of abolition of slavery or bonded labour is rarely touched upon beyond simply mentioning it.[54] The increasing interest in slavery and bonded labour in the South Asian Region has not been matched by focused research on policy developments towards the abolition of slavery, particularly covering the period after 1843.[55]

The definitional question of where to locate bonded labour has more than judicial consequences;[56] it also carries political and social implications and is of academic interest. It

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[43] UPADHYAYA, 2004, p. 120.
[44] Cf. Gujarat: BREMAN, 1974; South India: HJEJLE, 1967.
[45] Cf. Assam tea plantations: VARMA, 2011; BEHAL/MOHAPATRA, 1992; BEHAL, 2010; MOHAPATRA, 2004; on labour resistance related to indigo production: KLING, 1966; railways: KERR, 2004; agriculture in South India: HJEJLE, 1967; Tamil country: MANICKAM, 1982; agriculture in Kerala: SARADAMONI, 1980.
[46] MAJOR, 2012, p. 146.
[47] MAJOR, 2012, p. 10.
[48] MANN, 2012, p. 20–21.
[49] MAJOR, 2012, p. 18–19; CHATTERJEE/EATON, 2006, xi; VINK, 2003, p. 132.
[50] MANN, 2012, p. 21; MAJOR, 2012, p. 19; see for instance the AHRC Research Project, March 2015 - August 2017 of Bates and Major, BATES/MAJOR.
[51] MANN, 2012, p. 20–21; cf. CAMPBELL, 2005a; ALPERS/CAMPBELL/SALMAN, 2007.
[52] Cf. CAMPBELL, 2004; ALPERS/CAMPBELL/SALMAN, 2007; MANN, 2012; ALI, 2016; SUZUKI, 2017. The first major publication to focus on slavery in India, including its abolition, was the extensive monograph by Banaji, *Slavery in India*. His contribution outlines in minute detail the variations of slavery and its abolition. Unfortunately, his book ends with the adoption of the *Act V* in 1843, BANAJI, 1933, xxxiv.
[53] Cf. Damir-Geilsdorf, Sabine, Lindner, Ulrike and Müller, Gesine, Oliver Tappe and Michael Zeuske, eds. 2016. *Bonded Labour. Global and Comparative Perspectives (18th-21st century)*. Bielefeld: Transcript, which unfortunately does not touch upon India; Campbell, Gwyn and Stanziani, Alessandro, eds. 2013. *Bonded Labour and Debt in the Indian Ocean World*. London: Pickering & Chatto, one contribution discusses bonded labour in contemporary South India: GUÉRIN, 2013.
[54] MAJOR, 2010, p. 503.
[55] Cf. KUMAR, 1988, p. 259–260.
[56] The answer to the question, whether bonded labour constituted slavery or not, had direct judicial consequences: It determined whether a person on trial was charged with heavier or lighter punishment. In the case of *Madan*, a conviction under IPC Sec. 370 would have meant imprisonment for up to seven years and a fine. Being convicted under Sec. 374, Biswas had to serve only one year and pay a fine of Rs. 500, Calcutta High

becomes politically intricate for states at the international stage when they stand accused of committing slavery or bonded labour within their national borders or failing to erase it. After all, today the abolition of bonded labour and slavery constitute one of the four core human rights stipulated in the *International Bill of Human Rights*.[57] Naming and shaming, as well as more drastic measures, are some strategies used by the United Nations (UN) to coerce member states to end violations of international norms against forced labour, bonded labour and slavery within their national border.[58] States can be criticised and presented as bad examples,[59] and besides international sanctions, also individual states react on slavery and bonded labour allegations.[60]

The discrepancy between the norm and ineffective enforcement continuously challenged the power and legitimacy of the state:[61] The British colonial power justified its rule over India to civilise and develop her people—the eradication of slavery constituted one of those missions.[62] The independent state of India after 1947 similarly promised salvation to the poor with its massive projects in development and the democratic promise of equality to all citizens.[63] Both transfigurations of the state claimed the monopoly of power and violence within its territory.[64] How have the British Raj and independent India responded to these challenges, and how have these responses developed over time? Slavery was delegalised[65] with the adoption of the *Act V* in 1843 and abolished with the adoption of the IPC in 1860. But neither defined slavery or mentioned bonded labour. The *Workman's Breach of Contract*

Court, April 20 1892, p. 581–582; in another case of a household slave, the judge suggested to apply IPC Sec. 344 (wrongful confinement) instead of Sec. 370, with equally low punishment, *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871.

[57] The other three are: The non-retroactivity of the law, the right to life, and the right to be free from torture, KOJI, 2001, p. 927. This means that these rights may never be violated under any circumstances, even in emergency situations—they are *non-derogable*, United Nations, 1966, Art. 4 (2).

[58] See for example the reappearance of Myanmar (former Burma) as condemned state at UN and ILO for extracting forced labour by the army and consequently confronted with embargos, visa restrictions, and other coercive measures, HORSEY, 2011, 1-5, 43; MAUL, 2007, p. 490.

[59] For instance, in the case of Myanmar and its use of forced labour by the military forces, cf. THOMANN, 2011, p. 82–101; or Pakistan in the shadow of the World Cup in 1995 when journalists and NGOs demonstrated that most of the globally consumed soccer balls came from Pakistan and were produced by bonded child labourers. As a consequence, the ILO, the US, and other states and organisations acted against child labour in Pakistan, LUND-THOMSEN/NADVI, 2010, p. 4–5; Pakistan's Soccer-Ball Industry, April 6 2000; International Labour Rights Forum, February 1999.

[60] The United States, for instance, makes the distribution of aid and bilateral cooperation conditional upon a state's rating in the *Trafficking in Persons* (TIP) report: *William Wilberforce Trafficking Victims Protection Re-authorisation Act* of 2008, Congress of the United States of America, 2008, Sec. 103. The definition of human trafficking includes bonded labour, WOODITCH, 2011, 473, 476, 487-88.

[61] Singha has framed the same arguments in terms of a competition between the state and the patriarchal claims over labour, SINGHA, 1998, xiv; cf. SINGHA, 1998, p. viii–ix; RUDOLPH/RUDOLPH, 1987, p. 213.

[62] MANI, 1987, p. 119, MANN, 2012, p. 165–166, 2004; MAJOR, 2012, p. 7; BASU, 2012, p. 362; PRAKASH, 2002, p. 2.

[63] ROY, 2007, Chapter 4; CHATTERJEE, 2004, p. 34; BASU, 2012, p. 363–364.

[64] HAY/LISTER, 2006, 5, 8; PETERS/PIERRE, 2006, p. 209; REINER, 2010, p. 6–7; SINGHA, 1998, p. 129.

[65] CHATTERJEE, 2005, p. 139.

Act of 1859[66] (hereinafter *Act XIII*, or WBCA), practically legalised the use of debt bondage.[67] Since the 1920s, India was actively involved in the development of the *Slavery Convention* of the League of Nations of 1926, to which it became party in 1927.[68] International pressure on the Government of India grew to implement the norm.[69] But no legal provisions against bonded labour were adopted that were applicable to the whole of the British Raj, and regional legislation often rather regulated bonded labour, for instance by making the registrations of debt agreements mandatory.[70]

In 1946, with independence at the horizon, an opportunity for drastic change of the rules against slavery and bonded labour opened.[71] The Constituent Assembly adopted Article 23 that prohibited forced labour and *begar*,[72] which is an Indian term for 'free,' meaning unpaid, labour. Another attempt to define bonded labour more clearly failed: In 1947, and again in 1954, members of parliament submitted and withdrew the *Free, or Forced and Compulsory Labour Bill*—a bill unmentioned in any historical account of the abolition of bonded labour and slavery in India.[73] When India became independent, only 'toothless'[74] legislative provisions against slavery and forced labour were in place. The discretion of interpretation as to whether or not bonded labour arrangements were criminalised by law remained with the judiciary and the administration. Then, in 1975, the Indian Parliament under Indira Gandhi adopted the *Bonded Labour System (Abolition) Ordinance*, which became an act (BLSA) in 1976. The BLSA provides a clear definition and outlines in detail

[66] The original title of the act was: *Presidency Towns.--Masters and Workmen, Act No XIII.* of 1859 [passed on May 4 1859], THEOBALD, 1860, p. 275–277. The short title *Workman's Breach of Contract Act* was enacted by the *Indian Short Titles Act* XIV of 1897, WIGLEY, 1909, p. 139. Full title: Act No. XIII of 1859, *An Act to Provide for the Punishment of Breaches of Contract by Artificers, Workmen, and Laborers in Certain Cases*, Art. II, Legislative Council of India, May 5 1859. Sometimes, the act is referred to as '*Workmen's Breach of Contract Act*,'cf. WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 107 or AVINS, 1967, p. 42. I followed the convention to refer to the '*Workman's Breach of Contract Act*,' cf. ANDERSON, 2004, p. 431.

[67] SARKAR, 1985, p. 110.

[68] British India constituted an individual actor at the international level: Despite the fact that India was the only non-self-governing founding member of the LN, representatives of the British Raj, among them Indian princes and nationalist leaders, were able to represent and uphold a position for British India: at times, the Indian delegation's position was in conflict with the position of the British delegation. And while divided into directly and indirectly ruled territories, British India constituted a single judicial unit at the LN. MCQUADE, 2019, 1, 5-7, 10.

[69] LEGG, 2014, p. 107.

[70] Cf. *Bihar and Orissa Kamiauti Agreements Act*, Government of Bihar and Orissa, 1920, Art. 3, 4. This act is reprinted in the Appendix; for a discussion of three regional legislations from 1920 and 1940, refer to DINGWANEY, 1985, p. 324.

[71] COLLIER/COLLIER, 1991, p. 6–8.

[72] Also written *begaree*, CASSELS, 1988, p. 168.

[73] Only Mishra, MISHRA, 2011, p. 324–325, and the commemorative edition of the Lok Sabha Secretariat for the former labour minister Jagjivan Ram, Lok Sabha Secretariat, 2005, p. 133, actually mention the bill. The authors ascribe the authorship of this bill to Ram, but I show that in the discussion in the Interim Parliament, it was Ram who actually requested the withdrawal of the bill.

[74] LEBOVIC/VOETEN, 2009, p. 79.

measures to eradicate bonded labour in its own right. In 1982, the Supreme Court entered the platform of abolition in India as a main actor to implement the rules. The court's assumption of the power to act *suo motu*, as well as the adoption of public interest litigation (PIL), allowed for NGOs, not aggrieved parties to a rights violation, to come forward to the court with bonded labour cases. Finally, the Supreme Court issued an order to the National Human Rights Commission to take up the monitoring process of abolition of bonded labour in India.[75]

Several authors showed that the ideology of freedom shaped the discursive practices and policy outputs[76] against slavery and bonded labour in India.[77] The ideology of freedom has its roots in post-Enlightenment and is expressed by theorists of capitalism and market economies such as John Stuart Mill.[78] Abolitionists focussed on the contrast between slave labour in the West Indies and free[79] labour in India. Historical research reveals the fallacies of approaching slavery and freedom as a dichotomous concept that guided political activities and legal understanding:[80] With establishing the dichotomy of free labour and slave labour, the antislavery movement blinded itself to the many varieties of Indian labour relationships. The dichotomy allowed for the interpretation of the 'milder versions of slavery'[81] in India as free labour. Consequently, abolitionists later were troubled to address slave labour exploitation in India beyond chattel slavery.[82] The work of Major and Prakash insightfully shows how the idea of freedom influenced the policy output of the British Parliament and the Government of India. Through discursive processes bonded labour relationships and other forms of slavery became disguised and legally invisible. Prakash argues that the agricultural labourers in Southern Bihar, the *kamias*, were seen by British officials clearly as slaves, but after 1843 "they were defined as bonded labourers."[83] And Chatterjee even argues that

> delegalisation ensured the erasure of the word 'slave' from the superior British officers' memoirs. (...) The gradual erasure of the term itself from official records was reinforced by some British officials and judges who denied that terms in local languages like bandi, dasi, used by female litigants to describe themselves, actually translated as 'slaves.'[84]

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[75] MAJOR, 2012, p. 7–11.
[76] Outputs are the products of political institutional processes, such as, for instance, parliamentary or governmental policies. Outcomes are the intended or unintended consequences of these outputs, LANE/ERSSON, 2000, p. 60–61.
[77] PRAKASH, 2002, p. xi–xii; MAJOR, 2010, p. 505.
[78] PRAKASH, 1993, p. 132.
[79] In this context the term 'free' refers to non-slave labour.
[80] MAJOR, 2010.
[81] Lord Ellenborough in the House of Lords, Hansard 1803-2005, July 5 1833, Col. 190.
[82] MAJOR, 2010, p. 514, 2012, 315, 321-24.
[83] PRAKASH, 1993, p. 132.
[84] CHATTERJEE, 2005, p. 139.

These authors highlight the important point of denomination and definition related to the concept of free und slave labour. But, as I show in the following chapters, the term slavery was not avoided by official sources altogether. Additionally, Prakash and Chatterjee's observations have trouble accounting for the proliferation of antislavery or anti-bonded labour legislation after delegalisation, as well as legislation contradicting the idea of freedom, such as the WBCA.

Prakash explains that "[t]he institution of freedom had to be proclaimed repeatedly, because each proclamation was followed by an awareness of failure. Thus the 1843 abolition was followed by the discovery of new forms of unfreedom, such as debt bondage, requiring the enactment of new emancipatory legislations."[85] But already in the making of the *Act V*, Lord Ellenborough was convinced of the limited effect of any policy against slavery in India, and therefore anticipated the policy failure. Chatterjee and Prakash explain contradictory developments by resorting to explanations based on wilful ignorance of policymakers or sudden new discoveries of slave labour or the redefinition of slavery as bonded labour.[86] Consequently, Prakash suggests that responses to the rediscoveries of slavery were marked by *ad hoc* reactions.[87] He is accepting the slavery/freedom dichotomy as the main element within the discourse on bonded labour and slavery and as the guiding idea that explains the abolition of slavery. The inherent contradictions between the ideal and what was practiced, become visible, but Prakash, as well as Chatterjee, has trouble to explain these contradictions and the role of other ideas that helped to shape the particular configuration of these contradictions.

How, for instance, can the abolition of slavery and the WBCA be explained in more nuanced ways beyond the freedom/slavery dichotomy, in a period in which free labour constituted a rhetorical figure but did not reflect the lived reality of the majority of working people?[88] Furthermore, looking closely at the timing and content of the changes and non-changes of the institution of abolition, several puzzles appear: From the perspective of critical junctures, events such as the transition of regime change towards democratisation and independence in India, offered an opportunity of change.[89] Such an opportunity can be used by political actors to force political developments into a certain direction that had not been possible earlier. Weak provisions to abolish slavery were already in place, namely the *Act V* of 1843 and the IPC,[90] but the changes arrived at by the Constituent Assembly and the

[85] PRAKASH, 1993, p. 132.
[86] CHATTERJEE, 2005, p. 139.
[87] PRAKASH, 1993, p. 132.
[88] STEINFELD, 2001, p. 1; HAY/CRAVEN, 2004, p. 1.
[89] COLLIER/COLLIER, 1991, p. 6–8, 31.
[90] A. V. Thakkar, Constituent Assembly of India (Legislative), December 16 1949, p. 673.

Provisional Parliament did not contribute to strengthening these policies. The window of opportunity for the governing powers of India to adopt a decisive law to end bonded labour did not materialise in respective legislation. It took almost another three decades and the least democratic phase since Indian's independence—emergency rule between 1975 and 1977—to adopt a stringent law that went beyond all previous policies with regard to definitions and detail. For the first time, bonded labour was addressed as a form of labour exploitation to be banned and prosecuted in its own right. Insights from large-N[91] studies of International Relations find a negative relation between undemocratic regimes and the adoption and implementation of human rights law[92]—why, then, was the strongest law adopted under Indira Gandhi's emergency rule? Why did this critical juncture, and not independence, open the window of opportunity for change?

Following the political debates, judicial interpretation and developments of anti-slavery legislation in conjunction with bonded labour, I provide an alternative perspective to current understandings of the continued use of bonded labour after the abolition of slavery in India. Rather than dismissing the abolition of slavery and the continued existence of bonded labour in India after the formal abolition of slavery as pure failure,[93] or a measured intention to making available slaves as a cheap labour force,[94] or lack of political will to abolish slavery including bonded labour,[95] the case of bonded labour brings to light the struggle of the colonial power, but also independent India, to fulfil its promise and justification of governance: To civilize the Indian people, abolish slavery, and provide justice and the rule of law.[96] As the main responsible actor for the effective implementation of human rights, I follow the state's response to bonded labour from the mid-nineteenth century through independence to the late twenty-first century. For my purposes, I define the state in line with O'Donnell, who writes that the state is:

> A territorially based association, consisting of sets of institutions and social relations (most of them sanctioned and backed by the legal system of that state), that normally penetrates and controls the territory and the inhabitants it delimits. Those institutions claim a monopoly in the legitimate authorization of the use of physical coercion, and normally have, as ultimate resource for implementing the decisions they make,

[91] A large number (N) of cases.
[92] LUTZ/SIKKINK, 2000, p. 633; HATHAWAY, 2002, 1939, 1964, 1967.
[93] Cf. PATNAIK, 1985, p. 5; DINGWANEY, 1985, p. 283; CHATTERJEE, 2005, p. 141–143; KUMAR, 2005, p. 418; POUCHEPADASS, 2009, p. 32.
[94] DINGWANEY, 1985, p. 313–321.
[95] CHATTERJEE, 2005, p. 138; KLEIN, 1993, p. 21; RADHAKRISHNA, 1992, p. 188.
[96] PRAKASH, 2002, p. 2; KOLSKY, 2010, p. 2–3.

> supremacy in the control of the means of coercion over the population and the territory that the state delimits.[97]

It is interesting to note that O'Donnell uses the term 'claim,' which is important, since claiming a monopoly does not necessarily entail its actual realisation.

In this dissertation, I show how the slow and piecemeal developments of the abolition of bonded labour and slavery summarised above, came about and also assess if and in what way these developments marked changes from earlier provisions. This requires taking an institutional perspective on the abolition of slavery in India. Changes within legislation affecting slave labour can be traced and explained beyond critical junctures, and legal developments appear less *ad hoc* than Prakash portrays them, but rather more incremental. The theoretical basis which I use to conduct the analysis of the development of the abolition of slavery and its significance towards the abolition of bonded labour in India is based on the theory of gradual institutional change.[98] The theoretical foundation is laid out in the work of Mahoney and Thelen (2010), as well as Thelen and Streeck (2005). They offer a theoretical framework to understand institutional change by differentiating between actors of change and concomitant modes of change, depending on the political environment in which they are placed.[99] This allows me to consider the role of actors and structures, as well as the issue of the implementation gap that influenced the development of the institution of abolition in India until today. With this analysis, I go beyond examining the institutional failure to implement human rights law in India, and beyond a mere description of the developments and the current situation regarding the abolition of slavery and bonded labour.

The long-term perspective allows me to place "politics in time,"[100] and to trace the development and influence of ideas on the political output concerning a serious human rights issue. The theoretical framework offers an answer to the inherent policy contradictions, through acknowledging compromise, as well as the role of the quality of policies and ideas shaping these policies.[101] Analysing the discussions within the political and administrative system on the abolition of slavery and bonded labour throughout two centuries, I identify a set of ideas that go beyond the slavery/freedom dichotomy and which played a crucial role in both developing and undermining antislavery policies. Taking ideas such as paternalism or human rights into closer consideration allows us to understand in greater detail the subsequent legal developments after the abolition of slavery.

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[97] O'DONNELL, 2011, p. 51–52.
[98] MAHONEY/THELEN, 2010b.
[99] MAHONEY/THELEN, 2010b.
[100] PIERSON, 2004, p. 2.
[101] MAHONEY/THELEN, 2010b, p. 8.

My approach is therefore problem-oriented and informed by the desire to account for the development of the institution of the abolition of slavery and bonded labour in India. Outlining its development highlights how the institutionalisation of a human right, the freedom from enslavement, including debt bondage, evolved over time. Thereby, I contribute to two research fields: First, the history of the abolition of slavery and bonded labour in India, and second, comparative political science, theoretically grounded in gradual institutional change. The primary focus within this analysis is on the changes the institution has undergone or resisted. In the course of this analysis, the question of change itself needs to be addressed: When do political scientists speak of a change, and what is change? While change is the core focal point of Mahoney and Thelen, they have not provided a clear guide on how to measure change. They locate one cause of change in the ambiguity of policies but only give anecdotal hints as to what they mean and how to measure ambiguity.[102] By dissecting the different elements in legal provisions for antislavery laws in India, I propose a way to qualify what constitutes a weak or strong institution. This qualification will allow me to determine if changes at the rules level have actually taken place or not, and in what way. Other indicators of change are the level of implementation, measured in terms of liberations and convictions, and a close interrogation of cases decided by the courts.

Simultaneously, ideational aspects play a pivotal role in the changes that the abolition of slavery and bonded labour have undergone. Taking ideas seriously means not only to describe political outcomes, but also the content of the outcome. Even though Mahoney and Thelen address the issue of ideas, they have not fully integrated this component into their theory. I enhance this theoretical framework by integrating ideas as an additional variable. This includes the current *Zeitgeist*, which provides insight into the potential behaviour of actors, as well as the political output.[103] Hall noted in his contribution that, depending on timing, the same events may produce different outcomes.[104] Taking the *Zeitgeist* into consideration, which, during this long period moves from being proslavery towards antislavery, acknowledges that the ideational environment in which an actor moves makes a difference.[105]

Since policies against slavery and bonded labour in India have not been analysed from a political science perspective, nor has its legal history been studied bridging British colonial rule and independent India, this dissertation is an attempt to fill this research gap. Legal

[102] MAHONEY/THELEN, 2010b, p. 21.
[103] An output is for instance laws or programmes; the outcome is what happens at the implementation level and can either be intended or unintended.
[104] HALL, 2016, p. 34.
[105] DUMAS, 2016, p. 3.

provisions are commonly referred to and discussed in scholarly works,[106] but the actual development of the abolition of slavery in India after its formal abolition, has not been undertaken. The abolition of bonded labour and slavery touch upon the relations among human beings, and the formation of the state. The abolition of slavery and bonded labour are central to political history. Landman calls for more research in the field of political science on human rights in order "to provide better and more complete explanations for the variations in human rights protection and to enhance the relevance of its findings for the wider policy and practical community."[107] My contribution follows the tracks of how policies evolved within the political systems and the output the respective political systems generated. Therefore, this dissertation aims to understand how and why the institution of the abolition of slavery and bonded labour evolved the way it did, and is consequently placed interdisciplinary within the fields of history and comparative political science, with inspiration drawn from International Relations.

Structure of this Dissertation

In the first chapter I discuss the conjectures implied above, including the theoretical framework. I lay out in detail the theoretical assumptions and gaps that form the starting point of my analysis and then offer three suggestions of advancing the theory of gradual institutional change: The division of one variable in two; the addition of a type of actor; and the explicit inclusion of ideas and *Zeitgeist* in the theoretical deliberations and analytical approach to the history of the abolition of slavery and bonded labour in India.

In the second through sixth chapter of the dissertation, I present the empirical cases and my theoretical analysis based on the theory of gradual institutional change. Here I also test the relevant hypotheses, depending on the cases' conditions, the *Zeitgeist*, the institutional characteristics and the political context. In reiterating the history of the regulation and abolition of slavery, forced labour and bonded labour, I begin with the identification and discussion of the appropriate starting point. This is simultaneously a discussion and description of how the abolition of slavery in India developed as an institution. I trace the regulation and abolition of slavery and the slave trade, interrogating in particular the legal developments that began in Great Britain and their impact on the issue of bonded labour. I begin with the institutionalisation of the abolition of slavery in India, starting with the abolition of the slave trade by the British Parliament in 1807. The period from 1807 on is also

[106] Cf. DINGWANEY, 1985.
[107] LANDMAN, 2002, p. 566.

important, since in this period I trace the development of the norm of the abolition of slavery and bonded labour at the international level. As previously suggested, I argue that the institutionalisation of the abolition of slavery was completed with the adoption of *Act V* in 1843. This constitutes the point from when the institution changed and underwent several transfigurations that were meaningful vis-à-vis the question of bonded labour. The time frame of this study comprises the years between 1807 and the 1990s: The first attempts to abolish slavery by the British until the becoming active of the National Human Rights Commission in India in monitoring the abolition of bonded labour. Within these approximately 200 years, several potential critical junctures can be identified, which appear useful to structure the analysis in the following phases:

Institutionalisation East India Company & British Parliament (1807-1843)
- 1807: Abolition of the slave trade
- 1833: Abolition of slavery (except the possessions of the EIC)
- 1843: Delegalisation of slavery

1st Episode East India Company and British Raj (1843-1919)
- 1859: *Workman's Breach of Contract Act*
- 1860: *Indian Penal Code*

2nd Episode British Raj (1919-1947)
- 1925: Repeal of the *Workman's Breach of Contract Act*
- 1926: League of Nations *Slavery Convention*

3rd Episode Part one and two (1946-1990s)
Part one Constituent Assembly, provisional government & parliament (1946-1952)
- 1950: Constitutional Article 23
- Withdrawal of the *Prevention of Free or Forced or Compulsory Labour Bill*

Part two Independent India, emergency and post-emergency rule (1952-1990s)
- Withdrawal of the *Prevention of Free or Forced or Compulsory Labour Bill*
- 1976: *Bonded Labour System (Abolition) Act* (BLSA)
- 1982: *Bandhua Mukhti Morcha Case*
- 1993: National Human Rights Commission

Chapters two to six are dedicated to the cases—their description and theoretical analysis. All chapters are structured similarly. First, I describe the institutional characteristics, as well as the relevant *Zeitgeist* and actors' disposition towards the institution. I formulate respective theoretical assumptions about possible changes, based on the hypotheses developed in the theoretical chapter. The prediction is then followed by a description and simultaneous analysis of the historical events. In the final conclusion I outline the observations and discuss how the

theoretical framework is able to explain the institutional development of the abolition of slavery and bonded labour. From there I move to suggesting future research.

The remainder of this chapter is dedicated to describing the historical and current forms of slavery, bonded labour and forced labour in India. Part and parcel of such a description is the role of poverty and caste. At the end of this chapter, I discuss the definition of slavery and define bonded labour, as well as forced labour.

Slavery and Bonded Labour in India

Historical records from the Indian subcontinent documented slavery since Mahmud Ghazni in 1025 to 1000 BC, and throughout the Delhi Sultanate, in which slaves rose to such political power as to establish their own ruling dynasties—the Qutb al-Din Aybak dynasty.[108] The Mughal Empire[109] and the British Empire[110] observed and regulated slavery. Under the Moghul Empire people became enslaved as war captives and were traded as slaves; women were held as concubines by the ruling elite.[111] Mann shows that slaves during these millennia had been employed in different occupations and that the institution varied, from hereditary to temporary enslavement. He argues that the slave trade not only from Africa to the Americas but also from Africa to Asia constituted an important part of the history of globalisation. The slave receiving societies, their economic, bureaucratic, trade, as well as military systems, would have collapsed without slavery.[112]

Enslavement in South Asia was not necessarily maintained throughout life; people were born into slavery, but slaves could buy themselves out of enslavement.[113] Manumission was not necessarily inherited. Slaves could own property and valuables,[114] and some exercised major influence on their master and ruler of the kingdom, as in the famous example of the female slave Virubai, who controlled the political affairs of the Maratha king until her death in 1740.[115] There were slaves who inherited kingdoms[116] and became rulers, as it happened in 1894 in the kingdom of Rajput.[117] But as Patterson points out, the slave's dependence upon a master ensured the loyalty of the slave, and to the very end, the fate of the

[108] KUMAR, 2006, p. 84–85.
[109] MAJOR, 2012, p. 26–27.
[110] CHATTERJEE, 2006, p. 32–33.
[111] EATON, 2006, p. 11–12.
[112] MANN, 2012, 18-19, 22, 156.
[113] GUHA, 2006, p. 175–176.
[114] GUHA, 2006, p. 175.
[115] CHATTERJEE/GUHA, 1999, p. 172–186; cf. GUHA, 2006, 174, 176.
[116] EATON, 2006, p. 10.
[117] CHATTERJEE/GUHA, 1999.

slave depended on the master.[118] The unfixed social status of slaves allowed for their integration into society. Social boundaries were not set rigidly, and some individuals enjoyed opportunities of social up-ward mobility.[119]

Bonded labour in India appears to be just as old as slavery. Kautilya's *Arthashastra*,[120] written around 300 BC,[121] set rules for debt bondage:[122] The punishment for "[a]ny person who has once voluntarily enslaved himself if guilty of an offence (…), be a slave for life."[123] While "[t]he offspring of a man who has sold off himself as a slave shall be an Arya."[124] The *Arthashastra* also acknowledged that whole families in times of distress may choose to bind themselves via debt to another more wealthy family, and a worker could also give himself into bondage instead of paying a fine as punishment for an offence.[125]

The British colonial power also made use of slave labour: Indians were used as domestic slaves;[126] during the time of the East India Company (EIC), officers travelling across the region made use of coolies[127] and slave labour as carriers or boat men. These practices were already banned in Bengal and Madras in 1795 and 1810,[128] but continued until the early twentieth century.[129] British colonial power also used slave labour for the building of the railways and roads,[130] and after the abolition of slavery in 1833, Indian labourers were moved to plantations on other colonial territories, for instance to Mauritius, Jamaica, Trinidad and British Guiana, under the indentured system.[131] During the famines in the eighteenth and nineteenth centuries, British observers described the self-enslavement of individuals into debt bondage as a means of survival. They interpreted these actions "with emerging orientalist tropes about the inherent passivity, indolence and lack of entrepreneurial spirit that supposedly characterised Hindus."[132] According to other historians such as Arnold and Davis, the Bengal famine of 1770, with about ten million casualties, was a product of British

[118] PATTERSON, 1982, 311, 331-33.
[119] MANN, 2012, p. 12; EATON, 2006, p. 6.
[120] SEN, 1999, p. 559. The *Arthashastra* is a manual in state-craft; the authorship is ascribed to the ruler Kautilya in 300 BC at the beginning of the Mauryan dynasty in the Indus delta, The Editors of Encyclopaedia Britannica.
[121] MANN, 2012, p. 13; CHATTERJEE, 2014, p. 343.
[122] SHAMASASTRY, 2010 [1915], p. 260. In judicial, governmental and parliamentary discussions of colonial and independent India, no actor referenced to the Arthashastra between the time period I consider.
[123] SHAMASASTRY, 2010 [1915], p. 260–261.
[124] SHAMASASTRY, 2010 [1915], p. 261.
[125] SHAMASASTRY, 2010 [1915], p. 260, cf. Kautilya/OLIVELLE, 2013, 582 (2.36.46.), 613 (3.13.5.).
[126] BANAJI, 1933, p. 6–8; MAJOR, 2012, p. 90.
[127] For a discussion of the origin of the term coolie, refer to TINKER, 1974, p. 41–43.
[128] CASSELS, 2010, p. 170–171.
[129] CASSELS, 2010, p. 168–169.
[130] UPADHYAY, 2011, p. 39; KERR, 2004, p. 9.
[131] CASSELS, 2010, 211, 224; GILLION, March 1958, p. 14.
[132] MAJOR, 2012, p. 56; see also the Law Commission Report of 1841 in which the ancestors of the 1770 famine were still enslaved as hereditary slaves, *Details of Bengal Slavery*, Indian Law Commission, January 15 1841a, p. 4–5.

intervention and seizure of crops. The British colonial power used the prevalence of slavery as justification to colonise the Indian subjects who were in need of European guidance, and, furthermore, they did not acknowledge their contribution to these human disasters, in which debt bondage was a strategy of pure survival.[133]

Major interrogates the 'reality' of slave labourers from the vantage point of the political discourse in the British Parliament in the early nineteenth century. When the abolition of the slave trade and slavery came under attack, parliamentarians moved to abolish slavery in the West Indies, but several MPs resisted the abolition of slavery in India. In the British parliamentarians' eyes, Indian slave labour seemed to be a mild version compared to the slave labour on the plantations in the Americas.[134] But Major demonstrates that brutality, homicide and chastising of slaves were known to those who experienced slavery on the Indian subcontinent. She makes clear that severe punishments have been part of the lives of slaves in South Asia and, in many cases, was not different from the brutality exercised on the plantations in the Americas.[135]

Today, references to slavery in India most commonly refer to debt bondage or bonded labour. In 2005 and 2011 the ILO estimated that there were 12.3 million people working in forced labour[136]—the ILO's definition of forced labour includes bonded labour—and in 2012 this number rose to 20.9 million[137]—a change which is attributable not to an actual increase of people in forced labour, but rather to different methods used to generate the numbers.[138] The 1819 observations of a collector from Tanjore are strikingly similar to the tales of bonded labourers of today:[139]

> [T]he origin of their bondage arises in a voluntary agreement on their part to become the slave of some man more powerful than themselves, upon whom they thus impose a more strict obligation to protect and maintain them and their families, than if merely serving them as labouring servants. (…) When a bond of slavery has been given, it ceases not with the life of the party, but is binding upon the descendants of the original giver, who continue bound by the condition of it likewise. In return, the owner is obliged to find subsistence at all times and under all circumstances, for the family of

[133] DAVIS, 2001, p. 310; ARNOLD, 1999, p. 94–99.
[134] Cf. BANAJI, 1933, p. 390.
[135] MAJOR, 2012, 4-5, 13, 97-103; cf. POWELL, 2006, p. 264.
[136] BELSER/MEHRAN/COCK *et al.*, 2005, p. 1; International Labour Office, 2005, December 7 2011; bonded labour falls under the ILO's definition of forced labour.
[137] International Labour Organisation, 2012, p. 11.
[138] International Labour Organisation, 2012, p. 11.
[139] Cf. MISHRA, 2011, p. 44–49; PREMCHANDER/PRAMELLA/CHIDAMBARANATHAN *et al.*, 2015, p. 1; National Archives of India, 1933, p. 30–31; BREMAN, 1996, p. 164–167. For a literary presentation of bonded labour, cf. Premchand: One and a Quarter Ser of Wheat (Hindi: Sawa Ser Gehun, 1921), reprinted in: Premchand, 2017, p. 513–519.

> his bondsman, whom he can employ in any manner he pleases, although it is generally as a labourer in the fields.[140]

Another variation of slave labour in India is so-called 'free' labour. 'Free' translates as 'unpaid' in this context. One name used for free labour is *begar*, which is explicitly banned by the *Constitution of India* of 1950. *Begar* (or *begaree*) has been demanded by the regional nobility, or by the British colonial administrators who used carriers and requested other services for short periods of time when they toured in the Indian regions. The *Elphinstone Code of Bombay* of 1827 defines *begaree* as follows:

> Compelling a person to serve as a porter or guide by means of personal violence, as blows, or such treatment as produces corporal pain or injury: or by means of violence to property, as seizing or injuring any article belonging to him or in his occupation: or by means of threats expressed in words, or conveyed by conduct denoting an intention to inflict some injury to person or property apparently in the power of the culprit to effect.[141]

Begar has most commonly been used to describe forced labour extracted by the state or state agents. The Government of India regulated the use of *begar* by the British administrators[142] and abolished it with the *Act V* of 1843.[143]

Another form of free labour still extracted today is carried out under the auspices of caste: In the villages the lowest caste members and Dalits are often requested to perform free labour.[144] Since most of the bonded labourers are members of the Scheduled Castes (SCs) or Scheduled Tribes (STs),[145] I discuss this relation in more detail in the following sub-chapter.

Caste and Poverty

When you sweat, it's water. When we sweat, it's blood![146]
—Viramma, a Dalit woman from a South Indian Village, 1997

Caste in India is the institutionalisation of inequality, resulting in discrimination of low caste communities and Dalits in the social and economic spheres. While caste is a specific form of social stratification in South Asian societies, the concept as such can be found in every

[140] Collector of Tanjore, June 30 1819, House of Commons, 1928, p. 837.
[141] Quoted in CASSELS, 2010, p. 168.
[142] MAJOR, 2012, p. 52–54.
[143] Governor-General in Council, April 7 1843, Art. 1; MAJOR, 2012, p. 9.
[144] BHATTACHARJEE/Human Rights Watch, 2014, 2, 17, 59-60; International Dalit Solidarity Network, October 2015, p. 56; UPADHYAY, 2011, p. 44.
[145] BREMAN, 1974, p. 7; International Labour Office, 2005, 31, para. 141; MARLA, January 1981, p. 17–18.
[146] Viramma/RACINE/RACINE, 1997, p. 266.

society.[147] The stratification of society along the lines of caste, allows for upper caste members to appropriate the labour or the surplus produced by lower caste members or Dalits.[148] Consequently, lower caste members and Dalits are primarily the victims of bonded labour.[149] Caste, contrary to race, cannot be revealed by physical traits, only by social practices: the labour an individual performs, the family name the person carries or the knowledge a village community shares of its community members.[150] Caste overlaps with class, but contrary to class, caste divides even workers among each other: Ambedkar observed in his work that "[t]he Caste System is not merely a division of labour. *It is also a division of labourers*."[151]

Caste constitutes a marker for the exercise of citizenship, yet also contributes to the limitation of citizenship.[152] Kosambi explains that the division of labour along caste lines originated several thousand years ago,[153] and Patnaik confirms that Aryan society incorporated different Indian tribes and these tribes conducted different tasks than the Aryans.[154] While this racialised interpretation of Indian social history needs to be treated with caution,[155] in the past, as still today, many Hindus make a value distinction between the different occupations. This distinction is based on the ritual meaning of the labour exercised and is translated into caste relations. Depending on the nature of the labour it can be perceived as polluting or pure.[156] One line that can be drawn is between manual and non-manual labour or the exposure to bodily fluids and corpses.[157] Occupations such as manual scavenging, the removal of human excrement by hand,[158] the skinning of dead animals, or leather production,[159] belong to occupations deemed 'polluting' and are almost exclusively undertaken by the lowest castes or Dalits.[160] Often Dalits are forced to do these tasks for no

[147] ROY, 1979, p. 297
[148] Cf. MUNDLE, 1979, p. 113; MARLA, January 1981, p. 146.
[149] Human Rights Watch, January 2003, 6, 10; CHAKRAVORTY/International Labour Office, February 2004, p. 15.
[150] UPADHYAY, 2011, 37, 52, 53.
[151] Ambedkar, Annihilation of Caste, quoted in AMBEDKAR/ANAND/ROY, 2014, p. 115, italic in the original.
[152] JAYAL, 2013, p. 227–228.
[153] KOSAMBI, 1965, 83, 101; cf. UPADHYAY, 2011, p. 36–37.
[154] PATNAIK, 1985, p. 3.
[155] See for a short discussion GHOSH, 1999, p. 32–33.
[156] KUMAR, 1993, p. 113. It is interesting to note that resistance of Dalits and lower caste members against these forms of labour were also based on the ritual meaning of these works and their denial to be the rightful inheritors of those occupations, UPADHYAY, 2011, p. 41; cf. BREMAN, 1974, p. 53.
[157] UPADHYAY, 2011, 31, 36-7, 41-2, 44; cf. BREMAN, 1974, 8, 14.
[158] BHATTACHARJEE/Human Rights Watch, 2014; MISHRA, 2011, p. 138. Manual scavenging is the term for the practice of manually cleaning and disposing of human waste from dry latrines and sewers. This is often carried out with bare hands or basic tools like brooms and baskets.
[159] PRUTHI, 2004, p. 164.
[160] UPADHYAY, 2011, p. 31; cf. BHATTACHARJEE/Human Rights Watch, 2014; NIAZI/ANZIA/Women News Network – WNN, May 12 2008; SHRIKANT, 1952, p. 3.

remuneration, in some cases even without any compensation, neither cash nor kind.[161] There are also 'pure' occupations, which include polluting duties, such as a post-mortem examination in medical professions. Roy reiterates that there are upper caste doctors, who conduct post-mortem examinations with the assistance of the low caste sweeper.[162] Therefore, it is no surprise that the majority of the bonded labour population, but not exclusively, consists of lowest caste members and Dalits, followed by tribal people.[163]

The results of the *National Survey on the Incidence of Bonded Labour* estimate that 2,617,000 bonded labourers, 86.6 percent, belong to the SCs or STs.[164] There is not a conditional relationship between bonded labour and caste—not all bonded labourers belong to the SCs and STs and not all SCs and STs are bonded labourers—but social relations and social hierarchy play into the configuration of bonded labour in India. Hjejle discusses the first British reports on slavery and bonded labour in South India: Since 1818 the British administrators observed the connection of caste, or rather untouchability, and bonded labour, which the colonial officers found was absent in areas that had been governed by Muslim rulers.[165] Similarly, Quirk summarises that "anti-slavery obligations invariably impinge upon larger structural questions of social and institutional discrimination, and the (mal)distribution of economic resources and political power."[166]

Poverty is another contributing factor that perpetuates bonded labour: Gabhanin argues in his study on human trafficking that being poor does not necessarily lead to slavery, but it "creates the necessary conditions."[167] Van den Anker,[168] Künnemann,[169] Iqbal,[170] and Tomlinson[171] agree with the identification of poverty as the main force that pushes people into exploitative labour relationships. The assumption that poverty is the main cause of the continued existence of bonded labour is supported by quantitative studies on a global scale, which correlate between poverty and human rights violations: Hafner-Burton and Tsutsui[172] find in their analysis that generally those countries that rate badly in human rights performance are also economically under-developed. The solution to the problem prescribed

[161] BHATTACHARJEE/Human Rights Watch, 2014, 2, 17, 59-60; International Dalit Solidarity Network, October 2015, p. 56; UPADHYAY, 2011, p. 44.
[162] ROY, Janary 17 2015.
[163] A survey of the Palamau district conducted in 1976 found that 50 percent of the bonded labourers belonged to the *Bhuiyas*, an indigenous community, and 25 percent to tribal communities, MUNDLE, 1979, p. 105–106.
[164] MARLA, January 1981, p. 144.
[165] HJEJLE, 1967, p. 75–86.
[166] QUIRK, 2008, p. 532.
[167] GABHAN, 2006, p. 531; cf. ZHANG/PINEDA, 2008, p. 52.
[168] VAN DEN ANKER, 2004.
[169] KÜNNEMANN, 1995.
[170] IQBAL, 2006, p. 5.
[171] TOMLINSON, 2009.
[172] HAFNER-BURTON/TSUTSUI, 2005, 1390, 1399.

by this perspective on slavery and bonded labour is economic uplift.[173] But capitalism and economic growth have not delivered on their promise to serve the general welfare of all people. Often in areas of industrial development, a deterioration of labour conditions of the poor can be observed. Too often the poor are excluded or treated as the collateral damage for development.[174] Poverty persists,[175] even after the liberalisation of the Indian economy in the 1990s, and particularly Dalits and Adivasis[176] remain largely unaffected by the fruits of India's growth:[177] 46 percent of the informal agricultural workers in India live below the poverty line, even though they have work.[178] During the period between 2003 and 2012, the United Nations Development Programme (UNDP) estimated that the working poor, people who earn USD 2 or less per day,[179] constituted 55.5 percent of the population in India.[180] The Indian government sets the poverty line at INR 20 per day. According to an Indian government report of 2007, 77 percent of the Indian population lived on less than INR 20 a day in 2004.[181] By the year 2016, the number of those who work and earn less than USD 2 experienced a sharp decline: The UNDP estimated that the working poor constituted 21 percent of the population.[182] These numbers show that having work does not necessarily provide for the possibility of even dreaming of rising out of poverty. The poverty rate also shows that a large number of people is at risk to become bonded labourers.

Dalits and lower caste members are much more vulnerable to poverty than members of higher castes, and the majority of the Dalits in agriculture are landless.[183] Poverty increases the likeliness of landless farmers and workers to submit to exploitative contracts or to bond themselves to their debtor.[184] Caste and the continued existence of bonded labour play a pivotal role in sustaining a cheap workforce. Employers are able to increase the margins of gains because of the cheap labour.[185] To continuously be able to tap the source of cheap labour, caste is essential. The caste system regulates the division of labour and the "division

[173] VAN DEN ANKER, 2004, p. 22–28; KÜNNEMANN, 1995; IQBAL, 2006; TOMLINSON, 2009, p. 241.
[174] HIMANSHU/CULTURAL SURVIVAL, September 1999.
[175] BAVISKAR, 1995, p. 25.
[176] Indigenous tribes of India.
[177] BALCAZAR/DESAI/MURGAI *et al.*, 2016, i, 8-15, 27.
[178] United Nations Development Programme, 2015.
[179] The UNDP offers the following definition of the "working poor at PPP [purchasing power parity] $2 a day: Employed people who live on less than USD 2 a day, expressed as a percentage of the total employed population ages 15 and older," United Nations Development Programme, 2015, p. 50.
[180] In 2008 USD 2 bought around INR 80 Rupees, by the year 2012 USD 2 bought around INR 106. Calculation and currency conversion of INR to USD based on: http://www.x-rates.com/average/?from=USD&to=INR&amount=1&year=2008.
[181] National Commission for Enterprises in the Unorganised Sector/Government of India, August 2007, i.
[182] UNDP.
[183] JAYAL, 2013, p. 262.
[184] MISHRA, 2011, 29, 36, 38-9.
[185] KAK/PATI, 2012, p. 1; CHOPRA, 2012, p. 37; cf. KARA, 2012, p. 12–15.

of labourers."[186] Consequently, caste draws the line between those who are exploited and those who exploit and helps to explain enslavement patterns.[187]

Some commentators styled this logic of vulnerability and exploitation as a charitable undertaking: A high court decision of 1880[188] and in reports of the British administration of the 1840s, slavery and debt bondage were explained to function "as the Indian Poor Law."[189] Others argue that bonded labour compensates for the lack of access to the formal credit market.[190] Bonded labour arrangements allow workers to receive a credit which they would never receive from a bank.[191] But Brass warns against reinterpreting exploitative relations as "functional-for-those-who-are-ruled."[192] The bonded labourer-employer relationship is not among equals and not only characterised by economic nature; rather, the relationship is usually marked by social hierarchy mediated and legitimised by caste[193] and often enforced by threat or the actual use of physical violence.[194] Other scholars found that state supported credits are not the solution to the problem either. Credits cannot compensate for caste discrimination or notorious underpayment. Microcredits have in many cases proven to perpetuate exactly what Yunus claimed to alleviate: Poverty.[195] Reports on suicides of debtors is a reoccurring theme in the news, even though these credits are intended to help avoid these tragedies. Because women comprise the main target group of microfinances, these suicides have an increasingly higher rate of female victims.[196]

One might wonder why bonded labourers do not 'simply' walk away from their exploiters. Power, defined in the simple terms of Dahl, finds its perfect empirical expression in bonded labour: "A has power over B to the extent that he can get B to do something that B would not otherwise do."[197] This power can be exercised on the individual level, but also at the community level. Power and control are at the heart of the relations between slaveholder/employer, the slave/bonded labourer, and the state. As Mitra put it so eloquently in *Power, Protest and Participation*: "[A]ny act of power requires an implicit complicity by

[186] AMBEDKAR/ANAND/ROY, 2014, p. 115; cf. ANDERSON, 2005, p. 55.
[187] TOMLINSON, 2009, p. 242; LERCHE, 2007, p. 430.
[188] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 728.
[189] Mr. Cameron's Minute, Indian Law Commission, January 15 1841a, 13, 340-43.
[190] Human Rights Watch, January 2003, p. 9.
[191] This is also one of the reasons why some scholars suggest a change of the formal credit market to tackle the issue of bonded labour, PREMCHANDER/PRAMELLA/CHIDAMBARANATHAN *et al.*, 2015, iii.
[192] BRASS, 1994, p. 268.
[193] MISHRA, 2011, 29, 36, 38-9.
[194] VARMA, 2011, 70, 112; BREMAN, 1996, p. 167.
[195] YUNUS/JOLIS, 2003, p. 171.
[196] Staff Reporter, July 11 2010; KINETZ, February 25 2012; BISWAS, December 16 2010; KALPANA, 2016; a study on the effectiveness of microcredits DUVENDACK/PALMER-JONES/COPESTAKE *et al.*, August 2011, p. 2–3; an edition on microcredits KLAS, 2014.
[197] DAHL, 1957, p. 202–203.

those subject to that power, wherein lies the room for manoeuvre by the powerless."[198] This room was used by many Indian labourers, when they removed themselves from the power relation, for instance by leaving the tea plantations in Assam.[199] Their self-help strategies were also forms of resistance: There are reports of violent actions against exploitative employers, flight, go-slow tactics, collective protest,[200] or coping mechanisms that could also be seen as means of resistance, such as drug consumption or suicide.[201]

Hjejle describes instances of slaves and coolies in South India who learned of the delegalisation of slavery in 1843; in asserting their newly acquired 'right' and the inability of employers to reclaim them legally, they were confronted with reprisals by upper caste members and former slaveholders. These groups resorted to different methods of repression that also reflect the power relations, mediated by caste, economic and social position, and resulting in better access to judicial institutions of the better-off and higher castes. Such methods included:

> '(a) bring false cases in the village courts or in the criminal courts; (b) obtain, on application, from government waste lands lying all round [sic] the paracheri, so as to impound the pariahs' cattle or obstruct their way to the temple; (c) have mirasi names fraudulently entered in the government account against the paracheri; (d) pull down the huts and destroy the growth in the backyards; (e) deny occupancy right in immemorial subtenancies; (f) forcibly cut the Pariahs' crops, and on being resisted charge them with theft and rioting; (g) under misrepresentations, get them to execute documents by which they are afterwards ruined; (h) cut off the flow of water from their fields; (i) without legal notice, have the property of subtenants attached for the landlords' arrears of revenue.'[202]

The dimension of violence played an important role. In many cases coercion was exercised in a variety of forms, such as the threat or actual use of physical violence, threats or actual execution of internment, and threats against the lives of the debtor as well as his or her whole family. In the late nineteenth and early twentieth centuries, the tea plantation owners, for instance, ran private prisons, where they were allowed to incarcerate workers[203] and severely punished runaway slaves. Surrounding villages were complicit in returning runaway slaves to

[198] MITRA, 2002, p. 8.
[199] VARMA, 2011, p. 59.
[200] GRAY, 2008, p. 386; VARMA, 2011, p. 10; BHATTACHARYA, 2013; BAAK, 1999, 123, 148; CAMPBELL/ALPERS/SALMAN, 2007, p. 7–8; KOLSKY, 2010, p. 142; GUHA, 1977, p. 46.
[201] My interpretation of the descriptions of drug consumption of coolies at the tea plantations in VARMA, 2009, p. 149. On suicide cf. TINKER, 1974, p. 11.
[202] J. H. A. Tremenhere: Note on the Pariahs of Chingleput, October 5 1891, in Madras Revenue Proceedings, September 30 1892, Vol. 4218, p. 615-50, quoted in HJEJLE, 1967, p. 115.
[203] VARMA, 2011.

the tea plantations.[204] Ambedkar gives the example of social boycott—as described above—which higher caste groups used against lower caste members to coerce them to do 'their duty.'[205] Today there are still reports of corrupt police officers who return bonded labourers to their employers, and today's newspapers report on acts of violence too abhorrent to picture that bonded labourers can experience, when they choose to run away;[206] and Breman reiterates equally disturbing treatment of absconding labourers, whom creditors had tied to trees and flogged, shaved or beaten to death in the 1990s.[207]

Some bonded labourers did run away and ended the exploitative labour relationships.[208] But for the lot who endured, one has to understand the different coercive mechanisms at the disposal of those exacting free or bonded labour. Many workers 'voluntarily' choose to bond themselves and often lacked the knowledge of their rights officially granted to them by the state. Or they were unable to access the records of their creditor in order to track their amount of debt and down-payment through the work they already completed. There were also normative and moral obligations at work that 'forced workers to pay back their debt.'[209] The Royal Commission on Labour observed in 1931 that the labourers took their contractual obligations seriously and noted the populations' notion of "the sanctity of contract."[210] The caste system was, and is as of today, successful in keeping the losers of the social hierarchical system in their place: Often Dalits believed in their inferiority and obligation to perform those tasks, and they often also believed that this was their duty, or they simply lacked alternative options.[211]

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[204] VARMA, 2011, p. 63–67.
[205] *Letter from the Scheduled Caste People (Chamars) to the Deputy Commissioner*, February 1947, reprinted in RAO, 1968b, p. 105–106.
[206] HAWKSLEY, July 11 2014.
[207] BREMAN, 1996, p. 166–167.
[208] Cassels reiterates the report of the Resident of Hyderabad of 1819, who told of a deserted village whose inhabitants had left to avoid becoming pressed labourers of the regional ruler, the Nizam, CASSELS, 2010, p. 170; VARMA, 2011, p. 59.
[209] MUNDLE, 1979, p. 121–122; in the *Report of the Royal Commission on Agriculture in India* the authors describe that farmers took up the debt of their deceased fathers as a matter of honour, Royal Commission on Agriculture in India, 1928, p. 581 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]; also the commissioner Lasker of the Ad Hoc Committee on Slavery observed: "The debtor's helplessness in India sometimes is intentionally accentuated by those who profit from it by appeals to religious beliefs that reinforce his sense of inferiority and guilt, so that instead of taking advantage of the courts and of such special agencies as have been set up to help him defend his rights, he regards his exploiter as his only protector and completely subjects his will to that of his master," Lasker, quoted in United Nations Economic and Social Council, February 9 1955, p. 73. Also, ancient Greece knew the moral obligation of debt, see FINLEY/SHAW/SALLER, 1981, p. 151; see also GRAEBER, 2011.
[210] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 230.
[211] UPADHYAY, 2011, 42, 48; BREMAN, 1996, p. 217.

Defining Slavery, Forced Labour and Bonded Labour

Between the Law Commission Reports of 1841 and the Trafficking in Persons Report (TIP) of the US State Department of 2016, organisations, administrators, commissioners and scholars described bonded labour as "self-mortgage,"[212] "semi-slavery,"[213] labour exploitation "akin to slavery,"[214] or subsumed it under "human trafficking,"[215] or "forced labour."[216] Another term used to describe coerced labour[217] since the beginning of the twentieth century[218] is "modern slavery."[219] The adjective 'modern' tries to isolate contemporarily observed forms of slavery from supposedly past forms of so-called 'chattel slavery.'[220] In other cases it seems that authors use the word 'modern' simply because they describe slavery as it is found today—and today is modern.[221] This use of terminology encompasses various forms of exploitation: Bonded labour, forced marriages and human trafficking.[222] The plethora of terms and the academic discourse exemplify that the question on defining slavery is far from resolved.[223] Examining several authors' discussions on the terminological conflation does not necessarily clear the confusion.[224] Unfortunately, a recourse to international legal provisions is not helpful either[225]—the adoption of additional conventions and the defining of new areas of concern, namely the ILO and bonded labour,[226] has only contributed to the terminological and definitional confusion.[227]

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[212] Indian Law Commission, January 15 1841a, p. 70.
[213] Correspondence, T. C. S. Jayaratnman, dated June 14 1926, National Archives of India, 1926 June.
[214] United Nations Economic and Social Council, February 9 1955, p. 21.
[215] US State Department, June 2016.
[216] International Labour Office, 2005, p. 1; CAMPBELL/ALPERS, 2004.
[217] An umbrella term suggested by van der Linden, VAN DER LINDEN, 2016, p. 294.
[218] See for instance a publication of 1834: BOURNE, 1834, p. 68.
[219] BALES, 1999, p. 14–22; BALES/TRODD/WILLIAMSON, 2009, p. 27–29. Patterson takes apart Bale's indicators, which Bales uses to support his claim of what is new in today's slavery compared to the old, for instance, that in the past slaves very highly valuable and pricy, while today they are not and easily disposable, PATTERSON, 2012, p. 330–336.
[220] Cf. BALES/TRODD/WILLIAMSON, 2009, p. 27–28.
[221] Cf. KARA, 2012, p. 32.
[222] Cf. KARA, 2009, p. 3–4.
[223] Cf. ZEUSKE, 2018, 25ff; RODRÍGUEZ GARCÍA, 2016; BRASS, 2017; Research Network on the Legal Parameters of Slavery, March 3 2012, p. 1; AHUJA, 2013.
[224] Cf. SWEPSTON/International Labour Organisation; RODRÍGUEZ GARCÍA, 2016. Rodriguez discusses the current conflation of terms, but does not offer a final definition of each term. Swepston discusses the international conventions on forced labour and slavery, but also does not offer a clear definition which those conventions might ultimately brush over.
[225] As the use of the *Supplementary Convention on the Abolition of Slavery* of 1957 indicates; see for a similar observation: PATTERSON, 2012, p. 322.
[226] Based on an interpretation of the *Declaration on Fundamentals Principles and Rights at Work* of 1998 (International Labour Conference, 1998), the ILO expanded the meaning of C29 *Abolition of Forced Labour Convention*'s provision "all forms of forced or compulsory labour" to bonded labour, MISHRA/International Labour Office, July 2001, iii; International Labour Conference, June 2009, 5, 77; THOMANN, 2011, p. 138.
[227] RODRÍGUEZ GARCÍA, 2016, p. 16–19.

As Major points out, the transatlantic slave trade and the plantation slaveries in the Americas were constitutive of the initial legislation of abolition. In addition, slavery is often defined from the vantage point of the American experience. The abolitionist discourse drew a bipolar line between free labour and unfree or slave labour.[228] Different systems of slavery in South Asia, never fit this freedom/unfreedom dichotomy.[229] And it also did not reflect the actual experience of most workers and (female) service providers in the metropolis. Also, in Britain, the 'free' workers with contracts were legally covered by master and servant laws that allowed for criminal sanctioning for breaches of contract. None of the workers were free in the sense that they were not exposed to mechanisms of physical compulsion,[230] or that they could choose their employer, leave their job whenever they wanted, or bargain their wages or working conditions.[231] But the concept of chattel slavery and the "complete and extreme domination as the essential prerequisite of slavery"[232] is also only valid for aspects of the American slavery experience: The position of the first black slaves that were brought to America did not fit the narrow definition of chattel slavery. By the mid-seventeenth century the African slave status became increasingly formalised, with the black population forced into permanent and inheritable slave status.[233] Smedley explains that "[t]hese changes continued into the early eighteenth century, and in the process produced a system of bondage that was unique in human history. Its primary distinctiveness rested on the fact that such slavery was reserved exclusively for black Africans and their descendants."[234]

Eaton argues that in societies organized by social hierarchy, dependencies vary in degree, and slavery constitutes the highest degree of dependency. Slavery in India constituted only one form of dependency, in a society in which all individuals depended in greater or lesser degree.[235] Chatterjee insists that restricting the use of the term slavery to arrangements similar to the slaveries in the Americas would be buying into the master and ruler narrative exercised by the British that ultimately failed to address other forms of slavery in other parts of the world: "This perspective [that slavery in India was 'benign'] on indigenous society persisted till well into the twentieth century, and continues to circulate today as a resistance to

[228] MAJOR, 2012.
[229] MAJOR, 2012, p. 12–13.
[230] STEINFELD, 2001, p. 1.
[231] CASTLE/HAGAN/WELLS, 2007, p. 97.
[232] CHATTERJEE, 2005, p. 138.
[233] ALLEN, 2012, chapter 10.
[234] SMEDLEY, 2007, p. 97; cf. CAMPBELL/STANZIANI, 2013, p. 2.
[235] EATON, 2006, p. 3.

the 'universalisation' and 'homogenisation' implied by the term 'slavery' itself."[236] Salman also supports this observation in the discussion of the Philippines, arguing that "[t]he privileged position of the United States and the Americas in this global historiography is obviously inadequate for understanding slavery and abolition."[237] Interestingly, shortly after the act of 1833, the British parliament adopted an additional act against slavery committed by British subjects. This act provided that "all Persons holden in Servitude as Pledges for Debt, and commonly called 'Pawns,' (….) shall (…) be deemed and construed to be Slaves."[238]

Translations and descriptions of ancient texts indicate that degrees of dependency and bondage by debt were known in ancient India,[239] but also for instance in Rome and Greece.[240] In ancient Greece was no term that could be translated as debt bondage, but authors discussing antique sources testify that people could get caught in debt bondage: The ruler Solon, for instance, abolished debt bondage in 600 BC. Bondage and slavery existed side by side and were associated with degrees: Bondage was not an agreeable status, but slaves were socially inferior to bonded labourers.[241] Olivelle, who translated the *Arthashastra*, describes terms that can be understood as bondage through debt, established by monetary exchange or in kind: Udaradāsa, bhaktadāsa and āhitaka. Olivelle explains that an udaradāsa was a "subsistence slave," a person who became "a slave in order to obtain maintenance. Thus, no sale [took] place."[242] Referring to other sources, the Mānava Dharmaśāstra and the Nārada Smṛti, the same construct was called "bhaktadāsa."[243] Furthermore, a person could be given as a pledge:[244] The āhitaka was "someone given to a creditor as collateral. During the time the person [was] a pledge, he or she resemble[d] a slave and [could not] act independently."[245] But a person given as collateral had "more rights than a slave."[246] Another state-sanctioned variation of debt bondage could be entered through a judicial process. If an accused person was poor and found guilty, the plaintiff could pay the fine ordered by the court as punishment and "get work done by him."[247]

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[236] CHATTERJEE, 2005, p. 138; "slavery and abolition in the Americas have been taken as the ideal type definitions of the phenomena," SALMAN, 2005, p. 167.
[237] SALMAN, 2005, p. 167.
[238] *An Act for the more effectual Suppression of the Slave Tade* of 1843, Parliament of the United Kingdom, August 24 1843, Art. II.
[239] CHAKRAVARTI, 1985.
[240] FINLEY/SHAW/SALLER, 1981, p. 150–166.
[241] FINLEY/SHAW/SALLER, 1981, p. 150–166; MEIER, 2012, p. 26.
[242] Kautilya/OLIVELLE, 2013, p. 613.
[243] Kautilya/OLIVELLE, 2013, p. 613; cf. PRAKASH, 2005, p. 265.
[244] Kautilya/OLIVELLE, 2013, p. 180.
[245] Kautilya/OLIVELLE, 2013, p. 584.
[246] Kautilya/OLIVELLE, 2013, p. 613.
[247] Kautilya/OLIVELLE, 2013, p. 181.

Already the ancient examples show that debt bondage did not fit the dichotomous concept of either free or slave labour. Their social status was not as degrading as slavery, and it could be entered into and later ended as a relation based on a debt. Therefore, I formulate a working definition of bonded labour with hindsight to free labour and slavery. In line with the suggestions of other authors,[248] I diverge from the dichotomous concept and use a continuous model. Ahuja cautions scholars not to fall in the same trap of fixing different forms of dependencies on the continuum, which ends up being too simplistic, and brushes over the rich real-life experiences and struggles between workers and employers:[249]

> During their working lives, large segments of the workforce have been moving, under diverse historical conditions, in and out of various labour forms, of their own accord and/or in response to economic or political coercion. Crucially, (…) workers and/or their employers have also been known to stretch a labour form to the point of turning it into another, qualitatively distinct form.[250]

In the light of the previous discussion, and for instance the different experiences of the bonded labourers exemplified in the case of *Madan*, "it is clearly understood [that the definition of formally free labour is] an abstraction from the much richer and more complex reality of concrete historical situations,"[251] and it serves "the purpose of marking out larger historical *tendencies*."[252] This also applies to other conceptualisations of forms of unfree labour.

According to Zeuske, chattel slavery encompasses four dimensions:[253] Ownership rights including the full disposal over the slave's body by the owner; the transferability of the slave by sale and purchase; the demobilisation of the slave; and the slave status being hereditary.[254] Looking at those elements and the ensuing discussion of Zeuske, it appears that there are more elements constitutive of slavery than appear at first sight. The definition of chattel slavery invokes a legal dimension, the legally sanctioned ownership right over a person enforceable by a court or other state bodies.[255] This definition is also given in the League of Nations *Slavery Convention* of 1926, Article 1: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are

[248] AHUJA, 2013, p. 100–114; PATTERSON, 2012, p. 323.
[249] AHUJA, 2013, p. 100–114.
[250] AHUJA, 2013, p. 99–100.
[251] AHUJA, 2013, p. 115.
[252] AHUJA, 2013, p. 115, italics in the original.
[253] Cf. CAMPBELL/ALPERS, 2004, ix.
[254] ZEUSKE, 2018, p. 17–18; cf. Research Network on the Legal Parameters of Slavery, March 3 2012, p. 2.
[255] ZEUSKE, 2018, p. 18.

exercised."[256] Allain clarifies that "the status or condition"[257] encompasses *de jure* and *de facto* exercise of slavery, and which therefore allows the use of this article vis-à-vis bonded labour. The phrase "any or all of the powers attaching to the right of ownership"[258] removes the *de jure* 'ownership' requirement, and the *de facto* 'power of ownership' is sufficient to make a judicial case.[259] Seeing slavery as one form of labour exploitation on the free/unfree labour continuum, the ownership right *de jure* is the qualifying element for slavery, while bonded labour is marked by the *de facto* ownership. Following the logic of property, the property in the person can also be inherited, transferred, sold and purchased,[260] a practice also familiar in the case of bonded labour, as discussed in the case of *Madan*.[261]

A third dimension, addressed by Zeuske and in the *Slavery Convention's* Article 1, is the full disposal over the slave's body by the slaveholder. This relates to the control exercised over the slave regarding decisions of life and death, marriage and reproduction. The full disposal over a slave includes the appropriation of the production of the slave or the services s/he offers, for which the slave is not remunerated or compensated. Regarding the full disposal over the slave's body, Zeuske insists that this is also relevant for debt bondage and a condition that renders the distinction between bondage and slavery artificial. He therefore suggests to follow Warren, and to use the term 'debt-slavery'[262] instead.[263] The exercise of control also touches upon another element: The dimension of exploitation, which in the estimation of Marx turned the slave into the ultimate proletarian who is dispossessed of the surplus he produces and cannot even claim property rights over his or her own body.[264]

The reference to the Atlantic trade and Americas' chattel slavery, also carries implicit additional elements, as Zeuske suggests. For instance, the image of black slaves shipped across the Atlantic to be used as labourers on plantations in the Americas[265] includes: The transportation or trafficking of human beings over large distances or the sea.[266] Allain and Bales refute this element to be constitutive of slavery on the grounds that trafficking does not necessarily end in slavery. On the other hand, the experience of slavery after being trafficked

[256] League of Nations, 1926, Art. 1 (1).
[257] League of Nations, 1926, Art. 1.
[258] League of Nations, 1926, Art. 1.
[259] ALLAIN, 2009, p. 241, 2015, p. 26–27.
[260] ZEUSKE, 2018, p. 18.
[261] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 334.
[262] WARREN, 2007, p. 216.
[263] ZEUSKE, 2018, p. 19.
[264] I thank professor Mitra for pointing this out. The proletarian wage labourer works primarily for the capitalist, while the free surplus is hidden by the wages s/he earns; the slave works only for the master and only earns his/her subsistence; see MARX/ENGELS/FETSCHER, 2011 [1848], p. 18–19; MARX, 1872, p. 560–561.
[265] MAJOR, 2012, p. 19.
[266] ZEUSKE, 2018, p. 17–18.

cannot be diminished by the prior experience of trafficking.[267] I follow the definition that trafficking describes a process of transportation of people. It usually occurs in a transnational context and therefore is connected to a specific set of policies and jurisdictional conflicts, for instance over limiting or expanding migration and respective rules. This usually involves at least two jurisdictions: The country of origin as well as the country of destination. Since these conflicts differ from those over bonded labour,[268] I exclude trafficking from my research project. Trafficking would, for instance, include the transportation of coolie and indentured labourers by the British to other overseas possessions.[269] These processes related to indentured labour are based on the complicity of the (colonial) state,[270] an issue that also plays into the definition of forced labour, which I address further below. Considering this history would deviate from my attention to bonded labour, which concerns mainly 'native' labour exploitation and its abolition. This focus is timely, since most of the recent publications on bonded labour or slavery in the Indian Ocean Region rarely address bonded labour and its abolition in India.[271]

As mentioned above, the process of trafficking usually relates to a place of origin and destination. In the American slave trade particularly, the destination is of interest: The plantation.[272] The plantation regime refers to a specific mode of production[273] and the integration of the production of raw materials into the global market. This construction contributed to the exclusion of slavery systems within the 'unproductive' household, as was found prevalent in India and referred to as 'domestic slavery.'[274]

Another element inherently connected to trafficking is the slave's social disconnection, which is reinforced by the control of the master over the slave. Patterson described this as the "social death."[275] The social disconnection of the slave goes in tandem with the reimplantation in an unfamiliar region. Geographically and socially disconnected, running away becomes a difficult or impossible undertaking. The reimplantation of a group of slaves into a new area that was either already inhabited or ruled by another group carried the potential of deepening the element of disconnection. This also contributes to the construction

[267] ALLAIN/BALES, Summer/Autumn 2012, p. 4.
[268] Derks refers to immigration legislation: DERKS, 2010, p. 845. Other contributions on indenture highlight the additional legislation that needed to be passed to allow subjects to leave for instance India, TINKER, 1974, 61ff.
[269] DERKS, 2010, p. 844; LINDNER/TAPPE, 2016.
[270] Cf. ANDERSON, 2009; ANDERSON, 2004, p. 425.
[271] See for instance the special issue on *Bonded Labour in Southeast Asia*, in the *Asian Journal of Social Science*, (Vol. 38, No. 6) 2010, DAMIR-GEILSDORF/LINDNER/MÜLLER *et al.*, 2016; CAMPBELL, 2004, 2005a, the contribution of Chatterjee refers to India, CHATTERJEE, 2005.
[272] ZEUSKE, 2018, p. 11–17.
[273] VARMA, 2011, p. 254.
[274] CHATTERJEE, 1999, p. 207; MAJOR, 2012, 131ff.
[275] PATTERSON, 1982.

of difference and social hierarchy.[276] Smedley makes clear: The difference in the American case of slavery did not come naturally. Racism was not the cause of slavery, but slavery's consequence.[277] With the plantation image in mind, slaves appear to be easily identifiable because of a natural or imprinted physical appearance.[278] But also other indicators were and are used to construct difference between the slave and the slaver: Social status or the loss of it.[279] That difference is or becomes embedded in social hierarchy constructed along lines of caste, race, class, religion, or criminal record.[280] Social hierarchy within which the exercise of power[281] of masters over slaves occurs is acted out at times with gross violence.[282] Slavery is the perverted exercise of social hierarchy, and constitutes not an aberration of the norm but "a confirmation of it."[283] As a signifier of social hierarchy, the possession of slaves was also reason for slaveholders to indulge in pride.[284] An example is the observation of Buchanan, who wrote on Indian farmers in 1800: "A farmer with such a stock [of oxen, ploughs and land of 35 acres that need five families with about 24 people to work] (…) is reckoned a substantial man."[285]

Contrary to Patterson's insistence that the element of alienation is constitutive of slavery, but not bonded labour,[286] I argue that, looked at it from its end—the exercise and maintenance of control[287]—alienation also applies to debt bondage in India.[288] In the case of bonded labour, it is the entrenchment within the familiar from which bonded labourers often cannot escape. The alienation embedded in the social community contributes to their inability to remove themselves from exploitative labour relations. Known to the neighbours, low caste members or Dalits are coerced by such means as social control and caste boycott to do as requested.[289] Consequently, black slaves in the Americas challenged their difference by being

[276] ZEUSKE, 2018, p. 18.
[277] SMEDLEY, 2007, p. 97.
[278] CAMPBELL/ALPERS, 2004, xvii.
[279] Patterson speaks of honour, PATTERSON, 2012, p. 326.
[280] RICHARDSON, 2018, p. 59–62.
[281] DAHL, 1957, p. 202–203.
[282] See for reiterations of repugnant examples of how masters and employers treated their labourers and slaves: in Jamaica: PATTERSON, 2012, p. 328; in India: KOLSKY, 2010, p. 65; SHARMA, 2009, p. 1308–1309; BANAJI, 1933, xli, 18.
[283] ROY, 2007, p. 3, Roy herself is referring to BAUMAN, 1989, 83ff.
[284] A point also observed by PATTERSON, 2012, p. 358. Breman explains that landowners increased their prestige as high caste individuals by having others doing manual labour for them, while they needed not to compromise their spiritual purity by touching the plow, BREMAN, 1974, 14-15, 66.
[285] BUCHANAN, 1807, p. 372.
[286] PATTERSON, 2012, p. 330.
[287] PATTERSON, 2012, p. 326.
[288] TOMLINSON, 2009, p. 242; LERCHE, 2007, p. 430.
[289] *Letter from the Scheduled Caste People (Chamars) to the Deputy Commissioner*, February 1947, reprinted in RAO, 1968b, p. 105–106; cf. HJEJLE, 1967, p. 115.

baptised,[290] low caste members or Dalits challenged their difference within the community by attempting to become different through conversion to Islam,[291] Buddhism[292] or Christianity.[293] Therefore, alienation understood as being disconnected or held apart from the general social community is a shared experience of slaves and bonded labourers.

The element of disconnection and alienation intentionally contributed to the slave's demobilisation. With nowhere to go, and unfamiliar with the location and local language,[294] the slave had little chance to succeed at running away, which ultimately forced him or her to stay. To ensure demobilisation the threat or use of violence was applied. British tea planters in North India, for instance, collaborated with the surrounding communities to track down fugitive coolies.[295] And today's newspapers document cruel tales of bodily mutilation after runaway bonded labourers are captured by their debtors.[296] The whip has been identified as the insignia of America's chattel slavery.[297] Violence, among other points, has constituted a key requirement for defining slavery.[298] Consequently, when British policymakers assumed that violence was absent in slavery practiced in India, this allowed them to withdraw 'benign' forms of slavery from the discussion of slavery.[299] But the use or threat of violence is a means to keep slaves in slavery, and this is important, because slavery has not been voluntarily entered.[300] Contrary to this observation stands the idea that bonded labour is voluntarily entered, as for instance argued in the case of *Madan*.[301] The labourers owned the "liberty to starve,"[302] and the contract or verbal agreement only underlined the fact that they acted as free labourers.[303] In connection to this is Zeuske's fourth dimension, the temporal element: The slave status constitutes a lifelong condition, because it is inherited by birth.[304] Looking at the elements of time and involuntary v. voluntary entrance in conjunction with bonded labour as exemplified in the case of *Madan*, I suggest subsuming these elements of entrance to bonded labour and the temporal dimension under the absence of exit options.[305] In the example of

[290] PATTERSON, 1982, p. 72.
[291] THURSTON, 1909, p. 61.
[292] AMBEDKAR/ANAND/ROY, 2014, p. 139–140.
[293] RADHAKRISHNA, 1992, p. 187.
[294] CAMPBELL, 2005b, p. 7.
[295] VARMA, 2011, p. 63–67.
[296] HAWKSLEY, July 11 2014.
[297] CHATTERJEE, 2005, p. 138; MAJOR, 2012, p. 12.
[298] Cf. Research Network on the Legal Parameters of Slavery, March 3 2012, p. 2.
[299] CHATTERJEE, 2005, p. 138.
[300] ENGERMAN, 2000, p. 481.
[301] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 581; cf. LINDNER/TAPPE, 2016, 9, 12.
[302] CAMPBELL, 2005b, p. 14.
[303] MAJOR, 2012, p. 225; FINN, 2009, p. 201.
[304] ZEUSKE, 2018, p. 17–18.
[305] LINDNER/TAPPE, 2016, p. 12; BRASS, 1994, p. 255–257, 1999, p. 11.

Madan the husbands entered the debt allegedly voluntarily. But the wives and children inherited their debt. Even though bonded labour arrangements can end upon repayment of the debt,[306] the determination whether the debt has been redeemed is within the power of the master. Until then, the bonded labourer, like the slave, cannot leave.[307]

One condition of labour relations amounting to slavery that is rarely explicitly stated is the number of people affected. A single slave does not make slavery, but rather the subjugation of a discernible group or, as in forced labour, the extraction of coerced labour of many people within a confined structure—the prison, for instance.[308] To use another gross human rights violation to exemplify this point: It depends on the context to determine whether a murder case is either homicide or genocide.[309] Most scholars draw on the notion of coerced labour following traceable pattern of human interaction that affect a larger number of people.[310]

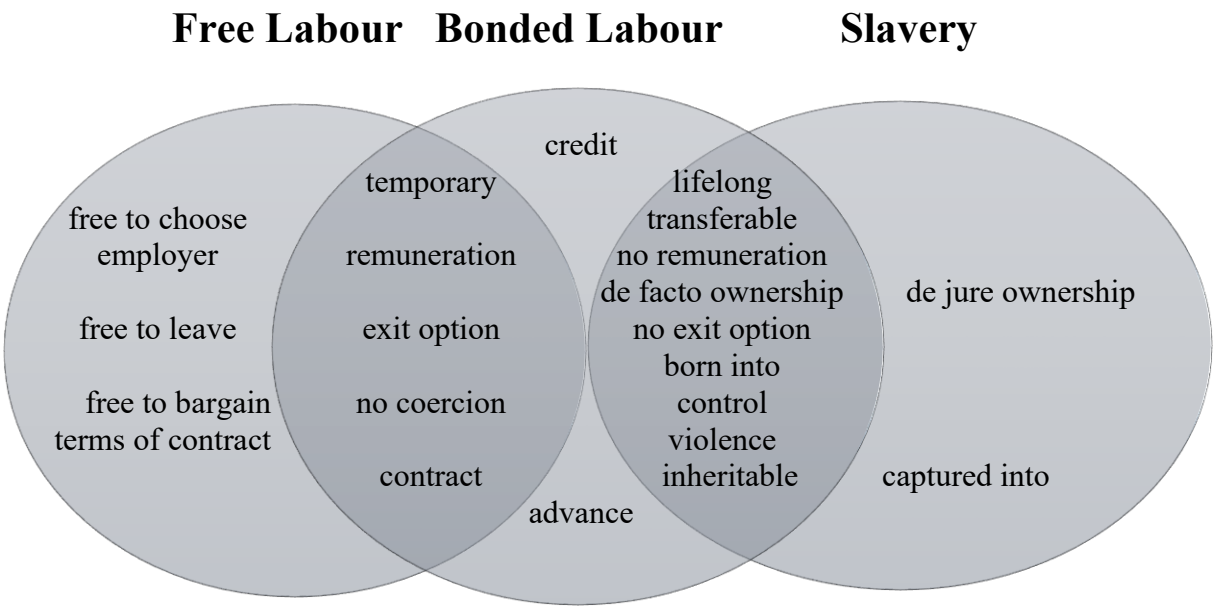
A last element, which is related to the definition of forced labour, is the question of who is the master. I follow the initial suggestion of the ILO and the British translation of *begar*[311] that reserved the extraction of forced labour for the state.[312] It was particularly the colonial states which the ILO was commissioned to supervise when the ILO *Convention on Forced Labour* was adopted in 1930.[313] *Begar*, *veth*, or *vethbegar* are the respective terms used by Indian rulers, and the British in India.[314] According to Kadam, *veth* and *begar* both mean 'work without pay,' and he explains that in the sixteenth and seventeenth centuries these terms were used to denote labour extracted by the government without remuneration.[315] Within the colonial context, forced labour was extracted either directly by the colonial state or by intermediary private entities working in conjunction with the state[316]—it was based on the state's support and legal sanction, as in the case of indenture.[317] Since 2001, bonded labour is covered explicitly by both the United Nations[318] and the ILO.[319] I suggest limiting the use of

[306] DERKS, 2010, p. 842.
[307] BRASS, 1994, p. 255–257; BREMAN, 1974, p. 65. See for a similar observation: FISHER, 2006, p. 189.
[308] BRASS, 2009, p. 752; ZEUSKE/FINZSCH, 2011, 285, 299-302.
[309] BOOTH, 1995, p. 134.
[310] DAVIS, 1984, p. 21.
[311] Quoted in CASSELS, 2010, p. 168.
[312] International Labour Organisation, 1930, Art. 2 (2); International Labour Office, 2005, p. 1; cf. TINKER, 1974, p. 39.
[313] THOMANN, 2011, p. 189; ALLAIN, August 2018, p. 1.
[314] VERMA/KUSUM, 2000, p. 17; KADAM, 1991, p. 57.
[315] KADAM, 1991, p. 57.
[316] Cf. Ahuja who writes of the shipmaster who "represented both the employer and state-sanctioned authority as he held the right to punish 'disobedient' seafarers," AHUJA, 2013, p. 115.
[317] TINKER, 1974, chapters 4 and 5.
[318] *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, (hereinafter: *Supplementary Slavery Convention*), United Nations Economic and Social Council, 1956, Art. 1.

the term 'forced labour' to the exercise of coerced labour by the state. In terms of the extraction of forced labour, the state occupies a special role, namely as the claimant of the monopoly on violence as discussed above. The maintenance of armies, prisons, public works, workhouses, and indenture are all embodiments of this violence, as well as manifestations of labour coercion.[320]

Considering several of the above discussed elements, the Venn-diagram (Figure 3) visualises the continuum between slavery, bonded labour and free labour. The graphical overlap also depicts the conceptual overlap, as well as the range of conditions within which both, slavery and bonded labour, can move. Patterson suggests that the presence of some or all elements of his definition make his "approach (…) polythetic."[321] Depending on time, place and individual labourer/employer relationship, bonded labour can share several features with slavery. At one time it can occupy the field in the middle, or it can move within a worker's lifetime to the left or right side of the diagram. Progressing towards the left would reflect the Indian Law Commission's description of bonded labour of 1841, when one commentator observed that the labour relation 'degenerated into slavery:'[322]

Figure 3. Free labour – bonded labour – slavery – continuum



[319] International Labour Conference, 1998; MISHRA/International Labour Office, July 2001.
[320] O'CONNELL DAVIDSON, 2015, 20, 50, 187; TINKER, 1974; SARKAR, 1985, p. 117.
[321] PATTERSON, 2012, p. 323.
[322] Indian Law Commission, January 15 1841a, p. 155.

There are two differences between slavery and bonded labour: The first is that in slavery the property claim is exercised *de jure*.[323] This no longer exists, as there is no country in which the property in a slave can be claimed in court.[324] Yet, Allain's argument is useful in observing the *de facto* claim of property rights in a human, thereby making it possible to punish offenders under slavery abolition legislation.[325] The second qualification that separates bonded labour from slavery is the establishment of the employer/labourer relationship based on a debt fixed in word or on paper constituting a contractual obligation which also carries a moral dimension.

Bonded labour constitutes a form of labour exploitation on the free/unfree labour continuum in its own right. On this continuum, bonded labour is not fixed—it can move and cover certain elements at one time and other elements at another time. It can be defined as a condition that is temporarily unspecified and based on a debt, stated in writing or as oral agreement. Depending on the legal context, this contract may or may not be upheld in a court. The bonded labour relationship has been entered voluntarily or involuntarily, for instance by inheritance of a debt, and in any case lacks an exit option initiated by the bonded person. Part and parcel are the exploitation of the labourer who may or may not be remunerated. The relationship to the master can be temporary or lifelong. A bonded labourer can be exposed to violence and total control. This could entail that the debt, and therefore the labourer, is transferred to another master, who is not a state agent but a private person. Social hierarchy separates the master from the bonded labourer and systematically exposes a larger number of people to this form of labour exploitation within a state or society.

In this dissertation, my main focus is on bonded labour. Since in this case, anti-slavery legislation and the discourse on slavery are relevant, taking into account also that political actors referred to both forms of labour exploitation at times interchangeably, I refer to them both in conjunction throughout this text. In the following chapter I discuss and present the theoretical framework. From there I formulate the hypotheses that are tested in this dissertation. In addition, I outline the methods with which I analyse this case.

[323] For the *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery* the "control over a person tantamount to possession is sufficient," Research Network on the Legal Parameters of Slavery, March 3 2012, Guideline 5.
[324] Research Network on the Legal Parameters of Slavery, March 3 2012, Guideline 6.
[325] ALLAIN, 2009, p. 241, 2015, p. 26–27.

Chapter 1
Theory & Method

The continuous concern of the League of Nations (LN), the International Labour Organisation (ILO) and the UN (United Nations) towards the issue of slavery, forced labour and human trafficking demonstrates: The abolition of slavery is a real-world issue affecting many individuals globally, both in the past and today.[1] Choosing this issue as the focal point of my research, I dedicate this work to the "*exploration of how far politics can help explain human experiences and help resolve human difficulties*."[2] With the institution of the abolition of slavery at the centre of my inquiry, I analyse how a central actor in India, the state, has dealt with one of the gravest human rights abuses. Landman explains that empirical social theories are primarily used to understand and offer explanations of the social world, why this world looks the way it does.[3] In understanding the connections between the different social and political phenomena, a political science theory "illuminates a causal mechanism regulating variation in a phenomenon."[4] In this chapter, I outline the theoretical framework I employ to address the issue of the abolition of slavery and bonded labour and respond to my research questions. The theoretical foundation rests on the work of Mahoney and Thelen's *Explaining Institutional Change*[5] within historical institutionalism, which I test and advance in this dissertation.

Historical Institutionalism

Since the 1980s scholars of political science started to pay attention to the processes of change of institutions. Institutions such as education,[6] or democratic institutions, race and affirmative action laws in the United States,[7] the capitalist economic setup of OECD countries,[8] and other institutions are all on the research agenda. Before this period, the issue of change was neglected.[9]

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[1] International Labour Office, 2005; Walk Free Foundation, 2017.
[2] BELTRAN/COHEN/COLLIER *et al.*, 1999, p. 129, italics in the original.
[3] LANDMAN, 2006, p. 37.
[4] SOUVA, 2007, p. 557.
[5] MAHONEY/THELEN, 2010b.
[6] THELEN, 2004.
[7] LIEBERMAN, 2007b.
[8] BECKERT/EBBINGHAUS/HASSEL *et al.*, 2006.
[9] CAMPBELL, 2010, p. 89–90.

The classic assumption of historical institutionalism is that "initial policy choices, and the institutionalized commitments that grow out of them (…) determine subsequent decisions."[10] Scholars of Historical Institutionalism (HI) also observe that institutions do change, and punctuated equilibria or critical junctures are the concepts that are invoked to understand institutional change. Borrowing from evolutionary biology and the work of Gould and Eldredge,[11] scholars of political science applied the concept of punctuated equilibria to political science questions. Within this line of explaining institutional change, change is depicted as an external force with "short bursts of rapid institutional change followed by long period of stasis."[12] Critical junctures are "an immediate response to an external shock such as the depression of the 1930s, the debt crisis of the 1980s, an international wave of social protest, or a war—it may occur more or less simultaneously across a number of countries and hence may be relatively easy to identify."[13] Other external factors may be the threat of an invasion or adjustments of national policies according to international system requirements.[14] But also economic crisis,[15] revolutions, political regime change,[16] or electoral changes[17] puncture stability.

On the other hand, external shocks are not always followed by an alteration of the institution, and not every institutional change is caused by external shocks.[18] While historical institutionalists are strong in explaining stability and continuity, incremental change of institutions is largely undertheorised.[19] Mahoney and Thelen, and earlier Thelen and Streeck,[20] address this omission in their theoretical framework.[21] Mahoney and Thelen argue that scholars frequently resort to the concept of critical junctures to introduce change in stable institutions. During critical junctures, usual paths of institutional action are drastically altered. The alteration takes place in such a way that earlier constraints of existing institutions are removed and "dramatic change is possible."[22] Inherent forces or inbuilt settings that provide

[10] PETERS, 2012, p. 20.
[11] ELDREDGE/GOULD, 1972, 84, 98.
[12] KRASNER, 1984, p. 242.
[13] COLLIER/COLLIER, 1991, p. 31.
[14] KRASNER, 1984, p. 238.
[15] BAUMGARTNER/JONES, 1993; CAMPBELL, 2010, p. 92.
[16] THELEN, 2009, p. 474.
[17] BAUMGARTNER/JONES, 1993, xvii.
[18] VAN DER HEIJDEN, 2011, p. 9.
[19] MAHONEY/THELEN, 2010b, p. 2.
[20] STREECK/THELEN, 2005b.
[21] MAHONEY/THELEN, 2010b, p. 1.
[22] CAPOCCIA/KELEMEN, 2007, p. 341; cf. MAHONEY/THELEN, 2010b, p. 7.

room for change are not visible and remain unexplained[23] and "more incremental or evolutionary (i.e. path dependent) change"[24] is not addressed.

Looking at the case of the abolition of slavery in India, there are critical junctures during the period I consider. For instance, the emergency rule of Indira Gandhi and its aftermath might turn out as critical junctures for the adoption of the BLSA and the appearance of the Supreme Court as a major actor in the implementation of the norm. But the critical juncture of transition from colonial rule to democratic rule in 1947 was followed only by marginal[25] transformation of the institution of the abolition of slavery. Furthermore, the changes that took place in the aftermath of the critical junctures were not radical since the normative core—the abolition of slavery—remained stable. Not only are the moments of change difficult to grasp with the concept of critical junctures, but also the quality of the changes is not accounted for.

On the other hand, IR scholars expect an example of "window dressing,"[26] but in fact, India adopted antislavery legislation with the *Act V* and the IPC even before international conventions against slavery and forced labour were adopted.[27] IR scholars observe a correlation between human rights treaties and democratic governments being more eager to become parties to human rights conventions, which in turn means that national legislation has to be adjusted to the new rules. At the same time, India adopted its most detailed act in its least democratic phase since independence, under Indira Gandhi. And while this autocratic regime phase poses one of the critical junctures that led to gradual institutional change, other critical junctures did not produce alterations, while new rules were adopted when there was no critical juncture in sight.

How, then, can we explain the changes the institution of the abolition of slavery underwent? How can we explain the timing of the changes that occurred, or the failure to make changes at critical junctures? HI and its variant of gradual institutional development appear as a fruitful theoretical foundation to approach the issue of change of the institution of the abolition of slavery in India. In the following chapter I discuss and present the theoretical framework. From there I formulate the hypotheses that are tested in this dissertation.

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[23] MAHONEY/THELEN, 2010b, p. 7.
[24] CAMPBELL, 2010, p. 92.
[25] Further below I discuss the quality of change, what change is, and how to measure it in the particular case of the abolition of slavery in India.
[26] HAFNER-BURTON/TSUTSUI, 2005, p. 1378.
[27] Hill remarks regarding this observation that "[t]he fact that human rights treaties seem to have an effect on states that are likely to respect human rights in the absence of a commitment to the regime should raise some eyebrows," HILL, 2010, p. 1161.

Institutions and Actors

To describe the abolition of slavery I already used the term institution. How does the abolition of slavery qualify as an institution? North's classical definition explains that institutions are "humanly devised constraints that structure political, economic and social interaction" that "consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)."[28] Similarly, Hall defines institutions in stricter terms as "the formal rules, compliance procedures, and standard operating practices that structure the relationships between individuals in various units of the polity and economy."[29] The definitions rely on actual practices that constitute institutions. But what if these policies do not effectively constrain the behaviour of actors, such as the Indian Constitution or the *Indian Penal Code* (IPC), as the estimates of bonded labour today and in the past indicate? In addition, Blyth wonders how change can even be conceivable under this notion of institutions: "If institutions structure agents' choices so completely, why would the agents inside these institutions ever get the urge to change their environment?"[30]

Slavery can also constitute an institution: As long as slavery is sanctioned by the political system, it is an institution. According to the definition of an institution given in the introduction,[31] slavery no longer constitutes an institution, as soon as the third-party enforcement is removed. This would not be the case with Hall and North's definitions of an institution: The continued existence of slavery exacted on the basis of informal rules, such as traditions or caste, could in Hall's terms be framed as the 'compliance procedures' within a polity and therefore still be an institution. According to Hall's definition, the institution of the abolition of slavery would constitute the formal rules not to enslave any person and would also regulate the relationship between citizens, and between citizens and the state.[32] The rules intend to structure the behaviour of actors but fail to do so, as already demonstrated in the introduction. The definition of Thelen and Streeck, given in the introduction, overcomes this issue: Their definition does not build on the actual enforcement of the institution.[33]

Mahoney and Thelen treat the issue of implementation and the failure to implement rules and policies differently. They highlight that institutions are

[28] NORTH, 1991, p. 97.
[29] HALL, 1986, p. 7.
[30] BLYTH/HELGADÓTTIR/KRING, 2016, p. 148.
[31] STREECK/THELEN, 2005b, p. 12.
[32] Forced prison labour and military service are seen as forced labour, but legalised under the *Forced Labour Convention* of 1930, Art. 2, 2.a) and c), International Labour Organisation, 1930; International Labour Conference, 1962, p. 2002. The question of military service was also discussed in the Constituent Assembly of India, Constituent Assembly Debates, May 1 1947.
[33] STREECK/THELEN, 2005b, p. 12.

> *distributional instruments* laden with power implications (…) [which] inevitably raise resource considerations and invariably have distributional consequences. Any given set of rules or expectations—formal or informal—that patterns action will have unequal implications for resource allocation (…). This is true for precisely those institutions that mobilize significant and highly valued resources (e.g., most political and political-economic institutions) (…).[34]

The abolition of slavery and bonded labour as a distributional instrument affects the three main actors—the state, bonded labourers and employers—in different ways. The state claims the monopoly of violence and is in charge of facilitating implementation by making resources and structures available (i.e., inspectorates, policing, courts, the prison system, and administration of compensations).[35] All processes—the identification of bonded labourers, the prosecution of offenders, and the rehabilitation of and compensation for bonded labourers—require resources in terms of funds, as well as man-power, time, and infrastructure that either must be developed, or existing infrastructure must be dedicated to this purpose. Other resources of interest to the state are status and legitimacy. Status plays an important role within the international community of states but also at the national level. Status is connected to influence, credibility and legitimacy.[36] As already pointed out in the introduction, states can be criticised and presented as bad examples at the international level.[37] Similarly, the British Raj was confronted with questions of legitimacy as a result of labour resistance, such as that of the indigo farmers in the late 1850s, and with criticism from members of the legislative assemblies for the use of *coolie* labour on the Assamese tea plantations.[38]

On the other hand are the employers and their economic interests in labour exploitation.[39] The effective implementation of the abolition of slavery would mean that employers would suffer a loss of economic profits, or, if they choose not to abide by the rules, they risk criminal prosecution. Historically, the punishment of slaveholders has not been self-evident, such as when abolition was about to be legally formalised in Britain: The state compensated former slaveholders for losing their labour force due to abolition with £20 million[40] and the Court of Directors of the East India Company contemplated compensation of

[34] MAHONEY/THELEN, 2010b, p. 8, italics in the original.
[35] JAYAL, 2013, p. 156.
[36] HAFNER-BURTON/TSUTSUI, 2005, p. 1378.
[37] THOMANN, 2011, p. 82–101; LUND-THOMSEN/NADVI, 2010, p. 4–5.
[38] KUMAR, 2012, 259, 296; see also YEO/WRIGHT, 2011.
[39] Cf. KUMAR, 2012, p. 95–97; SHARMA, 2009, p. 1293; MUNDLE, 1979, p. 115; cf. KARA, 2012, 12-15, 145-46; ROGOWSKI, 2013, p. 194–195. For a study on what employers of bonded labourers in India think, with interviews conducted in 2017, see CHOI-FITZPATRICK, 2019, p. 56–57.
[40] DRAPER, 2010, p. 2; TEALL, 1897, p. 3.

slave owners in India in 1833.[41] In the United States, congressmen also suggested compensation of slaveholders in 1865, but did not succeed.[42] The idea to compensate former slaveholders was not off the table and still contemplated by the German delegates at the Temporary Slavery Commission of the League of Nations in 1926.[43]

Lastly, the labourers themselves are actors interested in having control over the lives they live, their labour and wellbeing. Despite being exploited as slaves and having no or "low-intensity citizenship,"[44] studies such as those of Genovese depict vividly the agency of the oppressed and their resistance to exploitation.[45]

Gradual Institutional Change

Mahoney and Thelen (2010) propose a theory of gradual institutional change in which they address the issue of the "gradual evolution of institutions"[46] within the realm of HI. In the implementation process of a policy, a gap might appear between the intention and the outcome of a policy. This discrepancy may evolve over time or exist outright from the inception of the institution.[47] One reason for this is the two-level game:[48] On one level, policymakers formulate acts and policies, but cannot envision or respond to all potential questions that might arise during implementation. On the street-level, another set of actors is in charge of implementation of these policies; they have to interpret the meaning of the provisions of those rules. In addition, there is the third level, the targeted population of the institution and its challengers who contribute their share to the development of an institution.[49] Mahoney and Thelen argue "that institutional change often occurs precisely when problems of rule interpretation and enforcement open up space for actors to implement existing rules in new ways."[50] One example they give[51] is the work of King, who shows along the example of the United States, that the executive and administration granting unemployment benefits were free to interpret applicants' behaviour towards "actively seeking work."[52] The consequence of administrative interpretation was the separation of job-seekers

[41] Court of Directors, 1833, p. 327; NICOLLS/BIRD/CASEMENT *et al.*, 1841, p. 5–6.
[42] MCPERSON M., 2011, p. 12; RODRIGUEZ, 2007, p. 150.
[43] ALLAIN, 2008, p. 77.
[44] O'DONNELL, 1993, p. 1361.
[45] GENOVESE, 1974, p. 587–660.
[46] MAHONEY/THELEN, 2010b, p. 2.
[47] Cf. ACKRILL/KAY, 2006; WINCOTT, 2011, p. 152–153; LIEBERMAN, 2002a, p. 697, 2007b, 175-76, 201.
[48] PUTNAM, 1988.
[49] HILL/HUPE, 2002, p. 4.
[50] MAHONEY/THELEN, 2010b, p. 4.
[51] MAHONEY/THELEN, 2010b, p. 20.
[52] KING, 1995.

into worthy and unworthy recipients of unemployment benefits. Assuming a "policing role"[53] over unemployment recipients, the administration worked in a manner not intended, while at the same time failing to meet the intended goal of bringing people back into work relations.[54]

Some actors within the polity profit from an implementation gap and contribute to its growth, or prevent its closure. Other actors might try to change the institution in order to close the gap.[55] "Actors with divergent interests will contest the openings (…) ambiguity provides because matters of interpretation and implementation can have profound consequences for resource allocations and substantive outcomes."[56] The level of actors' compliance with the rules has an effect on the mode of change of an institution.[57] Through this theoretical acknowledgement of the implementation gap, compliance is not the dependent variable, but one of the independent variables to explain stability or change.[58]

To understand institutional change, attention needs to be paid to several independent variables: (1) The political context, if for instance changes can be enacted in parliament. (2) The institutional characteristics, which can be determined by the ambiguity of the rules and the level of enforcement. The other variables are (3) the actors and their disposition towards the institution, and (4) ideas. Since (1) and (2) provide the background conditions within which actors operate, the same actors can be expected to behave differently when the political context or the characteristics of the institution are different.[59]

Modes of institutional Change

Referring to the earlier work of Hacker,[60] Schickler,[61] Thelen and Streeck,[62] Mahoney and Thelen introduce several modes of institutional change. Depending on the actors' behaviour, different forms of institutional change take place. These modes of change are linked "to features of the institutional context and properties of institutions themselves that permit or invite specific kinds of change strategies and change agents."[63] To better understand the dependent variable (change) and to connect the different forms of change to the independent variables, Mahoney and Thelen suggest a typology of four modes of change. These are

[53] KING, 1995, p. 14.
[54] KING, 1995, xii-xiii, 54, 186.
[55] VAN DER HEIJDEN, 2011, p. 11.
[56] MAHONEY/THELEN, 2010b, p. 11.
[57] MAHONEY/THELEN, 2010b, p. 20–21.
[58] MAHONEY/THELEN, 2010b, p. 10.
[59] MAHONEY/THELEN, 2010b, p. 18–19.
[60] HACKER, 2004.
[61] SCHICKLER, 2001.
[62] STREECK/THELEN, 2005a.
[63] MAHONEY/THELEN, 2010b, p. 4.

displacement, layering, drift and conversion. In *Beyond Continuity* (2005) Streeck and Thelen identified a fifth mode of change, which they dropped while developing the theoretical framework in *Explaining Institutional Change*:[64] exhaustion.[65] The authors explain that this process of change rather describes the breakdown of an institution than its change.[66]

The first mode of institutional change is displacement, which refers to changes that occur through the removal of existing policies and their replacement by other rules. Hacker describes the same mode of change but calls it 'revision.'[67] An example for this mode of change is the displacement of the oligarchic regime in Indonesia by an autocracy under Suharto.[68] Another example is the change of British economic policies: Keynesianism was displaced by Neoliberalism in the 1980s.[69]

The second mode of change is layering, which describes a change through the addition of new rules to already existing ones. Layering occurs when a gap between the policy goal and enforcement appears and actors choose not to replace the existing policies. The existing institution is amended to either ensure or distort the implementation of the spirit of the rules through the addition of "rules, policy processes or actors."[70] Thelen reiterates the case of the privatisation of social security as an example for layering. Public social security was not replaced, but layers of private social security schemes diverted a portion of the paying population from the general social security system and undermined the functioning of public social security programmes.[71]

The third mode of change, drift, is characterised by a change of the environment which impacts rules. The rules continue to exist, but they produce different outcomes from the time of the institution's creation. This form of institutional change can, for instance, be attributed to actors refraining from changing the rules or neglecting them. Hacker describes this mode of change by example of the welfare provisions in the US and the increase of private benefits. While the policymakers did not change the existing policies, the targeted population had undergone significant transformations: New family models had formed with an increasing number of single parents, and the number of insecure work relations had grown. These changes in the population had the consequence that the number of people benefitting from

[64] The fifth mode of change is mentioned in STREECK/THELEN, 2005b, p. 1, but not in MAHONEY/THELEN, 2010b.
[65] Cf. FALLETI/MAHONEY, 2015, p. 222.
[66] STREECK/THELEN, 2005b, p. 29–30.
[67] HACKER, 2004, p. 247.
[68] SLATER, 2010, p. 148.
[69] STREECK/THELEN, 2005b, p. 20.
[70] VAN DER HEIJDEN, 2011, p. 11, summarizing MAHONEY/THELEN, 2010b, p. 17.
[71] THELEN, 2003, 226-227, 231; cf. BÉLAND, 2007, p. 33.

welfare provisions declined. Because of actors undermining adjustment efforts of the government, drift took place while the rules of the welfare policy remained stable.[72] Actors like Clinton attempted to change the formal policy to bring the outcomes back on track to realise the initial intention of the policy, but failed. Another example is the American (alcohol) prohibition: "[B]y suppressing suppliers of alcohol, Prohibition in the United States created highly profitable opportunities for bootleggers. Whereas the bootleggers embraced Prohibition because of the high profit margins it produced, their activities subverted the effort to prevent the consumption of alcohol—the main point of Prohibition."[73]

The fourth mode of change which Mahoney and Thelen describe is conversion. Conversion happens when the existing rules are enacted or interpreted differently than before to react to new challenges.[74] Hacker, Pierson and Thelen[75] use the *American Sherman Antitrust Act* of 1890 as an example for conversion. This law was intended to protect trade by breaking up business trusts.[76] But it was this legislation which corporations invoked to undermine the formation of unions. Thelen observes for the case of vocational training in Germany that conversion "can be a consequence of the incorporation of groups, previously on the margins, who turn existing or inherited institutions to new ends."[77]

One question is whether a line between the 'discretion of interpretation' and outright corruption should be drawn.[78] For corruption it is irrelevant if the rules are ambiguous and allow for a lot of room for interpretation or not. Under corruption, the rules cannot be invoked to explain behaviour of the actors. This is a problem which has not been explicitly addressed in the contributions on institutional change discussed above. It is related to the question of other criminal behaviour, as the above-mentioned example of bootleggers profiting from and at the same time undermining Prohibition.[79] Looked at from the angle of institutional change, corruption is the behaviour of actors that engenders change of an institution and therefore can be described within this theoretical framework.[80] The approach of gradual institutional change allows us to acknowledge that criminal behaviour also influences the characteristics of the institution and subsequent change. An emerging gap within or beyond discretion of

[72] HACKER, 2004, 246, 249-250.
[73] ONOMA, 2010, p. 69.
[74] MAHONEY/THELEN, 2010b, p. 15–18.
[75] HACKER/PIERSON/THELEN, 2015.
[76] HACKER/PIERSON/THELEN, 2015, p. 181.
[77] THELEN, 2003, p. 228.
[78] Kennedy raises a similar question, KENNEDY, 1999, p. 462. Waylen observes this in the case of informal rules, WAYLEN, 2014, p. 217.
[79] ONOMA, 2010, p. 69.
[80] ONOMA, 2010, p. 65. The case of Onoma concerns the issuance of land documentation, a governmental report described the process of issuing these documents as being marked by corruption, Republic of Kenya, 2004, 8, 18, 192.

interpretation has consequences on actors and their ideas about the institution, which in turn have an effect on the actors' behaviour. The question of corruptive behaviour is factored in by the consideration of actors, whether they adhere to the rules of the institution or if they violate them.[81] This also means that it is important to keep the two variables, 1) discretion of interpretation and 2) actual enforcement, separate. As a consequence, the patterns of change that Mahoney and Thelen observe occur at two different levels: At the rules level and at the outcome level.[82]

Another question is why one change is happening over another one. Mahoney and Thelen offer the theoretical framework which establishes the causal relationship between the dependent variable and the independent variables. By linking the mode of change to several variables, they can explain why, for instance, layering happened and not drift. The independent variables they include are: The political context, the characteristics of the institution,[83] the actors and the variable ideas, which Mahoney and Thelen did not develop well. In the following, I discuss these variables.

Political Context

The first two variables are the political context and the characteristics of the institution. The two questions regarding the political context and institutional characteristics are (a) whether there are veto possibilities, and (b) whether the rules of the institution leave room for interpretation and enforcement.[84] Veto-players are political actors on which the development of a formal policy change depends. These can be individual actors or collectives, such as parties in parliament. Institutional actors are those actors prescribed by a constitution, for instance, to adopt or reject policies. Changing the status quo becomes less likely the more distant the actors are positioned regarding a policy issue. The more veto-players are needed to assent to a new policy or policy reform, the more stable the status quo is and less likely formal change. The number of veto-players, as well as their cohesion in a policy question, needs to be considered. The number of veto-players alone does not determine the likeliness of change,

[81] MAHONEY/THELEN, 2010b, p. 23.
[82] MAHONEY/THELEN, 2010b, p. 15–18.
[83] MAHONEY/THELEN, 2010b, p. 31–32.
[84] MAHONEY/THELEN, 2010b, p. 18. Regarding veto possibilities, Mahoney and Thelen rely on the work of Hacker, MAHONEY/THELEN, 2010b, p. 18. Hacker himself relies on Immergut and Tsebelis, HACKER, 2005, p. 42.

but rather the cohesion of the veto-players on the issue to block or advance, for instance, a new act.[85]

Mahoney and Thelen explain that veto possibilities, and concomitantly the modes of change, vary: The displacement of old rules and the creation of new ones is most likely where actors face a small number of veto points or only weak veto points. Layering is most likely with strong veto-players that can prevent changes of the targeted institution. There is a high chance for drift when rule interpretation is relatively open but veto points are too strong to allow for a new decision to change these rules. And lastly, where there are only few veto possibilities and a high degree of discretion in interpreting or enforcing rules, conversion, the alteration of the enforcement of those rules, is likely to occur.[86] In the part on my hypotheses I return to these causal relationships.

Immergut provides a set of indicators[87] which are useful for the operationalisation of veto points at the policy-making level. The summary below is a version of Immergut's table:[88]

Table 2. Political arenas and moves indicating veto points (Immergut, 1990)

Arena	Move
Executive	Members of Parliament can overturn executive decisions.
Legislative	No stable parliamentary majority.
	No party discipline required.
Electoral	Members of the electorate can overturn parliamentary decisions
	Potential for shifting voters or a referendum.

Source: Table adapted from IMMERGUT, 1990, p. 397.

One might argue against using veto points for the colonial period of India, since Immergut limited her concept of veto points to "specific characteristics of democratic political institutions."[89] The regime in India between 1833 and 1946 was clearly not democratic. But in one of the cases Immergut analyses, the country experienced undemocratic phases during the period she considers: In France, policy changes were possible because the government removed democratic veto points,[90] and governed through ordinances across parliament.[91] She concludes that "French Social Security was introduced in precisely such an extraordinary period. The executive could issue legislation directly by Ordinance, the parliament was

[85] HACKER, 2004, p. 247.
[86] MAHONEY/THELEN, 2010b, p. 18–21.
[87] IMMERGUT, 1990, p. 397.
[88] IMMERGUT, 1990, p. 397.
[89] IMMERGUT, 1990, p. 395.
[90] In the Polity IV France is rated as having 5 points during the beginning of the Fifth Republic, qualifying as an anocracy, which Immergut analyses, Polity IV Project, 2014.
[91] IMMERGUT, 1990, p. 400.

merely consultative, and it was composed, in any case, overwhelmingly of representatives of the resistance coalition."[92] Therefore, this concept can also be used for non-democratic regimes.

What is Change?

When conceptualising change, some aspects or elements must remain stable to make sure that one is still talking about something that has been changed, not replaced or removed altogether. The word 'change' as such implies a form of stability, something that remains constant. Or, as Béland put it: The institution's "development itself remains path dependent."[93] In the research on social security, the concept of making arrangements to offer welfare provisions to citizens remains stable, while the targeted population or the benefits received, for instance, change. In Thelen's work on vocational training the concept of preparing citizens for the labour market through educational programmes remains stable, while the parameters of the educational system change.[94] Thinking of change this way, the mode of exhaustion does not constitute a form of change, since that would involve the end of the institution.[95]

Campbell observes that scholars often do not address the question of what change is. He notes that "surprisingly little effort has been devoted to defining exactly what we mean by institutional change in the first place."[96] He opines that it might be easier to determine change at the outcome level,[97] but also concedes "that changes in rules qualify as institutional change."[98] Above I discussed Mahoney and Thelen's typology of institutional changes, noting that they can occur on either one or both levels: The rules level or the enforcement level.[99] Hacker observes that institutions can undergo "formal revision,"[100] or the policy can remain stable but produce changing outcomes.[101] Campbell adds that "if institutions actually consist of both rules and functional outcomes, then the question becomes how much change has occurred if the rules but not the function change, or if the function but not the rules

[92] IMMERGUT, 1990, p. 400.
[93] BÉLAND, 2007, p. 32.
[94] THELEN, 2004.
[95] STREECK/THELEN, 2005a, p. 29–30.
[96] CAMPBELL, 2010, p. 107.
[97] CAMPBELL, 2010, p. 108.
[98] CAMPBELL, 2010, p. 108.
[99] MAHONEY/THELEN, 2010b, p. 15–18.
[100] HACKER, 2004, p. 245.
[101] HACKER, 2004, p. 249; cf. CAMPBELL, 2010, p. 107.

change?"[102] In the following discussion of the institutional characteristics that comprise the level of enforcement, as well as the quality of the rules, I suggest how to empirically account for change.

Institutional Characteristics

One of the variables Mahoney and Thelen suggest is the 'level of discretion in interpretation and enforcement.'[103] Here the ambiguity of the rules, as well as the actual enforcement, are the operational value to determine if the level of discretion is high or low.[104] They explain that "there is tremendous space for diverse outcomes even under stable rules, given different interpretations (narrow/broad) and enforcement (vigorous/lax) of those rules."[105] In their further deliberations Mahoney and Thelen do not differentiate between the rules level and the enforcement level.[106] Yet, they indicate a difference by explaining that rules can be interpreted either 'narrow or broad,' and enforcement can be exercised either 'vigorously or lax.'[107] Therefore, Mahoney and Thelen consider only two of four possible combinations. Table 3 highlights the variations Mahoney and Thelen integrate in their theoretical consideration—the combinations of the level of interpretation and enforcement, that are either low or high. The mixed results are not part of their consideration and I suggest to take the mixed characteristics of the institution into account as well:

Table 3. Characteristics of the targeted institution

Interpretation	Enforcement	Level of discretion
Broad	Lax	Low
Broad	Vigorous	Mixed
Narrow	Lax	Mixed
Narrow	Vigorous	High

Note: According to the concept of Mahoney and Thelen, 'broad' interpretation and lax enforcement translates as 'high level of discretion;' 'narrow' interpretation and 'vigorous' enforcement translates as 'low level of discretion,' cf. MAHONEY/THELEN, 2010b, 20 21, 28.

The omission of mixed characteristics of the institution, fails to account for one of the main arguments: The dependency of change on the ambiguity of the rules and the implementation

[102] CAMPBELL, 2010, p. 107–108.
[103] MAHONEY/THELEN, 2010b, p. 19.
[104] MAHONEY/THELEN, 2010b, p. 19.
[105] MAHONEY/THELEN, 2010b, p. 21.
[106] MAHONEY/THELEN, 2010b, p. 18.
[107] MAHONEY/THELEN, 2010b, p. 21.

gap. This problem becomes clear when they discuss civil rights and the work of Lieberman. They first describe the US-American civil rights provisions as weak, but then argue that it turned out strong, because actors managed to effectively enforce the rules. Therefore, at two points in time, the rules appear weak, since they do not change, but the implementation level appears once as ineffective and once effective.[108] Mahoney and Thelen lump these two phenomena together in one variable, the low or "high level of discretion in interpretation/enforcement."[109] I suggest keeping the rules and the enforcement level separate and splitting this variable into two: The discretion of interpretation and the enforcement level. This is also important, since a combination of weak rules and strong enforcement, for instance, is theoretically accounted for.

Ambiguity – The level of Discretion in Interpretation

Are the rules of the institution ambiguous, or do they leave a high level of discretion to interpretation?[110] Hacker observes in his contribution that policies vary regarding the precision or sheer amount of provisions for interpretation.[111] The mode of change is dependent on the ambiguity that may arise from less precise provisions.[112] In his study on race politics in the United States, Lieberman shows in the case of the *Civil Rights Act* of 1964 how a weak law turned into a powerful tool, because executing actors and civil society helped to interpret it in an expansive manner.[113] Compared to the "strong-worded" race policies in the UK and France,

> the institutional form of the law [the *Civil Rights Act* of 1964] and the enforcement mechanism that the law created (...) provided unexpected openings for advocates of race-conscious policy to press their case and push the state toward a set of enforcement practices that went beyond the initial color-blind policy settlement.[114]

Rocco and Thurston write that "[w]ithout a doubt, providing evidence to evaluate an institution's initial ambiguity is difficult."[115] But how can the ambiguity of an institution be measured? Mahoney and Thelen do not specify what ambiguity is, and what "high" or "low discretion," or 'narrow and broad interpretations of rules' are.[116] One example of an

[108] MAHONEY/THELEN, 2010b, p. 22.
[109] MAHONEY/THELEN, 2010b, p. 19.
[110] MAHONEY/THELEN, 2010b, p. 18.
[111] HACKER, 2004, p. 246–247.
[112] HACKER, 2004, p. 247.
[113] LIEBERMAN, 2002b, p. 140; MAHONEY/THELEN, 2010b, p. 13.
[114] LIEBERMAN, 2002b, p. 139–140.
[115] ROCCO/THURSTON, 2014, p. 43.
[116] MAHONEY/THELEN, 2010b, p. 21.

ambiguous provision in relation to the abolition of slavery is Article 4 of the *Universal Declaration of Human Rights* (UDHR) of 1948 that states: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."[117] This declaration is the provision of a norm, but it does not specify what slavery is, and how victims and perpetrators are to be treated. As a declaration, it is clear that the UDHR does not intend to indicate these details, but it exemplifies which questions remain open.

As mentioned in the sub-chapter on defining slavery, bonded labour and forced labour, an important part of legal provisions are definitions.[118] The first question when determining the ambiguity and evaluating the quality of a policy against slavery, forced labour or bonded labour is, therefore, if it contains a definition. Particular attention needs to be paid in the context of this dissertation if the definition of forced labour or slavery includes or excludes bonded labour or leaves room of interpretation. The second component referred to in several sources are the provisions for punishment: Scholars point out that international laws are often not effective because they do not come with coercive means which force states into compliance.[119] What is requested at the international level is also observed for the national level and the treatment of perpetrators on the ground.[120] The last three components necessary for the qualification of antislavery laws are the indication of a time frame, enforcement mechanisms and provisions for compensation or rehabilitation.[121] Miers criticises the absence of a time frame in the *Covenant of the League of Nations* and its provisions against slavery.[122] Furthermore, she observes that the first international attempt to ban the slave trade, the *General Act and Declaration of Brussels* of 1890, failed because "[t]he major loophole (…) was that the treaty contained no provisions for its enforcement."[123] This encompasses the enumeration of competent authorities in charge of implementation on the ground: Among them are executive or judicial bodies, such as magistrates, labour inspectors; or agencies set up specifically for the purpose of enforcing the abolition of slavery.[124] The last question is

[117] United Nations, 1948, Art. 4.
[118] Cf. MIERS, 2008, p. 22–23; AP-Forced Labour Net/International Labour Organisation, 2014.
[119] HAFNER-BURTON/TSUTSUI, 2005, p. 1378; MIERS, 2008, p. 22–23; LEBOVIC/VOETEN, 2009; FORSYTHE, 2006, p. 89.
[120] BALES, 2007, p. 57; International Labour Office, 2005, p. 2, 2005, p. 17. Cf. also THOMANN, 2011, p. 191. Calls for stronger punishment seem to follow the underlying assumption that if punitive provisions were installed and effectively enforced, actors would abide by the law, cf. International Labour Office, 2005, p. 83. This assumption is contradicted at the micro level by criminologists who testify that there is no correlation between law abidance and the provision of coercive measures, cf. CLINARD/QUINNEY/WILDEMAN, 2015, 26ff.
[121] QUIRK, 2008, p. 548.
[122] MIERS, 2008, p. 22–23.
[123] MIERS, 2008, p. 19.
[124] International Labour Conference, June 2009, 2, 20.

whether there are provisions for compensating victims and structures set up for victim support.[125]

These five components—the definition of slavery, forced or bonded labour, the provisions for punishment and compensation, as well as the enumeration or installation of competent authorities—are the parameters that are necessary in considering the quality of the rules and determining the level of ambiguity. If all components are specified, the rules are strong and leave little room for discretion to interpretation. If less than half are covered, the rules can be described as weak and ambiguous.

Table 4. The formal institutional characteristics

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Slavery Abolition Act, 1833	No	N.A.	Yes[126]	No	No[127]	Yes[128]
UDHR, 1948	No	N.A.	No	No	No	No

This table helps to evaluate the formal characteristics of the institution which I conduct in each episode. In addition, I present cases of the high courts or the Supreme Court of India dealing with bonded labour or slavery. Through this analysis I can test if the rules left room for discretion of interpretation and, if so, how the courts made use of this discretion.

Enforcement – The actual gap between the Norm and Reality

Depending on the institution, actors not only have different degrees of interpreting the rules, but also a certain amount of discretion granted to enforce them. This issue is the level of compliance with those rules and also plays into the mode of change of an institution.[129] Viewed as an independent variable, implementation highlights how institutions change in ways that policymakers did not predict. Researchers often overlook these changes[130] when they are concerned with the output and the failures the institution suffers. The actions of all

[125] International Labour Conference, June 2009, p. 40.
[126] Abolition to be effective as of August 1 1834, Parliament of the United Kingdom, August 18 1833, XII.
[127] Compensation was provided for former slaveholders.
[128] A committee can be appointed by his Majesty, if deemed necessary, Parliament of the United Kingdom, August 18 1833, Art. XIV.
[129] MAHONEY/THELEN, 2010b, p. 20–21.
[130] MAHONEY/THELEN, 2010b, 2, 4.

actors, from the executive down to the street-level bureaucrat[131] need to be considered for the scholar to be able to judge the effects of a policy.[132]

The implementation or enforcement can be measured in different ways: Enforcement can be determined by the estimated number of victims and holding those estimates against prosecutions and convictions. This approach is not very reliable and, in the case of slavery, can only be indicative of tendencies: Since 1843 and the 1860s the trade in humans and the exercise of slavery has been criminalised in India. Criminalisation is usually followed or accompanied by the formerly legal business becoming hidden, hardly accessible to governmental observers.[133] To a certain extent, the accuracy of slavery and bonded labour estimates is not necessary for the policymaking process. In the following sub-chapter, I explain why.

Ideas

Ideas as a driving force of politics have been closely studied in the political science since the 1990s. But Blyth et al. are convinced that "less attention was paid to ideas as core analytic variables in the decades that followed."[134] Ideas, ideologies, and beliefs are closely tied to the legitimacy of policies[135] and play a vital role in the political process. Béland and Cox go so far as to identify ideas as "primary source of political behaviour,"[136] and that these ideas are substantially reflected in the institutions.[137] In their theoretical deliberations on gradual institutional change, Mahoney and Thelen remain vague on the question of ideas and their role causing change.[138] They touch upon ideas rather indirectly,[139] speaking of the contestations of actors, and "struggles over the meaning, application, and enforcement of institutional rules."[140]

It is worthwhile here to frame the word 'meaning' in terms of ideas. Acknowledging the role of ideas and including them in the theoretical framework, closes the circle of the definition of policies as institutions, which "stipulate rules that assign normatively backed

[131] LIPSKY, 2010, p. 3.
[132] HACKER, 2004, p. 247.
[133] International Labour Office, 2005, p. 69–70; BELSER/MEHRAN/COCK *et al.*, 2005, iii; cf. LAROCQUE, 2004, p. 131–132.
[134] BLYTH/HELGADÓTTIR/KRING, 2016, p. 142.
[135] FINNEMORE/SIKKINK, 1998, p. 903; KRASNER, 1984, 228, 238.
[136] BÉLAND/COX, 2011b, p. 3.
[137] BÉLAND/COX, 2011b, p. 8.
[138] In the work of Thelen and Streeck (STREECK/THELEN, 2005b) ideas are also only marginally treated; see WINCOTT, 2011, p. 143.
[139] A point observed by Wincott in the case of *Beyond Continuity* (2005) WINCOTT, 2011, p. 147.
[140] MAHONEY/THELEN, 2010b, p. 11.

rights (…) and that are legitimate."[141] Norms are "a standard of appropriate behaviour for actors,"[142] and actors who entertain corresponding ideas gain legitimacy. The changes institutions undergo are the result of actors' agency—the decisions they make, which are also based on the ideas they hold. In turn, ideas are reflected in the policies, although potentially distorted by compromise.[143] This insight acknowledges that actors do not operate in a vacuum, but rather that ideas influence what actors think of a problem and the solutions to be applied.[144] In relation to the implementation gap, ideas are the connecting element that fills the space between the institutional ideal and its reality and which engenders change.[145]

Ideas are the mind-sets of people—what they think, where they identify political issues, how they judge these problems and what solutions they believe are best to address or alleviate these problems. Béland and Cox define ideas in the following way:

> [I]deas are causal beliefs. This simple definition involves many discrete dimensions. First, as beliefs, ideas are products of cognition. They are produced in our minds and are connected to the material world only via our interpretations of our surroundings. Our minds can create ideas from any of a multitude of sensory perceptions, or the mind can create ideas based on no connection to reality at all. (…) Second, as causal beliefs, ideas posit connections between things and between people in the world. These connections might be causal in the proper sense, such as suggesting that one event was responsible for bringing about a series of successive events. But ideas can be causal in more informal ways, by drawing connections between things or people that we believe are related to one another. Finally, causal beliefs, or ideas, provide guides for action.[146]

In order to structure ideas, I follow Béland's analyses of the social security system in the US.[147] Paradigms are the overarching principle of an idea. Béland identifies several paradigms that were crucial in shaping the mode of change that occurred in the episodes he identified.[148]

Interests and rational choice have the basic assumption at heart that politics is about competition and that people have clear interests that are transitive and guide actors to adopt specific strategies to realise their interest.[149] Béland and Cox assert that politics is still about a power struggle, but that actors' motivation is based on a variety of ideas, which might be grounded in interests, but also informed by ideational concepts, as well as emotions. As such, ideas are not only reflective of the actors' interests, but also what actors "deem to be

[141] STREECK/THELEN, 2005b, p. 12.
[142] FINNEMORE/SIKKINK, 1998, p. 891.
[143] MAHONEY/THELEN, 2010b, p. 8; BÉLAND, 2007, p. 34; LIEBERMAN, 2002a, p. 702; SCHICKLER, 2001, p. 15.
[144] BÉLAND/COX, 2011b, p. 12.
[145] LIEBERMAN, 2002a, 697, 702, 708.
[146] BÉLAND/COX, 2011a, p. 3–4.
[147] Béland builds on Hall's work on paradigms, HALL, 1993.
[148] BÉLAND, 2007, p. 33–34.
[149] HALL/TAYLOR, 1996, p. 939; SCHMIDT, 2011, p. 49.

appropriate, legitimate, and proper."[150] This also means that within political debates it is possible that the sheer facts become irrelevant, (i.e. scientifically) inaccurate,[151] or even facts may become controversial.[152] This is in contrast to interests, since these are supposedly objective and fixed, which is not the case with ideas.[153] A single actor may hold beliefs that are irreconcilable with the interests of that person or with the truth.[154] For the identification of relevant ideas and paradigms, it is instructive to turn back to the elements that are constitutive of slavery, forced labour or bonded labour, as discussed in the introduction. These elements, such as violence, or social hierarchy, are embedded in paradigms that sanction certain behaviour and norms that are constitutive of coercive labour relations. These paradigms exist independently and outside of slavery or bonded labour relations and, as I argue, allow labour exploitation that can constitute slavery to continue, through a combination of these legitimate elements. I discuss this in more detail in the respective chapters on the episodes.

The *Zeitgeist*, which reflects ideas of a large community or society, represents ideas that are "widely shared and not open to criticism in a particular historical moment."[155] Mehta provides the example of the principle of accountability of people as an idea that enjoys the status of *Zeitgeist*.[156] To respond to the question as to when an idea or a norm becomes a *Zeitgeist*, Finnemore and Sikkink suggest a useful tool for analysis. This concept allows us to also consider the developments at the international level, as it was devised to do so. According to Finnemore and Sikkink, norms undergo three different stages before they become accepted international norms, or *Zeitgeist*. The first stage is the emergence of the norm. As soon as a tipping point is reached, where a certain number of actors accept the norm, the second stage begins. During this stage the norm becomes institutionalised.[157] For the next tipping point to arrive, critical actors, as well as a critical mass of actors, need to accept the norms.[158] With this first tipping point, the second stage occurs: The norm cascade. This means that norms have been accepted by enough actors to become a tool to pressure those actors who have not yet accepted or adhered to the norm. If another critical mass and a number of critical actors accumulate, the third stage is reached. In the third stage, norms become internalised and "acquire a taken-for-granted quality and are no longer a matter of

[150] BÉLAND/COX, 2011b, p. 3.
[151] WINCOTT, 2011, p. 152.
[152] BÉLAND/COX, 2011b, p. 4.
[153] BÉLAND/COX, 2011b, p. 10.
[154] HUNT, 2007, p. 19; IACCARINO.
[155] MEHTA, 2011, p. 27.
[156] MEHTA, 2011, p. 27.
[157] FINNEMORE/SIKKINK, 1998, p. 900.
[158] FINNEMORE/SIKKINK, 1998, 895, 901.

broad public debate."[159] This means that these norms are not up for further negotiation as such. In the case of the abolition of slavery and forced labour, this means that no state will question the illegality and wrongness of these practices and violations thereof.[160]

In this paragraph I propose a norms cycle of the abolition of slavery in the terms of Sikkink and Finnemore. Stage 1, the norm emergence occurred between 1807 and the 1920s, when the norm of the abolition of slavery developed. With the proliferation of bilateral and international agreements, as well as regional laws in India, the norm had taken a strong hold within the policymaking community at the international level as well as the regional level of the British Raj. The *Versailles Treaty*, and the beginning of the negotiations for the development of an international convention to abolish slavery at the LN marked the tipping point. At stage 2, norm cascade, the norm became institutionalised by conventions, such as the *Slavery Convention* of 1926, and monitoring mechanisms, such as the Advisory Committee of Experts on Slavery.[161] By the end of 1930, one third,[162] of the members to the League of Nations became state parties to the *Slavery Convention*—20 of 49 had signed, ratified or acceded.[163] Among the states committed to the convention, 20 members were critical states[164] that formed the "critical mass of relevant state actors,"[165] such as the United States, the United Kingdom, Spain, India, and China. A simultaneous development confirms the occurrence of the norm cascade: The General Conference of the ILO adopted the *Forced Labour Convention* (C29) in 1930. At the end of 1935, 15 ILO members out of 62 member states had ratified the *Forced Labour Convention*—almost one quarter. By the end of 1947 almost one third, 21 of 66 member states of the ILO, were parties to the convention. With only two exceptions, the relevant number of critical states had ratified the convention.[166] Stage 3, the internalisation occurred around the 1930s. The internalisation of the norm began and the abolition of slavery had acquired "a taken-for-granted quality and [was] no longer a matter of broad public debate."[167]

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[159] FINNEMORE/SIKKINK, 1998, p. 895.
[160] International Labour Organisation, 1930, Art. 2 (2). This statement should be treated with caution: Until today, international legal provisions, such as the ILO *Forced Labour Convention* (C29) of 1930, allow for forced labour in some cases. For instance, forced labour is allowed in times of national emergencies, such as during war or natural catastrophes. Also, convict labour and military service are exceptions to the provision of C29.
[161] FINNEMORE/SIKKINK, 1998, p. 900; League of Nations, 1936.
[162] Finnemore and Sikkink set the critical point at "one-third of the total states in the system," FINNEMORE/SIKKINK, 1998, p. 901.
[163] List of signatures, ratifications and accessions to the *Slavery Convention*: United Nations, Chapter XVIII, 3.
[164] FINNEMORE/SIKKINK, 1998, p. 901.
[165] FINNEMORE/SIKKINK, 1998, p. 895.
[166] Dates of ratification derived from the website: International Labour Organisation; China and the USA still have not ratified the convention as of, June 2019.
[167] FINNEMORE/SIKKINK, 1998, p. 895.

This model highlights that the emergence of the norm is not a signifier of an antislavery *Zeitgeist*. Based on the development of the norms cycle following Finnemore and Sikkink, I place the emergence of the antislavery norm as *Zeitgeist* around 1935. This is relevant for the analysis of the hypotheses and the influence of the *Zeitgeist* on the behaviour of actors. But it is not only the *Zeitgeist* that helps us to understand institutional change. Other ideas need to be entertained. An example in the context of the abolition of slavery is the compensation of former slaveholders by the British Parliament in 1833.[168] Compensation for slaveholders reflects the idea that former slaveholders had lost their property, a value as such above all.[169] The loss of this property due to the liberation of slaves justified the compensation of former slaveholders, but not the compensation of lost remuneration for the former slaves or compensation for the physical, psychological and social damage they endured. Therefore, I diverge from earlier research that focused on the idea of freedom[170] and focus on other paradigms that are present in the respective episodes and that help us to understand the particular events. Since ideas and the *Zeitgeist* change, I discuss them in more detail in each episode separately.

The *Zeitgeist* at the international level does not necessarily reflect the *Zeitgeist* at the national level. Therefore, to consider the *Zeitgeist* at the national level, it has to be interrogated separately. Finnemore and Sikkink suggest that the development of a norm into *Zeitgeist* is similar at the international and the national level.[171] To determine the *Zeitgeist* at the national level, several sources are indicative: Political party programmes, statements of politicians, adopted legal provisions, and court cases.[172]

Agents of Change

Looking at the agents of change, Mahoney and Thelen ask two questions that help to classify the actors in four basic groups: The first question is whether the actors drive for change of the rules and whether the actors abide by the rules. The nature of change is influenced by the disposition of the actors towards the institution and is dependent on the institutional environment and the veto possibilities.[173] Mahoney and Thelen thereby differentiate between the insurrectionaries, subversives, opportunists, and symbionts. Insurrectionaries seek to

[168] DRAPER, 2010, p. 2; TEALL, 1897, p. 3.
[169] SMEDLEY, 2007, p. 54.
[170] MAJOR, 2012, p. 5–7; PRAKASH, 2002, p. 1–12.
[171] FINNEMORE/SIKKINK, 1998, p. 893–894.
[172] Cf. MEHTA, 2011, p. 42–45.
[173] MAHONEY/THELEN, 2010b, p. 22–23.

actively change the rules while probably also not abiding by them—their goal is the displacement of the rules. Symbionts are those actors who exploit the institution to their advantage either in a parasitic or a mutualistic manner. Parasitic symbionts cause drift of the rules; they support the rules' persistence and device attempts to undermine institutional reforms[174] while at the same time "violating the spirit"[175] of the institution. Mutualist symbionts, on the other hand, violate the institutional rules in order to sustain the spirit of the institution. Subversives do not violate the rules but seek the displacement of the institution's rules. Subversives are most likely to cause change in the direction of layering or conversion. The last actors are opportunists who neither seek to change nor to maintain an institution, but to extract gains to their advantage without investing any resources in either change or maintenance of the institution. Since change involves higher risks, opportunists are more likely to opt for stability and thereby contribute to the inertia of an institution or its conversion.[176]

Mahoney and Thelen ascribe an important role to the agents of change. Firstly, their actions are guided or 'encouraged' by the institutional provisions: "Those who benefit from existing arrangements may have an objective preference for continuity but ensuring such continuity requires the ongoing mobilization of political support as well as, often, active efforts to resolve institutional ambiguities in their favour."[177] Depending on the nature of the institutions, agents choose different strategies. Secondly, change agents choose a behaviour that is either active or inactive, to prompt particular outcomes.[178] The characteristics of the political context, as well as of the institution, influence both the type of change agents and the type of institutional change. The actors' strategies to bring about change vary from open changes through official venues, to means beyond observation or supervision.[179] Hacker specifies that actors are able to engender change, by choosing "*not* to attack such institutions directly. Instead, actors may seek to shift those institutions' ground-level operation, prevent their adaptation to shifting external circumstances, or build new institutions on top of them."[180]

Based on both variables, (1) the political context (the veto possibilities) and (2) the characteristics of the institutions (the level of discretion to interpret the rules or to enforce

[174] HACKER, 2004, p. 246.
[175] MAHONEY/THELEN, 2010b, p. 24.
[176] MAHONEY/THELEN, 2010b, p. 23–27.
[177] MAHONEY/THELEN, 2010b, p. 9.
[178] MAHONEY/THELEN, 2010b, p. 4.
[179] HACKER, 2004, 243, 249.
[180] HACKER, 2004, p. 244, italic in the original.

them), Mahoney and Thelen propose a model to predict which kind of potential actors are most likely to emerge and which mode of incremental change they will cause. The mode of change can be the unintended result of actors or the accumulative effect of actors working in different directions. But, as Hacker shows, the mode of change can also be the intended result of actors.[181]

Regarding the denominations of the change agents, for instance the parasitic symbiont,[182] the terms introduced seem to carry a negative connotation and place a value judgment on the actors and the outcomes they produce. In Mahoney and Thelen's descriptions, it seems as if change actors are all ill meaning: Insurrectionaries "seek to eliminate existing institutions,"[183] and symbionts 'exploit' the existing institution for their private gain.[184] Rocco and Thurston write also that actors' behaviour causing layering "may or may not be related to a desire of a 'destructive' nature."[185] But they contend that the actors mostly have negative intentions.[186] I do not suggest other names in this dissertation to avoid adding another 'layer of labels.'[187] But I will add one kind of actor, who is not explicitly covered, but is observed by Mahoney and Thelen discussing Lieberman's example of the *Civil Rights Act*.

In Lieberman's example, the provisions for equal employment opportunities is a case of a weak law, weak implementation,[188] and strong veto opportunities on the side of the preservers of the status quo. But because of the bureaucracy, civil society and the judiciary acting strongly in favour of the spirit of the law, the institution underwent change in the mode of conversion (new interpretation and enactment of rules).[189] The institutional and political environment was in essence against the intent of the spirit of the rules.[190] But the EEOC, working together with private actors, such as the NAACP (National Association for the Advancement of Colored People),[191] and in tandem with plaintiffs making use of the *Civil Rights Act* in the Courts, contributed to strong implementation of the law in the form of affirmative action. After the adoption of the act, the judiciary used its discretion of

[181] HACKER, 2004, p. 248.
[182] MAHONEY/THELEN, 2010b, p. 24.
[183] MAHONEY/THELEN, 2010b, p. 23.
[184] MAHONEY/THELEN, 2010b, p. 24.
[185] ROCCO/THURSTON, 2014, p. 46.
[186] ROCCO/THURSTON, 2014, p. 46. See for a similar observation in the work of Hacker, BÉLAND, 2007, p. 23.
[187] ROCCO/THURSTON, 2014, p. 38.
[188] Measured in backlog of the bureaucracy and the absence of impositions of remedies, LIEBERMAN, 2007a, p. 11–12.
[189] MAHONEY/THELEN, 2010b, p. 17–18.
[190] LIEBERMAN, 2007a, p. 2.
[191] LIEBERMAN, 2007a, p. 14.

interpretation and relied, for instance, on information provided by the EEOC to argue rulings.[192] The result was "one of the strongest affirmative action regimes in the world."[193]

The actors in the bureaucracy cannot be described in the terms Thelen and Mahoney offer:[194] They were not insurrectionaries, since they did seek to preserve the spirit of the rules. They were not symbionts, since they were seeking to preserve the institution and neither violated nor followed the rules—they rather extended the interpretation of the rules towards the preservation of the institution.[195] Consequently, they did not act like subversives. Being invested in change, they also cannot be described as opportunists. Instead, actors at the bureaucratic, judicial and civil society level ganged up as the defenders[196] of the spirit of the rules and drove for change at the implementation level. Despite the absence of changes at the rules level these actors were able to fundamentally transform the working of the state towards the realisation of civil rights in the US.[197] I therefore suggest adding another actor described but not formalised by the Thelen and Mahoney: The defender. Defenders stick not only to the rules but the spirit of the rules, and are interested in the preservation as well as effective implementation of these rules. While opportunists are the closest to the defenders, both might be described as having ambiguous positions towards the existing rules of the institution. But the difference is that opportunists dread investing resources in change,[198] while defenders are eager to do so.

In the case of the institution of the abolition of slavery, I expect to find two different kinds of actors: Antislavery actors who are active against slavery or bonded labour or who speak against slavery and for the freedom from enslavement; and proslavery actors, who defend slavery and bonded labour and may (but not necessarily) profit from it.[199] Therefore, the latter encompasses politicians defending slavery but having no direct stakes, as well as the employers of bonded labourers. The preference for the term pro- or antislavery lays less in the actual definition and more in a desire for simplicity, as rules against slavery were the framework within which bonded labour was initially addressed.

My analysis begins when the institution of the abolition of slavery was already in place. This means that my theoretical concern is not on the emergence of the norm and the

[192] LIEBERMAN, 2007a, 22-23, 25.
[193] MAHONEY/THELEN, 2010b, p. 13.
[194] MAHONEY/THELEN, 2010b, p. 22–25.
[195] LIEBERMAN, 2007a, p. 10.
[196] Rocco and Thurston refer to "institutional defenders," but they do not formalise them as an own category of actors as I suggest; see ROCCO/THURSTON, 2014, p. 45.
[197] LIEBERMAN, 2007a, p. 10.
[198] MAHONEY/THELEN, 2010b, p. 26.
[199] For a similar definition refer to DUMAS, 2016, p. 2.

creation of the institution but its development thereafter. Depending on the institutional characteristics, the level of ambiguity and the enforcement of the abolition of slavery, pro- and antislavery actors are positioned differently towards the institution: They can be identified either as the change agents or as defenders of the status quo. If legislation against slavery and forced labour suffers from an implementation gap, proslavery actors probably want to preserve the status quo since a strong law, but weak implementation, allows for the discretion to continue labour exploitation. On the other side, antislavery actors are interested in change when implementation fails the spirit of the institution. But if implementation is strong, weak rules are probably not interesting for them to change, which Thelen and Mahoney explain with the costs that need to be invested to actively induce change.[200] Table 5 summarises the expectations of the actors' disposition towards the institution depending on the characteristics of the antislavery institution:

Table 5. Dominant agents of change depending on characteristics of the institution

		Enforcement	
		Lax/ineffective	Vigorous/effective
Interpretation	Broad (Weak law)	Antislavery	Proslavery
	Narrow (Strong law)	Antislavery	Proslavery

The actors' disposition towards the institution depends on its characteristics; the actors' behaviour is also contingent on the *Zeitgeist* in which they act. For instance, strong believers in the right to be free from enslavement behave differently in an environment where slavery is a common form of labour exploitation and even legally sanctioned, as compared to actors who are in an environment in which slavery is legally abolished.[201] Acknowledging the insights of the scholarly work in the field of IR and the work on ideas, I expect different forms of behaviour of actors, depending on the current *Zeitgeist*: In times where there is a proslavery *Zeitgeist*, proslavery actors speak out and act openly in favour of slavery. When the norm of

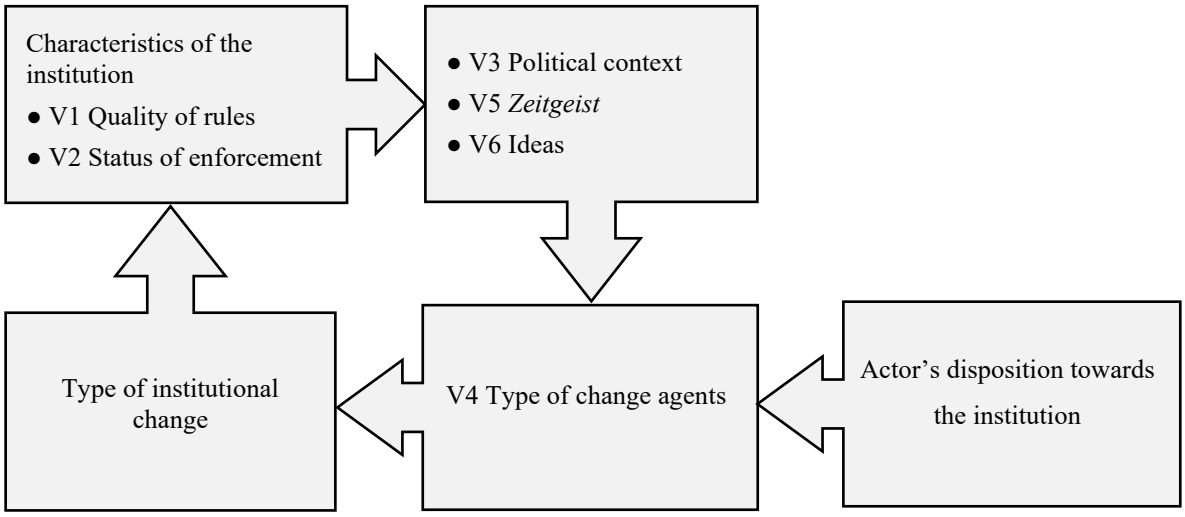
[200] MAHONEY/THELEN, 2010b, p. 26.
[201] DUMAS, 2016, p. 3.

the abolition of slavery has achieved the taken-for-granted-ness,[202] it can be expected that proslavery actors no longer speak out directly in favour of slavery.[203] In a period where the *Zeitgeist* leans towards the acceptance of slavery, open resistance to infringements on slavery is possible, as was the case with the British abolition of slavery in 1833, against which petitions were submitted to the British Parliament and the King.[204] Proslavery actors rather attempt to limit the scope as to which forms of labour relations constitute slavery, and try to enact or maintain legislation that undermines existing antislavery legislation.

Causal Relationship and Hypotheses

Based on the insights of Mahoney and Thelen[205] and the outline of the theoretical assumptions, I formulate several hypotheses. Hypotheses are statements that establish the relationship between cause and effect.[206] While a hypothesis expresses this relationship, the theory provides an explanation as to why this relationship exists.[207] The following causal relationship between the dependent variable—the change of the institution—and the independent variables—the institutional environment, the actors, and ideas—is visualised in the graph below. The arrows mark causality:

Figure 4. Causal relationship between the variables



[202] FINNEMORE/SIKKINK, 1998, p. 895.
[203] DUMAS, 2016, p. 3.
[204] An example of a petition against the abolition of slavery, see Planters, Merchants, and others interested in the Welfare of the Island of Tobago, April 17 1832, p. 854.
[205] MAHONEY/THELEN, 2010b.
[206] SOUVA, 2007, p. 557.
[207] SOUVA, 2007, p. 557.

Depending on the actors' disposition towards the institution and depending on the political environment in which the actors act, one or the other mode of change will occur. Among the set of actors, there can be two options: Actors who either uphold the rules as they are, or actors who are in favour of changing the rules. Earlier, I showed that the different modes of change are connected to either the outcome level or the output level, and in some cases with both levels. In Mahoney and Thelen's theoretical summary it appears that this distinction of location is not factored in explicitly:

Table 6. Expected modes of change (Thelen & Mahoney, 2010)

		Discretion of interpretation & enforcement: Low	Discretion of interpretation & enforcement: High
Veto possibilities	Strong	Layering	Drift
	Weak	Displacement	Conversion

Source: MAHONEY/THELEN, 2010b, p. 19. Note: The mode of change depends on the political context and the veto possibilities the political context affords, and the discretion of interpretation and enforcement granted to actors regarding the targeted institution.

This table shows, for instance, that if there is a low level of discretion in interpretation and enforcement of the institutional rules, and if there are strong veto possibilities on the side of relevant actors to prevent change, layering is the most likely to occur. Incorporating the two variables, the level of discretion and level of enforcement, as well as the theoretical assumption of the *Zeitgeist* and the two sets of actors, the tables in the Appendix summarise all hypotheses, in some cases illustrated with an example. The hypotheses are written in full sentences, with (a) indicating an antislavery *Zeitgeist* and (b) indicating a proslavery *Zeitgeist*. The relevant hypotheses I test in this dissertation are the following six:

Hypothesis 3a: If antislavery rules are weak and enforcement ineffective and preservers of the status quo have strong veto possibilities, antislavery actors behave like subversives causing displacement to remove contravening legislation or[208] like defenders causing conversion.

[208] Thelen and Mahoney suggest for the combination of these variables that change agents will be parasitic symbionts, MAHONEY/THELEN, 2010b, p. 28.

Hypothesis 4a: If antislavery rules are weak and enforcement ineffective and if veto possibilities of the preservers of the status quo are weak antislavery actors are the change agents and induce change by layering as subversives, or displace contravening legislation as insurrectionaries.[209]

Hypothesis 4b: If antislavery rules are weak and enforcement ineffective and if veto possibilities of the preservers of the status quo are weak antislavery actors act like insurrectionaries causing displacement or layers.

Hypothesis 6b: If the rules are weak but enforcement is effective and veto possibilities are weak proslavery actors acting like subversives cause change by layering.

Hypothesis 7a: If rules are strong and enforcement ineffective and veto possibilities are strong antislavery actors change the institution as defenders by layering (i.e. new actors).

Hypothesis 8a: If the institution has a strong policy but enforcement is ineffective and veto possibilities are weak antislavery actors are likely to be the actors of change as defenders causing layering.

Method

To test my hypotheses, I chose the method of process tracing. The idea of process tracing is to follow at "close range"[210] with a "thick description"[211] of the processes that took place. The order of the processes is one central aspect that needs to be taken into account to make meaningful statements about the relation between the causes and consequences in the historical process. This method is particularly suitable for "measuring and testing hypothesized causal mechanisms"[212] for the single-case study.[213] Mahoney explains that "[p]rocess tracing tests can be used to help establish that (1) an initial event or process took place, (2) a subsequent outcome also occurred, and (3) the former was a cause of the latter."[214] George and Bennett explain that:

> In process-tracing, the researcher examines histories, archival documents, interview transcripts, and other sources to see whether the causal process a theory hypothesizes

[209] Under those conditions Thelen and Mahoney suggest the mode of change to be conversion, MAHONEY/THELEN, 2010b, 17, 18, 27.
[210] COLLIER, 1999, p. 4.
[211] COLLIER, 1999, p. 5.
[212] BENNETT/CHECKEL, 2015, p. 3–4.
[213] MAHONEY, 2012, p. 570.
[214] MAHONEY, 2012, p. 570.

> or implies in a case is in fact evident in the sequence and values of the intervening variables in that case.[215]

Much like scholars of American political development (APD) I apply "the 'causes-of-effects' approach to explanation."[216] According to Galvin, APD scholars look at present political problems, "the real world," and move backward in history to identify the causes of those political problems.[217] What facilitated the policy changes of legislation against bonded labour in India? What explains the advent of actors such as the Supreme Court or the NHRC in the 1980s? Through process tracing it will be possible to identify the particular factors that caused the outcomes in a deductive manner.[218] Although lacking a general effect of the independent variables, "[what] this approach sacrifices in the generalizability of its causal claims, it more than makes up for in its ability to generate causal specificity and substantive understanding."[219]

My analysis of the institutional development of the abolition of bonded labour in India is historically grounded. Using the theory of gradual institutional change to explain the institutional changes of the abolition of bonded labour, I put this theory to the test. The theory offers general assumptions: It makes general inferences about the development of institutions under certain conditions with a broad range of applications.[220] If the theoretical propositions are generally applicable, they should also hold in the specific case of the institution of abolition of bonded labour.[221] By testing the theory, this study is a qualitative study, with a single-case conducting a within-case comparison. I analyse the abolition of bonded labour throughout different periods and compare them to each other. Within these periods there are variations, where changes do and do not occur, while other variables remain constant.

The advantage of this approach is that a limited number of cases allows the researcher to "move back and forth between theory and history in many iterations of analysis" and to "formulate new concepts, discover novel explanations, and refine pre-existing theoretical expectations in light of detailed case evidence."[222] There might arise the problem that the results derived from this particular study on this particular case are not easily transferred to other cases,[223] but Mahoney explains that "comparative historical studies can yield more

[215] GEORGE/BENNETT, 2005, p. 6; cf. BENNETT/CHECKEL, 2015, p. 6.
[216] GALVIN, 2016, p. 209.
[217] GALVIN, 2016, p. 209.
[218] BENNETT/CHECKEL, 2015, p. 18.
[219] GALVIN, 2016, p. 210.
[220] RUESCHEMEYER, 2003, p. 309.
[221] RUESCHEMEYER, 2003, p. 312.
[222] MAHONEY/RUESCHEMEYER, 2003, p. 12.
[223] MAHONEY/RUESCHEMEYER, 2003, p. 9.

meaningful advice concerning contemporary choices and possibilities than studies that aim for universal truths but cannot grasp critical historical details."[224] Anticipating that the observations of causal relations or correlations may potentially only apply to this specific case does not detract from the insights that are derived from this particular case.[225]

[224] MAHONEY/RUESCHEMEYER, 2003, p. 9.
[225] GALVIN, 2016, 216, 220.

Chapter 2 Institutionalisation: EIC & British Parliament, 1807-1843

This sub-chapter focuses on the inception of the institution of the abolition of slavery and bonded labour and provides an introduction to my cases. It also serves as the basis for my discussion and argument regarding where to set the starting point of my research. Here I follow the call of Bennett and Checkel to "make a justifiable decision when to start,"[1] trying to go back in time far enough, but not too far. One guide to determine an appropriate starting point is the definition of the institution of the abolition of slavery and bonded labour—the moment in time from which the abolition of slavery can be said to have become an institution. That is, when the rules against slavery, bonded labour and forced labour "constitute rules for actors other than for the policymakers themselves—rules that can and need to be implemented and that are legitimate in that they will if necessary be enforced by agents acting on behalf of the society as a whole."[2]

"[T]he society as a whole"[3] poses a challenge to the analysis, since in the case of India it carries a territorial dimension. The territorial expansion of British India, independent India, as well as earlier kingdoms, such as under Kautilya, have undergone several changes: For instance, the country which is today Pakistan was part of the British Raj, but became an independent state from India in 1947. And while the British governed over large territories of India, its rule over the princely states was only indirect. Many of the native-ruled states maintained their legal and executive sovereignty until their accession to India after independence. Burma[4] constituted a part of British India, until it became an independent colonial entity in 1937. Finally, due to the resulting complexity with about 500 princely states, and, subsequently, potentially 500 different histories of the abolition of slavery, I limit my

[1] BENNETT/CHECKEL, 2015, p. 26.
[2] STREECK/THELEN, 2005b, p. 12.
[3] STREECK/THELEN, 2005b, p. 12.
[4] Today Myanmar.

focus on British rule under the EIC (East India Company), the British Raj, and independent India. Thereby I am be able to draw out continuities between the colonial state and the independent Indian state. This means that I only mention in passing other jurisdictions and dealings with slavery in the princely states, as well as the Portuguese colonial rule in Goa and the French colonial territories in India.

The sources of this chapter are variegated: I rely on the work of other scholars and the primary sources they used. Wherever possible, I make use of and refer to primary sources, such as governmental reports, judges' decisions, personal communications or interdepartmental communications of the colonial administration, the British Parliament,[5] legal texts and commentaries, governmental and non-governmental reports, and newspaper articles. Primary sources were obtained from the British Library India Office Records, the National Library of India, as well as material made available online.[6] Before I take up the history of the abolition of slavery by the British, I briefly discuss earlier legal legacies, before the British became the colonial power over India.

Regulating Slavery

More than 2000 years ago, Indian rulers already attempted to regulate or ban some forms of slavery or the slave trade. The *Arthashastra,* written by the statesman and philosopher Kautilya around 300 BC, referenced to the treatment of slaves and regulation of slavery.[7] The chapter *Rules regarding Slaves and Labourers* regulated who could be sold into slavery or bought as slave.[8] For instance, it was forbidden to sell an Arya (a member of the ruling clan) into slavery. Some forms of slavery that appear to be bonded labour were permitted:[9]

> It is no crime for *Mlechchhas* [foreign born people] to sell or mortgage the life of their own offspring. But never shall an Arya be subjected to slavery.
>
> But if in order to tide over family troubles, to find money for fines or court decrees, or to recover the (confiscated) household implements, the life of an Arya is mortgaged, they (his kinsmen) shall as soon as possible redeem him (from bondage); and more so if he is a youth or an adult capable of giving help.[10]

[5] Available at Parliament of the United Kingdom.
[6] Available at The Internet Archive, Google and HathiTrust.
[7] MANN, 2012, p. 13; CHATTERJEE, 2014, p. 343.
[8] SHAMASASTRY, 2010 [1915], p. 260.
[9] SHAMASASTRY, 2010 [1915], p. 260.
[10] SHAMASASTRY, 2010 [1915], p. 260.

This law prescribed who might be treated as a slave and regulated the treatment of slaves by their masters, as well as provided rules for bonded labour.

Later laws also regulated rather than abolished slavery: The Mughal Emperor Akbar, for instance, who ruled over large parts of northern India between 1556 and 1605, banned the trade with eunuchs.[11] His son Jahangir, Mughal Emperor from 1605 until 1627, passed a law to prohibit the employment of eunuchs in 1608.[12] In the period between 300 BC and the seventeenth century, the institutionalisation of the abolition of slavery and forced labour had not yet taken place in India. Some forms of slavery were banned, and certain individuals were exempted from enslavement, but at the same time some forms of slavery were acceptable and legally sanctioned.

Before the abolition of slavery in 1833, the British legally extracted slavery and forced labour in India. The East India Company employed slaves on its own tea plantations,[13] and British nationals living in India kept *ayahs*,[14] housekeepers and cooks, or gardeners, as slaves. They claimed and exercised ownership rights over runaway domestic servants in the courts and offered rewards for the return of runaway slaves through advertisements in the newspapers.[15] Government officials made use of temporary slave labour, usually called *begar*: Villagers or field workers were recruited to carry the material needed by travelling officials, or for taking care of public works, building roads or maintaining water supplies.[16]

The EIC addressed the issue of slavery and attempted to regulate the practice of slave holding by British nationals early on: Warren Hastings, Governor-General of Bengal, issued a declaration that a master shall not exercise his power over a slave for more than one generation in 1774.[17] By the 1790s the presidencies of Malabar and Madras prohibited the slave trade. By the 1820s several presidencies had legislations installed that prohibited the abuse of slaves, and criminal courts sat on trials against violent slave owners who had killed their slaves.[18] Other regulations towards the use of coolies and *begar* (or *begaree*) by British officials, as well as the slave trade, were adopted in Bengal, Bombay, Assam, and Madras

[11] HAMBLY, 1974, p. 129.
[12] HAMBLY, 1974, p. 129.
[13] CASSELS, 2010, p. 186.
[14] Nannies and wet-nurses of Indian origin.
[15] CHATTERJEE, 2017, 161, 164, footnote no. 6. Examples of advertisements offering rewards for returned runaway slaves: June 17 1784, December 2 1784, December 8 1785, July 20 1786, May 17 1787, SETON-KARR, 1864a, 44-5, 66, 120, 179, 217-18; May 7 1789, July 12 1792, SETON-KARR, 1864b, 498-99, 538-39.
[16] CASSELS, 2010, 168-69, 235-36.
[17] PRAKASH, 1996, p. 12.
[18] CASSELS, 2010, 186-87,197.

between 1800 and the 1840s.[19] In Bombay, Madras and Bengal, for instance, the use of *begaree* or coolie labour became allowed under the condition that the labourers were duly remunerated.[20] With these legislations the EIC tried to regulate slavery and abolish the slave trade. But at the same time, these attempts were in conflict with other legislations of the period from 1790 up to the 1820s, which the EIC had adopted to ensure the supply of labour for British officers and collectors. These regulations allowed for the punishment of individuals or communities who resisted offering their labour to the company.[21]

The EIC attempted primarily to address the use of slave labour by British nationals, as the use of slaves by the native population was legally sanctioned according to British assessments.[22] During Company rule, the British began to develop a legal framework applicable to the whole of the directly ruled Indian territories. Under Hastings several religious law codes of Hindus and Muslims were translated and collected in a compendium as reference for judges. The goal was a general law to govern the diverse Indian subjects and it was developed with the help of the Indian elite.[23] The compendium was supposed to ensure the protection of the religious rights and property rights of the Indian subjects. Governor Cornwallis requested the development of a legal code for the Indian population in respect to the different religions and customs of Hindus and Muslims. This legal code was adopted as part of the Cornwallis Code of 1793.[24] It granted "that in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, Mahomedan laws with respect to Mahomedans and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which Judges are to form their decisions."[25] In 1795 the British Parliament adopted an act that again guaranteed the respect of the British EIC towards Hindu and Muslim personal law.[26] The basis for the development of Hindu and Muslim personal law regarding slavery was founded on translations of Hindu and Muslim scriptures,[27] namely the English translation from Persian by Hamilton, volume three of *The Hedaya, or Guide: A Commentary on the Mussulman Laws*,[28] published first in 1791, and Halhed's 1776

[19] BANAJI, 1933, p. 248–313.
[20] CASSELS, 2010, 166, 168-69; MAJOR, 2012, p. 52–54.
[21] CASSELS, 2010, 171-72, 178-82.
[22] CASSELS, 1988, p. 36; MAJOR, 2012, p. 139–142.
[23] CASSELS, 2010, 167, 174-75; PRAKASH, 1993, p. 133; WASHBROOK, 1981, p. 653.
[24] CASSELS, 1988, p. 63. For a detailed description of the translation and codification of Hindu and Muslim personal law see COHN, 1996, 27-30, 72-5.
[25] Cornwallis Code, *Regulation IV of 1793*, Sec xv., quoted in CASSELS, 2010, p. 175.
[26] *Bengal Regulation III and IV, 1793* (35 Geo III c.155), CASSELS, 2010, 181, 406.
[27] CASSELS, 1988, p. 63–64.
[28] AL-MARGHINANI/HAMILTON, 2013 [1791].

translation of *A Code of Gentoo Laws or, Ordinations of Pundits*.[29] The Calcutta Sudder Dewanny Court ruling of April 12 1798 recognised slavery as "law of the land."[30] Until the *Act V* of 1843, courts in India enforced the right of masters over slaves on the ground that they recognised Hindu and Muslim laws that allowed slavery.[31] Runaway slaves from the princely states who fled into the territory of the EIC had to be reinstituted to their owners.[32]

Abolishing the Slave Trade, 1807

The British government began to act against the abolition of the slave trade in the beginning of the nineteenth century. Historians have established that the norm of the abolition of slavery and the slave trade was fostered by civil society in Great Britain.[33] Groups such as the Society for Effecting the Abolition of the Slave Trade (founded in 1787),[34] the London Society for Mitigating and Gradually Abolishing the State of Slavery throughout the British Dominions (founded in 1823), and later the British and Foreign Anti-Slavery Society (founded in 1839),[35] lobbied for the ban of the slave trade and the abolition of slavery. A general abolition of slavery was the long-term aim, but for strategic reasons these advocates chose to focus on the slave trade and the abolition of slavery in the West Indies.[36]

In 1791 the British Parliament voted against a first bill to abolish the slave trade submitted by Wilberforce.[37] But with increasing pressure by the public and civil society, and the support of members of Parliament, such as Wilberforce himself, the British Parliament adopted the *Act for the Abolition of the Slave Trade* in 1807.[38] The House of Lords voted for the bill with 100 ayes and 34 nays; in the House of Commons 283 voted in favour and 16 against.[39] The *Slave Trade Act* of 1807 prohibited the trade in slaves for British merchants only,[40] but it was the starting point for the British government in the fight against the global slave trade.[41] In the following decades the British concluded several bilateral and multilateral

[29] HALHED, 2013 [1776].
[30] CASSELS, 2010, p. 237.
[31] CASSELS, 2010, p. 198; Indian Law Commission, January 15 1841a, p. 4–5.
[32] CASSELS, 2010, p. 181.
[33] Cf. WALVIN, 1982, p. 30; DRESCHER, 2009, p. 263; PRAKASH, 1993, p. 134; DIRKS, 2008, p. 33.
[34] DIRKS, 2008, p. 32.
[35] MIERS, 2008, p. 18.
[36] WILLIAMS, 1944, p. 189; MAJOR, 2010, p. 516.
[37] DIRKS, 2008, p. 32–33.
[38] *Slave Trade Act* of 1807, Parliament of the United Kingdom, March 25 1807.
[39] MERRILL, 1945, p. 397.
[40] FISCHER, 1950, p. 43–45.
[41] KEENE, 2007, p. 313; MIERS, 2003, p. 14–15; BANAJI, 1933, p. 286.

treaties with other slave trading nations:[42] In 1810 the Portuguese pledged to only trade slaves within its territories; the Anglo-Swedish Treaty of 1813 provided that Sweden banned its slave trade; in 1814 the Anglo-Portuguese Treaty followed, and several more.[43] In 1846 the British reached a treaty with Persia to stop the slave trade with black slaves, and made further agreements to end the slave trade with the Ottoman Empire (1857), Zanzibar (1873), and Egypt (1877).[44]

Regarding the implementation of the *Slave Trade Act* of 1807 in the Indian Ocean region, Mann argues that the few vessels of the Royal Navy, charged with controlling ships, were by far not enough to cover the trade routes along the Indian Ocean. Ships of different origins disguised their identity by travelling under the flags of other nations who had no treaties with Great Britain. Rajas of the Indian subcontinent continued to order black slaves from Africa.[45] Portuguese officials and Portuguese traders as well as slaveholders in India demonstrated resistance towards the abolition of the slave trade and slavery. The bilateral agreement between Great Britain and Portugal of 1818, an edict of the Portuguese crown of 1836, and another English-Portuguese agreement of 1848 were ineffective: Slaveholders did not, as requested according to the agreement, announce the number of their slaves, and also officials in the administration helped to disguise the real number of slaves. Well after the abolition of the slave trade, the Portuguese trade in slaves flourished in the nineteenth century.[46] Another problem of implementation was that East India Company law, and laws adopted by the Indian government, did not apply to the princely states.

Civil society and MPs striving for the abolition of slavery were the "norm entrepreneurs"[47] that Sikkink and Finnemore identified as crucial for the development of a norm. They were the active agents in creating the normative environment, pressing their own government and other nations to implement this norm through the adoption of bilateral or multilateral agreements against the slave trade.[48] This formalisation of the abolition of the slave trade from 1807 on can be described as the norm's emergence,[49] during which the British Empire undertook efforts to convince other states to adhere to the norm prohibiting the slave trade. But with the abolition of the slave trade, the institutionalisation of the abolition of

[42] KEENE, 2007, p. 333; ALLAIN, 2008, 2-3, 19; FISCHER, 1950, p. 43–45; KAUFMANN/PAPE, 1999, p. 634.
[43] LOVEJOY, 2000, p. 290. For a detailed list refer to LOVEJOY, 2000, p. 290–294.
[44] KLEIN, 2005, p. 181.
[45] MANN, 2012, p. 182–184.
[46] MANN, 2012, p. 184.
[47] FINNEMORE/SIKKINK, 1998, p. 895.
[48] FINNEMORE/SIKKINK, 1998, p. 895.
[49] FINNEMORE/SIKKINK, 1998, p. 894.

slavery and eventually bonded labour, had not yet taken place. Although the prohibition of the slave trade and trafficking did call for third-party enforcement, no rights for the victims of the slave trade arose from the provisions.

Abolishing Slavery, 1833

Collectors of the East India Company described bonded labour in agricultural settings in their reports as early as 1775.[50] But neither systematic evidence nor statistical information on bonded labour or slavery was available by that time, and the first census was conducted after 1840.[51] One group to document slavery and bonded labour in India were missionaries to India. Abbe Dubois described in his publication of 1822:

> Throughout the whole of India the Pariahs are looked upon as slaves by other castes and are treated with great harshness. Hardly anywhere are they allowed to cultivate the soil for their own benefit but are obliged to hire themselves out to the other castes, who in return for a minimum wage exact the hardest tasks from them.
>
> Furthermore, their masters may beat them at pleasure (...). In fact, these Pariahs are the born slaves of India (...).[52]

Within a span of two weeks, the British Parliament discussed the *East India Charter Bill* (or *Government of India Bill*) and the *Slavery Abolition Bill.*[53] The *East India Charter Bill* was first read in June 28 1833, and the *Slavery Abolition Bill* was discussed the following week.[54] Since the EIC was responsible to the sovereign, and not Parliament, the British Parliament had not discussed slavery in India before.[55] The main issue the MPs addressed was slavery in the West Indies. Major argues that India was not referred to in the discourse on the abolition of slavery in the public sphere[56] and in Parliament, because activist groups had focused on the West Indian slaveries. These groups had to calculate their impact and resources and therefore concentrated on the 'worst' situation with an intention to continue from there[57]—the perception among parliamentarians, but also abolitionists, was that slavery on the subcontinent was not as harsh as compared to the slavery experience in the Americas. This assessment was possible due to a lack of information, and because of the interrelated

[50] CASSELS, 2010, 166, 166.
[51] BANAJI, 1933, p. 195; the first census in Malabar (South India) was conducted in 1857 and the "slave population" was estimated to comprise 187,812 people, LOGAN, 1951 [1887], Appendix XIII., clxxv.
[52] DUBOIS/BEAUCHAMP, 1897, p. 50–51.
[53] TEMPERLEY, 2000b, p. 169.
[54] TEMPERLEY, 2000b, p. 169.
[55] TEMPERLEY, 2000b, p. 169.
[56] PEASE, 1842, p. 94.
[57] MAJOR, 2010, p. 518.

issue of caste obligations and slavery, as several authors argue.[58] As a result of political and economic interests, on the side of MPs[59] who profited from the trade of the EIC, as well as the political strategy of abolitionist groups to focus on the West Indies, India was off the agenda. In the discussion of the *Slavery Abolition Bill*, Indian slave labour and bonded labour were even portrayed as the free labour alternative against the slave labour of the West Indies,[60] from where "any quantity of sugar might be obtained, the entire produce of free labour."[61]

One reason why abolitionists finally succeeded to abolish slavery through the British Parliament, was a reform of the parliamentary system in 1832, which increased voter influence. The election campaign focused on the abolition of slavery in the West Indies, and nominees pledged to their constituents to vote in Parliament for the abolition of slavery. The majority of the West Indian lobby was dismantled. British Parliament offered practically no veto for the abolition of slavery in the West.[62] With a clause of a seven years transition period, the provisions for apprenticeship allowed slaveholders to continue to employ their former slaves as apprentices. It also provided a compensation for the slave owners and the *Abolition of Slavery Bill* was accepted in the British Parliament and received royal assent in August 1833.[63] The British Parliament abolished slavery, its trade and the actual possession of slaves for all British nationals throughout the whole of the British Empire—with one exception. Listed as one of the last items in the document of over 15,000 words, parliament declared in paragraph LXIV: "And be it further enacted, That [*sic*] nothing in this Act contained doth or shall extend to any of the Territories in the Possession of the East India Company, or to the Island of *Ceylon*, or to the Island of *Saint Helena*."[64] Consequently, this act did not apply to the Indian subcontinent or the indirectly ruled territories, the princely states.[65]

But the issue of slavery in India was not off the table. In 1834 the charter of the East India Company expired, and the British Parliament had already begun drafting the renewed charter in June 1833.[66] During this renewal, two abolitionists,[67] Charles Grant, President of the Board of Control of the EIC, and T. B. Macaulay, the Secretary of the Board of Control,

[58] TEMPERLEY, 2000a, p. 169–170; MAJOR, 2012, p. 205–209.
[59] MAJOR, 2012, 8-9, 11, 45.
[60] WILLIAMS, 1944, p. 186–188; MAJOR, 2010, p. 502, 2012, p. 326–327; DRESCHER, 2009, p. 387.
[61] Mr. Buckingham in the House of Commons, Hansard 1803-2005, May 31 1833, Col. 231.
[62] DRESCHER, 2009, 260, 263, 269.
[63] SHERWOOD, 2007, p. 150. In 1838 the British Parliament removed the system of apprenticeships, DRESCHER, 2009, p. 264.
[64] Parliament of the United Kingdom, August 18 1833.
[65] MAJOR, 2012, p. 43.
[66] DRESCHER, 2009, p. 269.
[67] MAJOR, 2012, xiv.

declared that slavery in India needed to be fully abolished.[68] Grant introduced a clause to the bill for the new company charter providing "that all rights over any person, by reason of such persons being in a state of slavery, shall cease throughout the said territories on"[69] April 12 1837. But this provision in the charter bill was met with serious resistance: The defenders of the status quo argued that the EIC should not interfere with slavery in India.[70] Lord Ellenborough explained that an interference into the social matters of the Indian people would lead to turmoil:

> Now, what were called domestic slaves[71] in India were not really slaves, (…); but their condition was that of the mildest state of domestic servitude. There were parts of India, no doubt, where the state of those slaves was of a more severe description,—in Malabar for instance; but then the noble Marquess himself admitted, that their slavery there was a slavery of caste. It would be a violent outrage on the feelings and prejudices of the natives of India thus to abolish all castes there, and to say, that slavery should no longer exist in that country. The attempt to establish such a state of things would lead most certainly to bloodshed in every part of India. In fact, it was insanity to make the attempt.[72]

The Court of Directors of the EIC rejected[73] the proposal to set a time frame to abolish slavery in India on the grounds that "any plan which may be calculated to improve the condition of the Natives, by abolishing slavery, without doing violence to the feelings of caste or to the rights of property, cannot fail to meet with the Court's cordial approbation."[74] And Mr. Tucker in the Companies Court of Directors dissented from the abolition of slavery, arguing that it posed a violation towards the respect of the Mohammedan and Hindu laws. He expressed his fear that the abolition of slavery would lead to an uproar and ultimately resistance against the colonial power.[75]

Through Ellenborough's statement quoted above, the idea of slavery in India being a benign form of slavery shines through: The Indian slaves "were not really slaves."[76] Grant also explained, "generally speaking, slavery is not so severe in the East Indies, in consequence

[68] TEMPERLEY, 2000b, p. 169.
[69] East India Company, 1833b, p. 297; cf. East India Slavery, February 10 1841, p. 39; East India Company, 1833a, p. 262.
[70] TEMPERLEY, 2000b, p. 170.
[71] The term domestic slave can have two meanings: domestic slaves can be slaves born into the slave owner's household, or the term described forms of slavery exercised by the local population, opposed to slavery of one people over a distinctively other people, as for instance in the case of American plantations and slaves imported from Africa; see MIERS, 2003, 74, 112.
[72] Lord Ellenborough in the House of Lords, Hansard 1803-2005, July 5 1833, Col. 190.
[73] East India Slavery, February 10 1841, p. 39.
[74] MARJORIBANKS/WIGRAM, 1833, p. 306.
[75] ST. TUCKER, 1833, p. 347.
[76] Lord Ellenborough in the House of Lords, Hansard 1803-2005, July 5 1833, Col. 190.

of its being the effect of caste, and connected with religion."[77] Policymakers identified forms of labour exploitation in India as slavery. But some commentators suggested to abstain from interfering with slavery in India, which were judged as being a mild version of slavery and entangled with religion and caste. Jenkins explained that "there is nothing in the situation of slaves in that country, which approaches at all to that of the same class in the West Indies."[78] According to several historians, these arguments served a very practical problem: With a very limited number of officers stationed in India, to actively enforce the abolition of slavery would have been an impossible task. Related to this problem was the reliance on the cooperation of the native elites, and abolition risked alienating this elite.[79] On the other hand, Cassels suggested that there was a serious concern of the colonial rulers towards respecting native customs and the protection of labourers.[80] She criticises that contributions like Prakash's are

> inclined to regard the Company's law making process as a colonial exercise. (…) Yet, Prakash and another Bihar scholar,[81] both observe that *Act V* 1843 made it impossible to perpetuate any form of bondage which smacked of a master-slave relationship. Such an acknowledgement of the force of law rather undercuts the need to dismiss all British law in India as a colonial exercise in projecting western notions of power relationships onto Indian society.[82]

She rejects the verdict that the production of law was either a "colonial exercise"[83]—with legislators adopting laws against slavery, while allegedly intending to continue to coerce workers in the form of bonded labour or coolie labour—or purely cynical action, since policymakers knew that their laws would be ineffective.[84]

Cassels[85] criticises approaches that emphasise rational imperatives of colonial rule. Interrogating social legislation,[86] she traces the developments of legislations since Governor-General Warren Hastings from 1793 until 1843. According to her observation, slaves and bonded labourers, in the eyes of the British administrators enjoyed a level of protection—

[77] Speech of Charles Grant, held on June 13 1833, quoted in East India Slavery, February 10 1841, p. 39.
[78] JENKINS, 1833, p. 361.
[79] SHARMA, 2009, 1296, 1299, 1300; VARMA, 2017, p. 50; MANN, 2004, 5-8, 24; Lord Wellington in the House of Lords, Hansard 1803-2005, August 5 1833, Col. 323.
[80] CASSELS, 1988, p. 73–74.
[81] Cassels refers to Jacques Pouchpadass.
[82] CASSELS, 2010, p. 174.
[83] CASSELS, 1988, p. 62.
[84] CASSELS, 1988, p. 61–62.
[85] Her article from 1988 (CASSELS, 1988) became part of her book (CASSELS, 2010, p. 2).
[86] CASSELS, 2010, p. 2.

protection they would lose upon manumission.[87] She highlights that the insights of "the men on the spot"[88] had been ignored by metropolitan antislavery actors, while the colonial power attempted to respect native customs and laws by the protection of Hindu and Muslim civil law. Against the repeated trope of describing the *Act V* as a failure, she remarks: "The argument that the economic reality of slavery continued in the form of debt bondage does not undermine the fact that after Act V 1843 the status of legality was denied to the institution of slavery in the Company's Indian territories."[89]

In their deliberations, the commentators on the *Charter Bill* for the EIC did not give a definition of slavery. The Court of Directors explained: "[T]he term "slave" may be construed to have a more extended signification, and to include domestic slaves, and also numerous class of labourers, by which whole districts in some parts of India are cultivated."[90] It might be that they thought of bonded labour and explicitly mentioned domestic slavery as potentially falling under the definition of slavery. More revealing are the words of Tucker, who wrote in his comments on the bill submitted by Grant: "Domestic slavery exists in Bengal; but the slave or bondman is in reality a servant (…). The parent, during these seasons of distress [famines], is willing to part with his child for food, to prolong the existence of both."[91] The policymakers did in fact have different forms of labour exploitations in mind which they found to constitute slavery. But Lord Auckland reduced the rather wide interpretations and defined slavery along the lines of chattel slavery as "an entire subjection, sanctioned and upheld by the law, of an individual and his family to the will of a master, and the absolute claim of property, with the right also and the means of enforcing that claim, of one man over another."[92]

In the discussion of the House of Commons and the House of Lords, even the abolitionists conceded to the arguments of the EIC against abolishing slavery in India.[93] The EIC was able to convince the parliament that it would become active against slavery in India without respective legislation forcing them to do so.[94] Therefore, Grant's suggestion was not completely rejected, but was modified.[95] The House of Lords, as well as the House of Commons, supported the Court of Directors and voted to remove the deadline for the EIC to

[87] CASSELS, 1988, p. 73–74.
[88] CASSELS, 2010, p. 62
[89] CASSELS, 1988, p. 86–87.
[90] Court of Directors, 1833, p. 327.
[91] ST. TUCKER, 1833, p. 346; cf. Indian Law Commission, January 15 1841a, p. 8.
[92] Lord Auckland, 1842, p. 61.
[93] TEMPERLEY, 2000b, p. 171.
[94] MAJOR, 2010, p. 518.
[95] East India Slavery, February 10 1841, p. 39.

instate the abolition of slavery.[96] With respect to slavery, the British Parliament approved of the clause, requesting the Governor-General in Council "to take into consideration the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery (…) so soon as such extinction shall be practicable and safe."[97] The same paragraph contained provisions for the Governor-General to draft laws and regulations and to report back to parliament on a yearly basis.[98]

Removing Slavery's Civil Status in India, 1843

The Governor-General[99] was the newly created post, enacted by the *Government of India Act* of 1833. Additionally, it provided for the installation of the Government of India residing in Fort William in Bengal. The Governor-General was put in charge of enacting legislation of British nationals as well as of the Indian population in British India. Four members of the India Council were commissioned to advise him. When the Council met for legislative purposes, it was referred to and acted as the Legislative Council. Legislation that had received the assent of the Governor-General needed the approval of the Board of the Directors and parliament in Britain. The Governor-General's veto position was not questioned and only challenged once in 1844. The *Government of India Act* constituted the foundation of the development of the Penal Code,[100] which I discuss in the following chapter.

A few years after the adoption of the new charter, F. Buxton asked in parliament which measures the EIC had taken up to abolish slavery in India. John Hobhouse, President of the Board of Control of the EIC, assured him that the company had not lost sight of this goal,[101] but effectively, the EIC had not taken any steps against slavery in India.[102] In the consecutive years after the adoption of the *Charter Act* of 1833, non-governmental reports on

[96] HJEJLE, 1967, p. 97.
[97] *Government of India Act* of 1833, Parliament of the United Kingdom, August 28 1833, Para. LXXXVIII. Also referred to as *Charter Act* of 1833, or *Saint Helena Act* of 1833.
[98] *Government of India Act* of 1833, Parliament of the United Kingdom, August 28 1833, Para. LXXXVIII.
[99] The discrepancy of earnings between the highest employees of the colonial administration and the lowest worker in the plantation was huge: The Governor-General was remunerated with 240,000 Sicca Rupees (more valuable than the Rupees circulated by the East India Company), Merriam Webster, May 15 2020; a Councillor received 60,000 Sicca Rupees (presumably per year), *Government of India Act* of 1833, Parliament of the United Kingdom, August 28 1833, Section 76. It would have taken 1250 years for an Assam tea plantation worker to earn that amount a councillor made in one year.
[100] MISRA, 1970, p. 13–18; *Government of India Act* of 1833, Parliament of the United Kingdom, August 28 1833, Section 39, 40, 43.
[101] John Hobhouse in the House of Commons, Hansard 1803-2005, July 10 1837, Col. 1853.
[102] HJEJLE, 1967, p. 97; TEMPERLEY, 2000b, p. 171.

Indian labour conditions were published in Great Britain.[103] Also, the government published several volumes on *Slavery in India: Papers Relative to Slavery in India* between 1828 and 1841. James Peggs, a missionary, who returned from Orissa, published on slavery in India in 1830.[104] In addition, he wrote a summary of the governmental publication on slavery to disseminate information on slavery in India among British subjects.[105] In the same year, the American abolitionist William Adam, who wrote about native forms of enslavement, suggested that there were more than 800,000 slaves in British India. In his definition of slavery he included debt slavery, and used the example of agricultural bonded labour, and free (of payment) labour exacted under the umbrella of caste.[106] In 1840, at the first World Anti-Slavery Convention in London, Adam estimated that there were about a million people enslaved in India.[107] And at the World Anti-Slavery Convention in London in 1843, James Peggs reiterated estimates of the number of slaves in British India which ranged from 10 to 20 million people.[108]

These numbers are hardly comparable with each other, nor with later estimates. The respective definitions of slavery were different[109] or not clarified, let alone the methods by which the authors arrived at those numbers. The number of 20 million slaves in India was 25 times more the number of people liberated by the *Slavery Abolition Act* of 1833,[110] and it was more than "four times greater than the entire slave population of the New World."[111] Accurate or not, what is interesting about these numbers is their consequences in terms of the ideas they reflect: Some actors perceived slavery in India as a grave problem. For antislavery activists it was clear in any case that the task of realising emancipation for all people in the world was not yet achieved. For that purpose, the British India Society was founded in 1839, the same year that the British and Foreign Anti-Slavery Society was founded. Together they organised the first World Anti-Slavery Convention in London, to work towards the full abolition of slavery, also in India.[112]

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[103] ADAM, 1840.
[104] PEGGS, 1830, Book V, 363-490.
[105] PEGGS, 1840, p. 4.
[106] ADAM, 1840, 11, 13, 15-16, 222.
[107] British and Foreign Anti-Slavery Society, 1841, p. 77.
[108] JOHNSON, 1843, p. 27.
[109] TEMPERLEY, 2000b, p. 177.
[110] Full title: *An Act for the Abolition of Slavery throughout the British Colonies; for promoting the Industry of the manumitted Slaves; and for compensating the Persons hitherto entitled to the Services of such Slaves*, (3 & 4 Will. IV c. 73), 1833. 800,000 people had been liberated with the 1833 Emancipation Act, DRESCHER, 2009, p. 269.
[111] TEMPERLEY, 2000b, p. 177.
[112] British and Foreign Anti-Slavery Society, 1841.

The abolitionist movement turned its focus towards slavery of the East Indies:[113] Antislavery societies began to publish for the abolition of slavery, petitioned parliament requesting the abolition of slavery in India.[114] They lobbied for their issue and personally met the Prime Minster, as well as Lord Ellenborough, who was the President of the Board of Control of the EIC, and Governor-General of India from 1842 to 1844. With a new region to focus on, the pressure on the EIC to act increased. In September 1841, Ellenborough sent a letter to Auckland, the Governor-General of India (from 1836 until 1842), cautioning him of the agitation of the Anti-Slavery Society and requesting that he drafted an act against slavery in India.[115]

At the same time, another legal provision paved the way for the abolition of slavery in India. Based on the *Government of India Act* of 1833, the Indian Law Commission under T. B. Macaulay, the law member of the Council in India, was installed.[116] In 1835, the five members—T. B. Macaulay, one additional member and three representatives of the Provinces Bombay, Madras and the North-Western Provinces (NWP)[117]—began to work on a general criminal code that should apply to British nationals as well as the Indian people.[118] Up to that point, British nationals residing in India were exempted from criminal prosecution by the magistrates or any court. Felonies could only be punished with fines of maximal Rs. 500, or two months imprisonment if the fine could not be paid.[119] The task of developing a code was completed by four law commissions which produced the codification of the civil and criminal law, the *Indian Penal Code* (IPC), as well as codes for civil and criminal procedures.[120]

With the enquiries for the development of the general code, one question evolved around the request of the Court of Directors of the EIC "that no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave."[121] If the then current legislation in British India did not already cover this goal, an act should be drafted to make such a provision.[122] Therefore, Secretary Grant asked the Law Commission to make an enquiry and to find out whether the law in force was

[113] MAJOR, 2010, p. 518.
[114] CASSELS, 1988, p. 80.
[115] Letter of Ellenborough to Lord Auckland (Extract), dated September 19 1841, 14-19, Law, Algernon, Sir, 1922, p. 86; cf. TEMPERLEY, 2000b, 173, 182; the very same article was published in the edition of Temperley: TEMPERLEY, 2000a.
[116] MISRA, 1970, p. 13.
[117] MUKERJI, 1915, xxviii.
[118] MISRA, 1970, p. 527–528.
[119] MISRA, 1970, p. 524–525; cf. KOLSKY, 2010, p. 33.
[120] MISRA, 1970, p. 530.
[121] Indian Law Commission, January 15 1841a, p. 1.
[122] Indian Law Commission, January 15 1841a, p. 8.

sufficient or if further legislation should be adopted.[123] In 1834 the law commission had already sent a legislative despatch to India, requesting the preparation of a report in relation to the timing of the abolition of slavery.[124] By 1838 the Law Commission collected information on the issue of slavery in India based on witness testimonies, judges' commentaries, earlier reports, such as the report of Dr. Francis Martin Buchanan[125] who conducted his field research in 1800 and submitted his report in 1807 on North Arcot (South India);[126] other references were magistrates, slave owners, and natives,[127] *pundits* (religious scholars), and *mookhtears* (head of a village).[128] The Commission compiled a large amount of material on slavery and submitted the report in 1841.[129] The report consists of two volumes: The first contains reports on slavery in Bengal, Assam (part of Bengal), Madras, Bombay, Arabia and Africa,[130] and the second volume is the appendix with the submissions of the witnesses.[131]

The report highlighted the brutality with which some masters treated their slaves:

> The Pathans of Rohilcund, naturally a choleric race, enforce the services of their slave by beating them either with a rattan or a staff; and the latter mode of punishment is sometimes carried to such an extend [*sic*] that the arms and legs of the slaves are broken by the violence of the blows inflicted. An absconding slave they tie with a string, or place fetters, light or heavy, on his legs in the manner practiced with convicts in public jails.[132]

This quote testifies that the treatment of slaves in India was anything but benign. Yet, the author of this passage softened the power of the testimony, indicating that this information was outdated since the witness had left the region thirty years ago. The chapter concluded that "the system of slavery prevailing in this part of India is of a very mild character."[133]

The very last subchapter of the report on Bengal is dedicated to the *Practice in the Courts in the case of Bondage*, a separate chapter on bonded labour. This part documented the reports of judges and how they treated cases of bonded labour. They described the occurrence of debt bondage and cases of maltreatment of the bondsmen and the transfer of their debt to the next generation in case the bondsman died, what virtually equalled being born into

[123] Indian Law Commission, January 15 1841a, p. 1.
[124] LUSHINGTON/JENKINS, 1841, p. 1.
[125] His work has been found not necessarily reliable: PINCH, 1996.
[126] HJEJLE, 1967, p. 86–87.
[127] Indian Law Commission, January 15 1841a, 3, 36.
[128] Indian Law Commission, January 15 1841b, p. 27–28.
[129] TEMPERLEY, 2000b, p. 172; Indian Law Commission, January 15 1841a, p. 2.
[130] Indian Law Commission, January 15 1841a.
[131] Indian Law Commission, January 15 1841b.
[132] Indian Law Commission, January 15 1841a, p. 36; testimonies of flogging, use of stocks, burning, beating: Indian Law Commission, January 15 1841a, 107, 111, 112,161, 219, 220, 237, 269, 271, 277, 336, 339, 340.
[133] Indian Law Commission, January 15 1841a, p. 38.

slavery. They also reported cases of reclaiming runaway bonded labourers. Until shortly before the composition of the report, the witness claimed that runaway bondsmen had even been restored with the help of the magistrate.[134] The report referred to 'bondsmen,'[135] to people who had committed 'self-sale,'[136] or who had bound "themselves to work for other either for life, or for a specific term, in consideration of a sum advanced to them for a marriage or other occasion."[137] All these terms described bonded labour relations. The Indian Law Commission came to the conclusion that an adoption of an additional act would be in order since there were different legislations and interpretations of slavery used in the courts and by the magistrates. They recommended the adoption of a law applying to the whole of British India, and the law commission submitted a draft act along with its recommendation.[138] The report contains a lot of information and reflects that administrators had knowledge and awareness of slavery and bonded labour.[139]

Several voices expressed their dissatisfaction with the suggestion of the commission aiming at the abolition of slavery and the prohibition of the sale of children as slaves. Commenting on the report, John Hobhouse, the President of the Board of Control of the EIC, complained of the committee's work to Auckland,[140] and in a minute to the Court of Directors, he pointed at "the generally mild character of what is termed slavery in this country."[141] He expressed his deepest doubts that slavery legislation and executive action would change or contribute to the freedom of the bonded agricultural labourers, referred to as 'agrestic serfs.'[142] C. H. Cameron, member of the Law Commission and member of the Council in India, expressed his belief that slavery in India "mitigates the evils of poverty, at all times pressing heavily upon the lower orders, in times of dearth and famine pressing with intolerable severity. Slavery may be regarded as the Indian poor law and preventive of infanticide."[143] H. T. Prinsep, member of the Council in India, argued similarly when he wrote against this clause, explaining that the sale of children as slaves provided 'a blessing in disguise'[144] during times of famines.

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[134] Indian Law Commission, January 15 1841a, p. 137–138.
[135] Indian Law Commission, January 15 1841a, p. 158–159.
[136] Indian Law Commission, January 15 1841a, p. 146.
[137] Indian Law Commission, January 15 1841a, p. 149.
[138] Indian Law Commission, January 15 1841a, 1-3, 8.
[139] DINGWANEY, 1985, p. 313.
[140] Letter from Hobhouse to Auckland, January 30 1841, quoted in HJEJLE, 1967, p. 97.
[141] Minute of Lord Auckland, dated May 6 1841, printed in Lord Auckland, 1842, p. 60; cf. Indian Law Commission, January 15 1841a, p. 13.
[142] Lord Auckland, 1842.
[143] Minute of C. H. Cameron, Indian Law Commission, January 15 1841a, p. 13.
[144] Consultation Number 8, Minute by H. T. Prinsep, January 11 1842, referred to in BANAJI, 1933, p. 392.

Auckland, the one person with strong veto possibilities, decided against the draft act[145] and referred the issue back to the Law Commission.[146] Consequently, the adoption of *Act V* was finally possible, according to Temperley, because of a personal change in the office of the Governor-General in India: Lord Ellenborough took over the position of Auckland who had resigned from the post.[147] He adopted the initial submission of the Law Commission but without the provision penalizing the sale of children.[148] The act is reprinted in the Appendix.

The adoption of the *Act V* was well received among antislavery actors and commented upon in publications in India,[149] Great Britain[150] and America[151] in 1843. An American journal published the act in full, claiming that this act constituted the abolition of slavery in India, supporting their own cause against slavery.[152] The interpretation of the act was that it abolished slavery, announcing this with headlines such as "Abolition of Slavery in India."[153] In Great Britain the Foreign and British Anti-Slavery Society celebrated the success it claimed credit for, explaining that the act "virtually abolishes slavery throughout the whole of British India."[154] While admitting this act being "defective"[155] their prognosis was that because of the act "millions more, born free, will be prevented from becoming slaves by sale and purchase, to perpetuate that system of cruelty and sin."[156]

Some scholars celebrate also the adoption of the *Act V* of 1843 as "the death-blow on slavery,"[157] and Guha maintains that the British abolished slavery with the *Act V* of 1843.[158] Prakash also speaks from 1843 on as "after the abolition of slavery."[159] This would seem to be the perfect starting point where the abolition of slavery in India was finally institutionalised. But looking at the provisions of this law, the abolition of slavery had actually not become institutionalised.[160] This law did not emancipate slaves; it only regulated slavery.[161] It banned

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[145] *Government of India Act* of 1833, Parliament of the United Kingdom, August 28 1833, Para. LXXXVIII.
[146] TEMPERLEY, 2000b, p. 181.
[147] TEMPERLEY, 2000b, p. 183, 1972, p. 107.
[148] CASSELS, 2010, p. 203.
[149] Abolition of Slavery in India, May 3 1843.
[150] JOHNSON, 1843.
[151] Slavery in British India, August 1843.
[152] The East Indies, 1844, p. 22; cf. Slavery in British India, August 1843.
[153] Abolition of Slavery in India, May 3 1843.
[154] JOHNSON, 1843, p. 19.
[155] JOHNSON, 1843, p. 20. And in a letter to Queen Victoria, printed in the *British and Foreign Anti-Slavery Reporter*, Clarkson noted in a sub-sentence: "[T]he abolition of slavery is not expressly declared by this Act" CLARKSON, November 29 1843, p. 217.
[156] JOHNSON, 1843, p. 20.
[157] BANAJI, 1933, p. 124. According to Banaji, slavery actually died twice: With the *Act V* in 1843 and the IPC enacted in 1860, BANAJI, 1933, p. 336.
[158] GUHA, 1977, p. 10.
[159] PRAKASH, 2002, p. 1.
[160] DINGWANEY, 1985, p. 312.

the right to purchase or sell persons into slavery and criminally sanctioned abuses if committed against a slave, the full title of the act already hints at the continued acceptance of slavery: *An Act for declaring and amending the law regarding the condition of slavery within the territories of the East India Company*.[162] Writing for the Calcutta Review in 1848, barrister and advocate at the Calcutta Supreme Court William Theobald noticed that "[p]rotection against every kind of wrong is given to the slave, except the fact of slavery."[163]

Essentially, the act did not ban the ownership over a person or the possibility to inherit the status of slave parents. It also did not define slavery and did not grant any right to be free from enslavement. In 1884 judge Spankie of the Allahabad High Court concluded in discussing the *Act V* of 1843 "that the private sale of a free person for the purpose of being dealt with as a slave is not prohibited by this law."[164] More accurate appear the assessments of Temperley[165] and Chatterjee,[166] who describe the situation as the 'delegalisation' of slavery with the *Act V*—the removal of property rights over other human beings or the withdrawal of the civil status of slaves.[167] The *Act V* withdrew the option of slave owners to claim their property rights through the magistrates and the courts, by declaring that "no rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal Court or Magistrate within the territories of the East India Company."[168] 'Voluntary bondage,' or, according to the assessment of judge Spankie: '[A] person being dealt with as a slave against his will,' was not the employer/labourer relation the British legislators had in mind.[169] Bonded labour was not covered by the *Act V*.

But the *Act V* was not a complete failure: After all, it ended the opportunity for slaveholders to assert their claims over slaves with the help of magistrates and the courts and enabled the executive and judiciary to legally cope with the excesses of slavery. From an institutional perspective, the abolition of slavery did not gain the status of an institution with the adoption of the *Act V* of 1843. And while some authors treat the adoption of this act as the critical juncture to end their analysis,[170] the act was not in fact a critical juncture: It combined elements of continuity and change. On the one side, the colonial power continued to be

[161] DINGWANEY, 1985, p. 312; cf. MAJOR, 2010, p. 501.
[162] Governor-General in Council, April 7 1843.
[163] THEOBALD, January-June 1848, p. 154–155. For as similar observation, cf. MAYNE, 1861, p. 303
[164] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 730.
[165] TEMPERLEY, 2000b, p. 183.
[166] CHATTERJEE, 2005, p. 138.
[167] Cf. PATNAIK/DINGWANEY, 1985, p. 312; VATUK, 2006, p. 231.
[168] Governor-General in Council, April 7 1843.
[169] BANAJI, 1933, p. 356–360.
[170] Cf. CASSELS, 2010; MAJOR, 2012.

reluctant to interfere with the business of the native people.[171] With a law that only required the magistrates and courts not to enforce any property rights in labourers, active intervention was still not an option. Yet, it constituted an interference and change from earlier legal and administrative practices. The change was not critical—this act did not delineate any right or norm towards the abolition of slavery: It did not stipulate "rules that assign normatively backed rights and responsibilities to actors,"[172] which would require "'public', that is, third party enforcement."[173]

Although abolition had not gained the status of an institution, contemporary actors still reacted to the *Act V* as if it had constituted the institutionalisation of the abolition of slavery in India. Contemporary pro- and antislavery actors interpreted it that way: The above quoted comments of antislavery organisations and representatives do bear witness to this interpretation of the law as an institution. So did those who profited from slave labour: After the adoption of *Act V*, about 1400 *zamindars* of Bengal[174] petitioned against the *Act V* arguing that it would violate the guarantee of India's government to respect Hindu and Muslim customs.[175] Furthermore, the abolition of slavery "would tend to the ruin of all India, specially [*sic*] that of the respectable part of the population of Sylhet. From time immemorial slaves of both sexes were engaged in the services of respectable men and performed drudgeries of various descriptions."[176] And in Assam the landowning upper-castes sent 1000 petitions to the government and demonstrated against the *Act V*.[177]

The reaction of the *zamindars* can be understood in the framework of gradual institutional change: The *zamindars* were profiteers of slavery, which the *Act V* delegalised and they made use of the political venues accessible to them, namely petitioning. Proslavery actors can be described as the losers of this policy. They rose to resist it in order to maintain the status quo. The delegalisation of slavery can therefore be described in the terms of the definition of an institution. The adoption of the *Act V* appears to be a useful starting point in analysing how the abolition of slavery developed as an institution. The expressions of the *zamindars* are also an indicator for the *Zeitgeist* that prevailed in this period: The *Zeitgeist*

[171] Non-interference was a common practice established by the British and observed by historians; cf. BANAJI, 1933, p. 280–281; SINGHA, 1998, p. 272; RAMAN, 1994, p. 748–749; GILMOUR, 2007, p. 18; ROCHER, 2010, p. 78–80; Regulation IV, Section 15, 1793, (reiterated in the *Act of Parliament*, 35 Geo III c. 155, 1795) quoted in CASSELS, 2010, p. 175; Queen in Council, November 1 1858.
[172] STREECK/THELEN, 2005b, p. 12.
[173] STREECK/THELEN, 2005b, p. 12.
[174] CASSELS, 2010, 206, footnote No. 129; cf. DINGWANEY, 1985, p. 311.
[175] Quoted in CASSELS, 2010, p. 205–206; BANAJI, 1933, p. 402.
[176] Quoted in BANAJI, 1933, p. 401.
[177] GUHA, 1977, p. 11.

was still proslavery. It was still possible for *zamindars* to express their discontent openly and to explicitly reject the abolition of slavery.

Describing the 'characteristics of the targeted institution,'[178] the *Act V* offered a high level of discretion[179] for interpretation. Without a definition of what slavery was and by not enumerating the competent authority to enforce and supervise the act's provision, this appeared to be a weak law. According to Prakash, the legal withdrawal of ownership over a person resulted in the increased use of bonded labour contracts and monetarised the *kamia*/*malik* relationship, which had been marked by social reciprocity until this point. After 1843 this relationship entered into a new configuration to the disadvantage of the labourer and offered another means for employers to exploit labourers.[180] An allegation that lacks substance,[181] and while this does not invalidate Prakash's argument, British administrators described the existence and demonstrated the prevalence of bonded labour before the abolition of slavery.[182] In light of the continued use of bonded labour, Guha, Kumar and Mann agree that the implementation of the abolition of slavery under the *Act V* largely failed.[183] These authors' quite negative evaluation of the *Act V*'s effectiveness is not necessarily justified: They hold the outcome against an expectation that is not met by the provisions of the act. The *Act V* did not provide for emancipation—neither in spirit, nor on paper. The emancipation of slaves and bonded labourers on the basis of the *Act V* was only possible if the judiciary and executive had used the discretion of interpretation of the act expansively.

While not directly interfering, the *Act V* accomplished two things: The *Act V* of 1843 was the first act concerning slavery in India that broke with the British colonial rulers' doctrine not interfering with the internal customary affairs of the colonial subjects,[184] namely the intertwined issue of slavery and caste. It thereby constituted an entry point for the British government to regulate the relationships within the subject population. It should be kept in mind, that in the *Reports of the Indian Law Commission upon Slavery in India* of 1841, bonded labour relations were described under the heading of slavery.[185] And while the colonial government found an entry point into the labour/employer relationship of the native

[178] MAHONEY/THELEN, 2010b, p. 19.
[179] MAHONEY/THELEN, 2010b, p. 20–21.
[180] PRAKASH, 2002, 1, 17, 143, 223.
[181] TEMPERLEY, 2000b, p. 183.
[182] Cf. Indian Law Commission, January 15 1841a, p. 281.
[183] KUMAR, 2013, p. 74–76; PRAKASH, 2002, p. 222; MANN, 2012, p. 199–200.
[184] BANAJI, 1933, vii; MAJOR, 2012, p. 8–9.
[185] Indian Law Commission, January 15 1841a, 52, 63-71, 126, 166-67

population, by not actively interfering, allowed for a continued respect towards customary practices and the scriptures of Hindu and Muslims.[186]

Conclusion

In the first sections of this chapter on the attempts to regulate slavery and bonded labour in India, old sources, such as the *Arthashastra*, as well as later commentaries, testified that bonded labour already existed thousands of years ago. Before the adoption of the *Act V,* the Law Commission of India observed forms of bonded labour. The debates on these forms of exploitation depicted them as benign and mild. Even though the commissioners rejected the idea that these forms of labour exploitation constituted slavery, they still enumerated them. They could not ignore bonded labour, since it did not appear self-evident that bonded labour did not constitute slavery, but the invocation was followed by outright rejection: Repeatedly, a commentator would make the comparison to slavery, and in the next moment withdraw slavery cases, or bonded labour, from this comparison because "domestic slaves in India were not really slaves."[187]

The first British law for the abolition and emancipation of slaves was passed only for the West Indies in 1833. After that antislavery groups moved their attention to slavery in India and placed pressure on the EIC. Upon the suggestions of the Law Commission and made possible by a new Governor-General, the *Act V* was adopted and celebrated as the abolition of slavery. The outcome, the actual content of the *Act V,* can be analysed in terms of gradual institutional change. The Governor-General adopted a very weak law, because he believed that slavery in India was mild, and he was convinced that executive intervention might cause social turmoil and threaten British rule over India. Consequently, the result was a compromise: The *Act V* aspired to the abolition of slavery in India without offering enforcement mechanisms beyond abstention by magistrates and courts from protecting ownership rights.[188] While the act did not offer any tools to the executive and judiciary to actively interfere with the slave/employer relationship, the exception of penal offences allowed a small entry point to intervene between the two. And it demonstrated that pressure from civil society led to governmental action against slavery.

[186] CASSELS, 2010, 167, 174-75.
[187] Lord Ellenborough in the House of Lords, Hansard 1803-2005, July 5 1833, Col. 190.
[188] Cf. MAJOR, 2010, 506, 518; TEMPERLEY, 2000b, p. 181–186.

The *Act V* of 1843 is a useful starting point to begin my analysis. Strictly speaking, the *Act V* does not fulfil the requirements of an institution as defined earlier.[189] But political actors reacted to it as if the abolition of slavery had been institutionalised. Therefore, I describe and analyse developments in the abolition of slavery from that point forward. The following first episode begins with the adopted *Act V* of 1843 and ends in 1919. The second episode ends with India's independence on the horizon, the beginning of the work of the Constituent Assembly and the Interim Government in 1946. The third episode covers the period of the work of the Constituent Assembly, the aftermath of independence, as well as Gandhi's emergency rule and the adoption of the *Bonded Labour System (Abolition) Act*.

[189] STREECK/THELEN, 2005b, p. 12.

Map of British India, 1860

Figure 5. Map of British India, 1860

Figure 5, Map of British India 1860. Source: Kmusser/Wikimedia Commons.

Chapter 3
1st Episode: EIC & British Raj, 1843-1919

On April 7 1843 the Council of India passed the *Act V*. While this act does not fulfil the requirements for a policy to be described as an institution, actors already behaved towards the adoption of the *Act V* as if it were a strong policy. I begin with the description and analysis of the events and institutional changes since 1843. First, I discuss the institutional characteristics and the *Zeitgeist* prevalent around this time. These two factors determine the actors' behaviour, depending on the question if they are pro- or antislavery, and future changes. After this discussion I introduce the political context and identify the veto points along Immergut's model. Based on the respective conditions I select the hypothesis to be tested in this episode, the expected actors and changes, as discussed in the theoretical chapter. From there I describe and analyse the subsequent events, namely the adoption of the *Workman's Breach of Contract Act* (WBCA) and the *Indian Penal Code* (IPC). The discussion of several court cases shows how these laws were applied at the judicial level, and it is possible to draw inferences if the judges contributed in changes of the institution. I close with a concluding discussion of the hypothetical assumptions and observed occurrences.

In this chapter I rely on secondary sources, as well as primary sources, such as: Internal communications of the British administration retrieved at the National Archives of India (NAI); the debates at the British Parliament,[1] as well as the Proceedings of the Legislative Council.[2] Furthermore, I employ governmental reports, such as the report of the Indian Law Commission (1841), or the *Indigo Commission Report* (1860), as well as petitions submitted to the regional and central government. For the discussion of the case law at the

[1] Available at: hansard.parliament.uk.
[2] Available at: The Internet Archive.

higher courts I draw inspiration from secondary sources, but also selected cases that are made available in online archives.[3]

Institutional Characteristics

As highlighted in the theoretical chapter, the variable of the institutional characteristics—the level of discretion and enforcement—should be split into two variables: The variable of discretion in interpretation, which attempts to qualify whether the law or policy is strong or weak, and the enforcement variable, which considers the actual enforcement of the policy, regardless of whether it is a strong or weak policy. Since the institution of the abolition of slavery had only been completed by 1843, actors could only observe how the law was enforced with the passage of time. Therefore, I start with the institutional characteristics regarding the discretion of interpretation. Later I discuss the enforcement of the institution.

Discretion of Interpretation

By the year 1843 the *Act V* was in force, but the *Indian Penal Code* was not yet adopted. In 1835 the work on the IPC began, and in 1837 a first draft of the abolition of slavery through the IPC was already published and suggested:

> Whoever kidnaps any person, intending or knowing it to be likely that the consequence of such kidnapping may be grievous hurt to that person, (…) or the slavery of that person, shall be punished with imprisonment of either description for a term which may extend to fourteen years and must not be less than two years, and shall also be liable to fine.[4]

This passage underwent additional changes, but it was clear since the 1830s that the IPC would provide punishment for the extraction of slave labour. By the year 1843 the only regulation for the whole of British India was the *Act V*. Did the *Act V* "afford actors opportunities for exercising discretion in interpretation?"[5] Table 7 gives a brief overview:

[3] Available at: The Internet Archive; Indian Kanoon; ILI; GIPE; Google—I thank the Google Books Team who has been very responsive to my requests to make digitised sources available.
[4] Indian Law Commission, 1838, p. 52.
[5] MAHONEY/THELEN, 2010b, p. 18.

Table 7. Characteristics of the formal institution, 1843

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Act V, 1843	No	N.A.	No	No	No	No

Regarding the provisions that might curtail the discretion of interpretation, major elements, such as the definition of slavery and how to treat bonded labour, were not covered. Slavery did not constitute a criminal offence in its own right. The *Act V* did not indicate a timeline as to when it had to be fully enforced. Regarding punishment for violations, the *Acv V* criminalised the trade and any offence that already constituted a criminal act if committed against a free person. It did not provide explicitly defined means of punishment. Compensations were neither granted for former slaves nor slave holders. The discretion of interpretation of this policy was high—therefore, the *Act V* was a weak law.

The *Act V* was also limited in scope geographically since it only applied to British territories. Beyond the reach of the EIC and the British Raj, the princely states continued with their own policies and largely did not adhere to the *Act V*. The Nawab of Dhaka explained that the *Act V* did not apply to his territory in 1878 and the Rajuputanas declared slavery to be an integral part of the royal culture.[6] Slavery in the princely states of Rajasthan and central India remained legally sanctioned until 1947.[7] Klein argues that most rulers within the Indian Ocean region seemed uninterested in abolishing slavery.[8] But there are also historical accounts of rulers in the princely states, who took up the challenge to abolish slavery: Allegedly influenced by the British resident to the princely state,[9] the Rani Lakshmi Bai of Travancore promulgated a proclamation that prohibited the trade in slaves in December 1812,[10] and abolished slavery in 1855.[11] The native states and their position and behaviour towards slavery and its abolition are not well studied,[12] and such references are usually anecdotal. Their case would be an interesting topic for future studies to trace continuities and discontinuities beyond British India.[13]

[6] MANN, 2012, p. 200; YADAV, 1988, p. 540–541.
[7] CHATTERJEE, 2005, 143, 151.
[8] KLEIN, 2005, p. 180.
[9] CASSELS, 1988, p. 66.
[10] MENON, 1878, p. 371; CASSELS, 2010, p. 178.
[11] AIYA, 1906, p. 119–120.
[12] KUMAR, 1993, p. 116.
[13] Cf. CHATTERJEE, 2014, p. 343.

Paradigms and *Zeitgeist*

Three main paradigms emerge from a closer interrogation of the discourse on slavery and bonded labour before 1843 and a few decades after. These ideas are also reflected in the legal provisions and empirical practices: (1) The non-interference paradigm, (2) the protection or paternalist paradigm and (3) the ideology of work paradigm. These paradigms are interconnected but also in conflict with each other and contain the following ideas: The first paradigm, the non-interference paradigm,[14] is based on the legislatively-grounded norm that the British not interfere with the customs of the local population, discussed above. Warren Hastings encoded the principle of non-interreference with the development of personal Hindu and Muslim laws in the 1770s.[15] The non-interference paradigm became enshrined in the Cornwallis Code of 1793, a set of legislative provisions for the governance of India. The code regulated the use of "Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos (…) as the general rules by which the Judges are to form their decisions."[16] Queen Victoria evoked the respect towards indigenous customs after the institution of India as Crown Colony in 1858.[17]

Arguments against the abolition of slavery in India partially derived their legitimacy from the assumption that the abolition of slavery constituted an illegitimate interference with the social order of the native population. Another fear of policymakers was that the removal of rights over slaves would cause social unrest against the EIC, or later against the colonial government of India.[18] The British Parliamentary discourse on the abolition of slavery in India, discussed in the previous chapter, and Wellington's statement underlines this paradigm, when he called "upon their Lordships to deal lightly with the question [of slavery], as [*sic*] they valued the maintenance of British India."[19] He explained that "there was hardly a family in India which was without domestic slaves; certainly there were no Mussulman families who had not female slaves, and any attempt to deprive the Indians of their slaves would inevitably produce the greatest dissatisfaction, if not absolute insurrection."[20] As discussed above, the *Act V* constituted a departure from the non-interference paradigm, while at the same time it

[14] Non-interference was a common practice established by the British and observed by historians; cf. BANAJI, 1933, p. 280–281; SINGHA, 1998, p. 272; RAMAN, 1994, p. 748–749; GILMOUR, 2007, p. 18.
[15] ROCHER, 2010, p. 78–80.
[16] *Regulation IV* of 1793, Section 15, (re-enacted as Act of Parliament, 35 Geo III c. 155, 1795), quoted in CASSELS, 2010, p. 175.
[17] Queen in Council, November 1 1858.
[18] Lord Ellenborough in the House of Lords, Hansard 1803-2005, July 5 1833, Col. 190.
[19] Lord Wellington in the House of Lords, Hansard 1803-2005, August 5 1833, Col. 323.
[20] Lord Wellington in the House of Lords, Hansard 1803-2005, August 9 1833, Col. 447.

managed the legal stretch towards the respect of local customs, by not actively interfering into the slave/slave owner relationship.

The second set of ideas evolved around the protection or paternalist[21] paradigm. It shares one feature with the third paradigm, the ideology of work: violence. The developing colonial state claimed to protect its subjects, as for instance expressed by Queen Victoria in 1858.[22] Part of this protection is the state's claim to the monopoly of violence, which aligns well with the colonial concept of trusteeship.[23] This included the protection of slaves from excessive maltreatment. The protection from maltreatment had already found legal foundations in some provinces and judicial practices before 1843.[24] But the protection's flip side was the measured use of violence. It has been compared with the parent who uses violence against the child for its own 'benefit.'[25] The protection paradigm was deeply ingrained in the colonial discourse.[26] It reflected the serious trust in authority and the acceptance of violence as means to exercise control. This was expressed by the Governor of Bengal in 1893, when he explained that "the tea planter as master of a large and irregular labour staff must enforce discipline by occasional severe measures which need not be looked into too closely, because these are substantially just and for the general good of the coolies."[27] The development of a whole nation was described as the 'white man's burden' or the 'civilizing mission'[28] and could be observed at the global imperial level, as well as the individual level: The state and its relationship to the colonial subjects, the planter and his relationship to the coolie. Part of the protection paradigm was also the attempt to identify positive effects of slavery. Some commentators of the 1840s justified slavery because of its function as India's poor law.[29] Social relations based on slavery were depicted as inherently good, as a mechanism to save the poor from sheer demise. It ignored that the assumed choice was often only between two evils—death or total subjugation.[30]

Concerning the monopoly of violence, the state did not provide the right to freedom, but claimed to control the exercise of violence of intermediaries, which the state legitimised

[21] ANDERSON, 2004, p. 422; KERR, 2004, p. 23; Mohapatra speaks of the "paternal ideology," MOHAPATRA, 2016, p. 220. For connecting slavery and paternalism, see CHATTERJEE, 2005, p. 141.
[22] Queen in Council, November 1 1858.
[23] GRANT, 2005, p. 19–21.
[24] PRAKASH, 1993, p. 135; CASSELS, 2010, p. 165–208.
[25] Mr. Cameron's Minute, Indian Law Commission, January 15 1841a, p. 13; cf. BANAJI, 1933, p. 20, 1933, p. 391–392.
[26] HAY/CRAVEN, 2004, p. 37; MIERS, 2003, p. 15.
[27] Note of the Governor of Bengal, September 1893, quoted in MOHAPATRA, 2004, p. 476.
[28] MANN, 2004, 5, 8, 25; cf. MAUL, 2007, p. 481.
[29] Mr. Cameron's Minute, Indian Law Commission, January 15 1841a, p. 13.
[30] CHAKRAVARTY, 2016, p. 265.

and regulated by law.[31] Mediated through social hierarchy, the exercise of a certain degree of violence allowed the power of the intermediaries over others—such as fathers over children,[32] husbands over wives,[33] whites over Indians,[34] employers over workers and, essentially, the state over its subjects. As one judge in Benares put it in 1871: "A person is treated as a slave if another asserts an absolute right to restrain his personal liberty, unless that right is conferred by law as in the case of a parent, or guardian, or a jailor."[35] This 'conferred right' was limited by legal restrictions on the legitimate degrees of violence exercised by husbands, fathers, slaveholders and employers.[36] The *Act V* fell neatly into the terms of the current paradigms. As Temperley notes, it was not surprising that the members of the law commission of 1841 "spent much time discussing whether owners should be allowed to continue employing ropes and canes as a form of 'moderate chastisement,' noting that a 'moderate right of correction' was traditional in India and by no means confined to slaves."[37]

The paternalist paradigm also served a very practical problem: Some of the actors in the policymaking arena, for instance, Lord Auckland[38] or Hobhouse,[39] did express their concerns about the applicability of the ideal of the abolition of slavery in India. There was a valid point that, due to the intersection of social relations mediated by caste and labour, this issue was difficult for a company respecting theses relations to enforce.[40] Furthermore, there was the problem of a limited reach due to a lack of personnel to oversee the implementation.[41] The state did not penetrate either the Indian subcontinent or its society too deeply.[42] While never having fully owned the monopoly on violence,[43] the state now shared this monopoly with the intermediaries,[44] which the state tried to control.

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[31] Mohapatra describes this as the 'privatisation of labour regulations,' MOHAPATRA, 2016, p. 222; on the power conferred to shipmasters over seafarers, AHUJA, 2013, p. 115. See also SINGHA, 1998, p. 129.
[32] Indian Law Commission, January 15 1841a, p. 3; *Mr Cameron's Minute*, Indian Law Commission, January 15 1841a, p. 13.
[33] ABRAR/LOVENDUSKI/MARGETTS, 2000, p. 244; Indian Law Commission, January 15 1841a, p. 15.
[34] KOLSKY, 2010, 11, 19.
[35] *Queen v. Mirza Sikundur Bukhut*, Allahabad High Court, June 20 1871.
[36] For a study on violence exercised by British nationals in India, see KOLSKY, 2010.
[37] TEMPERLEY, 2000b, p. 176; cf. NICOLLS/BIRD/CASEMENT *et al.*, 1841, p. 5–6; Indian Law Commission, January 15 1841a, p. 340–343, January 15 1841a, 12: iv; Mr. Cameron's Minute, speaking against correction Indian Law Commission, January 15 1841a, p. 12.
[38] Lord Auckland, 1842.
[39] Letter from Hobhouse to Auckland, January 30 1841, quoted in HJEJLE, 1967, p. 97.
[40] CASSELS, 1988, p. 59–60.
[41] In the Assam tea gardens, for instance, planters had trouble securing local workers and restoring runaway labourers who made themselves scarce in a terrain hardly penetrated by the British, SHARMA, 2009, 1296, 1299, 1300.
[42] VARMA, 2017, p. 50.
[43] POUCHEPADASS, 1999, p. 38; ERIKSEN, 2011, p. 240.
[44] In the case of Assam a commissioner explained that "with so few magistrates in the district, it must be planter himself that we must look to for the maintenance of order among these large bodies of labourers," in W. A.

The third paradigm is the ideology of work. The paternalist paradigm is easily detectable, since expressions of it were mostly explicit.[45] The ideology of work is less explicit and can be read against the grain when there is for instance talk of idleness.[46] Regarding the labourers in the mines and the recruitment of the local population the *Bengal Labour Enquiry Report* of 1896 testified:

> The Sonthali and Bauri (…), like most aboriginals, prefer to idle when they have earned enough to satisfy their immediate wants. Having had no competition in the labour market, they have hitherto been able to dictate their own terms, and have taken holidays when and as often as they like, since three or four days' hard work suffices to keep them and their families in the utmost comfort of [*sic*] the rest of the week.[47]

Remarkably absent from all the interrogated primary sources is the critical questioning of the legitimacy of work, or the use of violence to coerce people to work. After the abolition of slavery, Kale observes that two recurring complaints of employers were about labour shortage and that former slaves were not eager to work beyond subsistence level.[48] The Assam Labour Enquiry Committee remarked repeatedly that higher wages would attract workers to come to Assam, despite its "bad name."[49] Employers countered such suggestions, arguing that higher wages "only means less work and more leisure."[50] Former slaves seemed to actively question the legitimacy of work. In 1883 Lafargue exposed the underlying ideology of work in Marx' critique of capitalism and French legislation of 1848 enshrining the right to work.[51] The ideology of work is related to the paternalist paradigm: In both paradigms social hierarchies are at work and both accept and legitimise the use of violence. Work was conceived of as an exercise to educate and liberate workers by forcing upon them discipline and the experience of hard labour. Through these labourers, the development of a

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Stoddard: *Reports on the Tea and Tobacco Industries in India* (London, 1874), p. 87, quoted in VARMA, 2011, p. 69.

[45] I borrow the term from ANTHONY, 1978 and UPADHYAY, 2009.

[46] Cf. King's discussion of unemployment legislation in the US and GB, which was punitive in nature against idle workers, KING, 1995, 38, 61.

[47] Bengal Labour Enquiry (Williams) Commission 1895-1896: Report and Appendices (Calcutta: 1896), p. 10-11, quoted in PUNEKAR/VARICKAYIL, 1989, p. 73.

[48] KALE, 1998, p. 44–45.

[49] VARMA, 2011, p. 113–115. Varma explaines how among prospective workers and in the public the bad working conditions in the Assam tea plantations were known. The damaging reputation was met with increasing resistance of labourers to go there; see also EDGAR, 1873, xviii; No. 35. Mr. E. B. Clair Smith, General Manger of Wards and Encumbered Estates, Manbhum, Assam Labour Enquiry Committee, 1906a, p. 27; see also witness No 47, Assam Labour Enquiry Committee, 1906a, p. 36; witness No. 98, Assam Labour Enquiry Committee, 1906a, p. 75.

[50] Extract from speech of Chariman, Duars Tea Company at the 20th Annual Ordinary General Meeting of the Company, 1905, reprinted in Assam Labour Enquiry Committee, 1906a, p. 237.

[51] LAFARGUE, 2015 [1883]; original title: *Le droit à la Paresse*, (Eng.: *The Right to Be Lazy*).

nation was supposed to be achieved. Furthermore, the control over people, the use of violence at the work place, and work itself, appeared as a strategy for the execution of the civilizing mission.[52] Christianity offered the foundation for the idea of the liberating qualities of labour, preferably hard labour. The features of punitive labour legislations were built upon this principle and found their most perverted reflections in the famine relief camps and the prison system that usually entailed forced labour (called hard labour) as punishment.[53] Within this logic, work serves as liberation and punishment at the same time. While the idea of possession over a person was rejected, the respective features of violence,[54] labour, social hierarchy and control were upheld and therefore provided the breeding ground for the continuation of labour relations approximating slavery on the free/slave labour continuum. With this argument, I underline the importance of undermining ideas in contrast to the idea of freedom. While the ideal of freedom led to the abolition of slavery and probably constituted a sincere attempt to better the condition of slaves, the other paradigms were still impacting state/subject and employer/worker relationships. Features of these relationships were also constitutive of bonded labour and slavery and contributed to their continuance.

At the international level, the tide towards an antislavery *Zeitgeist* had not yet gained momentum. Civil society and MPs in Britain were the norm entrepreneurs that Sikkink and Finnemore identified as crucial for the development of the norm of the abolition of slavery. They were the active agents who created the normative environment, pressing their own government and other nations to implement this norm.[55] The process of undergoing formalisation, the conclusion of bi- and multilateral treaties abolishing the slave trade from 1807 on, can be described as the norm's emergence,[56] during which the British Empire undertook efforts to convince other states to adhere to the norm prohibiting the slave trade, as discussed in the introduction. The period after 1843 was still in the first stage of the norm's development and had not yet gained the quality of 'taken-for-grantedness.'[57] At the national level in India, the *Zeitgeist* had already moved towards the second stage: The delegalisation of slavery was accomplished and its full prohibition was about to be enacted.

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[52] KERR, 2004, p. 23.
[53] DAVIS, 2001, p. 144. Hard labour as punishment was also enshrined in other penal acts in colonial India, for instance in the *Thugee Act* XXX of 1836, SINGHA, 1998. Hard labour was enforced under conditions of slavery and is also enshrined in Chapter III on *Punishments* in the IPC, but became reinterpreted in the 1970s, not being meant to be punitive and changed into 'light labour,' Fifth Law Commission of India, June 1971, p. 64.
[54] HAY/CRAVEN, 2004, p. 1–2.
[55] FINNEMORE/SIKKINK, 1998, p. 895.
[56] FINNEMORE/SIKKINK, 1998, p. 894.
[57] FINNEMORE/SIKKINK, 1998, p. 895.

Political Context

Executive and Legislative Arena

In the beginning of this episode, the administration of India was regulated by the *Government of India Act* of 1833, which formed the basis for the installation of the Governor-General. He was in charge of enacting legislation for British nationals in India, as well as the Indian population. The India Council consisted of four members, who assisted the Governor-General with advice. When the Council met for legislative purposes it was referred to and acted as the Legislative Council. The assented legislation of the Governor-General needed the approval of the Board of the Directors and parliament in London. With no elections and no parliament in India, executive decisions could not be vetoed. Therefore, the India Council constituted no veto point,[58] which, for the purpose of analysis, translates as weak veto possibilities for the defenders of the status quo.

After the Indian uprising of 1857, the British Crown liquidated the EIC and seized the governing power over India. Under the *Government of India Act* of 1858,[59] the Secretary of State for India was appointed by the Queen. He was nominally but not effectively responsible to the British Parliament. The Secretary of State at the India Office in Whitehall, London, held the executive power and was responsible for governing India, Burma and Aden. The Council of India, also situated in the India Office, could advise, but not veto decisions of the Secretary of State. He occupied a supreme position over the Government of India, with "the final control and direction of affairs"[60] vested in him.[61] He appointed three of the five members of the Imperial Legislative Council,[62] while two were to be elected by the Queen; but from 1869 on, he appointed all five. The Governor-General could appoint another six to twelve members. The five individuals appointed headed the executive departments—home, military, revenue, finance, and law. Under this changed constitution, the veto possibilities were still weak. The appointed members of the Governor-General had legislative powers; they proposed acts, and discussed petitions and private bills submitted to the Council. An act had to be assented by the Governor-General. Without any parliamentary responsibility, the Legislative Council functioned in an advisory manner and did not constitute a veto possibility that was able to overturn executive decisions.

[58] Cf. IMMERGUT, 1990, p. 400.
[59] *Government of India Act* of 1858, Parliament of the United Kingdom, August 2 1858.
[60] MISRA, 1970, p. 24.
[61] MISRA, 1970, p. 22–24.
[62] Also referred to as Governor-General's Legislative Council.

In the provinces, provincial legislative councils were set up: The Bengal Presidency, the Bombay Presidency, the Madras Presidency and the North-Western Provinces. They were reinstated by the *Indian Councils Act* of 1861. The provincial legislative councils had legislative powers over their territories, with the exception of the Bengal Presidency, which could pass policies for the whole of British India. Bills passed by the provincial legislative councils needed the assent of the Governor-General. These councils also did not constitute a veto possibility. Since 1861 Indians could be nominated to the Legislative Councils, which formed an access point for Indian interests to be represented through the nomination of non-official members.[63] Here Bhattacharya makes the convincing point that the social, and I would add racial,[64] distance between the British ruling class and the Anglo-Indians[65] vis-à-vis the Indian population was marked by a sharp separation in terms of access to and influence on the political decision makers. Anglo-Indians had several advantages that the Indians lacked, such as the ability to sell their interests to the political elite and to garner sympathy.[66]

But at the same time, sympathy was not naturally given. Mayo, for instance, Viceroy of India from 1869 to 1872, stated that the non-official Europeans "come here to get as much money out of the Blacks as they can. I have no sympathy with this class and they know it."[67] Kolsky also shows in her monograph that the British did not constitute a monolithic entity. The ruling British elite and, for instance, the planters, were divided by class and social hierarchy. Their relationship among the British was regularly marked by conflict.[68]

In 1857, after the Indian rebellion, which the British called 'the Mutiny,' the colonial power decided to incorporate the Indian voice, in order to better understand and know "*what the natives think.*"[69] But the appointed Indian individuals selected represented the Indian aristocratic and western-educated elite.[70] During the period between 1861 and 1892 altogether 45 native Indians served in the Imperial Legislative Council, 25 of them were *zamindars*, seven were rulers of the princely states. Historians have carved out how closely these council members were serving their own interests. Some of the Indian members used their position and access to power to secure rights to exploit the land just like the British. The colonial imperative to secure the loyalty of Indian elites fuelled the collaboration between the Indian

[63] BHATTACHARYA, 2005, p. 20.
[64] ALATAS, 1977.
[65] The term refers to British nationals working in India, The Editors of Encyclopaedia Britannica.
[66] BHATTACHARYA, 2005, 20-1, 23-4.
[67] Mayo in a letter to Argyll, dated November 9 1870, quoted in BHATTACHARYA, 2005, p. 33.
[68] KOLSKY, 2010, 5, 202-06.
[69] Bartle Frere, British Member of the Legislative Council, March 1860, quoted in METCALF, 1964, p. 91, italics in the original.
[70] SISSON, 1993, p. 42.

elites and the British rulers.[71] At the same time, the interest of colonial capitalism limited the capitalist aspirations of Indians. As competing forces, this turned into a conflict over power-sharing.[72] Therefore, in the new Legislative Council, the representation of the worker's interest was hardly to be expected: The members usually had vested interests in business and the number of Indian representatives was marginal.[73]

"Electoral" or Public Arena

Since there were no elections, there was no electoral arena that could either exercise pressure through elections, or make use of a referendum. Therefore, there is no electoral arena that Immergut suggests as a potential veto point.[74] Until the 1880s there were no political parties either, and no representation of them in the political system—the Indian National Congress (INC) was founded in 1885 as a political movement.[75] But political interest groups began to form with the installation of the legislative councils at the centre and in the presidencies. In 1851 the British Indian Association was formed and requested that Indians have access to the councils as well as the civil service.[76] And while it might be correct that "[t]he techniques used by pressure groups are more limited in range in an authoritarian system than in a democratic set-up,"[77] pressure groups did form and attempted to influence the political process. To a certain extent the Government of India was open to outside influence and lobbying efforts after the Indian rebellion, in part because the Government of India was concerned with its "public image."[78] Part of this concern was the legitimacy of the colonial rule, and to prevent another upheaval that could jeopardise British rule.[79]

One way the general population in Great Britain and India could give voice to their demands was the venue of petitions. Petitions formed the basis of the legislative procedure in Great Britain and people sent their petitions to the Government of India and the British Parliament. Petitions and private bills needed a member from within the political system to present them in the Legislative Council, and, if voted upon, a majority of the members needed

[71] JAYAL, 2013, p. 48–49; DIAMOND, 1993, p. 42–46; WASHBROOK, 1981, p. 689.
[72] WASHBROOK, 1981, p. 689–690.
[73] RENFORD, 1987, p. 61.
[74] IMMERGUT, 1990, p. 397.
[75] SISSON, 1993, p. 40.
[76] KSHIRSAGAR, 1994, p. 52.
[77] BHATTACHARYA, 2005, p. 14.
[78] BHATTACHARYA, 2005, p. 29.
[79] CHAN/WRIGHT/YEO, 2011, p. 54.

to approve.[80] Rokkan has identified petitions as one of the four locks that constitute the thresholds for democratisation. Through them, the undemocratic state gained legitimacy. They also offered the possibility to openly criticise the government and therefore extended some influence to external actors of the policymaking process, which in turn produced legitimacy of the regime.[81] But the power of petitions should not be overstated: Formal requirements limited the accessibility to potential petitioners, and Drescher argues that "[t]he general record of parliamentary responsiveness to non-violent mass requests which also threatened major interests was (…) rather poor in the short term."[82] Therefore, the success of anti-slave trade and slave emancipation petitions was exceptional in the late seventeenth and early eighteenth centuries,[83] but the number of petitions or signatures alone did not guarantee any success.[84]

Another venue to express political interests were the publication of periodicals and the emission of deputations—a means of communication that was less available and even less successful when used by Indians.[85] Among the publications vested with political interest was the *Hindoo Patriot*, supported by the British Indian Association, or the *Cotton Supply Reporter* by the Cotton Supply Association. The *Englishman* and the *Pioneer* were other publications representing commercial interests, as for instance the indigo planters.[86]

In the reports produced by the Law Commission, but also in other reports, the needs and concerns of the people that were the law's object, were not the ones to be addressed. Their needs needed to be studied and formulated by the state agents. The state and his representatives discovered and defined the needs of the labourers and formulated the respective measures to satisfy those needs. The state knew better. The self-expressions of the slaves and bonded labourers were not necessary, they were to be represented.[87] Slaves and bonded labourers were therefore (un)suspiciously silent or rather silenced in the political discursive processes regarding matters of their own concern—the subaltern cannot speak.[88] But while unheard of in the legislative and executive arena, as well as in the reports on slavery, the labourers themselves were not silent. Labourers had different ways of expressing

[80] BRADLEY, 1986, p. 17; BHATTACHARYA, 2005, p. 6.
[81] ROKKAN, 1968, p. 180–181.
[82] DRESCHER, 1982, p. 41.
[83] DRESCHER, 1982, p. 42.
[84] DRESCHER, 2009, p. 252.
[85] BHATTACHARYA, 2005, 14, 16.
[86] KLING, 1966, p. 203; BHATTACHARYA, 2005, p. 17.
[87] For a similar observation in reviewing the governmental reports on indentured labour, the trafficking of Indian labourers to the British Caribbean, see KALE, 1998, p. 84.
[88] SPIVAK, 1994.

their discontent with their labour situation. Among these forms of resistance practiced were desertion and walk-out by individual labourers or groups.[89]

Hypotheses

In 1843 the characteristics of the institution of the abolition of slavery were weak, with much room for discretion of interpretation. The legislative councils did not pose a veto point; actors of change were confronted with limited access to the political institutions. With the legal status quo of slavery being abolished, but with high discretion of interpretation, proslavery actors were likely satisfied with this status quo in the long-run: Ludden for instance showed that South Indian landlords relying on bonded labour were not worried that the *Act V* would interfere with their relations with the workers.[90] The petitions of the Bihari *zamindars* shows that the potential losers[91] of the institutional development reacted to the changes as if the institutional characteristics were strong. On the other hand, antislavery actors were probably not satisfied: The ownership of people had lost its legal and legitimate basis, but the paradigms at that time supporting paternalism, violence, and labour extracted under whatever means, as well as the weak provisions against slavery,[92] were probably cause to aim at improving the legislation.[93] Due to the colonial logic—the need for revenue, increasing demands for colonial products on the market,[94] and racial bias—business interests had better access to the political machinery. Proslavery actors were likely to be more successful in advancing their interests and bringing forward legislation to undermine antislavery efforts.

The political context offered weak veto possibilities for the defenders of the status quo. The level of discretion of the institution was weak; the level of enforcement was yet unknown to the actors at the time. Some actors expected strong enforcement, while other actors expected weak enforcement; therefore, two hypotheses should be considered. The *Zeitgeist* at the international level was still proslavery, as argued in the introduction, and the *Zeitgeist* at the national level in India, with the *Act V* adopted, moved towards the third stage, the internalisation of the norm, but was also still proslavery. Hypotheses 4b as well as 6b are to be tested. According to H4b, change agents are most probably antislavery actors behaving

[89] GHOSH, 1999, p. 35–42.
[90] LUDDEN, 1985, p. 174.
[91] MAHONEY/THELEN, 2010b, p. 14.
[92] JOHNSON, 1843, p. 20.
[93] Commentators observed that the *Act V* was "defective," JOHNSON, 1843, p. 20; see also CLARKSON, November 29 1843, p. 217.
[94] BEHAL, July 2013, p. 3; KUMAR, 2012, p. 18–19; MAJOR, 2010, p. 504.

as insurrectionaries causing either displacement or layering. Along hypothesis 6b I expect proslavery actors to be the change agents, who behave as subversives causing layering.

Gradual Changes

The period after 1843 was followed by several developments that contributed to a deterioration of the economic situation of a large number of the Indian people that carried pull and push factors for forced labour, bonded labour and indentured labour. Famines constituted a reoccurring problem: The famine in Orissa in 1866 and 1867; the famine in Bihar between 1873 and 1874; the famine in Rajputana in 1899; and the two great famines across large areas of India between the years 1876–78 and 1896–1902 during which between 12.2 to 29.3 million people died of hunger.[95] The increasing economic activities of the British in India—namely the establishment of tea plantations,[96] the extraction of minerals (such as mica) in mines, and an increasing demand for indigo[97] came with an increased demand for labour.[98] The British fostered the production of cotton since American independence (1776) and the US Civil War (1861-1865).[99] And in the shadow of the abolition of slavery in 1833, the British began to meet the need for cheap labour by suppling Indians to overseas possessions through the indentured labour system.[100] After the abolition of slavery, an estimated 1.3 million Indians left India as indentured labourers between 1834 and 1922.[101] Opium and other raw materials began to be produced for an increasing international trade. The construction of the railroads in India took off in the 1860s and was carried out under severe conditions, labour exploitation at a high cost—the labourers' physical integrity and often life—clouded under the umbrella term of public works.

The biggest sector in which Indians worked and where probably the largest numbers of bonded labourers and slaves could be found, was agriculture.[102] In the early nineteenth century, the largest population of slaves in the Madras Presidency worked in agriculture. In South India agricultural labourers were mostly tied to the land they worked and could be transferred with the land. With heavy tax burdens on land, formerly self-sustaining

[95] DAVIS, 2001, 7, 21-2, 36,168.
[96] BEHAL/MOHAPATRA, 1992, p. 147.
[97] VAUGHAN, p. 273; KUMAR, 2012, p. 6.
[98] ANDERSON, 2004, p. 424.
[99] BHATTACHARYA, 2005, p. 8; KUMAR, 2012, p. 54.
[100] EMMER, 1986, p. 187; VARMA, 2011, 40, footnote: 82.
[101] NORTHRUP, 1995, p. 60; TINKER, 1974.
[102] Data for other states are not available, CASSELS, 1988, 70, 75.

communities needed to collect cash to be able to pay their duties.[103] In addition, land grabbing dislocated a large amount of people and created a workforce that became available, for instance, on the tea plantations, by binding themselves as indentured labourers.[104]

Political Arena

The Calcutta Trade Association, formed in 1830, had already complained to the government about the relation between labourers and employers in 1846. The association explained that it was common in all trades to pay advances and that in many cases labourers defected from the agreement and employers had no means to curb this problem. The Association sent a memorandum and draft act to the President of the Council of India, but "without effecting any beneficial alteration."[105] Apparently the addressed council member ignored their submission. Indigo planters were also repeatedly requesting the criminalisation of breaches of contract.[106] Their submission was inspired by an English law from 1823, but left out any protection clauses for workers,[107] or duties on the side of the employer.[108] While it seems that the members of the Calcutta Trade Association, or the indigo planters, were not directly affected by the delegalisation of slavery by the *Act V*, their submission concerned the *Act V*, since penal sanctions against a labourer could be instigated and therefore undermined the spirit of the abolition of slavery, because people could be forced to work through legal sanction.

In 1852 the *Madras Native Association, and others, Native Inhabitants of the Presidency of Madras*, founded in the same year, submitted a petition asking for the abolition of the revenue system, the so-called *ryotwari* system. The petitioners described the plight of labourers, unable to pay their revenue which left them as 'beggars and slaves.'[109] According to the petitioners, the poorer *ryots* had to incur debts to be able to buy working materials, and seeds.[110] They represented three to four thousand individuals and their petition was discussed in the Lords' sitting on February 1853.[111] The petition was referred to the Select Committee

[103] SHARMA, 2009, 1295, 1303; WASHBROOK, 1981, p. 663.
[104] BEHAL, July 2013, p. 2; GHOSH, 1999, 16-18, 30; SHARMA, 2009, p. 1305–1306; GUHA, 1977, p. 14.
[105] Calcutta Trade Association, 1852, p. 26. Petition Letter, reprinted in Calcutta Trade Association, 1852, p. 286–287, *Draft Act for Master and Workmen*, January 1846, reprinted in Calcutta Trade Association, 1852, p. 287–298.
[106] NADRI, 2016, p. 187.
[107] ANDERSON, 2004, p. 432; cf. *Draft Act for Master and Workmen*, January 1846, reprinted in Calcutta Trade Association, 1852, p. 287–298.
[108] Cf. *Draft Act for Master and Workmen*, January 1846, reprinted in Calcutta Trade Association, 1852, p. 287–298.
[109] Select Committee on Indian Territories/House of Commons, 1853, p. 441.
[110] Select Committee on Indian Territories/House of Commons, 1853, p. 441.
[111] Hansard 1803-2005, February 25 1853, Col. 631-648.

on Indian Territories in March 1853.[112] The Earl of Ellenborough presented the petition and started with the discussion of the *ryotwari* and *zamindari* system,[113] but it ended without any further consequences. While the petitioners probably represented better-off agricultural labourers or landowners, their problems also affected the agricultural workers at the bottom, who had to take credits for "sheer survival."[114]

The WBCA, 1859

In July 1858, the Calcutta Trade Association again filed its petition to the Legislative Council asking, "for the introduction of a legislative measure to check wilful [*sic*] breaches of contract or desertion of service by workmen or servants by a system of summary punishment and summary remedies to be enforced by a Magistrate."[115] The petitioners complained again of runaway workers whom they had given advances. Apparently, employers often failed to recover the advances through civil courts.[116] They resubmitted the *Draft Act for Master and Workmen*[117] along with their petition. But instead of ignoring the submission, as in earlier years, the Legislative Council discussed it in July 1858. Just a month earlier, the Legislative Council had debated a petition of the Indigo Planters' Association, which was "praying (…) for further protection and improved means of redress against Ryots to whom they [the indigo planters] had made advances and who broke their engagement."[118] The issue of advances reappeared repeatedly in the records[119] and employers argued that advances were the only means upon which the workers could be attracted to work.[120] In light of other reports, of the railways for instance, or testimonies of plantation owners regarding delayed or withheld payment,[121] it comes as no surprise that workers asked for advances. This is one example where workers were able to exercise agency and control. The contribution of employers to

[112] Select Committee on Indian Territories/House of Commons, 1853, 416, 441-42.
[113] Hansard 1803-2005, February 25 1853, Col. 631-648.
[114] HABIB, 2006, p. 75.
[115] Saturday, July 8 1858, Legislative Council of India, 1858, p. 304.
[116] Legislative Council of India, 1858, p. 510.
[117] *Draft Act for Master and Workmen*, January 1846, reprinted in Calcutta Trade Association, 1852, p. 287–298.
[118] Indigo Planters, Legislative Council of India, 1858, p. 477.
[119] ANDERSON, 2004, p. 426; cf. SHARMA, 2009, p. 1303; cf. Petition Letter of the Calcutta Trade Association, reprinted in Calcutta Trade Association, 1852, p. 287; cf. letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June; letter from Captain A. K. Comber, Principal Assistant Commissioner to Darrang to Col. F. Jenkins, Gent, Governor-General, dated October 20 1859, Government of Bengal, 1861, p. 21
[120] This was also the case for contracts between indigo planters and the peasants that sowed the indigo; see NADRI, 2016, p. 187.
[121] VARMA, 2017, p. 54–55; cf. GUHA, 1977, 15-16, 17; ANDERSON, 2004, p. 438.

this situation and also the advantage of giving advances, namely to secure and control labour,[122] was not acknowledged by the petitioners.

The association acted as change agent against the *Act V* as proslavery actor—although, they did not request the removal of the *Act V* or complain of the loss of slaves due to the act. Their requests were fully in the spirit of the outlined paradigms: Contracts underlined the ideology of work paradigm, as they requested the use of violence and coercive mechanisms to be legally legitimised. Still confronted with high veto possibilities that had played out earlier in the petition of 1846, these actors behaved like subversives, and their submission constituted an example of a layer[123] used as a strategy, which did not attack the *Act V* of 1843, but undermined its spirit.

The Calcutta Trade Association's submission was debated in the Legislative Council in Calcutta in September 1858. The association had approached a member of the Legislative Council, E. Currie, on several occasions to present their petitions. Currie seemed sympathetic to their cause, arguing in the council that it truly was a fraud to take money in advance and "then wilfully [neglect] (…) the work."[124] Currie explained that employers were forced to give advances, and added: "It was the universal custom—and any manufacturer who attempted to break through it would find it impossible to obtain workmen. But if the workmen insisted on the preservation of this custom, it was but reasonable that their employers should be protected against its abuse."[125] Therefore, he suggested a reworked version of the draft act submitted earlier.

In October 1858 the *Breach of Contract by artificers, &o*. was referred to a select committee,[126] and in April 1859 it was again discussed in the Legislative Council.[127] The member representing Bombay[128] argued in favour of the bill and explained that "[i]f a person contracted to do work, and after receiving an advance of money wilfully failed to perform it, it was but reasonable to render him liable to punishment for his fraudulent conduct."[129] The committee proposed further amendments to the bill, such as extending the reach of the bill to contracts that were made orally, and also to contracts where no advances were made. Some of the council members argued against including other contracts that had not been based on an

[122] ANDERSON, 2004, p. 430–431.
[123] MAHONEY/THELEN, 2010b, p. 28.
[124] Legislative Council of India, 1858, p. 511.
[125] Legislative Council of India, 1858, p. 511.
[126] Legislative Council of India, 1858, 304, 567, 588.
[127] April 3 1859, Legislative Council of India, 1859, p. 298–300.
[128] KERR, 2004, p. 15.
[129] P. W. LeGeyt, April 3 1859, Legislative Council of India, 1859, p. 298.

advance payment and described the provided punishments as harsh and disproportionate.[130] The committee's suggestion did not find a majority in the council and the *Breach of Contract Act* was adopted without further changes.[131]

The adopted version of the WBCA of 1859 was in part copied from the submission of the Calcutta Trade Association, but did not fulfil its wishes completely: While the original submission called for up to twelve months in prison,[132] the final version provided for imprisonment and hard labour for only up to three months when the worker failed to repay his or her debt. The adopted act was limited in its scope to three presidency towns,[133] where most of the affected European manufacturers were located,[134] but it was gradually extended, and practically applicable to the whole British Raj by 1865.[135]

The WBCA effectively undermined the abolition of slavery.[136] It bound individuals to their contractual promises, especially in the case of monetary advances.[137] Running away became criminalised and could be sanctioned by criminal courts. Only in the case of total repayment of their debt were labourers free to leave. But criminal sanctions were only legitimately enforced when the worker did not follow the magistrate's orders.[138] None of the council members entertained the idea that there might be reasons on the side of the workers to default from contracts, or to provide respective remedies for the default on the side of the employer. The council failed to discuss the bodies that endured punishment and the suffering that came along with it, let alone the reasons for default or the actual truth to such allegations. The Governor-General assented to the Bill in May 1859.[139]

Additional penal contracts were adopted in the following decades, especially in the provincial legislatures: In Assam, the *Bengal Act III* of 1863 allowed for penal sanctions for breach of contract. The *Assam Contract Act* of 1865 allowed for the private arrest of deserted

[130] Legislative Council of India, 1859, p. 298–300.
[131] KERR, 2004, p. 17.
[132] Calcutta Trade Association, 1852, p. 289; Legislative Council of India, May 5 1859, para. II.
[133] Madras, Calcutta and Bombay.
[134] Legislative Council of India, 1858, p. 511–512.
[135] MOHAPATRA, 2016, p. 227; ANDERSON, 2004, p. 431.
[136] In the following years, other legislations which I do not address in detail were: The *Employers' and Workmen's (Disputes) Act* (Act IX of 1860), practically, this act has not been used, KERR, 2004, 8, 17, 19; The *Criminal Breach of Contract Act (Regulation I of 1040)* of 1865 addressed British as well as Indian employers and their workers; The *Criminal Tribes Act, 1871,* was another back door that allowed the exploitation of singled-out groups, such as nomadic people. The *Criminal Tribes Act* of 1871 allowed for punishment and correctional measures by the extraction of forced labour of the so-called criminal tribes, RADHAKRISHNA, 1992, p. 193.
[137] ANDERSON, 2004, p. 432.
[138] ANDERSON, 2004, p. 437.
[139] April 3 1859, Legislative Council of India, 1859, p. 298–300; May 14 1859, Legislative Council of India, 1859, p. 366.

coolies.[140] The Bengal Council adopted the *Act VI* of 1865. In 1873 another act was passed that limited to the planter's right to private arrest.[141] Running private prisons was legally condoned by Section 195 of the *Act VI of 1905* (repealed in 1910).[142] And the *Act I* of 1882 contained more provisions for the penalisation of breaches of contract for migrant labourers and provisions for the restoration of run-away coolies;[143] the surrounding population became complicit in this act, as illustrated by the following quote from a newspaper clipping before 1907:

> DEAR SIR - Two men, one very tall, over six feet, two women, and a child in arms, have been caught here, evidently runaways, but appear to be old coolies, if you should know of any garden who have lost any people tallying to the above description, kindly inform the manager without delay. Yours faithfully.[144]

The British Indian Association[145] met the adoption of this act with some criticism[146] expressing its discontent with the legal developments in Assam and, comparing the right to private arrest with slavery laws in the United States.[147] The association repeatedly addressed the Governor-General of India via memorandum expressing their negative position towards the legal changes.[148] The international *Anti-Slavery Reporter* wrote against the coolie labour in the Assam tea plantations.[149]

Kling suggests that the sepoy mutiny, as well as the 'blue mutiny' of the indigo farmers, opened the door for the British to enact penal sanctions as punishment for any acts that put the British authority, including the authority of employers, into question.[150] The timing supports this assumption. In the shadow of the indigo rebellion in 1859, the Government of India passed a temporary legislation criminalising the breach of contract for

[140] VARMA, 2017, p. 49.
[141] MOHAPATRA, 2016, p. 232–233.
[142] VARMA, 2017, p. 1–4; Assam Labour Enquiry Committee, 1906b, p. 1.
[143] VARMA, 2017, p. 85.
[144] Newspaper clippings collected by Reverend Charles Dowding, in IOR (L/PJ/6/832, File 3639), quoted in KOLSKY, 2010, p. 19–20.
[145] A representative organisation of Indian nationals to give voice to the Indian interest, founded in Bengal in 1851, later also in Madras and Bombay, STEIN/ARNOLD, 2010, p. 243.
[146] VARMA, 2017, p. 59.
[147] VARMA, 2017, p. 87.
[148] Extract from the Abstract of the Proceedings of the Legislative Council of the Governor-General of India, dated July 5 1882, referred to in VARMA, 2017, p. 85.
[149] 'Flogging of coolies in Assam,' *The Anti-Slavery Reporter and Aborigines' Friend*, August 15 1867, 179, referred to in VARMA, 2017, p. 62.
[150] KLING, 1966, p. 66–67. A similar point is brought forward by Kerr, who argues that the resistance of workers at the railways, and the death of one officer, opened the door for the adoption of the *Employers' and Workmen's (Disputes) Act* (Act IX) of 1860, KERR, 2004, p. 14.

peasants tailored to indigo.[151] From this perspective the mutiny of the *sepoys* and indigo farmers constituted a juncture—a moment in time that allowed for institutional changes that were backed by contemporary paradigms and colonial imperatives to secure the British position.[152] Since even before India became the crown colony, presidencies experimented with penal contracts, the changes enacted by the WBCA were not radical.[153] The mutiny had been an opportunity for the Calcutta Trade Association to demonstrate its loyalty to the EIC,[154] and the adoption of the WBCA was possibly an expression of the government's gratitude in return, not meant to alienate the British merchants in India. From the macro perspective of the state's imperative towards the monopoly of violence, the workers' resistance and the rebellion of the *sepoys* seriously put the claim of this monopoly and the legitimacy of colonial government into question. And while mutineers faced death penalty and transportation,[155] the state restored its power over workers by instituting sanctions under master and servant laws.

The actors of the trade association acted like subversives; although they did not have any veto power in the political arenas, their interests were understood in the Legislative Council. The adoption of the *Breach of Contract Act* constituted a form of gradual institutional change in the form of layering. This act and later similar acts did not remove the existing legislation against slavery, namely the *Act V* of 1843. By offering employers sanctioning mechanisms for the breaches of contract through state agents—the magistrates and the courts—the state undermined the potential intent of the abolition of slavery and reinvented it as a voluntary contractual relation. How bonded labour fit into the provisions of the WBCA and the *Act V* had yet to be determined in the courts. In theory, advances under bonded labour arrangement, could be legally sanctioned with the help of the WBCA. It was intended to control "artificers, workmen, and labourers,"[156] but which professions were included and which not was also open for interpretation.[157]

[151] NADRI, 2016, p. 187.
[152] MANN, 2012, p. 193–194.
[153] ANDERSON, 2004, p. 428–429.
[154] DODD, 1859, p. 99.
[155] GOPAL, 1965, p. 5.
[156] Legislative Council of India, May 5 1859.
[157] ANDERSON, 2004, p. 440.

The Indian Penal Code, 1860

Shortly after the *Workman's Breach of Contract Act* came into force, the IPC was enacted, even though it had been initiated almost three decades earlier.[158] In 1835 the Indian Law Commission under Thomas Babington (T. B.) Macaulay was formed and began to work on the IPC, and they submitted the first draft to the British Parliament by 1837.[159] Because Indian civil law was founded upon Hindu and Muslim law, which, according to British interpretation, legally sanctioned slavery,[160] the only venue through which the British could attack slavery was through criminal law.[161] The process of development and adoption of the code took a long time, and due to the Indian rebellion in 1857 the final adoption of the IPC was postponed. In January 1862, the IPC came into force four years after the British Crown had taken over the governing power from the East India Company.[162]

Four sections of the IPC, which are fully reprinted in the Appendix, concerned slavery:

> Sec. 367: "Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc. (…)";
> Sec. 370: "Buying or disposing of any person as a slave (…)."
> Sec. 371: "Habitual dealing in slaves (…)."
> Sec. 374: "Unlawful Compulsory Labour (…)."[163]

The trade in slaves became a criminal offence on January 1, 1862 and the IPC applied to British nationals and to Indian subjects alike. And while the IPC neither emancipated nor liberated the victims of enslavement,[164] all four IPC sections on slavery offered punishment for slavery. Until independence, the IPC was applicable to the British Raj, as well as the princely states under suzerainty,[165] and is still operational today.

The institution of the abolition of slavery did not become much stronger with the adoption of the IPC. It does not offer a definition of slavery; Sec. 374's limitation "against the will of that person" underlines the interpretation that the IPC did not encompass bonded

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[158] Two provisions in the Penal Code sanctioned the breaches of contract: Sec. 490, "Breach of contract of service during a voyage or journey;" Sec. 492, "Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense." The provisions were limited in scope and only for the protection of Anglo-Indians; these sections were invoked less often than the WBCA in criminal proceedings and contracts, ANDERSON, 2004, 430, 433, 436
[159] RAMAN, 1994, p. 763.
[160] British orientalists identified sanctions of slavery in Hindu and Muslim scriptures, CASSELS, 1988, p. 62–64.
[161] CASSELS, 2010, 198, 236.
[162] HARDGRAVE/KOCHANEK, 2008.
[163] Legislative Council of India, October 6 1860.
[164] MAJOR, 2012, p. 9.
[165] SANKARAN, 2007, 1, footnote 3.

labour and practically allowed for slavery as long as it was entered into voluntarily. No 'normatively backed rights that needed active enforcement'[166] arose from the IPC Sections 367, 370, 371 and 374.[167] But the IPC as a whole designated agents in charge of enforcing the new law: the executive, the magistrates,[168] the police and the criminal courts.[169] Offences committed under the four IPC sections were classified as cognisable, could be executed without the warrant of a court, and applied to everyone residing in India.[170] The IPC did not remove but rather reinforced existing rules and changed the enactment of the old rules: The institutional logic from desisting to enforce rights of others over slaves was changed towards active enforcement. Therefore, the abolition of slavery in India experienced a "course correction"[171] with the IPC, and clearly became an institution as defined by Streeck and Thelen.[172]

Theoretically, the adoption of the WBCA of 1859 constituted a layer in the form of an additional law on top of the existing *Act V*, undermining its spirit. The IPC, on the other hand, constituted a layer on top of the *Act V* to support it. Table 8 summarises the two policies and indicates whether the institution of the abolition of slavery changed and if there continued to be a low or high level of discretion in interpreting the institution.

Table 8. Characteristics of the formal institution, 1862

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Act V, 1843	No	N.A.	No	No	No	No
IPC, 1862	No	No	Yes	Yes	No	Yes

The discretion of interpretation was high, and, as developed above, both laws did criminalise slavery, but without emancipating slaves—no rights arose from these legislative provisions. The *Act V* granted a high level of interpretation and implementation of its rules, since it basically did not indicate a definition of slavery, nor specify who should execute and oversee its implementation. The IPC also did not give a definition of slavery but specified the punishment, fine and imprisonment, in the case of a violation. With only three provisions, the

[166] STREECK/THELEN, 2005b, p. 12.
[167] DONNELLY, 2013, p. 42–43.
[168] IPC Sec. 369.
[169] MISRA, 1970, p. 538–539.
[170] Legislative Council of India, 1861, Sec. 25.
[171] ROCCO/THURSTON, 2014, p. 45.
[172] STREECK/THELEN, 2005b, p. 12.

discretion of interpretation was high, particularly as the question of defining slavery was open. The WBCA could be read as to support bonded labour arrangements and offered employers a venue to legally enforce contracts. In the following paragraphs I outline how the IPC and the WBCA were enforced on the ground.

Enforcement

The *Law Commission Reports* of 1841 testified to the existence of bonded labour,[173] and other authors argued that bonded labour was already wide spread before the EIC reached Indian shores.[174] Prakash argues that with the adoption of the *Act V*, the recourse to bonded labour increased[175]—this remains to be empirically and statistically proven.[176] The work of Prakash is not sufficient to support the causal relationship, since he also concedes that bonded labour existed before *Act V*.[177] The yearly reports of the presidencies depict evidence that bonded labour existed. But, there has been no systematic research on the reflection of slavery in the official reports of the British Raj, probably because these reports were not prepared in a uniform manner and therefore do not lend themselves to an easy comparison. Regarding the implementation through the judicial system, the criminal reports, with the exception for the Punjab, the data collected during 1867 to 1940 on criminal proceedings and convictions are not disaggregated.[178] Some evidence, however, demonstrates that there were cases of slavery and forced labour under the IPC tried in the lower courts: In 1889 the yearly report of the Bengal Presidency recorded 569 alleged cases of kidnapping, forcible abduction, slavery or forced labour. Of these, 335 had been found true and 291 were brought to trial in the year 1889. The *Census of India on the Punjab and NFP* (Northwest Frontier Province) of 1901 recorded cases of bonded labour in the carpet industry.[179] The author of the report did not make any reference to bonded labour or slavery but spoke of "the system of advances"[180] and the debts that were transferred to the new employer, in case the labourer chose to leave. The report indicates that the majority of labourers were unable to redeem their debt and remained bonded throughout their life.[181]

[173] Indian Law Commission, January 15 1841a, 63-71, 126, 153, 158-59.
[174] STANZIANI, 2018, p. 70.
[175] PRAKASH, 1993, p. 136; KLEIN, 2005, p. 184.
[176] The same applies to the WBCA, TEMPERLEY, 2000b, p. 183.
[177] See the work of Prakash, PRAKASH, 1993, p. 136.
[178] ANDERSON, 2004, p. 450.
[179] ROSE/Census Commissioner, 1902, p. 368–369.
[180] ROSE/Census Commissioner, 1902, p. 369.
[181] ROSE/Census Commissioner, 1902, p. 369.

Anderson collected the numbers of prosecutions for violations of the IPC Sections 370 to 374 by scanning through the *Reports on the Administration of Criminal Justice in the Lower Provinces of Bengal and Punjab*, between the years 1879 and 1902. He found the following numbers for the Lower Provinces of Bengal on record: Between the years 1878 and 1902, there were approximately two to three convictions listed yearly for violations of Sections 370 and 371, and altogether 53 conviction for violations of Section 374. In Punjab, the criminal records indicated about six convictions under Sections 374, and two to three convictions under Sections 370 and 371 per year for the period between 1867 and 1940.[182] Compared to the estimates of slavery or bonded labour given in table 1 in the introductory chapter, the numbers of reported cases and convictions above seem to be relatively low. This is probably also because most cases would not be decided by the courts, but were dealt with by magistrates. But the enforcement situation was also highly contingent on the geographical location. In Assam, for instance, labour legislation and respective interpretation and implementation were left to the discretion of the tea planters, simply because there were not enough magistrates stationed.[183]

The WBCA was ultimately used all over India to coerce labourers to work.[184] Employers often gave advances to bring workers under the purview of the WBCA.[185] Kerr observes that the WBCA was invoked to threaten workers with criminal punishment and successfully coerced workers into obedience.[186] In the reports of the presidencies there is evidence of convictions based on the *Act XIII*, but the reports do not reveal much detail on the specific circumstances of the cases: In 1889 the report of the Bengal presidency indicated that 96 reports of criminal breaches of contract had been received and 30 had been put on trial.[187] Historians generally finding that the WBCA was used extensively.[188] One aspect that later became the entry point for criticism of the penal sanctioning of breaches of contract by policymakers, commissioners and scholars,[189] was the subversion of the *Workman's Breach of Contract Act* by employers: The act was often used to induce workers to do as they were told,

[182] ANDERSON, 2004, p. 450.
[183] VARMA, 2017, p. 61–66, Administration of the Bengal Presidency, 1867, p. 120.
[184] MOHAPATRA, 2016, p. 227–228.
[185] VARMA, 2017, p. 73; SIDDIQI, 1983, p. 369; *Emperor v. Namdeo Sakhgaram*, Bombay High Court, November 30 1909.
[186] KERR, 2004, 19, footnote 52.
[187] Government of Bengal, 1890, 541, 543.
[188] KERR, 2004, p. 8; VARMA, 2011, p. 48.
[189] Cf. N. M. Joshi, Central Legislative Assembly, 1921a, p. 229; Government of Assam, 1922, p. 75; KERR, 2004, p. 23–24.

with the sheer threat of the application of the WBCA.[190] Indigo farmers' petitions to the Governor of Bengal testified to the collaboration of magistrates with the planters to use the *Act XIII* as means of coercion.[191] In a court ruling of 1909 the judge remarked that the payment given was "so grossly inadequate as to suggest that the so-called advance was merely a device for bringing the contract within the act."[192] In many written contracts, a reference to the WPCA was included: Figure 6 shows a template form for a penal contract as published in 1909:

Figure 6. Agreement form under the Workman's Breach of Contract Act

FORM OF AGREEMENT* UNDER "THE WORKMAN'S BREACH OF CONTRACT ACT."

ACT XIII OF 1859.

FORM OF AGREEMENT.*

An agreement made the day of 19 between Manager Tea Estate, District hereinafter called the employer, of the one part and whose full description and address are given in the schedule hereto annexed, hereinafter called the labourer, of the other part.

1. The labourer hereby agrees to serve as a cooly under the employer in the said Tea Estate for a term of years months days commencing from day of 19 for which he/she hereby acknowledges to have received an advance of Rs.

2. The labourer shall remain and reside on the said Tea Estate and perform all such works as he/she may be ordered to do, and which are ordinarily known to be the duties of an ordinary garden cooly, to the satisfaction of the employer or the person in charge of the said Tea Estate for the time being.

3. The labourer shall receive wages at the rate of Rs. per mensem, which shall be paid to him/her during the month following that in which they are earned.

4. The amount of the advance made to the labourer by the employer or any one on his/her behalf in cash or otherwise, and the price of any rice or other articles of food supplied to the labourer from the garden godown, shall be set off against the labourer's monthly wages, and the labourer shall be entitled only to receive the balance remaining due after such deduction.

* There is no form of agreement included in the Act. This form is copied from the Annotated work, by Harendra Chandra Sinha and Pramode Chandra Dutt, B.L.

B, TC 21

5. The labourer shall work out the period of his/her contract without interruption and shall not absent himself from his work without the permission of the employer or the person in charge of the said Tea Estate for the time being.

6. The labourer shall without objection conform to the rules or practice prevailing in the said Tea Estate as to the hours during which the work is to be done and the measure of work requisite for determining a daily attendance or a full task.

7. In case the labourer shall, before the expiry of the term of this agreement, absent himself/herself from his/her work without leave, or shall neglect to perform the same, he/she shall be liable to be punished according to law and also to compensate the employer for such loss as he may sustain in consequence thereof.

8. In witness whereof the said and have set their hands hereto.

(Manager's signature.)

Signed and delivered in the presence of

(Labourer's signature.)

Figure 6, Agreement form under the Workman's Breach of Contract Act. Source: BALD, 1908 [1903], p. 231–322, originally printed in SINHA/DUTT, 1899. Note: Blank form of agreement under the *Workman's Breach of Contract Act*. It is unclear how widely these agreements were used.

The case of tea production in Assam is one example that highlights the enforcement of the WBCA and its regional variants. By the 1860s, and with the tea boom since 1865,[193] the plantation owners began to draw the necessary labour force from outside of Assam. The so-called coolies[194] were transported from Bengal, and South and Central India to Assam.[195] The

[190] Mohapatra refers to an employer who testified to the self-reinforcing power of the WBCA, MOHAPATRA, 2016, p. 229.
[191] Petitions of 1859, printed in PUNEKAR/VARICKAYIL, 1989, p. 2–6; Government of Bengal, 1860, p. 392–393.
[192] *Emperor v. Namdeo Sakhgaram*, Bombay High Court, November 30 1909; cf. ANDERSON, 2004, 433, footnote 60.
[193] BEHAL/MOHAPATRA, 1992, p. 145.
[194] On the origin of the term coolie, cf. TINKER, 1974, p. 41–43; SHARMA, 2009, p. 1306.
[195] SHARMA, 2009, 1288, 1289, 1293, 1296, 1303.

British tea planters and the Government of India cooperated to facilitate the transportation of the coolies. The conditions of transport and work were so bad that, between 1863 and 1866, 35,000 of the 85,000 workers who were transported to Assam had either died or deserted.[196] Wages paid for the work on the tea plantations were generally lower than remuneration paid outside the plantation system. The coolies were recruited from other Indian states, given an advance and transported to the tea plantations in Assam—following the system of indentured labour.[197] Conditions on the tea plantations were marked by violence: Coolies were closely controlled; when they ran away they were hunted down by the planters' dogs or the local population, and physically punished.[198] Coolies were foreign to the Assam hills, did not speak the language and had no knowledge of the terrain. With a head money of Rs. 5 in addition, desertion of labourers was doomed to fail; or it often ended with death in the jungle.[199] The dislocation of the individual, which made it so hard to run-away, was an intended feature of transporting the labour force to other places.[200] Poverty and recurring famines placed immense pressure on the population: Destitute people were easy recruits for the plantations. Under those conditions, planters could afford the inhumane treatment of the workers which continued until the turn of the century.[201]

The image reprinted on the title page[202] depicts a scene photographed in 1910. In the front, dressed in white and equipped with a shikar helmet against the burning sun, are the tea planters or their subordinates. They are surrounded by the tea plantation workers, mostly women and children,[203] but also men. The picture very likely shows workers who were transported from other parts of India to Assam to work on the tea plantations.[204] Many of them probably were bound to the plantation by the WBCA or other penal contracts: By the year 1891, 40 percent of the migrant labourers in Assam were bound by the WBCA, 55 percent of the workers could face penal sanctions under the *Labour Districts Emigration Act I*

[196] MOHAPATRA, 2016, p. 232.
[197] CASTLE/HAGAN/WELLS, 2007, p. 96.
[198] SHARMA, 2009, p. 1308–1309; EDGAR, 1873, xxii. Sharma reiterates anecdotal archival evidence according to which workers were whipped, and salt poured on the wounds. Female workers were punished by pepper being rubbed into their genitalia. Another anecdotal account testifies that dogs were used to hunt runaway tea labourers, SHARMA, 2009, p. 1308–1309.
[199] EDGAR, 1873, xxii; SHARMA, 2009, p. 1308; GHOSH, 1999, p. 39–42.
[200] GHOSH, 1999, p. 39–42.
[201] SHARMA, 2009, p. 1309.
[202] Author unknown/The Graphic, p. 573.
[203] Tea plucking was conducted mostly by women, Labour Investigation Committee, 1946, p. 36; TINKER, 1974, p. 30.
[204] Indentured labour contracts were enforced in Assam until 1915, MOHAPATRA, 2004, p. 455.

(1882).[205] In the case of *Reg. v. Gaub Gorah Cacharee & others*,[206] the court clarified that advances made to coolie labourers in Assam fell within the purview of the WBCA of 1859. The following table indicates the number of criminal cases against tea plantation workers in Assam between the years 1899 and 1926:

Table 9. Criminal records of breaches of contract, Assam tea gardens, 1899 to 1926

Year	Cases	Convictions	Imprisonments
1887	N.A.	87	N.A.
1899	418	149	34
1907-1908	1115	523	74
1913-1914	1192	370	111
1920-1921	1604	278	63
1925-1926	67	29	N.A.

Source: Data based on the Assam Labour Reports, collected by and derived from DAS, 1931, 57, 58.
Note: The entry 'Imprisonments' for 1899 includes fines.

Compared to the number of newly recruited migrants to the Assam tea plantations, with a yearly average of 70,000 people between 1909 to 1921,[207] the rate of cases, convictions and prosecutions appears rather small. This can be explained by underreporting of cases and use of force by the planters themselves. Located at the border of the British Raj, and the land for the plantations only recently grabbed, between the 1850s and 1860s, there was not a sufficient number of magistrates installed on the ground. The interpretation of the WBCA was left to the discretion of the tea planters. They stretched the boundaries of available punishment and deterrence strategies against their labourers. Practices such as hanging runaway labourers from a tree and flogging them, in some cases resulting in death, caused a scandal and public debate,[208] and were not sanctioned by the law.

But coolies were also able to turn the provisions of the *Act XIII* to their advantage, as far as it is possible to speak of advantage: Varma describes cases at the tea plantations, where workers turned themselves into prison for breaches of contract in order to cease the contracts they had committed to. The act provided that if the punishment was executed and imprisonment served, labourers were free afterwards to either continue to work under the contract or to return to their place of origin.[209] Labour conditions were so bad that labourers

[205] BEHAL/MOHAPATRA, 1992, p. 155.
[206] *Reg. v. Gaub Gorah Cacharee & others*, 1867, (8 W. R., Cr. 6), referred to in COWELL/WOODMAN, 1870, p. 110; ANDERSON, 2004, footnote 111.
[207] Numbers based on the Assam Labour Reports, collected by Varma, VARMA, 2011, p. 235.
[208] VARMA, 2017, p. 61–66.
[209] VARMA, 2017, p. 54.

often chose to serve prison time over continuing to work on the plantations.[210] Labourers responded to maltreatment by plantation owners with tactics of resistance, among them flight, self-mutilation and, even though rare, collective protest and assault against the managers and overseers.[211] These forms of resistance were met with punishment by physical violence and/or internment.[212]

In 1906 and 1921 the Government of Assam published the reports of the Labour Enquiry Committees on the labour conditions on the tea plantations.[213] While reporting on and criticising abuses based on the *Act XIII* of 1859, the report of 1921 does not use any terminology that might relate the observed and reported labour exploitations in terms of slavery or forced labour—the authors used the term 'indenture.'[214] They showed that convictions of labourers based on the *Breach of Contract Act* declined, but they observed that there was still a wide abuse of the WBCA to the disadvantage of the labourers.[215]

1860-1919

The British Indian Association submitted memoranda to the Governor-General to complain, for instance, about the extension of breaches of contract legislation in Assam.[216] Peasants and farmers also submitted petitions, but probably only the better-off peasants.[217] The Indian press demonstrated its concern regarding labour exploitation. There were also expressions of superiority of the Assamese elite and disgust towards the imported labour force of the coolies in the 1880s.[218] Indians were also divided among each other. The revolt of the indigo farmers in 1857 was followed by a large resonance in the public, and the plight of the indigo workers was re-enacted in public plays, such as *Neel Darpan* (or *Nil Darpan*—The Mirror of Indigo), written by Dinabandhu Mitra and published in 1860.[219] From the 1870s on, the Bengal vernacular press reported on the new forms of slavery on the tea plantations[220] and Dwarkanath Ganguli's *Slavery and British Dominion*[221] exposed the violence on the tea

[210] ANDERSON, 2004, p. 438.
[211] CASTLE/HAGAN/WELLS, 2007, p. 97.
[212] CASTLE/HAGAN/WELLS, 2007, p. 96–97.
[213] Assam Labour Enquiry Committee, 1906b; Government of Assam, 1922.
[214] Government of Assam, 1922, p. 88.
[215] Government of Assam, 1922, p. 91–92.
[216] Letters of the British Indian Association of 1882, referred to in VARMA, 2017, p. 87.
[217] POUCHEPADASS, 1974, p. 72–73.
[218] SHARMA, 2009, p. 1312–1313.
[219] BHATTACHARYYA, 2012, p. 33–34. The original text is in Bengali, MITRA, 1929 [1861].
[220] SHARMA, 2009, p. 1315.
[221] Ganguli, Dwarkanath: *Slavery and British Dominion*, 1886, reprinted in SCHIFFRIN, 2014.

plantation and the experience of the workers.[222] But soon enough British censorship curtailed press publications from reporting on forced labour and slavery in India, be it instances of slavery or forced labour, or publications expressing the injustice of colonialism in terms of the enslavement of the Indian people as a whole. In 1907 the Chief Court of Punjab decided the *Panjabee Case*, a periodical paper that had been prosecuted for two articles, one of them addressing the issue of forced labour and *begar*. The article titled 'How Misunderstandings Occur' indicated that a case of *begar* pressed by a British official had led to the death of two villagers. The court sentenced the editor K. K. Athvala to imprisonment.[223]

Established in 1885, the Indian National Congress adopted its first resolution concerning slavery in India in 1893, calling

> [t]hat the Government of India be moved, once and for all, to put a stop by new and express legislation (the existing provisions of the Penal Code having proved inoperative) to the existing oppressive system of forced labour (known as Begar) (…) which, despite numerous resolutions of the Government of India, are still prevalent through India.[224]

The INC also discussed the issue of poverty and bonded labour in agriculture, describing bonded labourers as "bond slaves."[225] The INC's focus was on the injustice experienced by coolie labourers, in particularly the killing of a coolie by a planter which caused an upheaval.[226] By the year 1895, the *Breach of Contract Act* was discussed as a legal tool in contravention to the abolition of slavery at the INC, which published on the topic and positioned itself towards the issue: The adoption of the abolition of bonded labour became one of the goals of a future Indian constitution.[227]

But the INC also had trouble representing the interest of the Indian population, particularly the poor and lower castes. As an elitist organisation, the founders of the INC had all been male, journalists or lawyers, university and Western educated.[228] And even in 1917, during the visit of Gandhi and other activists in the village Champaran, the distance between the nationalist movement and the village population was unsurmountable, as Kripalani explained:

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[222] SHARMA, 2009, p. 1315.
[223] MITTAL, 1977, p. 46; BASU, 1979, p. 292.
[224] Indian National Congress, 1909, p. 49.
[225] Indian National Congress, 1894, p. 55.
[226] Indian National Congress, 1894, p. 769.
[227] Author unknown, 1895; SIDHWA/LALWANI, 1932, p. 140; SAPRU, 1945, p. 219.
[228] JAYAL, 2013, p. 40.

> In those days such was our nationalism that we did not know what was really happening in the villages. We, the educated, lived more or less an isolated life. Our world was confined to the cities and to our fraternity of the educated. Our contact with the masses was confined to our servants, and yet we talked of the masses and were anxious to free the country from foreign yoke![229]

Gandhi was the first leader of the independence movement who condemned the bonded labour system in Gujarat.[230] And while labour resistance had independently occurred before and after the turn of the century, Gandhi's *satyagraha* in Champaran was not only a test drive for instigating the non-cooperation movement on a large scale, but also an acknowledgement of the vast number of people in the countryside who could be mobilised and their grievances channelled through the mass mobilisation against the British colonial power.[231]

With changes to the composition of the Legislative Council and the admission of an increasing number of Indian representatives, the air around slavery, forced labour, bonded labour, and the WBCA began to change: The *Government of India Act* of 1909 placed increasing pressure on the Government of India, and the government adopted some adjustments to the WBCA.[232] Simultaneously, since the 1860s, the Government of India became increasingly disinclined to support indigo planters' behaviour that would embarrass the colonial state in the eyes of the Indian population and international community.[233] In 1908 and 1909 the indigo farmers stood up against the demands of the indigo planters and the Government of India backed down. The Lieutenant General E. N. Baker explained in 1909 that "if indigo cannot subsist without coercion, indigo must perish."[234] He wondered why this revolt had not taken place sooner, with the enquiry report showing that the payments to indigo farmers were not remunerative.[235] This statement depicts the internal conflict between the British ruling elite and the British nationals residing and doing business in India. It also exemplifies that British colonial rule was not enacted by a monolithic entity, but a dominating society that itself was divided along lines of gender and class.[236] But Baker's statement also

[229] KRIPALANI, 1970, p. 61.
[230] BREMAN, 1974, p. 78.
[231] BOSE/JALAL, 2003, 93, 98, 110, 115.
[232] The Legislative Council of India amended the WBCA twice, first in 1874 by *Act XVI* of 1874 and then again by *Act XII* of 1920.
[233] KUMAR, 2012, 259, 296.
[234] Letter from Gourlay, director of the Department of Agriculture to the Chief Secretary to the Government of Bengal, February 9 1909, quoted in MITTAL, 1978, p. 112.
[235] MISRA/JHA, 1963, p. 15; MITTAL, 1978, p. 112.
[236] Kolsky drew out this line in more detail in analysing the colonial justice system and its treatment of indigenous and British or Anglo-Indian criminals, KOLSKY, 2010, 5-7, 230.

depicts the different position towards the producers of a cash crop that was doomed to end by the time of the revolt,[237] and tea that experienced a continuous increase in production.[238]

In 1917, the Indian national movement became involved in the indigo conflict, and the issue shifted from a struggle of labourers fighting for better working conditions into a struggle against the colonial power. As in earlier occasions, the lowest classes were initially absent from the revolt; it was the well-to-do indigo farmers who were in conflict with the planters' demands and coercive measures, such as private arrest.[239] The conflict rekindled with the resistance of indigo farmers and large tenant holders of higher castes, *Brahmin*, *Mahajan* and *Bania*, who rose to be the leaders of the movement against the planters.[240] In April 1917, Gandhi went to Champaran where the indigo disturbances began and initiated the *Champaran Satyagraha*. But the movement managed to integrate the whole peasantry, including poor agriculturalists.[241] The Government of India adopted a special act for this region, the *Champaran Agrarian Act* of 1918, which prohibited, among others, forcing famers to grow indigo. With the end of World War I and after securing the information on the synthetic indigo production from defeated Germany, Great Britain was able to produce its own synthetic indigo. Eventually, after the war,[242] the Government of India dropped the production of indigo, since the "Champaran indigo tracts had become the symbol of colonial exploitation and a stage for the enactment by Gandhi of erasure of a political and moral wrongdoing."[243]

The increasing number of representatives at the Central Legislative Assembly and Council of States allowed for the active involvement of Indians in the legislative process since 1909. In 1917 M. M. Malaviya, member of the Indian Industrial Commission, and private member of the Imperial Legislative Council,[244] suggested the removal of the *Act XIII* of 1859. The majority of the provincial governments opposed this proposal,[245] which, in the case of Assam and Madras, reflected the economic interests of the tea plantation owners.[246] Malaviya, repeating his request in 1919, hinted at the upcoming International Labour Conference, implying that the conflict of the WBCA and penal contracts were expected to be criticised

[237] NADRI, 2016, p. 121; KUMAR, 2012, p. 130.
[238] VARMA, 2011, p. 144.
[239] POUCHEPADASS, 1974, p. 71–73; Petitions of 1859, PUNEKAR/VARICKAYIL, 1989, p. 2–6; Government of Bengal, 1860, p. 392–393; NADRI, 2016, p. 186.
[240] POUCHEPADASS, 1974, p. 67.
[241] POUCHEPADASS, 1974, 76, 79.
[242] KUMAR, 2012, p. 295.
[243] KUMAR, 2012, p. 296.
[244] Of which he was member from 1912 to 1919, and the Central Legislative Assembly, of which he was member from 1919 to 1926.
[245] British Library, 1932, p. 22.
[246] ANDERSON, 2004, p. 448.

there.[247] The continued control of labour by penal contracts, in Malaviya's argument, would draw negative attention to British India.[248] He was actively seeking to change the institution via displacement. But his request did not effect any further moves from the side of the government. Also, at the provincial level, for instance in the Provincial Legislative Council of Bihar and Orissa, one member repeatedly pointed at problems regarding the treatment of labour.[249] At the other end of the political and public arena was the judicial arena, which treated cases of bonded labour as well as slavery, and which I discuss in the following subchapter.

The Judiciary and Magistrates

The *Indian Hight Courts Act* of 1861 established the High Courts at Bombay, Calcutta, Madras and the North-Western Provinces (NWP), the latter being established in Agra in 1866 and moved to Allahabad in 1875. They became the highest courts of appeal and only the Privy Council in London could overrule the decisions of the high courts in India.[250] It was upon them to interpret the meaning of the *Act V*, the IPC and the WPCA.[251] The following cases have been referred to in law reports, or were used and referred to as guiding principles for judicial decisions. India was, and still is, ruled by common law and judicial precedent, which "gave the courts a quasi-legislative power."[252] Precedents were meant to guide future decisions within the same jurisdiction, but it was also possible that judgments were not collected in the court reports and were not referred to in later cases.[253] Case law was limited to the jurisdiction of the respective high court, which means that a decision of the High Court at Bombay was not binding to the High Court at Calcutta. Nonetheless, the courts referred to each other's decisions.[254]

The case law is interesting for this analysis, because the courts occupied a core position in producing institutional change or defending the status quo. Since the IPC and the *Act V* were weak, the discretion of interpretation did inherently carry the potential for change.

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[247] ANDERSON, 2004, p. 448; cf. BANTON, 2004, p. 259.
[248] Government of India, Indian Council Proceedings, September 17 1919, 26, in ANDERSON, 2004, p. 448.
[249] POUCHEPADASS, 1974, p. 70.
[250] PRASAD, 2006, p. 9–10.
[251] YEO/WRIGHT, 2011, p. 6–8.
[252] ANDERSON, 2004, p. 440.
[253] ANDERSON, 2004, p. 447.
[254] For instance: *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 336, referred to *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880; *Satish Chandra Ghosh v. Kashi Sahu*, Patna High Court, April 8 1918) referred also to *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880.

In the following paragraphs, I discuss several selected court cases that are either relevant because they were rulings concerning the interpretation of the definition of slavery according to the IPC and the *Act V*, or because they were concerned with clear cases of bonded labour and therefore highlight how the courts treated this particular kind of labour exploitation. There were many cases under the WBCA and I draw inferences from Anderson's chapter.[255]

Case Law

The first relevant trial was heard in 1863, in which the Calcutta High Court dismissed the case *Bissonauth Chowdhree v. Bonomally*.[256] The plaintiff Bissonauth tried to enforce his customary rights to services from the family of the accused, as well as the descendants.[257] This claim was declined at the lower judicial level and Bissonauth appealed. The judges Kemp and Campbell at the high court rejected the case, arguing that customary rights can be treated as contract, and explained that customary rights to service over one person are unenforceable since the *Act V* prohibits slavery.[258] The dismissal is interesting, since for the court the concept of customary rights of service was sufficient to reject the claim of the plaintiff and to bring it into the purview of slavery.

In 1871 the judges Turner and Turnball sat over the appellate case *Queen v. Mirza Sikundur Bukhut*. Mirza was on trial because he had bought the kidnapped girl Musumat Paigya, thirteen years old; she was sexually exploited by Mirza's son and used as a house keeper, without payment of wages.[259] After four years Musumat escaped and was found by the police, who convicted Mirza under IPC Section 368,[260] 370 and 373,[261] and sentenced him to two years prison and a fine of Rs. 250.[262] The judges explained that:

> It is urged that to constitute a person [as] a slave, not only must liberty of action be denied to him, but a right asserted to dispose of his life, his labour and property. It is true that a condition of absolute slavery would be so defined, but slavery is a condition which admits of degrees. A person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailor (…).[263]

[255] ANDERSON, 2004.
[256] *Bissonauth Chowdhree v. Bonomally*, Calcutta High Court, August 14 1863; cf. AVINS, 1967, p. 42.
[257] *Bissonauth Chowdhree v. Bonomally*, Calcutta High Court, August 14 1863.
[258] Bissonauth Chowdhree v. Bonomally, Calcutta High Court, August 14 1863.
[259] *Queen v. Mirza Sikundur Bukhut*, Allahabad High Court, June 20 1871, p. 73.
[260] Wrongfully concealing or keeping in confinement a kidnapped person.
[261] Buying of any minor for purposes of prostitution.
[262] *Queen v. Mirza Sikundur Bukhut*, Allahabad High Court, June 20 1871, p. 73.
[263] *Queen v. Mirza Sikundur Bukhut*, Allahabad High Court, June 20 1871, p. 74.

In fact, the judges argued that not only the *de jure* condition, but also the *de facto* condition proved that the situation of Musumat compared to slavery. Furthermore, the judges remarked that the working relation of Musumat was a wide spread phenomenon in India; the judges were informed that children were sold and used as servants in private households. They concluded that "[t]hese children are practically slaves, and it cannot be too widely known that their condition is such as will not be tolerated by English law, and that persons who detain them in their houses are liable to punishment under the Penal Code."[264]

In the eyes of the judge, the use of children as domestic servants amounted in any case to slavery. Thereby they rejected earlier notions of the legality of slavery as long as it was 'benign'[265] and invalidated the idea that slavery functions as poor law.[266] The court upheld the conviction of Mirza under the IPC Section 370, by arguing that there was an absence of free will, since the person involved was a child. The ruling in this case stands out when compared to similar cases; regarding the rulings of the courts on WBCA cases, Anderson observed that the judges willingly disregarded the contents of the contracts, arguing that both parties to a contract—the employer and the worker—knew of the conditions, and that the worker willingly consented to the contract. Therefore, the workers were also liable for breaches of the contract, even if they were unfair.[267] Consequently, the judges might have decided differently in the case of Mirza, if the person had entered the condition of slavery by free will, and was not underaged.

A few months later, the judge Mitter observed in *The Queen v. Firman Ali* that the IPC did not offer a definition of slavery, and he explained in December 1871 that the female household slave, called bandhi, did not meet the legal requirements to constitute slavery. He suggested that "[t]he definition of slavery according to Blackstone is that "Civil relation in which one man possesses absolute power over the life, liberty, and fortune of another."" He interpreted the reach of the anti-slavery sections of the IPC to concern the transportation of slaves from other countries. Mitter concluded:

> In India itself, although the treatment which some unfortunate receive at the hands of their master may well entitle them to be regarded as slaves, there is no such thing as slavery proper (…). [T]he position of the woman Abidulnissa is by no means unique, and that if Firman Ali is liable under Section 370 (…) for his treatment of her as a

[264] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 728.
[265] Lord Ellenborough in the House of Lords, Hansard 1803-2005, July 5 1833, Col. 190.
[266] Mr. Cameron's Minute, Indian Law Commission, January 15 1841a, p. 13.
[267] ANDERSON, 2004, p. 445.

> slave, every Mussulman in the country who possesses a "Bandhi" is liable to a criminal prosecution.[268]

Judge Gover supported the decision not to apply Section 370 and the order of the Deputy Magistrate was reversed. It is noteworthy that the Deputy Magistrate of Perozepore had convicted Firman for using his household servant Abidulnissa as slave based on the IPC. The judge took recourse to the Blackstone commentary[269] to define slavery, as well as his own interpretation that the intention of the IPC was actually related to human trafficking across the borders of countries. Contrary to Chatterjee's evaluation of this judgment,[270] the session judge did not deny that the term *bandhi* translated as slave, or that the condition of Abidulnissa constituted slavery. He agreed that the treatment of Abidulnissa compared to slavery, and that the term *bandhi* translated as "slave girl."[271] But without legal sanction, slavery could not be "slavery proper,"[272] and, therefore, offered a verdict quite the opposite from *Mirza* (1871) in which the conviction of the appellant was upheld. Contrary to Turner and Turnbull in *Mirza* (1871), he made the argument that this case could not constitute slavery since it was *de jure* not sanctioned. From this angle, the IPC poses an oxymoron: It requires a legal sanction for a relation that is deemed illegal and therefore impossible to be punished.[273] This case demonstrates the trouble of interpretation, but also reveals the political dimension, in that the judge decided to refrain from exercising "quasi-legislative power"[274] through which every Muslim household with a slave girl would have been affected.

In the case of *Empress of India v. Ram Kuar*, decided on March 8 1880, the court reversed the decision of a lower court that had convicted Ram under the IPC Section 370. Ram was accused of having sold the girl Deoki to his brother as a slave. The judges of the Allahabad High Court renounced his conviction and explained that the exchange of money

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[268] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871, italics in the original.
[269] The first edition of *Willam Blackstone's Commentaries on the Laws of England* was published in 1765. New editions building on this work were published by James Stephen. The judge probably referred on the edition published in 1868, compare: STEPHEN, 1868, p. 245.
[270] The judge's verdict depicted a nuanced discussion of the matter and showed some difficulty in arriving at a decision. Chatterjee uses this case to argue, supported though by references to other correspondence, that "some British officials and judges (...) denied that terms in local languages like *bandi*, *dasi* (…) actually translated as 'slaves,'" CHATTERJEE, 2005, p. 139, italics in the original. In her quotations from the case, Chatterjee reduces her quote in such a manner that it supports her claim that "delegalisation ensured the erasure of the word 'slave' from the superior British officers' memoirs", CHATTERJEE, 2005, p. 139, which in this very case of *Firman* does not hold. In addition, Chatterjee leaves out the detail that the Deputy Magistrate had interpreted the IPC to apply to this case.
[271] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871.
[272] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871.
[273] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871.
[274] ANDERSON, 2004, p. 440.

and a buffalo was not payment because Ram's brother intended to marry Deoki.[275] The Allahabad High Court, referring to *Mirza* (1871), reiterated the meaning of the *Act V* of 1843. Judge S. J. Stuart defined slavery as follows:

> A slave is a creature without any rights or any status whatsoever, who is or may become the property of another as a mere chattel, the owner having absolute power of disposal by sale, gift, or otherwise, and even of life or death, over the slave, without being responsible to any legal authority. Such is the determinate and fixed condition of the slave, and it is not, as ruled in the above case [Mirza (1871)], a condition capable of degrees.[276]

The judge followed the definition of chattel slavery and declined to follow the ruling in *Mirza* (1871). Regarding the scope of the IPC Section 370, the judge acceded that "it is exceedingly difficult to understand what is meant to be intended by s. 370."[277] He concluded that it only applied in cases where a person was forced into the condition of slavery, or in cases where the treatment of the labourer was "inconsistent with the idea of the person so treated being free as to his property, services, or conduct, in any respect."[278] One of the members of the bench, Judge Oldfield, argued that the IPC Sections against slavery

> were enacted for the suppression of slavery not only in its strict and proper sense, viz., that condition whereby an absolute and unlimited power is given to the master over the life, fortune and liberty of another, but in any modified form where an absolute power [was] asserted over the liberty of another.[279]

Judge Stuart, on the other hand, argued that there could not have been a case of slavery because slavery in India stood abolished by the *Act V* of 1843.[280] While observing the transaction and the exploitation of Deoki, the judges agreed that because Ram's brother intended to marry her, this case did not constitute slavery and the conviction of Ram was overturned.[281]

In the case *Madan Mohan Biswas v. Queen Empress* (1892), already referred to in the introduction, the bench of judges at the Calcutta High Court was confronted with a case of debt bondage on a tea plantation. The defendant was accused of having not payed his employees, but instead, were indebted to him, but allowed to live on his premises and also

[275] MAYNE, 1861, p. 303; *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 732.
[276] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 726.
[277] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727.
[278] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727.
[279] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 731.
[280] Judgment of Judge Robert Stuart C. J., *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 736.
[281] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 732.

given food. He physically punished the complainants when they refused to work, confined them during the night and did not allow the workers to leave the plantation.[282] The court struggled with the case and sought the opinion of several members of the bench and finally decided as follows: The conviction of the appellant by the magistrate and Deputy Commissioner based on the IPC Section 374 was upheld, while the conviction by the commissioner under Section 370 of the IPC was rejected. The judge reiterated that the accused had given the labourers advances which virtually never diminished and thereby forced the workers to remain in his debt. These advances also formed the basis for the conviction. The accused had kept the labourers under close watch in coolie-lines[283] and physically assaulted them.[284] The fact that most of the plaintiffs were women seemed to devalue the victims' testimony in the eyes of the judges:[285] One of the judges ignored their statement of the violent means with which Madan had treated them. Disregarding the fact that they had inherited the debts of their husbands, he explained that the workers had voluntarily entered the bonded labour relation and, therefore, Madan was not guilty of an offence under IPC Section 374.[286] But with the majority of the judges agreeing that the labourers were compelled to work against their will, Madan was convicted under IPC Section 374. He had to serve one year of imprisonment and pay a fine of Rs. 500.[287] This is one rare case, where a tea planter was convicted for the abuses committed against the plantation workers. Since a judicial double-standard prevailed in the system, tea planters of British origin, who constituted the large majority,[288] were usually not prosecuted.[289] This case was probably only possible, because, as the name of the defendant indicates, the accused was an Indian.

In 1909 the High Court of Bombay sat over a summary decision in *Emperor v. Namdeo Sakharam* on five differently filed cases under the *Breach of Contract Act*, submitted by one magistrate. The court held that "[i]t is quite plain that the powers conferred on Magistrates, and the advantages given to employers by this Act can, unless great care is exercised, be used to interfere with the free competition of labour to secure adequate

[282] WOODMAN, 1894, p. 1107.
[283] The houses where the coolies lived were constructed in lines to allow for convenient surveillance, VARMA, 2011, p. 191–193.
[284] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892.
[285] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 575.
[286] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892.
[287] WOODMAN, 1894.
[288] In the 1920s, about 90 percent of the tea plantations were under European supervision, WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 349.
[289] Cf. KOLSKY, 2010, 4, 79-86, 93-107.

wages."[290] The court even presumed that the rather meagre advances in combination with the payment of wages were actually made on purpose for those labour relationships to fall under the *Breach of Contract Act*.[291] In the estimation of the court, the act was created to cover advances of wages, but in the present case the advances made were "in reality a debt."[292] Since neither the terms of the contract were known, nor could it be proven that the labourers had entered the contract voluntarily, the cases were dismissed.[293] Similarly, in 1913, the District Magistrate of Shahpur in Punjab, Major O'Brien, explained that contracts under the *Act XIII* constituted "a modified form of slavery."[294]

Some judges did make use of the discretion of interpretation, as the following examples demonstrate. Bansi had borrowed Rs. 13 from Ram Sarup and left him without repaying the principal. He also failed to repay the interest that was stipulated in the contract that would apply if Bansi did not complete the period for which he was bound to work for Ram Sarup.[295] Subsequently, Ram Sarup filed a suit against Bansi to recover the principal as well as interest. The *Munsif*,[296] alarmed by a government report but convinced that Bansi's case did not constitute a "slavery bond,"[297] referred the case to the High Court requesting guidance on how to evaluate the case before him.[298] Judge Coxe explained in *Ram Sarup Bhagat v. Bansi Mandar* (1915):[299]

> It binds down the executant to daily attendance and manual labour until a certain sum is repaid in a certain month and penalises default with overwhelming interest. It is remarkable that the suit, which is brought on this bond, is not contested, and this, in the Munsif's opinion, is probably due to the fact that the executor is too poor to defend himself. Such a condition is indistinguishable from slavery, and such a contract is, in our opinion, opposed to public policy and not enforceable.[300]

With this argument, it was sufficient that the interest rate in effect, as the *Munsif* observed, bound consecutive generations of bonded labourers to the families they served.[301] It was not an issue whether or not the contract was entered voluntarily. Furthermore, by referring to the poverty of the labourer, the judge invoked external factors that contributed to the effect that

[290] *Emperor v. Namdeo Sakhgaram*, Bombay High Court, November 30 1909.
[291] ANDERSON, 2004, p. 433.
[292] *Emperor v. Namdeo Sakhgaram*, Bombay High Court, November 30 1909.
[293] *Emperor v. Namdeo Sakhgaram*, Bombay High Court, November 30 1909.
[294] *Report on the Administration of Criminal Justice in the Punjab*, 1913, quoted in ANDERSON, 2004, p. 447.
[295] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 742–744.
[296] Judge at the lowest court level.
[297] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 743.
[298] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 743.
[299] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915.
[300] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 744.
[301] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 743.

labourers ended up being bound for indefinite time to their employers. Coxe explained that these contracts were not enforceable.[302]

Judge Mullick, deciding *Satish Chandra Ghosh v. Kashi Sahu* (1918), came to a similar conclusion as judge Coxe in *Ram* (1915). Referring to the case of *Ram*, Mullick explained that such contracts were invalid as long as the labourer went unpaid for his work and where the terms of agreement were set in a way to make it impossible for the labourer to redeem his or her debt. Such conditions, so Mullick, amounted to slavery and often resulted also in following generations being trapped in the bond of their ancestors.[303] Mullick's enumeration of offences committed under the *kamia* system underlined the similarity to chattel slavery. In his response to the request to share his opinion on the Draft of the *Bihar and Orissa Kamiauti Agreements Act*, the Secretary to the Government of Bihar and Orissa Huback wrote: "The contracts almost invariably purport to impose penalties on running away from service; and it is reported that kamias are in practice passed from one master to another by payment of the advance (…)."[304]

Another example of judicial activism was a case decided in 1916. Two men were convicted for an offence of the IPC Section 370 for having sold and purchased Vellan. Vellan was, like his father, first employed by Edavad Adharam. When he took a credit from Koroth Mammad, the two employers settled the ensuing conflict over this labourer by writing a transfer contract:[305]

> I execute to you and give you today (…) (this) jenmam deed giving you Velandi's son Pulayan Kurungot parkum Vellan, with his heirs. The sum that I received from you in cash today is Rs. 10. For this sum of Rs. 10, you should get work done for you by the aforesaid Vellan and his offspring that may come into being as your jenmam and act as you please.[306]

Because Koroth brought a suit against Edavad Adharam, the two ended up being convicted under the IPC Section 370, which they appealed. In 1917 the judges of the Bench, Rahim and Napier, were of different opinions as to whether this transfer of the debt amounted to slavery and therefore an offence of the IPC. Rahim translated the Malayalam term *jenman* as property and *pulayan* as 'rice slave,'[307] and the question he raised was if Vellan was "sold and bought

[302] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 744.
[303] *Satish Chandra Ghosh v. Kashi Sahu*, Patna High Court, April 8 1918.
[304] Letter from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, National Archives of India, November 1920, 39, Item No. 1.
[305] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 334.
[306] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 335.
[307] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 335.

as a slave."[308] If the employers had given him housing and taken care of him during times of sickness and not paid him a measure of rice per day, he would have been a slave, according to Rahim's estimate. Furthermore, Rahim argued, Vellan entered a contract with another employer, which also removed him from the shadow of slavery.[309] Since Vellan had also agreed to the transfer, and the whole situation was similar to the practices in domestic services to have servants work generation after generation for one family, Rahim explained that "it would be an outrage on one's common sense to suppose that domestic servants of this class occupy the position of slaves."[310] That Koroth had tied Vellan to furniture and prevented him from leaving did not raise Rahim's attention; he instead argued that employers detaining their servants against their will would not amount to slavery, but wrongful confinement.[311] This offence provides punishment by imprisonment for up to one month and a fine up to Rs. 500, while IPC Section 370 provides imprisonment for up to seven years. Rahim was in favour of releasing the plaintiffs.

Napier, on the other hand, also struggled with the meaning of the term slavery.[312] Looking into the *Act V* he found it did not actually ban slavery—this was only achieved by the IPC.[313] In discussing the relation of Vellan to his employer, Napier remarked that the credit Vellan had taken from his second employer and the remuneration in paddy he received was set in a way to never pay off the debt.[314] Napier found additional evidence of slavery, when he recounted that Koroth had restrained Vellan by chaining him to a bed.[315] While Napier repeatedly pointed out that workers in general, and also Vellan, consented to being bought, sold or hired out,[316] he did not follow the course of using this consent as evidence against slavery. Even though this was voluntary bondage, based on custom, Napier closed his statement by explaining the situation clearly fell under the purview of Section 370 of the IPC.[317]

Since judges Rahim and Napier could not agree, the Chief Justice got involved.[318] Chief Justice J. Ayling agreed that it was difficult to arrive at a judgement in absence of a

[308] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 335.
[309] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 337–338.
[310] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 340.
[311] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 341.
[312] Cf. *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727.
[313] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 343–344.
[314] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 345.
[315] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 348.
[316] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 348.
[317] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 348.
[318] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 341.

definition of the term 'slave.'[319] Ayling, delivering the final judgment, held that "the transaction in question was a sale of Vellan and his offspring as mere chattels and that the appellants were guilty of an offence under section 370, Penal Code."[320] Regarding the conviction of Edavad and Koroth, Napier suggested that the prison time of two months already served was sufficient, as well as a reduction of the fine to Rs. 100. Because the accused believed they had acted rightfully, and also acted in conjunction with the "general practice"[321] of the region—therefore not knowing that they committed a crime—the punishment appeared to Napier as "unnecessarily severe."[322] Ayling supported this argument.[323]

This case exemplifies the fluidity of the concept of bonded labour as defined in the introduction: Looking at the contract between the two plaintiffs, Ayling explained that the agreement was proof of the fact that Vellan and his descendants had been sold "as mere chattels."[324] And while Ayling agreed that up to some point the plaintiff's treatment of Vellan was not suspicious, the situation shifted the moment that Vellan "chose to assert his independence"[325] by taking another loan with a different employer. Koroth exercised an absolute right just like a master over his slave, when he physically punished and constrained Vellan to prevent him from leaving.[326] Turning to the claim in ownership, Ayling remarked vis-à-vis the contract between Koroth and Edavad that it equalled the transaction of chattels.[327] Therefore, the relevant issue was not just the treatment of Vellan, the exercise of "absolute power,"[328] but also the claim which was expressed by this contract, despite its unenforceability in a court. This judgment diverged from earlier cases in two ways: In the cases of *Firman* (1871) and *Madan* (1892), the exercise of violence was not taken into account in order to ascertain the criminal offences. In earlier cases, the contract was used to legitimise the exploitation and violence—in *Madan* (1892), as well as *Mirza* (1871), the contracts served as proof that labourers had entered the bonded labour relationship as free agents and were therefore enforceable. In *Koroth* the contract served as supporting evidence that an offence had been committed.

[319] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 349.
[320] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 334.
[321] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 348.
[322] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 348–349.
[323] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 352.
[324] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 350.
[325] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 351.
[326] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 352.
[327] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 350.
[328] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 347.

In the cases *Ram* (1915) and *Satish* (1918), the judges moved even further from earlier judgments by addressing the poverty of the labourers and found their exploitation repugnant. At the same time, they made bonded labour arrangements amenable to the definition of chattel slavery by identifying features, such as 'passing on of debts' or outlining a time frame for repayment that often exceeded a worker's life-time. But they did not define bonded labour as a form of slavery in its own right; they followed the definition of chattel slavery, as in the case of *Koroth* (1917).[329] These elements of chattel slavery identified in bonded labour contracts allowed the judges in *Ram* (1915) and *Satish* (1918) to rule within the IPC's provisions. This is also noteworthy since earlier rulings used the definition of slavery to the very opposite end: To remove bonded labour from the purview of the IPC, as for instance in *Firman* (1871).

The WBCA contained a provision for contracts not to exceed the period of three years. Several courts in the years between 1882 and 1919 therefore rejected the applicability of the *Act XIII* because the contracts under consideration exceeded the legal time period. The judges argued that the respective contractual agreements of lengthy or indefinite periods amounted to slavery.[330] But also in cases where the 'time requirement' was met, judges found the use of the WBCA illegal, explaining that it practically legalized slavery.[331]

It is interesting to note how most of the cases discussed above were actually initiated: In *Bissonauth* (1863) the employer sued his worker and ended up being convicted.[332] This was also the case in *Ram* (1915)[333] and *Satish* (1918).[334] A similar situation occurred in *Koroth* (1917), where one employer accused the other employer over the transfer of a bonded labourer and found himself convicted for slavery.[335] In all these trials no labourer had initiated the case; the employers had brought themselves under the purview of the law. These cases appeared to be treated as cases of slavery by lower executing actors, such as magistrates, and also at the lower judicial level. Consequently, they prosecuted employers either under the *Act V* or the antislavery sections of the IPC. More conservative rulings of the high courts reversed these decisions of the lower judicial instances, as in *Madan* (1892). A more detailed analysis

[329] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 349–352.
[330] AVINS, 1967, p. 43.
[331] Madras High Court Rulings, December 12, 1873 MILLS, 1875, p. xxx–xxxi; for similar rulings refer to *Queen-Empress v. Budhu Rat Un* (1891); *Queen-Empress v. Bhagooji Rat Un* (1892); *Queen-Empress v. Bhau Rat Un* (1888); *Queen-Empress v. Chonia Rat Un* (1894), all referred to in ANDERSON, 2004.
[332] *Bissonauth Chowdhree v. Bonomally*, Calcutta High Court, August 14 1863, p. 60.
[333] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 743; cf. *Amina v. The Queen Empress*, in which the person exercising a right over another person went to the magistrates but instead of being supported to retrieve the principal lost and the magistrate convicted the plaintiff, Madras High Court, February 18 1884.
[334] *Satish Chandra Ghosh v. Kashi Sahu*, Patna High Court, April 8 1918.
[335] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 348.

of archival records of court cases and magisterial reports[336] in the different states could reveal interesting insights, such as how, in general, cases under the IPC sections on slavery or the *Act V* were initiated.

One major problem regarding the enforcement of the *Act V* of 1843 and later the IPC was poverty. Bonded labourers simply could not afford to go to court and wage a process against their employer.[337] One district judge stated in 1920 that

> The courts are empowered to deal with bargains which are substantially unfair or unconscionable or contrary to public policy. Kamiauti bonds are rarely brought before them. In South Bhagalpur, where the system is said to be common, I am unable to trace a single suit instituted on such a bond in the Banka Munsifi within the last ten years.[338]

The other problem was the lower judicial mechanisms and the intersection of bonded labour relations with caste. Hjejle observes that due to caste and class it was often impossible for lower caste members to challenge their exploitation through legal means, which were primarily available only to higher caste members.[339] Another problem workers faced was the fear of retaliation, which prevented labourers from filing a suit against their exploiters.[340] It is furthermore unclear, how high court decisions influenced the behaviour of lower judicial levels and the magistrates;[341] Anderson discusses one case of 1894, which "should have derailed the enforcement of penal sanctions in Bombay, but it went unreported and had little impact."[342] Further studies could reveal in more detail how the act was implemented on the ground, by the police and magistrates.

The case law has already revealed tendencies of judges to decide slavery and bonded labour cases which also shed light on the changes the institution of the abolition of slavery in India underwent between 1860 and 1919: Around the beginning of the new century, the case law depicts a move from interpreting bonded labour and "slavery proper"[343] as poor law, to a

[336] Kerr points at potential limitations of archival sources from magistrates, that, if existent, would probably not contain sufficient detail, KERR, 2004, p. 19.
[337] HJEJLE, 1967, p. 116; UPADHYAY, 2011, p. 40; ANDERSON, 2004, p. 431.
[338] Letter by E. G. Drake-Brockman, District Judge of Bhagalpur to the Government of Bihar and Orissa, dated January 24 1920, National Archives of India, November 1920, 43, Item No. 10.
[339] HJEJLE, 1967, p. 116; cf. NADRI, 2016, p. 188.
[340] KLING, 1966, p. 81.
[341] ANDERSON, 2004, p. 446.
[342] ANDERSON, 2004, p. 446–447, referring to: *Queen-Empress v. Chonia* (1894).
[343] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871.

violation of 'public policy'[344] that thrived on the poverty of the victims and needed to be abolished altogether. Bonded labour contracts based on the *Breach of Contract Act* were found unlawful when the nature of work was not clarified.[345] Also, when wages were set to be too low, the Bombay High Court found no grounds to enforce such contracts within the purview of the WBCA.[346] And in 1919 a court admitted that the resistance of a labourer against his or her exploitation was actually legitimate.[347] The judges demonstrated an increasingly critical view on the practices related to the WBCA, but also slavery and bonded labour, and were increasingly willing to try them under antislavery provisions of the IPC.

Conclusion

During the period between 1843 and 1920 the institution of the abolition of slavery underwent several gradual changes. The institutional rules were weak—slavery only became a criminal offence when the IPC came into force in 1862. Just a year before the adoption of the IPC, the central government adopted the WBCA, which first was limited to three presidency towns and then was increasingly extended to the whole British Raj. Workers became criminally liable for breaches of contract and were bound to serve their master; therefore, the WBCA essentially constituted the legalisation of coerced labour.[348]

The political arena did not offer a veto possibility to the preservers of the status quo, and here I suggested treating this as weak veto possibilities, since the Governor-General alone throughout this period had the legislative power to adopt or reject legal proposals. I considered two hypotheses, H4b and H6b, and proposed that if the dominant change agents were antislavery actors they would behave as insurrectionaries, and cause either displacement or layering. Along hypothesis 6b, I expect proslavery actors to be the change agents, who would behave as subversives and cause layering. Actors in favour of exploiting labour, who could only somewhat be defined as proslavery actors, were one of the two principal change agents,[349] who openly pressed for legislation in their favour, but without attacking the abolition of slavery directly. The Government of India first rejected suggestions to adopt

[344] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915; cf. Letter from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, National Archives of India, November 1920, p. 36.
[345] *Re Kenga* (1917), discussed in AVINS, 1967, p. 43; Allahabad High Court, January 8 1918.
[346] *Emperor v. Kondia Gopal Katkari* (1919), discussed in AVINS, 1967, p. 43.
[347] *Pancham v. Emperor*, discussed in AVINS, 1967, p. 43.
[348] ANDERSON, 2004, p. 426.
[349] LAMBERT, 2016, p. 156; the other principal change agents were the judges in the high courts.

legislation towards criminalising breaches of contract. Change became possible because of facilitating processes,[350] which made the timing of actors pressing for change so important. After the struggle over power in the Indian rebellion, the Government of India took measures it had earlier rejected, but which constituted a then welcome tool to control Indian subjects: The new labour legislation provided for the penalisation of breaches of contracts.

The actual content of the WBCA is reflective of the prevalent paradigms. The ideology of work became manifested in contracts and was reinforced by the courts: In cases concerning the WBCA, as well as bonded labour cases tried under the IPC, even exploitative relations were justified with the contractual obligation to which the labourers voluntarily had committed during the first half of this episode. The voluntary self-enslavement via contract became a possibility that stood in contradiction to the idea of freedom. Hay and Craven add that "[f]reedom of contract [did] not mean freedom to abandon the contract."[351] The belief in the contract and the belief of bonded labourers in their obligation to repay the debt[352] transcended the question of work—the contract did not only bind bodies, but also minds: Ahuja describes this link between contractual obligations in which workers challenged their maltreatment and working conditions, but not the work they had committed to.[353] The ideology of work, the paternalist paradigm, and the legitimacy of violence became virtually inscribed in WBCA legislation. These paradigms were the breeding ground on which the continued existence of coerced labour was possible, and bonded labour was the outcome of the inherent logic of the ideology of work, paternalism and violence.

Pateman observes that "[i]n contract theory universal freedom is always a hypothesis, a story, a political fiction. Contract always generates political right in the forms of domination and subordination."[354] The court cases show how contracts clouded the asymmetrical, violent relationship between unequal parties and legitimised the vertical use of violence. With both parties consenting to the contract, it also certified the denial of responsibility of the employer and the state towards labour. Regarding a WBCA case in which a worker had agreed to the terms of a contract that effectively could lead to starvation,[355] the judge put it bluntly: "[H]e must be held to do so with his eyes open, and knowing well what he was about."[356] This was a similar argument made in the case *Madan*, also quoted in the introduction of this dissertation,

[350] LAMBERT, 2016, p. 156.
[351] HAY/CRAVEN, 2004, p. 26.
[352] MUNDLE, 1979, p. 121–122.
[353] AHUJA, 2013, p. 11–12.
[354] PATEMAN, 1988, p. 8.
[355] ANDERSON, 2004, p. 444.
[356] *Lyall & Co v. Ram Chunder Bagdee*, (1872), quoted in ANDERSON, 2004, p. 444.

where the judge explained that the IPC Section 374 did not apply, because the workers had submitted voluntarily to bonded labour.[357] Through the acknowledgement of contracts and further legislation providing the legal basis of exploitative contracts, the state removed itself from the responsibility to enforce the right to freedom. By contract, labourers themselves agreed to and legitimised their exploitation. The labourers made themselves available to punishment if defecting from the terms of the contract to which they had voluntarily submitted.

This interpretation of contractual obligations was challenged and experienced increasing exposure: At the international level, the *Zeitgeist* moved towards the 'norm cascade,'[358] the second stage of the norms' development. The opposition of the International Labour Conference to criminal sanctions for breaches of contract put pressure on the Indian Government from the outside. At the same time, the resistance of labourers and the increasing attention of the independence movement on labour issues, as in the *Champaran Satyagraha*, placed the British Raj under pressure from within. The newly admitted Indian members to the councils reflected the nationalist movement's interest in labour, even though their pressure through regular requests to remove the WBCA—supported by reference to international developments—failed due to the absence of veto possibilities. The question of labour and labour exploitation became an issue of legitimacy and at the end of this episode, coerced labour developed into one of the sites on which the struggle of the colonial subjects against the colonising power was fought.

The Government of India adopted the IPC in 1860 and thereby added a layer on top of the *Act V* of 1843. This layer did not remove the old rules of the *Act V* but introduced new ones. In contrast to the provisions of the WBCA, the IPC did not undermine the spirit of the *Act V* but changed its enactment: The IPC allowed for active enforcement of the abolition of slavery—legal actions and criminal punishments that were not possible under the *Act V*. And even though marginal in numbers,[359] the antislavery sections of the IPC were used against employers to convict them, as shown in the case law and criminal reports.

The WBCA constituted another layer, placed on top of to the *Act V* and the antislavery section of the IPC. This layer impacted the abolition of slavery by undermining it. Employers profited from weak antislavery legislations that, by lack of definition, did not make breach of contract legislation an impossibility. The WBCA developed a life of its own and, as a

[357] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, p. 581.
[358] FINNEMORE/SIKKINK, 1998, p. 895.
[359] ANDERSON, 2004, p. 450; DAS, 1931, 57, 58.

consequence, change also occurred at the enforcement level: Employers advanced minimal sums to bring workers under the breaches of contract legislation or invoked it in contracts as a threat against the workers. Acting as parasitic symbionts, they enforced contracts and stretched the legal means to their advantage in order to coerce workers—the Indian tea plantations or indigo production are instructive examples. These changes can be described as drift at the outcome level and affected a large number of workers, even though, effectively, many of these arrangements did not necessarily hold up against magisterial or judicial scrutiny. But labourers also used the breaches of contract legislation and exercised a degree of agency: Rather than returning to work, some chose to go to prison, as the example of the tea plantation shows.

In relation to the WBCA, Anderson observed a trend towards opposition of enforcing the WBCA since the 1890s.[360] In the case of bonded labour arrangements, the court judgments also depict a shift towards evaluating these cases as violations of antislavery legislation: In the late nineteenth century, debt bondage was upheld by the courts as legitimate. The definition of slavery followed the definition of chattel slavery and was used as argument against allowing bonded labour to fall under the IPC. By the beginning of the new century, this definition of slavery turned towards a new assessment. By making use of their discretion of interpretation, the judges became the second principal change agents,[361] progressively assuming the behaviour of the defenders, protecting the spirit of the abolition of slavery. In the beginning of this episode, the actual content of a contract, as well as the treatment of labourers, was not considered by the judges to constitute a punishable offence. Both elements were reconsidered: While there were already activist decisions in the beginning of the episode and also conservative decisions by the end of this episode, in more and more cases judges began to interpret contracts made under the *Breach of Contract Act* as slavery, and rejected bonded labour arrangements for the same reason. By adopting an alternate interpretation of the available rules, judges caused change through conversion, in which the "rules remain[ed] formally the same but [were] interpreted and enacted in new ways."[362]

What remains open in these cases on the antislavery sections of the IPC is the question of why the judges shifted their interpretation. Their decisions increasingly turned towards including bonded labour relations, as well as those fixed under breaches of contract, effectively bringing these offences under the IPC's section against slavery. While not evident

[360] ANDERSON, 2004, p. 447.
[361] LAMBERT, 2016, p. 156.
[362] MAHONEY/THELEN, 2010b, p. 17.

from the court rulings, it appears that judges were not acting in a vacuum: They were aware of the political environment in which they worked—in the case of *Firman* (1871) the judge's decision was explicitly politically motivated. The increasing criticisms against the Raj, international developments that indicated the development of an antislavery *Zeitgeist*, and the ideationally widening gap between the norm of abolition and reality, did not go unnoticed by the judges. The courts' changed interpretation of bonded labour and slavery aligned with the beginning of a 'norm cascade'[363] that took place at the national level in India, and the beginning of the next episode.

[363] FINNEMORE/SIKKINK, 1998, p. 895.

Chapter 4
2nd Episode: British Raj, 1919-1946

By the beginning of the 1920s, the British crown had ruled over large parts of India for more than 60 years. The Indian elite grew increasingly frustrated about their limited opportunities to participate in governing the country. Since the year 1906 *swaraj*,[1] self-rule, became the defined goal of the Indian National Congress (INC), formulated in the resolution of the Calcutta session. Other political parties, such as the Muslim League, founded in December 1906, followed in formulating this goal.[2] Gandhi began the non-cooperation movement in 1919,[3] and Ambedkar, the political leader of the Dalits and a Dalit himself, launched campaigns against casteism around 1925. At the beginning of this period, World War I had just ended. Millions of Indians had participated in the war and the colonial power expected new demands from the nationalist movement.[4] The British responded to the Indian call for *swaraj* with reforms of the political and administrative system which allowed larger participation of the Indian elite and in the estimation of the British secured collaborators for the colonial interest.[5] In 1919, the Montagu-Chelmsford reforms formulated in the *Government of India Act*[6] partially accommodated several requests of the Indian national leaders.

At the international level, the British fostered the development of the League of Nations (LN), of which India became one of the founding members. Grant argues that the creation of the LN was a project promoted by the British. It constituted a venue through which the declining Empire attempted to construct a world government to maintain its influence. After all, the LN was the mediator for territorial redistributions within Africa and the Middle East.[7] These mechanisms allowed the control over territories through a mandate system; the exercise of sovereign power by an international agency influenced by the British

[1] The term *swaraj* was first coined by left wing nationalists Bal Gangadhar Tilak (1905) and Aurobindo Ghose (1906); Mohandas Gandhi popularised the term with his publication *Hind Swaraj* (1909), MYER, 1995, p. 19; HARDGRAVE/KOCHANEK, 2008, p. 42–43.
[2] MISRA, 1970, 53, 67.
[3] HARDGRAVE/KOCHANEK, 2008, p. 48.
[4] MISRA, 1970, p. 59.
[5] CHIRIYANKANDATH, 2008, p. 48; MITRA, 2017, 41, 46.
[6] *Government of India Act 1919*, Parliament of the United Kingdom, 1919.
[7] GRANT, 2005, p. 10.

government.[8] With the establishment of the LN, international legislation on slavery, as well as the situation in India and all the other member states, became part of the international agenda.

My focus is on the institutional changes at the state level. But the developments at the international level and the communication within the colonial administration and between the colonial state and the international organisation, also provide an insight into the slavery, forced labour and bonded labour situation in India. The communication reflects the perception of the British colonial rulers and their attempts to implement the abolition of slavery in India. Therefore, next to secondary sources, I rely on primary sources available at the India Office Records of the British Library (London), and the National Archives of India (Delhi). Internal communication between the India Office, the Government of India and the presidencies and native states are sources I use, among others, to trace the communication on labour exploitation. Governmental reports on agriculture, and labour, and special reports, such as on labour in Assam, are other sources important for this chapter. In 1928 the International Labour Organisation (ILO) opened its regional office in New-Delhi, with Dr. P. P. Pillai as its director. Between 1947 and 1969 the office composed detailed monthly reports on the developments in India, relevant to the ILO.[9] These reports have been digitised and are available online.[10]

Institutional Characteristics

In this period, international organisations began to independently assume a rule-making role. The ILO, the LN and its successor organisation, the United Nations (UN), developed conventions to set international standards which member states are invited to follow. Two important conventions, the LN *Slavery Convention* of 1926 and the ILO *Forced Labour Convention* of 1930, were adopted during this episode. India became a member to all relevant conventions,[11] which means India had to incorporate these norms into national law. In the following I address the changes of the political context and the institutional characteristics of the abolition of slavery at the beginning of this episode.

[8] *Covenant of the League of Nations*, Art. 22, League of Nations, June 28 1919; GRANT, 2005, p. 10.
[9] AHUJA, 2012, i.
[10] Georg-August Universität Göttingen/CeMIS.
[11] India signed the UN *International Convention with the Object of Security the Abolition of Slavery and the Slave Trade* (*Slavery Convention*), League of Nations, 1926, on June 18 1927; the UN *Protocol amending the LN Slavery Convention*, United Nations, 1953, on March 12 1954; India ratified the ILO *Forced Labour Convention* (C29), International Labour Organisation, 1930, on November 30 1954; India ratified the ILO *Convention concerning the Abolition of Forced Labour* (*Abolition of Forced Labour Convention*) (C105), International Labour Conference, 1957, on May 18 2000.

Discretion of Interpretation

By 1919, the institution of the abolition of slavery was enshrined by a set of two weak laws: The IPC Sections 367, 370, 371 and 374, and the *Act V* of 1843. The *Workman's Breach of Contract Act* of 1859 (WBCA) constituted a layer, which undermined the spirit of the abolition of slavery. On the other side, judges at the high courts increasingly interpreted bonded labour, as well as contracts concluded under the WBCA, as violations of the IPC and the *Act V*.[12]

Table 10. Characteristics of the formal institution, 1920

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Act V, 1843	No	N.A.	No	No	No	No
IPC, 1862	No[13]	No	Yes	Yes	No	Yes
Case law since 1915	Yes[14]	Yes[15]	N.A.	Yes	N.A.	N.A.

The case law, which defined bonded labour as slavery, is included in the evaluation. Even though the case law was not binding and also not consistently applied, the judges in the high courts began to give definitions of slavery explicitly, because the *Act V* and the IPC did not provide a definition.[16]

Level of Enforcement

The judges' statements referred to in the chapter of the first episode on the prevalence of bonded labour demonstrate the awareness of the judiciary of the problem of slavery and

[12] Cf. *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917; *Satish Chandra Ghosh v. Kashi Sahu*, Patna High Court, April 8 1918.
[13] IPC Sec. 370 punishes the buying and disposing of a person as a slave "against his will" and Section 375 prohibits unlawful compulsory labour, prescribing punishment for compelling "any person to labour against the will of that person." Beyond these qualifications, there is no definition of what a slave or slavery is.
[14] In *Ram* (1915), *Satish* (1918) and *Koroth* (1917) the judges compared identified elements of chattel slavery in the cases of bonded labour and therefore illegal.
[15] *Ram Sarup Bhagat v. Bansi Mandar* in 1915 found that debt bond contracts amount to slavery; *Koroth Mammad and Another v. The King-Emperor* in 1917 found that the transfer of debt from one creditor to another creditor is punishable under legislation prohibiting slavery.
[16] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871; *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 349.

bonded labour and their estimation of this issue being wide spread.[17] The judges were also familiar with published work that reported on the continuation of slavery and bonded labour after the *Act V* and the IPC came into force. Judge Napier, for instance, referred in his argument[18] to the two volumes of William Logan's *Malabar* (1887) in which Logan described the working conditions of the lower caste members in agriculture as slavery.[19] Based on the census of 1857, the total slave population comprised 187,812 people in the Malabar district.[20]

The *Report of the Assam Labour Enquiry Committee* of 1906 on the tea plantations observed that an increasing number of labourers were bound by the WBCA. In its examples of labour exploitation carried out under breach of contract legislation, illegal private arrest, excessively low payment, indebtedness of labourers to planters, and "unduly severe punishments,"[21] serve as testimony to the exploitation of labourers that compared to slavery.[22] But the commissioners declared that the WBCA "is serving its purpose as a stepping stone towards free labour."[23] The second report on Assam became available in 1922 and confirmed the observation of labour exploitation amounting to slavery and the suggestion to repeal the *Act XIII* of 1859.[24]

The reports discussed in the previous episode, such as the *Census of India on the Punjab and NFP* (Northwest Frontier Province) and the *Reports on the Administration of Criminal Justice in the Lower Provinces of Bengal and Punjab*, show that the colonial administration was aware of the continued existence of slavery and bonded labour.[25] In 1920 one member of the council explained that "in Palamau the Settlement Officer came to the deliberate conclusion (…) that at the time when he reported, there were no less than sixty thousand persons, or close upon 9 percent of the whole population of the district, subject to this pernicious kamiauti system."[26] Referring to the *Bombay Census Report* of 1921, Shukla writes that 84,302 *halis* were on record in the census.[27] *Halis* were, like *kamias*, agricultural labourers who bound themselves to a master who gave them an advance; in return they

[17] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871; *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 728; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 339–340.
[18] *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 345.
[19] LOGAN, 1951 [1887], p. 146–147.
[20] LOGAN, 1951 [1887], p. 148.
[21] Assam Labour Enquiry Committee, 1906b, 1, 142.
[22] Assam Labour Enquiry Committee, 1906b, 1-2, 105-06.
[23] Assam Labour Enquiry Committee, 1906b, p. 105.
[24] Government of Assam, 1922, 91, para. 177.
[25] ANDERSON, 2004, p. 450.
[26] Sir Walter Maude, extracts from the Proceedings of the Legislative Council of Bihar and Orissa at a Meeting, held on July 30 1920, National Archives of India, November 1920.
[27] SHUKLA, 1937, p. 115.

pledged their labour. They were not allowed to leave their master until the debt was repaid.[28] Subsistence paid in cash or kind was added to the debt. Thereby the debt never decreased and, according to Shukla, who conducted a study in the 1930s, it became impossible for labourers to repay their debt and they were therefore tied to their masters permanently.[29] According to Shukla, landholders were able to secure cheap labourers by binding them as *halis*. But with growing opportunities to find work elsewhere—the mines or railway construction—running away became an increasingly viable option for *halis* to end their bondage.[30]

The state was quite aware of grave labour exploitation in the form of bonded labour and its potential to qualify as slavery. Since the high court judges began to rule against bonded labour by interpreting some of its elements in the terms of chattel slavery, the gap between the ideal and the continued existence of bonded labour became more nuanced. These reports and references demonstrate the gap between the spirit of the abolition of slavery and its actual enforcement, which was also perceived by the judges and commissioners. The enforcement of antislavery legislation was weak, ineffective and hampered by contradictory legislation, namely the *Workman's Breach of Contract Act* of 1859.

Paradigms and *Zeitgeist*

By the beginning of the 1920s, the tipping point for the norm of the abolition of slavery towards the second stage was reached at the international level. From then on, the 'norm cascade'[31] took place. The Peace Conference after World War I laid the foundation for the formalisation of the norm of the abolition of slavery with the *Constitution of the International Labour Organisation*.[32] The constitution of the ILO also became part of the *Treaty of Versailles*,[33] which contained the *Covenant of the League of Nations*. It explained that its members "(a) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children (…); (b) undertake to secure just treatment of the native inhabitants of territories under their control."[34]

This period was crucial for the international formalisation of the abolition of slavery: Several member states to the LN participated by signing and ratifying the *Slavery Convention*

[28] SHUKLA, 1937, p. 116.
[29] SHUKLA, 1937, p. 116–119.
[30] SHUKLA, 1937, p. 132; HEMINGWAY, 1906, p. 111; cf. HJEJLE, 1967, p. 125.
[31] FINNEMORE/SIKKINK, 1998, p. 895.
[32] Peace Conference, April 1 1919.
[33] *Treaty of Peace with Germany*, Allied and Associated Powers/Germany, June 28 1919, Part XIII, 227.
[34] League of Nations, June 28 1919, Art. 23, in Allied and Associated Powers/Germany, June 28 1919, p. 57.

of 1926. As discussed in the theoretical chapter, the adoption of the LN's and ILO's convention against slavery and forced labour, and growing membership to these conventions between the 1930s and 1940s, marked the beginning of the third stage of the norms internalisation.[35] The discussion on the *Slavery Convention* at the League showed that the third stage was not yet reached by the 1920s: The extraction of forced labour by the population in general was defended openly by the Portuguese. The Portuguese representative explained that the abolition of forced labour "to the native races (…) implies for them a right to idleness;" and its abolition interfere[s] with the development of these countries."[36]

The process of writing the *Slavery Convention* already started in 1922.[37] The drafting of the convention involved back and forth communication between all the member states and the LN. The process which the British Parliament initiated for the abolition of slavery in the British Dominions in 1833, reached a culminating point in the 1930s. Gaining the status of taken-for-granted-ness,[38] this period affected the ideas and behaviour of proslavery actors, as well as antislavery actors. Under the forming *Zeitgeist* at the international level, proslavery actors were becoming less likely to openly express their support for slavery in public and less likely to resist policy changes towards that effect. At the same time, the international legislation provided antislavery actors with ammunition in their fight against slavery. The influence of international legislation became visible, as demonstrated further below, when actors referred to conventions or copied them in part or in in full when creating national legislation.

At the level of the British Raj, the *Zeitgeist* had completed the stage of the norm's cascade. With the adoption of the *Act V* and the antislavery provisions of the IPC, two policies, even though weak, abolished the possession in human beings, slavery *de jure*. The WBCA and the continued existence of bonded labour undermined the spirit of the norm, but the process of internalisation[39]—the norms transformation into case law—had begun, even though not in a coherent and proactive fashion.

In the first episode the following ideas or paradigms were crucial in understanding the policy output: 1) The non-interference, (2) the protection or paternalist and (3) the ideology of work paradigm. With the adoption of the IPC in 1860, the British gave up the non-

[35] FINNEMORE/SIKKINK, 1998, p. 895.
[36] Note submitted to the first sub-committee of the Sixth Committee by the Portuguese Delegate, General Freire d'Andrade, quoted in ALLAIN, 2008, p. 11–12.
[37] ZOGLIN, 1986, p. 308.
[38] FINNEMORE/SIKKINK, 1998, p. 895.
[39] RISSE/SIKKINK, 2008, p. 17.

interference paradigm vis-à-vis slavery. The case law on the *Workman's Breach of Contract Act* of 1859 demonstrated an inclination of judges around the turn of the century to not enforce obviously unfair contracts. Some even found these contracts to be similar to slavery and observed that the provisions of the WBCA were misused.[40] In bonded labour cases judges also increasingly tended to reject the enforceability of these contracts after the turn of the nineteenth century.[41]

The latter two paradigms persisted. The protection or paternalist paradigm received its international expression and legitimation in the *Covenant of the League of Nations*. Even though not affecting India, Article 22 justified the continued control of Western states over African and Middle Eastern territories, and reflected the imperial paternalist position of Western states, which also marked the relation of Britain towards India:

> [T]hose colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.[42]

Therefore, within the protection and paternalist paradigm fell claims over supervising and guiding the development of a colony and its people. This in turn justified colonialism itself. Maul argues that by the end of the World War, and in light of increasing economic exploitation of the colonies, the members of the ILO agreed that different standards applied to Western and colonial labour. The colonial powers shared the duty to educate the people under their guidance[43]—an idea that was expressed in the context of the tea plantations, quoted earlier.[44] What changed within this paradigm was the idea of the protective function of slavery in cases of famines as poor relief. In the court cases this idea was increasingly rejected, for instance, in the case *Ram Kuar* (1880)[45] or in *Ram Sarup* (1915).[46] But statements such as in the report of the Assam Labour Enquiry Committee still depict the paternalist and protection paradigm with which governmental commissioners legitimised labour exploitation:

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[40] *Emperor v. Namdeo Sakhgaram*, Bombay High Court, November 30 1909.
[41] Cf. *Bissonauth Chowdhree v. Bonomally*, Calcutta High Court, August 14 1863, *Satish Chandra Ghosh v. Kashi Sahu*, Patna High Court, April 8 1918.
[42] *Covenant of the League of Nations*, League of Nations, June 28 1919, Art. 22.
[43] MAUL, 2007, p. 481.
[44] Governor of Bengal, quoted in MOHAPATRA, 2004, p. 476.
[45] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 728.
[46] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 744.

> The existence of abuses in the direction of the underpayment and indebtedness of the labour force on some estates was acknowledged, but the conclusion was arrived at that these were not general, and that 'more than half a million immigrants drawn from the very poorest classes of India are indebted to the industry for a much more liberal supply of food and clothing than they could ordinarily have expected to enjoy in their homes.'[47]

This line of argument justified conditions as they were. At the very moment of vulnerability, the profiteers of labour gained access to control over labour. Discursively, the win-lose situation, in which the labourer lost in any case, turned into a win-win situation: The labourer became the benefactor of his or her own exploitation while the profiteers could style themselves as the charitable actors.

The third paradigm—the ideology of work coupled with the acceptance of the use of violence—is reflected in the discussion of the LN in the making of the *Slavery Convention* of 1926. Discussing the question of forced labour, the Portuguese delegate's contribution above quoted is telling: Banning forced labour "to the native races (…) implies for them a right to idleness."[48] Idleness, an indulgence the state had to respond to, with violence if necessary. The Portuguese delegate essentially implied that if people did not want to work, then it was legitimate to coerce them. The states in the LN successfully claimed the monopoly on violence to force people to work. They enshrined this right in the exception clause of the *Slavery Convention*,[49] as well as in the ILO *Forced Labour Convention*, which reserved the deployment of forced labour to the state.[50] The "classical colonial crime,"[51] forced labour, became entrenched within the development discourse of the colonial powers since the beginning of the twentieth century.[52] Development became the goal that justified all means of labour extraction and legitimised the use of violence.[53] This was also the idea of the British administration in India: The statement of the commissioners reporting on Assam in 1906, that the WBCA was "serving its purpose as a stepping stone towards free labour,"[54] reveals that, also for the British, the goal of development legitimized the extraction of forced labour and the use of violence.

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[47] Assam Labour Enquiry Committee, 1906b, p. 2.
[48] Note submitted to the first sub-committee of the Sixth Committee by the Portuguese Delegate, General Freire d'Andrade, quoted in ALLAIN, 2008, p. 11.
[49] Art. 5 (1) "(…) compulsory or forced labour may only be exacted for public purposes."
[50] Work during compulsory military service, moral civic obligations, penal labour (may not be sourced out to private entity), work during emergencies, International Labour Organisation, 1930, Art. 2 (2).
[51] MAUL, 2007, p. 490.
[52] And continues in the twenty-first century, MAUL, 2007, 484, 494; on the ideology of development, see ZIAI, 2004, p. 102–103.
[53] MAUL, 2007, p. 484–485; ZIAI, 2004, p. 102–103.
[54] Assam Labour Enquiry Committee, 1906b, p. 105.

The contractual obligation, the idea of the paramountcy of the contract,[55] was replaced with another idea. This idea squarely fits into the protection paradigm, but can also be addressed as a new paradigm: The rights paradigm. The rights paradigm is reflected particularly in the INC's call for the realisation of citizenship rights and political participation. This paradigm was developed in the first proposals for an Indian constitution in 1895.[56] The INC and other parties had begun to formulate proposals for self-government. The *Constitution of India Bill* of 1895 did not provide for the abolition of slavery or the right to freedom, but it contained a call for fundamental rights.[57] The rights paradigm had gained momentum due to developments in India and elsewhere: Namely the growing labour movement and the revolution in Russia of 1917.[58] While the trade union movement in Great Britain was already successful in the 1870s in removing breaches of contract legislation from the metropole,[59] the first Indian labour union, the Bombay Mill-Hands Association, was formed in 1890; this was followed by the founding of the Madras Labour Union in 1918, and the All India Trade Union Congress (AITUC) in 1920.

Political Context

The Government of India proposed reforms to integrate demands of political participation and to channel them in such a way, as to slowly as possible move India towards self-government.[60] The Central Government of India enacted the Montagu–Chelmsford reforms—the *Government of India Act* of 1919. Another reform of the *Government of India* Act followed in 1935: The Montagu–Chelmsford reforms were intended to appease nationalist demands for *swaraj*. These reforms allowed the Indian educated elite to access the political system of the British Raj, but ultimately did not go far enough in the opinion of the nationalist leaders.[61]

[55] MOHAPATRA, 2016, p. 222.
[56] AUSTIN, 1966, p. 52.
[57] Art. 16; cf. AUSTIN, 1966, p. 53.
[58] MISRA, 1970, p. 59.
[59] HAY/CRAVEN, 2004, p. 8.
[60] METCALF/METCALF, 2006, p. 167–168.
[61] METCALF/METCALF, 2006, p. 167; HARDGRAVE/KOCHANEK, 2008, p. 46–47; MISRA, 1970, p. 80. For more detailed historical background of the events that led to these reforms: METCALF/METCALF, 2006, Chapter 6.

Executive and Legislative Arena

Since 1920, the King of England, who was also the Emperor of India, was represented in India by the viceroy. The Montagu-Chelmsford Reforms of 1919, implemented in 1921, had a decentralising effect between the central government and the provincial governments. At the central level, the reforms introduced two chambers: The former Imperial Legislative Council was split into the Council of State (upper house of the legislature) and the Indian Legislative Assembly (lower house of the legislature). The majority of the members of the lower house were elected, based on male, propertied and age restricted franchise,[62] ensuring that "[t]he interests represented through special constituencies were those of landholders and Indian commerce."[63] The Central Legislative Assembly consisted of 144 members, of which 41 were nominated and 103 elected on the basis of community and class (52 General, 30 Muslims, 2 Sikhs, 20 Special). The Council of State consisted of 60 members, of which 26 were nominated and 34 elected based on the same principles (20 General, 10 Muslims, 3 Europeans and 1 Sikh).

The Governor-General—the Executive Government—had the power to certify or veto the discussion of bills or accept a bill as passed, even if only one or none of the houses adopted it, as it happened for instance in the case of the *Rowlatt Act*. Among the Central Subjects belonged customs, external relations, and defence, as well as a reserved list of subjects relating to provincial matters. Relevant in relation to the issue of labour and slavery was the domination of the central legislature over criminal and civil law.[64] The Central Legislative Assembly members and members of the Council of State could ask questions and move motions. In case the veto of the executive did not come into play, the two houses of the legislatures could veto against submitted bills.[65] To pass a bill, the majority of the total members present in each house was required.[66] Even though conditional on the final assent by the Governor-General, the Central Legislative Assembly constituted a potential veto point,[67] because a bill could also fail or succeed, depending on majority within the legislature and

[62] MISRA, 1970, 72-3, 75. This meant that of 240 million potential voters, 17,346 were allowed to cast their vote for the Imperial Council, and 909,874 for the Legislative Assembly, CHOPRA, 2003, p. 216.
[63] MISRA, 1970, p. 75.
[64] MITRA, 1921, p. 123–125.
[65] MISRA, 1970, p. 75.
[66] *Government of India Act* of 1919, Parliament of the United Kingdom, 1919, 29, Art. 39.
[67] MISRA, 1970, p. 75–76; IMMERGUT, 1990, p. 397.

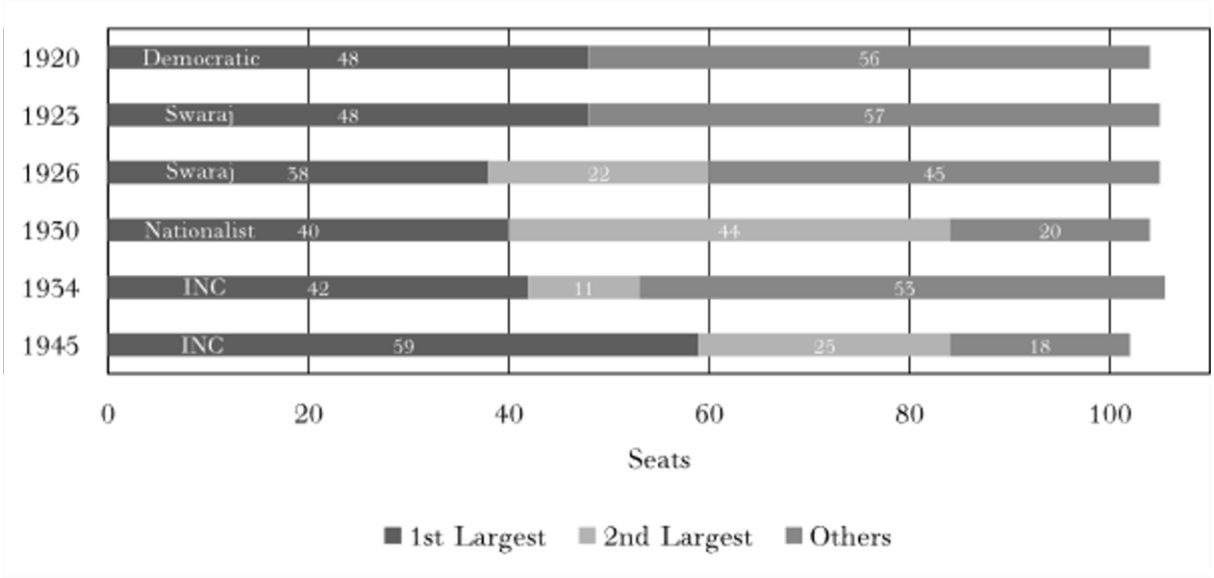
when the Governor-General did not make use of his veto power. But members of the Central Legislative Assembly could not override the decision of the Governor-General.[68]

The administrative sub-divisions of British India were the presidencies and provinces: Madras, Bombay, Bengal, Assam, the Punjab, the United Provinces (UP), Bihar and Orissa, the Central Provinces and Burma.[69] The legislatures in the presidencies were elected on male, adult, propertied franchise and Indian ministers were accountable to these legislative assemblies.[70] Each presidency and province had its own government. These administrative entities ruled directly over their territories. In the provinces, votes on bills had to earn the majority of the present members, and therefore, the provincial legislative assemblies also constituted a veto point. But as in the central legislature, the provincial legislature could move and adopt bills, but the governor had to assent to the proposal and he could veto or adopt any bill without support of the councils or assemblies.[71] The provincial legislature had the power of "[i]mposition by legislation of punishments by fine, penalty or imprisonment, for: enforcing any law of the province relating to any provincial subject."[72] Consequently, at both levels, the central as well as at the provincial legislatures, laws could be enacted to deal with bonded labour, forced labour or slavery.

Several elections for the Legislative Assembly were held between 1920 and 1945. The INC boycotted the first four elections.[73] The following graph summarises the election results between 1920 and 1945:

[68] IMMERGUT, 1990, p. 397.
[69] These were the nine major provinces. Bihar and Orissa became two separate Provinces in 1936 and Burma became a separate colony from India in 1937, HARDGRAVE/KOCHANEK, 2008, p. 46.
[70] METCALF/METCALF, 2006, p. 168; MISRA, 1970, p. 70.
[71] MISRA, 1970, p. 75.
[72] MITRA, 1921, p. 129–130.
[73] SCHWARTZBERG, 1992, p. 222.

Figure 7. Central Legislative Assembly seats, 1920-1945



Central Legislative Assembly seats, 1920-1945. Source: Data derived from SCHWARTZBERG, 1992, p. 73.

Due to the INC's boycott, the already curtailed representation of the Indian population was even more marginal with a huge number of potential voters not participating.[74] In all Central Legislative Assemblies, usually one party almost achieved the total majority of seats: First the Congress Democratic Party, then the Swaraj Party held the majority of seats and could only be outvoted if all other parties aligned. In 1926, the Swaraj Party formed a coalition with the Nationalist Party.[75]

The Swaraj Party and the Congress Democratic Party were committed to the protection of workers' rights.[76] The Congress Democratic Party declared the following goals:

> (2) Securing for the labouring classes, agricultural and industrial, a fair share of the fruits of labour, a fair minimum wage, reasonable hours of work, decent house accommodation, and adjustment of relationship between capital and labour on equitable basis, and promoting organisations suitable for the purpose. (…)
> (4) Absolute prohibition of Veth, Bigar and Sarbarai.[77]

In the Swaraj Election Manifesto, the party declared not only to commit to undermining the functioning of the British Government in the assembly and council, but also to "protect the

[74] GUHA, 1977, 122, 148.
[75] BANERJEE-DUBE, 2015, p. 309.
[76] A minority faction of the Congress that actually did participate despite the INC's boycott, BANERJEE-DUBE, 2015, p. 309; CHANDRA/MUKHERJEE/PANIKKAR *et al.*, 1989, p. 224.
[77] Lokmanya Tilak: *Manifesto for the Congress Democratic Party*, 1920, p. 329, reprinted in SITARAMAYYA, 1935, p. 327–380. *Bigar* is another transcription for *begar*, or a typographical error in the original source. *Veth* and *Sarabai* are also terms like *begar* that describe forced labour extracted by the state.

rights of labour, agricultural and industrial, and adjust the relations between landlords and tenants, capitalists and workmen."[78] Furthermore, the Swaraj Party committed to the programme of the INC.[79]

Among the parties, a strong majority could be expected to vote for stronger bills to protect labourers or to remove legislations, such as the WBCA. There was no party discipline,[80] but the majority towards the issue was very likely to be stable. This means that within the legislative arena was no veto point, neither could the legislature overturn executive decision.[81] Therefore, veto possibilities of the legislature were weak. Potential defenders of the status quo could be landholders and members representing Indian commerce, elected into the assemblies.[82] But since within the Central Legislative Assembly the major parties were committed to the cause of labour rights and protection, the success of defenders of the status quo in support of proslavery interests in the legislature was unlikely. Potential resistance by actors identified with the proslavery cause would fail within the assembly due to majority vote—only by lobbying the government beyond the assembly and council could the proslavery interest try to prevent change.[83]

Electoral or Public Arena

The electorate did not pose a veto point, since referenda were not a feature of policymaking in the British Raj.[84] And even though in principle members of the two houses were responsible to their electorate, this electorate was limited in number and constituted an elite not representative of the full Indian population. But the people continued to have the opportunity to petition, and to influence the representatives in the legislative assemblies and councils. With the growing number of participants in the independence movement, the influence of public opinion became increasingly significant for the behaviour of the Government of India. This was already the case in the first episode, when the government chose to withdraw from

[78] *Policy and Programme of the Swarajya Party as Approved by the All-India Party Conference, 16-17 August 1924*, p. 4, Swarajya Party, 1957.
[79] CHANDRA/MUKHERJEE/PANIKKAR *et al.*, 1989, p. 224.
[80] Representatives were not voted into the central and provincial assemblies based on party representation, but religion, caste, and profession, MISRA, 1970, p. 79.
[81] IMMERGUT, 1990, p. 397.
[82] SIMON, 1988 [1930], p. 168.
[83] MISRA, 1970, p. 75.
[84] IMMERGUT, 1990, p. 397.

supporting economic activities of the indigo planters because it could bring into question Britain's imperial dominance over India.[85]

Hypothesis

The level of discretion of the institution appeared high: Slavery and forced labour were only defined by case law, but not implemented consistently. The enforcement level was also weak, with continuous reports on the existence of bonded labour and awareness among policymakers and judges that the law failed the labourers. This included the WBCA, under which labour continued to be coerced through the threat of penal sanctions. At both levels, the international as well as the national, the *Zeitgeist* was still proslavery. But it was gradually moving towards the next tipping point,[86] visibly to actors, towards an antislavery *Zeitgeist* with the government and colonial power submitting to international labour standards and growing formulations of rights from the independence movement.

The institutional discretion for interpretation and implementation were high, with weak rules and a low level of enforcement. Antislavery actors were explicitly dissatisfied with the conditions, while the proslavery actors profited from the status quo. Proslavery actors likely had a resistant disposition towards any change that would better protect labourers. They were also presumably the upholders of the status quo, but because of the development of the *Zeitgeist*, they probably could no longer do so as openly as they had fifty or sixty years earlier. Consequently, antislavery could be expected to be the actors of change.

With weak enforcement and weak rules, antislavery actors were likely seeking change at the rules level. In the assembly antislavery actors were probably backed by the majority of the members since there was a cohesion of the largest parties regarding labour. As elections manifestos and draft constitutions demonstrate, they aimed for changes at the rules level, acting like insurrectionaries, who were actively seeking change through displacement of the institution.[87] In this particular case this meant inducing change at the rules level to remove policies that undermined the spirit of the abolition of slavery. In this episode Hypotheses 4b is also tested: The change agents, antislavery actors, are expected to behave like insurrectionaries causing either displacement or layering.

[85] CHAN/WRIGHT/YEO, 2011, p. 54.
[86] FINNEMORE/SIKKINK, 1998, p. 900.
[87] MAHONEY/THELEN, 2010b, p. 24.

Gradual Changes

The changes that occurred during the second episode were located at three different levels: The international level, the state level and the presidency level. I interrogate all three levels, but focus mainly on the central legislature and government, addressing the presidency level in passing. Since there are several presidencies, I chose one example: The Bihar and Orissa Presidency. I include the international level, since the legal framework developed at the international organisations was intended to influences the domestic level: States that ratified international conventions have to incorporate their provisions into national law. The communication back and forth between the state and the international organisation give intimate insight into the issue of slavery, bonded labour and forced labour in India.

Presidency Level

Under the Presidency of Orissa and Bihar, the provincial government proposed an act against forms of bonded labour. According to J. A. Huback, the Government of Bengal already became engaged with the issue in 1909 when he observed during settlement operations that "services of low caste individuals were transferred in the same way as moveable property."[88] In 1912, the administration found that the *kamiauti* system of debt bondage prevailed in the presidency and a draft bill was in the drawers. But only with more available information collected, especially from the Palamau and Hazaribagh districts, did this bill get the necessary push forward.[89] Furthermore, Huback referred in his arguments to the case law, namely the case *Ram Sarup* (1915) and *Satish Chandra* (1918), in which the judges ruled that debt bondage was "indistinguishable from slavery."[90]

In 1919 the Government of India sent out a request to the Presidencies to submit a report on the measures taken to the *kamiauti* system.[91] Within the exchanges upon this request, the correspondence of the administration of Orissa and Bihar clearly set the case of bonded labour within the context of slavery:

[88] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, National Archives of India, November 1920, 36, Item No. 1.
[89] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, National Archives of India, November 1920, 36, Item No. 1.
[90] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, National Archives of India, November 1920, 36, Item No. 1; *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 744; Satish Chandra Ghosh v. Kashi Sahu, Patna High Court, April 8 1918.
[91] Letter from the Hon'ble Mr. J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, item No. 1, dated September 12 1919, National Archives of India, November 1920, p. 35.

> The Criminal Law Commission of 1873[92] reported that the slave population of India comprised from one-sixth to two-fifths of the entire population. Although in 1843 an Act was passed declaring that rights in slaves would no longer be enforceable in the Courts, the Indian Penal Code of 1860 was the first law which provided penalties to check the system. Nine years later Mr. L.C. Forbes, the Settlement Officer of the Government Estates in Palamau, reported that large numbers of various low castes and aboriginals were *kamias* or "bondmen."[93]

Huback also quoted in his correspondence Mr. A. Forbes, Commissioner of Chota Nagpur, who wrote on the *kamiauti* system in 1898 and explained that state intervention was not necessary, since the *kamia* system would "die out of itself."[94] Huback was convinced that bonded labour was highly prevalent in several districts in Bihar and Orissa, counting 60,000 in total, or nine percent of the population in the Palamau district alone. But contrary to the expectation that the *kamiauti* would die out by itself, he believed that it actually increased.[95] Furthermore, Huback reported that there were no records of prosecutions under the IPC Section 370 and 374, even though he was convinced that there had been eligible cases.[96]

Initially, the bill was titled *The Bihar and Orissa Agricultural Labourers Bill* and was intended to limit the time period of bonded labour arrangements. It also provided for the regulation of other terms and conditions of agricultural labourers in Bihar and Orissa, the Santal Parganas and the Angul District. The act provided that all bonds—*kamia* agreements—were legal, as long as they were written on paper, stamped and officially registered by a magistrate. The bill further regulated that such an agreement could not exceed the period of one year and the labourer needed to be adequately remunerated (Art. 4. (1)). In Article 5 the bill provided that *kamia* agreements are not hereditary. But even this bill contained a provision criminalising the breach of contract: Article 7 (2) provided for a punishment fee if a *kamia* labourer did not fulfil his or her obligation.[97]

Dingwaney explains that the adopted act served rather for the regulation of bonded labour than for the liberation of bonded labourers.[98] Prakash, on the other hand, states that this

[92] The report was actually published in 1880.
[93] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 35, item No. 1.
[94] Mr. A. Forbes, Commissioner of Chota Nagpur, 1898, quoted in a letter from the Hon'ble Mr. J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 35, item No. 1.
[95] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 36, item No. 1.
[96] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 35, item No. 1.
[97] National Archives of India, November 1920; the act is copied in the Appendix.
[98] DINGWANEY, 1985, p. 324–325.

act was "designed to abolish bonded labour."[99] From reviewing the internal discussions, it appears that the intention of the act was somewhere in between: The act did regulate bonded labour—it permitted bondage for the period of one year[100]—but its immediate or complete abolition was not intended. The state tried to become a regulatory party within the employer/worker relation in the *kamiauti* system. The government hoped to contribute to the decline of these bonded labour arrangements.[101] The legislators acted like insurrectionaries: They rejected the institutional status quo, seeking instead to change its rules in order to improve the working conditions of bonded labourers.

The authors of the legislation saw clearly that this act did not directly serve to abolish slavery: The defined "object of this Bill is to deal with agreements entered into by labourers in consideration of advances made to them by their employer."[102] The *Statement of Objectives* addresses the observation that bonded labourers were limited in their physical movement and often inherited the debt, and the government deemed such practices to be "contrary to public policy."[103] Therefore, the intention was to end such relations in the long run.[104] Extracts of the Proceedings of the Legislative Council of Bihar and Orissa[105] at a meeting held on July 30 1920 reveal that also some respondents strongly doubted that this law would have any effect. While the member Nur, for instance, agreed that there was a need for such an act, he explained that this "legislation has not only a legal value of its own from a lawyer's point of view, but it has also a moral value."[106]

The (renamed) *Bihar and Orissa Kamiauti Agreements Bill*, as well as the ensuing discussion in the legislature, demonstrate the despair of the policymakers: They were confronted with an implementation gap, as the continued existence of the *kamiauti* system was contrary to 'public policy'—the *Act V* as well as the IPC. At the same time, the legislators were not convinced that an act would have the intended positive effect and expected the implementation gap to continue. But there was no suggestion to confront violators more vigorously than with the above enumerated measures. From Nur's explanation, the symbolic

[99] PRAKASH, 2002, p. 160.
[100] DINGWANEY, 1985.
[101] *The Bihar and Orissa Kamiauti Agreements Law, 1920: Statement of Objectives*, National Archives of India, November 1920, p. 20.
[102] National Archives of India, November 1920, p. 20.
[103] National Archives of India, November 1920, p. 20.
[104] Extracts from the Proceedings of the Legislative Council of Bihar and Orissa at a Meeting, held on July 30 1920, National Archives of India, November 1920.
[105] This council was constituted before the implementation of the Montagu-Chelmsford Reforms; the first reformed council session was held in February and March 1921, Government of India, 1922, ii.
[106] Extracts from the Proceedings of the Legislative Council of Bihar and Orissa at a Meeting, held on July 30 1920, National Archives of India, November 1920.

value of the law appears of importance, as well as the principle of hope, but also a sense of realism of what was achievable through only passing a law. The law which the Legislative Council adopted was weak: It did not provide penal sanctions for violations and did not bring the *kamiauti* agreements under the purview of the IPC Sections 367, 370, 371 or 374.

Table 11. Characteristics of the formal institution (Kamiauti Agreements Act, 1920)

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Bihar and Orissa Kamiauti Agreements Act, 1920	No	Yes	Yes	No[107]	No	Yes

Other governments and legislative assemblies became also proactive in making legislation against bonded labour: Ambedkar introduced *A Bill to Abolish the Kothi System* in Bombay in 1937;[108] three years later S. V. Parulekar, also member and worker's delegate to the Bombay Legislative Assembly,[109] introduced the *Free or Forced or Compulsory Labour Punishment Bill* on April 13 1939. This bill, which never became a law, was copied in parts from the ILO *Forced Labour Convention*, but aimed at the abolition of bonded labour.[110] In 1947 the Government of Bombay appointed a committee to research the social and economic conditions of *halis*—bonded labourers in the Bombay presidency, and found that 14 percent of the total population of the Surat District were *halis*.[111] In Madras the legislature adopted the *Madras Agency Debt Bondage Abolition Regulation Act* in 1940; and the Central Provinces and Berar adopted the *Kabadi System Regulation in Bastar in Madhya Pradesh* in 1943. In January of 1939 the Legislative Council of Sindh discussed the *Sindh Prevention of Free or Forced or Compulsory Labour Bill*.[112]

The princely states followed with legislation on bonded labour as well: In June 1929 the All India States Peoples' Conference (AISPC), which united several political movements in the princely states, had adopted a resolution in which it requested the Indian princess to

[107] There is no explicit provision in cases of violation beyond deeming contracts void, Art. 4 (1).
[108] Bombay Legislative Assembly Debates, 1937.
[109] The Millowners' Association Bombay, 1939, p. 51.
[110] Bombay Legislative Council, April 13 1939, p. 2796. Bill reprinted in The Millowners' Association Bombay, 1939, p. 319–321.
[111] ILO Delhi Office, June 1947.
[112] For an overview of the available legislations directly or indirectly concerned with bonded labour see DHAMNE/GOVERNMENT OF INDIA, 1956. Unfortunately, in several cases Dhamne only mentions existing legislation or ordinances without indicating their titles.

abolish all forms of compulsory labour.[113] In 1931, the AISPC turned also to the LN, submitting petitions against the extraction of forced labour in the princely states.[114] In Hyderabad, the *Bhagela Regulation* of 1936 and the *Hyderabad Bhagela Agreement Regulation* of 1943 were adopted. The former regulation was reported to the League of Nations.[115] The LN Advisory Committee of Experts praised Hyderabad's effort and invited other Indian states' "attention to the detailed information (…) as to the excellent results obtained by energetic action."[116] Such praise was received with some embarrassment on the side of the British, who explained in internal communication that

> it is understood that their [Advisory Committee of Experts] intention was to imply that the example of Hyderabad might be followed in British India. In their 1938 Report they say that the success (…) of the Hyderabad Government is regarded by the Committee as an example to every country in which forms of agricultural debt-slavery still prevail.[117]

The League of Nations' attention to slavery, as well as the comments by the Advisory Committee of Experts on the *Slavery Convention*, in some cases opened the possibility of change, particularly where the conventions served as templates. In the case of the *Bihar and Orissa Kamiauti Agreements Act*, this was already on the way before the LN or ILO took up their work, but gained momentum as soon as these organisations began to be operational.

International Level

> *I personally have no doubt that, if this Convention is accepted by the nations and carried into effect, it will constitute one of the greatest advances towards complete human freedom that has ever been made. I believe that it will free tens or hundreds of thousands of unhappy beings from conditions which closely resemble slavery and which now exist.*[118]
> *—Viscount Cecil of Chelwood, 1925*

With the *Versailles Treaty*, which officially formalised the end of World War I, the signatories[119] installed the International Labour Organisation[120] and the League of Nations.[121]

[113] ILO Delhi Office, June 1929. The AISPC met for the first time in 1927. Soon, the INC became involved and in 1939 Nehru became its president.
[114] McQUADE, 2019, p. 22.
[115] League of Nations, 1937, p. 57–58.
[116] League of Nations, 1937, 13, para. 61.
[117] League of Nations, 1939, p. 9–10.
[118] Viscount Cecil of Chelwood, British Delegate to the League of Nations, 1925, quoted in ALLAIN, 2008, p. 8.
[119] Germany, United States of America, United Kingdom, France, Italy, Japan, Belgium, Bolivia, Brazil, Cuba, Ecuador, Greece, Guatemala, Haiti, the Kingdom of Hejaz, Honduras, Liberia, Nicaragua, Panama, Peru, Poland, Portugal, Romania, das Kingdom of Yugoslavia, Siam, Czechoslovakia, Uruguay.
[120] Peace Conference, April 1 1919; Allied and Associated Powers/Germany, June 28 1919, Part VIII.
[121] Allied and Associated Powers/Germany, June 28 1919, Part I; League of Nations, June 28 1919.

The *Covenant of the League of Nations*, adopted on April 29 1919, already called its members to make provisions for fair labour conditions in its Article 23 and to end the slave trade in colonial territories. Territories ruled by other nations under B and C Mandates had to abolish slavery under the LN *Covenant* with the exception of public works and services, but for which remuneration of labour became mandatory.[122] The ILO held its first conference in Washington in 1919 and the LN began its operations with its first council meeting on January 16 1920. With the LN and the ILO, the participating states installed two permanent governmental agencies that also committed to the issue of slavery and forced labour. With those two institutions the stage was set: The idea of the norm of the abolition of slavery had taken root, and the norm's cascade was about to take place.

The League of Nations

On September 21 1922 the League of Nations adopted a resolution in which the Assembly decided that the issue of slavery should be on the agenda of the fourth Assembly and requested a report to be prepared by the Council.[123] In the memorandum sent back to the LN, the colonial government outlined the situation in India, explaining as follows:

> Slavery in the more civilized parts of India long ago disappeared; predial servitude, which continued in a mild form in certain areas, died out more slowly.
>
> As the frontier of the Empire extended the Act of 1843 was applied to the newly acquired regions with the least possible delay. (…) For instance in Chitral State on the North West Frontier bondsmen of the type of household servants and field labourer had long been regarded as constituting a valuable form of property. (…)
>
> Reports received from India during the past 10 years show that practices still exist in some places on the confines of the Indian Empire which approximate to slavery. The measures taken are gradually, but rapidly bringing about their abolition. Outside British jurisdiction they will continue; (…).
>
> (…) [I]t is anticipated that slavery will cease to exist in two or three years, just as it had ceased to exist amongst other tribes and in more settled areas since the British Government was introduced. (…)
>
> Meanwhile the so-called slaves are little different from servants. The administered districts are close at hand into which they can move if ill treated or desirous of leaving their masters. While conditions vary slightly along the border in the different tribes with the intensity of the administrative control it can be stated without hesitation that even among the tribes most recently brought under political control the practice of keeping slaves will soon be a thing of the past.[124]

[122] League of Nations, June 28 1919.
[123] National Archives of India, 1923.
[124] Undated memorandum (sent to the India Office approximately between December 1922 and January 1923), National Archives of India, 1923, p. 33–35.

The quoted parts of this memorandum are interesting for several reasons: The authors limited the issue of slavery to the border, tribal and newly acquired areas of the British Raj. These not yet fully administered regions were juxtaposed to the British ruled territory. According to the correspondents, slavery was successfully banished from British India. The British Empire did not reach to the remote border areas, mainly because in the border regions competing forces endangered the implementation of the abolition of slavery.

Through these statements, the idea of the civilising mission shines through: Areas where the British did not rule, law and order were in peril and slavery was still not effectively abolished. The authors of the memorandum even underlined the necessity of British domination over India, if slavery should be abolished, since there can be no trust and reliance on the local rulers and regional customs. Other evidence which was already available indicated that these statements did not reveal the whole extend of slavery in India: During the development of the *Bihar and Orissa Kamiauti Agreements Act*, the estimates on the prevalence of indebted *kamias* suggested that also directly administered territories were affected.[125] Additional evidence published shortly after the above quoted correspondence, in 1928, showed that indebtedness and slave labour[126] could be found "far beyond the confines of a single province."[127]

This memorandum also fails to define slavery. By refraining from giving the terms of reference, the correspondents alleviated the British administration from responsibility and disguised their failure to abolish slavery in the form of debt bondage or extraction of coerced labour under the WBCA. Interestingly, the memorandum described bonded labour, calling it 'predial servitude,' 'modified system of servitude,' or 'practices which approximate to slavery.'[128] Effectively it is not at all clear what these terms meant. And while these descriptions seemed to deny that these forms of slavery and servitude constitute slavery, the very mentioning of these labour relations within this context proved them wrong. The reports of the regional administrations and the cases at the courts, or the efforts of the presidencies, such as the attempt of the Legislative Council of Bihar and Orissa against the *kamiauti*

[125] Letter to the Government of India from the J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 36, item No. 1.
[126] Royal Commission on Agriculture in India, 1928, p. 575 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[127] Royal Commission on Agriculture in India, 1928, p. 573 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]; on debt in agriculture in Punjab, see DARLING, 1925.
[128] Undated memorandum (sent to the India Office approximately between December 1922 and January 1923), National Archives of India, 1923, p. 33–35.

system,[129] were not addressed. The LN was not satisfied with the memorandum, pointed at its shortcomings and requested that the India Office provide clarification on what and how exactly the abolition of slavery was enforced.[130]

The Council of the League of Nations reminded the League members on December 11 1923 to report on the legislative status as well as the status of implementation of the abolition of slavery. The idea was to collect as much information as possible to determine which forms of slavery were prevalent in order to achieve "the gradual suppression of all forms of slavery."[131] On July 9 1924 the Temporary Slavery Commission met for the first time. Issues addressed were, among others, the slave trade, domestic slavery and forced labour.[132] The draft convention was written by the United Kingdom, which also submitted the draft to the UN *Supplementary Slavery Convention* of 1957.[133] The original definition of slavery of the convention was quite extensive, and in the discussions bonded labour was also addressed. In the first meeting of the Slavery Commission several participants clarified that debt bondage should be included,[134] and in 1924, the drafting committee defined slavery as "the status of a person over whom another person or group of persons exercises the power attaching to proprietorship; or is the holding of a pledge or who is complied to serve such other person or group of persons for an undetermined time."[135] The participants included explicitly debt bondage, child marriage, voluntary or involuntary subjections, and domestic slavery.[136]

Within their work on the *Slavery Convention*, the League also requested information of its members on the issue of forced labour. The Government of India forwarded these requests to the presidencies and the *taluks*,[137] asking for reports on relevant legislation, estimates of prevalence and a description of forms of forced labour. Usually the returned reports were rather short, making reference to the IPC being in place, declaring that officials occasionally requested forced labour for public works, though remunerated. These responses were compiled into a memorandum and sent to the India Office. This time the *Bihar and Orissa Kamiauti Agreements Act of 1920* was addressed in the internal communications. The

[129] The regional denomination for bonded labour.
[130] Letter of the League of Nations, December 22 1922, National Archives of India, 1923.
[131] League of Nations, letter communicated to the Council, 1923 National Archives of India, 1923.
[132] Memorandum by the Secretary-General of the LN, *The Question of Slavery*, Geneva, August 4 1924 National Archives of India, 1923, p. 4.
[133] ALLAIN, 2008, p. 7.
[134] League of Nations, 1924, p. 10.
[135] Definition of slavery in the Draft Convention, 1925, printed in ALLAIN, 2008, p. 52
[136] ALLAIN, 2008, p. 76.
[137] Administrative sub-units.

discussants agreed that the act was not effective.[138] The Department of Education, Health and Lands explained that the government was aware of the problem and also the prevalence of the *kamiauti* system in other regions. The memorandum further explained for the Madras Presidency, that the *kamiauti* system is "dying out with the growth of a healthier public opinion and the local Govt. apparently do not consider it necessary to take any special steps to combat it."[139]

In the final memorandum sent to the Indian delegation to the League, *The practice of forced labour so far as it exists in British India* of August 1926, the extraction of forced labour for public purposes was enumerated and the authors chose to include debt bondage, such the *kamiauti* system in this report:

> In theory the system of 'man-mortgage' under which a padayal bound himself or his son, or both, to work for the same master for a lifetime in consideration of an advance of money, is now extinct, but in effect, the system of advances (…) sometimes leads to a not dissimilar condition [of forced labour].[140]

Regarding their success in abolishing the *kamiauti* system, the authors observed that legislations, such as the *Bihar and Orissa Kamiauti Agreements Act*, 1920, were not effective, "mainly owing to the ignorance and inertia of the kamias, whose rescue was intended."[141] While arguing that these forms of labour exploitation were declining, the Government of India reported these forms of labour exploitation as forms of forced labour.

The members of the Temporary Slavery Commission watered down the wording of the convention, and abstained from explicitly naming the different forms of labour exploitation which some of the participants deemed to be slavery. The definition adopted by the LN reads: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."[142] Allain has not found any archival traces on the discussion and explanations as to why the definition of the earlier Draft Convention was not adopted.[143] In his report on the Temporary Slavery Commission, Viscount Cecil of Chelwood

[138] Internal communication, dated April 16 1926, National Archives of India, 1926 June.
[139] Internal communication, Department of E.H. and Lands, dated June 4 1926, National Archives of India, 1926 June.
[140] British Library, June 21 1926 - January 8 1927.
[141] British Library, June 21 1926 - January 8 1927.
[142] League of Nations, 1926, Art. 1 (1).
[143] ALLAIN, 2008, p. 57.

clarified that debt bondage was supposed to be covered in Article 1[144] of the *Slavery Convention*:

> This modification [omission of terms] was made because it was believed that such conditions came within the definition of slavery contained in the first Article and that no further prohibition of them in expressed terms was necessary. This applies not only to domestic slavery but to all those conditions mentioned by the Temporary Slavery Commission and to which I referred last year, *i.e.*, "debt slavery," (…). Even if, as is possible, these last practices do not come under the definition of slavery as it is given in Article 1, the Commission is unanimously of the opinion that they must be combated.[145]

The terms forced labour and slavery in relation to bonded labour were actually conflated: In the very same document, a speech of Sir William Vincent is quoted, in which he described debt bondage as a form of private forced labour. He also mentioned the WBCA, which just had been repealed in India, and brought the extraction of labour and penal sanctions under the provisions of the *Slavery Convention*.[146] And while the draft convention's Article 2 originally contained the words "domestic slavery and similar conditions"[147]—similar conditions were explained to encompass "debt slavery"[148]—these terms became summarised under Article 2 (b) as "slavery in all its forms."[149] The original draft of the Council and the debates of the Temporary Slavery Commission on slavery were in strong contrast to the final output of the convention. Regarding the final definition of slavery, the participating states created a high level of discretion of interpreting the meaning of the convention. Viscount Cecil described it as "general principles which might be adopted usefully by all civilized nations as a minimum code in the matter of slavery."[150] While bonded labour was not enumerated in the adopted convention, the intent was to encompass bonded labour. This was

[144] This observation was also made by the successor organisation, the UN, in 1953 when debating the *Slavery Convention* and the question if and how the UN could continue the work of the LN. While observing that debt bondage and other forms of labour exploitation were originally supposed to be included in the convention, the Secretary-General suggested studying in more detail the current forms of slavery and if they would fall under the purview of the *Slavery Convention*, United Nations Economic and Social Council, January 27 1953, 27, 29.
[145] CECIL, February 5 1927, p. 218.
[146] Report of a Speech by Sir William Vincent in the Assembly, September 25 1926, 244-46, in CECIL, February 5 1927, p. 246.
[147] ALLAIN, 2008, p. 59.
[148] ALLAIN, 2008, p. 56.
[149] League of Nations, 1926, Art. 2 (b).
[150] League of Nations, Journal of the Sixth Assembly of the League of Nations, Geneva 1925, No. 3, September 9 1925, 24-5, quoted in ALLAIN, 2008, p. 8.

underlined by the requests of the Advisory Committee in the mid-1930s that the British colonial power submit follow-up reports on bonded labour.[151]

British India became member to the convention with reservations on June 18 1927. With reference to the possibility of making such reservation provided in Article 9 of the *Slavery Convention*, British India removed several territories from the purview of Article 2(b): The princely states under suzerainty[152] of the British colonial power, Burma, the Naga tracts, the Sadiya and Balipara Frontier Tracts in Assam, the tribal areas of the Naga Hills and the Lushai Hills.[153] Most of those regions had been identified as the un-administered territories, not penetrated by colonial rule, where the British found slavery to be highly prevalent in the memorandum quoted above.[154] The princely states were protected from interference by the British via bilateral contracts.[155] At the League, the representative of India, Sir William Vincent, who earlier was a member of the Indian Government's Home Department, explained that "[t]he reason for this reservation as regards the Indian States is not that slavery is prevalent there, for this is not the case at all."[156] This was a blunt lie, as shown by the internal communications between the India Office and the Government of India, which clearly wanted to protect itself: Referring to the issue, Mr. Patrick explained:

> The reason why it seemed to me desirable to have the word "suzerainty" inserted in the Convention was to guard against the possibility of it being contested before the Permanent Court of International Justice that the Indian States had not been excluded.[157]

The parties to the convention were requested to report on the situation of slavery in their states. The Government of India circulated the final version of the adopted *Slavery Convention* not only to the directly governed presidencies, provinces, and the courts, but also to the representing agents at the princely states for their instruction.[158] The representative of

[151] League of Nations, 1936, p. 24–26, 1937, 12-14, 17.
[152] Territories under suzerainty could legally be exempted from the reach of the *Slavery Convention*.
[153] League of Nations, 1926, p. 177–178.
[154] Undated memorandum (sent to the India Office approximately between December 1922 and January 1923), National Archives of India, 1923, p. 33–35.
[155] MIERS, 2008, p. 28.
[156] Sixth Committee of the League of Nations, 1926, p. 134.
[157] Letter from Patrick to E. J. Turner, India Office, dated June 5 1926, British Library, June 21 1926 - January 8 1927, p. 33.
[158] Letter of the Deputy Secretary to the Government of India in the Foreign and Political Department to the Chief Secretaries to the Governments, the Presidents at the princely states, the Agents to the Government General in the Native States, dated August 25 1927, National Archives of India, 1927b.

the Maharaja of Mysore replied to this request his intention to collaborate on that matter.[159] One summary of the impression of the residents at the princely states on their perception of what could be achieved was less positive. One officer remarked that the princely states accepted the norm of slavery abolition, but that implementation would be achieved only slowly. He indicated that the reasons were traditional customs as well as underdeveloped administrative system.[160]

In light of the interrogations of the League, the Government of India started to collect information on the occurrence of slavery in its administrative sub-units, the residencies. During this information collection, the Chief Secretary to the Government of Bihar and Orissa reported in a letter to the Foreign and Political Department on March 26 1926[161]—probably following the definition of chattel slavery. He explained that the slave trade and slavery "in the common sense of the term"[162] stood abolished. Referring to the *Bihar and Orissa Kamiauti Agreements Act*, he explained that the act failed to end "agricultural bondage, which is on the border line of slavery."[163] This letter clearly depicts the problem of the absence of a definition of slavery and other terms used. This observer saw bonded labour arrangements and noticed their similarity to slavery, when he described them as 'at the border line of slavery.'[164] He also made clear that this problem was not confined to the border regions or small areas, but an Indian-wide problem that needed to be addressed by the central government.[165]

The Chief Secretary to the Government of Madras welcomed suggestions to adopt provisions to align legislation with the *Slavery Convention*. He reported in his letter to the Foreign and Political Department on March 23 1926:

> In theory, the system of "man mortgage" under which a padayal bound himself or his son or both to work for the same master for a life time in consideration of an advance of money is no [now] extinct. But in effect the pernicious system of advances which the ryots (farmers) undoubtedly encourage in order to increase their hold over their

[159] Response letter of the Maharaja of Mysore to the letter of the Secretary to the Resident to the Maharaja of Mysore, dated September 24 1927, National Archives of India, 1927b.
[160] Letter from K. S. Fritze, Political Agent Baghalkhand, to the Sec. to the Hon'ble Agent to the Gov. Gen in Central India, dated June 29 1928, National Archives of India, 1927, p. 159.
[161] Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.
[162] Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.
[163] Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.
[164] Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.
[165] Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.

> padayals sometimes leads to a condition not dissimilar from "man mortgage." In the Malabar District the Cheruma or Pulaya farm-servant is (…) looked upon as a sort of slave and is sometimes even leased out to another landowner as a servant by his own master, but, on the whole, he is kindly treated and well-paid and lives in comparative comfort.[166]

The above cited communications demonstrate that political actors knew of the issue of bonded labour in the presidencies. The notion that these forms of labour exploitation constituted benign forms of slavery persisted. Yet the willingness to comply with international standards was expressed and the administrators saw bonded labour as an issue that was covered by the Slavery Convention.

In the following years, the LN Advisory Committee of Experts on Slavery held extraordinary meetings between 1934 and 1938, at which they reviewed and commented on the submissions regarding slavery made by the governments that were regularly invited to report to the committee. Their work continued into the World War II. The committee observed that "[t]he civilisation and development of Asia have not (…) been successful in abolishing 'debt slavery' and 'serfdom.'"[167] The committee explicitly referred to the submission of the Government of India, which contained memoranda from Madras, Orissa and the princely states of Rajputana and Hyderabad, which reported on their issues with 'debt bondage,' 'debt slavery' and 'hereditary domestic services.'[168] The author of the draft brief on the League's progress regarding slavery observed that the reservations of British India regarding the convention's application, "has created a suspicion in the Slavery Committee and generally at Geneva that apart from the admitted survival of certain systems of debt bondage, graver abuses exist in the [Princely] States."[169] Sir George Maxwell made a submission on India, including the comments to one memorandum provided by Mohandas Gandhi. Maxwell reported on the different forms of debt bondage, *kamia*, *rajwar*, *bhageela*, *hali*, *gothi*, and others.[170] The contribution of Gandhi confirmed that bonded labour was prevalent in the whole British Raj.[171] The Advisory Committee requested that the Government of India submit detailed reports on this issue.[172] The reports that the Government of India received for the committee's meeting in 1939 were forwarded to the advisory committee, but not without

[166] Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.
[167] League of Nations, 1937, p. 12.
[168] League of Nations, 1937, p. 13.
[169] League of Nations, 1939, p. 7.
[170] Sir George Maxwell: *The Rajwars of Bihar and Orissa*, League of Nations, 1939, p. 8.
[171] League of Nations, 1939, p. 9.
[172] League of Nations, 1939, p. 8–9.

omissions: "The Madras and Orissa Report were passed on to Geneva, although in the former case without certain annexures which seemed to present so bad a picture that it was considered desirable to withhold them."[173] The committee observed that the memoranda did not contain information on measures taken against bonded labour—an observation that the Government of India transmitted to the local governments.[174] This international supervision and criticism apparently was met with discomfort by the representatives of British India.

International Labour Organisation

Already laid down in the founding document of the ILO, slavery and forced labour were the core mandates of the ILO. The increasing exploitation of the colonies "required a level of manpower that was simply not to be had on a voluntary basis."[175] In 1926 the ILO took up its work on the issue of forced labour, which would ultimately lead to the adoption of the *Forced Labour Convention* of 1930. The League of Nations' Temporary Commission on Slavery had made references to forced labour and argued that it was the prime matter of the ILO, and, therefore, the League would not concern itself with this issue.[176] In a resolution, the Assembly of the LN asked the Council of the League to inform the ILO on the progress made and to caution the ILO's work on forced labour to ensure to formulate provisions that prevent "forced or compulsory labour from developing into conditions analogous to slavery."[177] In May 1926 an expert commission, the *Committee of Experts on Native Labour*, was established.[178] In 1929 the ILO Governing Body invited the member states to submit comments on the draft convention via circulation of a questionnaire. This was the first time so-called native-labour, or labour in the colonies, became a topic of the International Labour Conference.[179]

Based on the submissions of the member states, the commission concluded that there are three forms of forced labour: Forced labour extracted for general public purposes, forced labour for local public purposes, and forced labour for private purposes.[180] Regarding the first, the committee found that exceptions would be possible in cases of emergencies, such as natural disasters. Where the most abuses were found and where the committee argued forced

[173] League of Nations, 1939, p. 9.
[174] League of Nations, 1939, p. 9.
[175] MAUL, 2007, p. 479.
[176] GOUDAL, May 1929, p. 622; ALLAIN, 2008, p. 105.
[177] Sixth Committee of the League of Nations, 1926, p. 132.
[178] GOUDAL, May 1929, p. 623.
[179] GOUDAL, May 1929, p. 621.
[180] GOUDAL, May 1929, p. 624.

labour should be strictly controlled was the realm of public works, such as the construction of railways. Here the committee suggested provisions regulating the age and gender of the work force and the length of time the worker should be compelled to work, as well as making remuneration of forced labourers mandatory.[181] While the French, Belgian, Dutch, Portuguese and South African colonial powers were against a formalisation of the difference between private and public forced labour, the British were in favour of abolishing forced labour by private agents and managed to correct this distinction.[182]

In Article 2 the ILO *Forced Labour Convention* defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."[183] Being entered 'voluntarily,' bonded labour does not fall under this definition. The *Supplementary Slavery Convention* of 1957 along with the discussion of the Temporary Slavery Commission of the LN, again make clear: Bonded labour was considered a form of slavery and therefore no issue to concern the ILO. This separation of terms and mandates became only blurred in the 1970s.[184] India ratified the ILO convention after independence on November 30 1954.

Conclusion

Looking at the provisions of the LN *Slavery Convention*, bonded labour seems to not fall under the definition of slavery given in Article 1 (1). The discussion at the LN and the comments of Cecil make clear that bonded labour was supposed to fall under the definition, but then got summarised under the provisions of Article 2. Describing the *kamiauti* system as forced labour, for instance, would not be correct within the terminology of the LN and ILO—also because voluntarily entered forced labour arrangements were excluded by the ILO *Forced Labour Convention*. But why did administrative and political actors describe bonded labour as forced labour? In the consulted sources, I have not found an explicit explanation for this terminological conflation. On the one hand, there was clearly no agreement on how to name bonded labour arrangements. The ILO's *Forced Labour Convention* required that forced labourers be remunerated, state sanctioned and supervised. Therefore, it was maybe considered as less problematic and not as evil as slavery, an explanation that would also fit the

[181] GOUDAL, May 1929, p. 634–635.
[182] MAUL, 2007, p. 481.
[183] International Labour Organisation, 1930.
[184] SWEPSTON/International Labour Organisation, p. 10; THOMANN, 2011, p. 221.

earlier evaluations of slavery in India being a 'mild'[185] version of slavery. This is also reflected in the previously quoted statement of the League of Nations, in which they caution the ILO to prevent forced labour to merge into conditions that resemble slavery.[186] The British behaviour towards reporting on bonded labour or slavery in India shows that with the incidence of slavery came a bad reputation of the state; the term 'forced labour' could overcome, to a certain extent, the negative connotation of slavery.

Central Level

If I were viceroy of India (...) I would abolish the system of forced labour which prevails, contrary to law, in all parts of India.[187]
—Lajpat Rai, 1909

In 1919 Malaviya reminded the Imperial Council of his request of 1917[188] to repeal the *Act XIII*, hinting again at the upcoming International Labour Conference.[189] But the matter was not discussed again until four years later.[190] Narayan Malhar (N. M.) Joshi, founder of the All India Trade Union Congress (AITUC, founded on October 31 1920), and recently nominated labour representative to the assembly in 1921,[191] moved a resolution in which he requested the removal of the WBCA and the respective provisions of the IPC in September 1921.[192] He pointed out that these provisions were "putting all sorts of liabilities upon the poorer classes"[193] and that the government was "always kind to the higher classes and not the lower classes."[194] If the act served only the purpose to recover lost advances, he would agree with it. The provisions to criminalise breaching contracts, Joshi argued, resulted in conditions comparable to slavery.[195] By seeking the displacement of the *Act XIII*, he and the members of the assembly acted like insurrectionaries.

B. S. Kamant opposed the repeal, speaking as a representative of employers.[196] He explained that the WBCA served in a variety of ways—Joshi only spoke of very extreme

[185] Indian Law Commission, January 15 1841a, p. 38.
[186] Sixth Committee of the League of Nations, 1926, p. 132.
[187] Lajpat Rai in an Interview, Interviews on Topics of the Month, January 1909, p. 423–424.
[188] He was member of the Imperial Council from 1912 to 1919, and member of the Central Legislative Assembly from 1919 to 1926.
[189] ANDERSON, 2004, p. 448.
[190] Central Legislative Assembly, 1921a, p. 232.
[191] N. M. Joshi Dead, May 31 1955.
[192] Central Legislative Assembly, 1921a, p. 227.
[193] Central Legislative Assembly, 1921a, p. 228.
[194] Central Legislative Assembly, 1921a, p. 228.
[195] Central Legislative Assembly, 1921a, p. 229.
[196] Central Legislative Assembly, 1921a, p. 233.

cases.[197] Kamant argued that the workers themselves requested the advances and only because of the advances was it possible to secure the necessary labour. As an example, he referred to the labour conditions on the tea plantations in Assam, and during the construction of the very building in which the assembly had its session. Civil action against runaway labourers would be ineffective and the WBCA functioned as a safeguard.[198] He responded by trivialising the relationship between the obligation to fulfil a contract and the limitation of the movement of the labourer due to the outstanding debt, claiming that "[t]here is absolutely no question of coercing or torturing (…) [the workmen]."[199] Kamant acted as defender of the status quo. While not explicitly speaking in favour of slavery he also did not deny that these 'extreme cases' occurred; yet, he found coercion in fraudulent cases legitimate. In his defence of the continuation of the WBCA, Kamant relied on the idea of the contractual obligation and the need to uphold this obligation.

Member Barua also expressed his opposition to the repeal of the *Breach of Contract Act*, explaining that the act mostly served to the advantage of the labourer who, especially under strenuous economic conditions, could secure a credit through these advances.[200] Barua contented that

> in the case of advances received in a contract (…) the labourer is never required to concern himself with any thought of paying interest, but (…) the advance itself, is automatically repaid if the labourer is an honest persona and performs the contract as stipulated originally. Then, even if the labourer should prove to be dishonest (…) to perform the contract he is not punished at once.[201]

This representative also expressed his deep trust in the employers and distrust towards the workers. Simultaneously, the paternalist paradigm was the underlying idea—the poor were depicted as being charitably supported by advances, a line of argument that put the burden of responsibility on the victim. The numbers of convictions of labourers for defecting from contractual agreements was officially low, which indicates that the act was a successful tool of coercion.[202] In effect the labourers barely had any legal means at hand to defend themselves against abuses. Furthermore, a labourer's resistance to a magistrate's order within

[197] Central Legislative Assembly, 1921a, p. 233.
[198] Central Legislative Assembly, 1921a, p. 234.
[199] Central Legislative Assembly, 1921a, p. 235.
[200] Central Legislative Assembly, 1921a, p. 239.
[201] Central Legislative Assembly, 1921a, p. 239–240.
[202] ANDERSON, 2004, p. 438.

the provisions of the WBCA was highly unlikely due to the financial burden that would come along with the instigation of a legal case.[203]

Sir William Vincent, member of the government, Home Department, who also became a representative of India at the League of Nations,[204] commented on the discussion and summarised that the Government of India was against the repeal of the WBCA:[205]

> [T]he Government are in some difficulty. It is realised, that there is great deal of sympathy with the principle of complete repeal. Such an idea is in accordance with modern feeling. It is in accordance with the practice in European countries. (…) [W]e found that the majority of authorities were opposed to the course. (…) and it cannot be said with any reason that it [the WBCA] results in slavery or anything like it.[206]

A few years later, this open resistance to the repeal of the WBCA did not prevent Sir William Vincent to explain to the LN that "the Government of India has made (…) every effort to get rid of the evils [of penal contract law] against which this Convention is directed.[207]

Sir William Vincent suggested consulting the local governments and public opinion regarding the repeal of the WBCA and the respective sections of the IPC. Das explained at a later discussion that the circulations of bills were a strategy to delay the adoption of bills.[208] Vincent envisioned eighteen months[209] until the final decision could be made by the house. He explained that if the majority was in favour of the repeal, the Government of India would not veto against it.[210] Representing the government, Vincent made no use of the veto, but he used his power to stall institutional change. Thereby the government tried to preserve the status quo, while at the same time it appeared ambiguous about its own preferences. Referring to 'public opinion,' Vincent made clear that the government was not acting in a black box and willing to remove the WBCA if the opinions collected favoured this move. Upon this promise, Joshi withdrew his resolution under protest—"Cries of 'No, No.'"[211]

On October 1 1921 the Government of India's Home Department asked for the opinion of the governments of the Indian states on the repeal of the WBCA.[212] In the

[203] ANDERSON, 2004, p. 432.
[204] Dictionary of Welsh Biography.
[205] Central Legislative Assembly, 1921a, p. 236.
[206] Central Legislative Assembly, 1921a, p. 237–238.
[207] Report of a Speech by Sir William Vincent in the Assembly, September 25 1926, 244-246, in CECIL, February 5 1927, p. 246.
[208] DAS, 1941, p. 158.
[209] Which would end around March 1923.
[210] Central Legislative Assembly, 1921a, p. 239.
[211] Central Legislative Assembly, 1921a, p. 241.
[212] British Library, 1932.

meantime, the members of the assembly kept the topic on the agenda: The Central Legislative Assembly adopted a resolution to abolish impressed labour on January 24 1922, and N. M. Joshi reminded the government of its task to investigate this matter.[213] This was followed by another resolution to remove the repeal of the WBCA and the Sections 490 and 492 of the IPC.[214]

In early 1923, before the eighteen months had passed, K. C. Neogy moved the *Workman's Breach of Contract Repealing Bill*, asking for the repeal by April 1 of 1923.[215] Neogy reminded the Assembly and the government of the discussion held in September 1921. He substantiated the urgency of the matter based on the report of the Labour Enquiry conducted in Assam, published in late 1922.[216] The committee reported that contracts were extending the eligible duration of one year and that the tea garden employers and the magistrates cooperated in punishing and imprisoning labourers. Furthermore, children under the age of eight years were found to be employed under penal contracts.[217] The Committee expressed its favour of repealing the WBCA, considering "it an anachronism that there should be any penal contract at all," arguing "that the freedom of the coolie is considerably restricted under present system."[218] The Labour Enquiry Committee explained in its report that several tea plantation owners condemned the abuse of the act,[219] but they were against the repeal of the *Act XIII*, which gave them a tool to control labour.[220] Others favoured the repeal of the *Act XIII* of 1859, with one proponent arguing that under these changed conditions, employers had to improve the working conditions.[221]

Based on the insights from the Assam report, Neogy concluded that the act was "an anomaly"[222] that needed to be undone. Representing the opinion of the government, Mr. A. C. Chatterjee summarised the responses to the enquiry of the local governments: With the exception of Bengal and Madras, all governments rejected to repeal the WBCA.[223] Commentators on the Report of the Assam Labour Enquiry Committee suggested that employers would not suffer from a lack of labourers on the plantations if they payed decent

[213] Central Legislative Assembly, 1922a, p. 157.
[214] Central Legislative Assembly, 1922b, p. 77.
[215] Central Legislative Assembly, 1923, p. 2594.
[216] Government of Assam, 1922.
[217] Central Legislative Assembly, 1923, p. 2595; cf. Government of Assam, 1922, 75-7, 83, 85, 92.
[218] Government of Assam, 1922, p. 91.
[219] Government of Assam, 1922.
[220] Secretary, Assam Branch Indian Tea Association, dated December 12 1924, India Office Records, 1905-1929.
[221] Government of Assam, 1922, p. 91.
[222] Central Legislative Assembly, 1923, p. 2596.
[223] Central Legislative Assembly, 1923, p. 2596–2597.

wages to the workers.[224] Chatterjee continued to argue in favour of the provisions of the WBCA, explaining that for big projects labour had to be transported, and without substantial advanced payment, no labour would be secured.[225] Referring to the submission of the Government of Bombay, he explained that the employers needed security, since they invested with advances into the labourers which they could never recover if the worker deserted.[226] Chatterjee did not reject the repeal of the WBCA right away and conceded that a repeal would be possible, but that a time frame until 1926 should be granted to employers and industrialists to adjust to the changed conditions.[227] While he was concerned with the needs of employers, he made no mention of the needs of labourers.[228]

The members of the assembly seemed to use any possible chance to raise the issue: On March 8 1924, N. M. Joshi again tabled the repeal of the WBCA during the Questions and Answers.[229] The renewed discussion took place during the budget session, and some members and the President of the Assembly cautioned Joshi that the repeal of the WBCA was not within the scope of that session.[230] A few days later the issue was raised again but in much more detail. Within the debate on internal labour migration, particularly to Assam, the members of the assembly discussed the continued existence of the WBCA.[231] B. Venkatapatiraju compared the advances to labourers on the Assamese tea plantations to the indentured labour system exercised by the British in the colonies outside of India.[232] Joshi took the chance once more to ask for the repeal of the WBCA and the respective IPC Sections. He also reminded the government again that Neogy had withdrawn his bill and that he expected the Government of India to draft a bill.[233] Using the example of the tea plantations and coolie labour, he specified his observation and compared the practices exercised under the WBCA to chattel slavery: Tea planters exchanged workers and paid each other out while claiming ownership rights over their labourers and when coolies refused to work, they were punished.[234] B. C. Allen argued against Joshi that the WBCA was barely in use, and implied that a repeal was not necessary.[235] In addition, Allen relativised the idea that

[224] Government of Assam, 1922, p. 1.
[225] Central Legislative Assembly, 1923, p. 2597.
[226] Central Legislative Assembly, 1923, p. 2597.
[227] Central Legislative Assembly, 1923, p. 2597.
[228] Central Legislative Assembly, 1923, p. 2597.
[229] Central Legislative Assembly, 1924b, p. 1309.
[230] Central Legislative Assembly, 1924a, p. 1857.
[231] Central Legislative Assembly, 1924a, p. 1854.
[232] Central Legislative Assembly, 1924a, p. 1854.
[233] Central Legislative Assembly, 1924a, p. 1856–1857.
[234] Central Legislative Assembly, 1924a, p. 1858.
[235] Central Legislative Assembly, 1924a, p. 1859.

labour conditions under the WBCA resembled slavery by mocking Joshi, explaining that he was a "slave to his party."[236]

Finally, on September 13 1924 the *Workman's Breach of Contract (Repealing) Bill* was discussed. Sir Alexander Muddiman, member of the Home Ministry, presented the bill.[237] He explained that the WBCA "has been considered for some time to be out of place (…), although it is possible that it may be wanted in some out of the way places."[238] While the representatives of the government had been arguing that the WBCA was hardly used, the bill provided for the repeal by April 1 1926. The delay of two years until enforcement was granted to allow the administration and employers to adjust to the new circumstances.[239] Because the act was created by the government, its veto was unlikely. On February 2 1925 the Central Legislative Assembly adopted the *Workmen's Breach of Contract (Repealing) Bill*.[240]

Three days later, the Council of States discussed the submission by the Government of India that proposed the repeal of the WBCA. One member of the Council of State explained that only the Governments of the Madras and Bengal Presidency had agreed to the repeal, while all other governments rejected it.[241] Manckji Dadabhoy expressed his frustration about the intentions of the government. While still supporting the repeal,[242] he explained also that employers needed protection from unreliable labourers whom they granted large advance payments. He remarked also upon the changed treatment of WBCA cases in the courts and complained: "The Courts sometimes in their zeal in interpreting the Statute have dispensed with the necessity of requiring independent proof and have accepted the mere fact of an advance having been made and of the subsequent bolting of the workman as evidence of guilt and have convicted the parties."[243] Similarly he observed a changed attitude in the Legislative Assembly which depicted a "general spirit of opposition to capitalism."[244]

From the discussions and contributions of members in the assembly and the council, it does not explicitly become clear as to why the government chose to finally move this bill, especially after stalling every move in that direction in the previous years. The government finally let the Central Legislative Assembly repeal the WBCA, even though most of the consulted governments were against the repeal—thereby breaking its promise not to repeal it

[236] Central Legislative Assembly, 1924a, 1860-861, 1867.
[237] Central Legislative Assembly, 1924c.
[238] Central Legislative Assembly, 1924c.
[239] Central Legislative Assembly, 1924c, p. 3424–3425.
[240] Central Legislative Assembly, 1927, p. 629.
[241] Council of State Debates, February 5 1925, p. 99–100.
[242] Council of State Debates, February 5 1925, p. 101.
[243] Council of State Debates, February 5 1925, p. 100.
[244] Council of State Debates, February 5 1925, p. 105.

if the majority of states were against it. The interpretation of the members participating in the assembly debates on this change of heart was that the Government of India saw it as "an anachronism or an anomaly."[245]

Due to the persistence of assembly members like N. M. Joshi who were strongly committed to the representation of labour interests, the repeal of the WBCA was brought about. As a member of the first Indian delegation to the International Labour Conference in Washington in 1919[246] he was probably quite aware of the developments at the international level, even though in the debates, the making of international legislation was not invoked. After all, the *Slavery Convention* was underway and the Government of India had been communicating with the LN about the situation in India for a few years. Consequently, the repeal of the WBCA was not a question of *if* but *when*. With the formalisation of the abolition of slavery also at the international level, the idea of the abolition of slavery progressed towards the third stage, the internalisation of the norm and its acquiring of a taken-for-granted quality.[247]

The members of the Council of States took notice of the developments at the international level and reminded the Government of India about the *Slavery Convention*, questioning its commitment.[248] When member Jaffer posed a question on the abolition of forced labour in India and the status of the *Slavery Convention*, the respondent S. R. Das in the council explained that in certain sectors, forced labour was legally sanctioned, such as in forestry and irrigation, while the extraction of forced labour by private agents was illegal. He conceded that its private use was still ongoing in Madras, Bihar and Orissa, but that measures were taken to end forced labour[249]—as for instance by the *Bihar and Orissa Kamiauti Agreements Act* of 1920. Responding to queries of members of the assembly who referred to newspaper reports on slavery and the slave trade, the government representative explained that slavery was extinct and only a matter of the un-administered areas.[250] Within the discussion of the League, bonded labour was defined as slavery and the Government of India reported on it to the League. But, as shown in the quote above, bonded labour was often referred to as forced labour.[251]

[245] Manecji Dadabhoy, Council of State Debates, February 5 1925, p. 100.
[246] RODGERS, 2011, p. 48.
[247] FINNEMORE/SIKKINK, 1998, p. 895.
[248] Council of State Debates, 1927b, p. 132, 1927a, p. 1103–1104.
[249] National Archives of India, 1927a, p. 2.
[250] Central Legislative Assembly, 1925.
[251] Cf. British Library, June 21 1926 - January 8 1927; Sixth Committee of the League of Nations, 1926, p. 134.

The repeal of the WBCA was a significant step, since with it a tool to coerce labour was removed and bonded labour relations, for instance, could no longer hold under the WBCA in the courts. But with one exception, there were no other attempts at the central level to go beyond repealing the WBCA and to mend the weak provisions of existent slavery legislation, which the high courts had repeatedly addressed.[252] The government actually explained in 1921 that it would not take any steps at the central level, as long as the provincial legislatures took charge of that matter.[253] The discussion of the *Bihar and Orissa Kamiauti Agreements Act* of 1920 showed that this act in fact controlled rather than abolished bonded labour. The only additional policy adopted at the central level was a law prohibiting bonded child labour: After the Royal Commission on Labour had observed this issue and recommended legislation, the government introduced the *Children (Pledging of Labour) Bill* on September 5 of 1932.[254] The Legislative Assembly passed the *Act to prohibit the pledging of the Labour of Children* (Act No. II of 1933) on February 6 of 1933, the Council of State passed it on February 20 of 1933, and the Governor-General assented on February 24. The act, which criminalises turning in children as bonded labourers with punishment for parents, guardians, as well as employers, is still in force.[255]

Formulation of Rights

While at the central level no further steps were discussed or taken to change the institution of the abolition of slavery, the political movements and parties began to explicitly express their position towards the issue of bonded labour, forced labour and slavery, as well as labour rights. In 1927 the Simon Commission, sent from Britain to India to develop suggestions for constitutional reforms,[256] was seen as illegitimate by the Indian population and political leaders: In February 1928, the All Parties' Conference established a committee chaired by Motilal Nehru to propose a constitutional framework developed for Indians by Indians. Among the participating parties and organisations to the conference were the All India Muslim League, the All India Trade Union Congress, the Indian National Congress and many

[252] Cf. *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871; *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917.
[253] Central Legislative Assembly, 1921b, p. 412.
[254] The full text of the bill is in the appendix; reprinted in ILO Delhi Office, September 1932.
[255] Children (Pledging of Labour) Act, 1933, Art. 3, 4, 5, printed in Reforms Office/Government of India, 1939, p. 119–120; TUCKER, 1997, 574, 584.
[256] AUSTIN, 1966, p. 54.

more.[257] Several of them had developed their proposals for an Indian constitution and the committee's report was the result of bringing those proposals, as well as the work of earlier committees of the All Parties' Conference, together.[258] Members of the committee were among others N. M. Joshi, who represented the interest of labour, and Sir Tej Bahadur Sapru, who represented the liberal interest.[259] The committee was instructed to report on different subjects—the structure of parliament, franchise, as well as the "declaration of rights; rights of labour and peasantry and [sic] Indian States."[260] The committee suggested a *Draft Constitution*, published in the *Nehru Report* of 1928.

The committee stressed particularly the protection of fundamental rights, because the colonial government had denied these rights to the Indian people.[261] The report showed also the struggle between the nationalist movement and the colonial government over providing better policies to the marginalised population:

> The problem of the 'depressed' or 'suppressed' classes has come to the front in recent years and their present condition is put forward as an argument against the political advancement of India. We are certainly of opinion that the Hindus are chiefly responsible for this suppression of a large class, but we are equally clear that the solicitude for this class which the British government has endeavoured to show has its basis on reasons other than humanity or love for this class.[262]

Among the fundamental rights provisions suggested by the committee[263] was the right to freedom: "No person shall be deprived of his liberty"[264] and "[n]o breach of contract of service or abetment thereof shall be made a criminal offence."[265] The report concluded that fundamental rights should be secured under any circumstances and be non-derogable.[266] This conception of inalienable rights could be translated to mean that a person cannot even voluntarily sell him- or herself into slavery. The liberty of voluntary submission to enslavement has been formulated by a few case laws.[267] This possibility renders the right to

[257] For a longer but not complete list, refer to: The Committee Appointed by The All Parties' Conference, 1928, p. 20–21.
[258] The Committee Appointed by The All Parties' Conference, 1928, p. 17.
[259] The Committee Appointed by The All Parties' Conference, 1928, 21-2, 23.
[260] The Committee Appointed by The All Parties' Conference, 1928, p. 22.
[261] The Committee Appointed by The All Parties' Conference, 1928, p. 90.
[262] The Committee Appointed by The All Parties' Conference, 1928, p. 58.
[263] The Committee Appointed by The All Parties' Conference, 1928, p. 89.
[264] The Committee Appointed by The All Parties' Conference, 1928, p. 101.
[265] The Committee Appointed by The All Parties' Conference, 1928, p. 101.
[266] The Committee Appointed by The All Parties' Conference, 1928, p. 90.
[267] Cf. *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892, *Ponnusami v. Palayathan*, Madras High Court, March 7 1919, *Sreenivasa Iyer v. Govinda Kandiyar And Anr.*, Madras High Court, October 9 1944.

liberty meaningless, when it can be given up 'voluntarily'—and the provision in this text would mean to forestall this possibility, while a prohibition of bonded labour was not explicitly stated.[268]

In the Karachi Session of 1931, the INC laid out its proposals for the content of an Indian constitution, the *Swaraj Resolution.* According to Basu, this document contained the first constitutive formulations of social policy provisions.[269] A constitution supported by the INC should include fundamental rights, including labour rights and freedom "from serfdom or conditions bordering on serfdom."[270] The intent clearly aimed at removing debt bondage and the Sapru Committee suggested in its constitutional outlines of 1945 that "[n]o form of forced labour shall be permitted."[271] For the framework of a constitution, the committee also suggested the criminalisation of *begar*.[272] These rights provisions constituted first suggestions for legal provisions that would be adopted for the independent Indian state. But these rights were not only formulations of the prospective constitution, these provisions also intended to mark the difference between colonial rule and the aspiring democratic state.

Enforcement

The public debate on bonded labour and worker conditions reflects the perception of a gap between the ideal of the abolition of slavery and the reality: A. V. Thakkar, social worker and politician who later became a member of the Constituent Assembly, argued that in some Indian states 80-90 percent of the agrarian population were bonded labourers.[273] An open letter of the Servants of India Society received by Mohandas Gandhi was published in the *Hindustan Time*s on July 1 1931. The society described, in the name of 100,000 people from Bihar and Orissa, the destitute situation of the low caste members and exposure to *begar*.[274] In his additional note to the open letter, Gandhi explained that bonded labourer was "not an isolated phenomenon of Bihar. Almost all the provinces have the backward, suppressed, slave communities. They are no heritage from the British. We have had them for ages, and all the greater shame on us for that."[275] In 1937 the economist Shukla confirmed this observation,

[268] The Committee Appointed by The All Parties' Conference, 1928, p. 101–103.
[269] BASU, 2012, p. 363.
[270] SIDHWA/LALWANI, 1932, p. 140.
[271] SAPRU, 1945, p. 219.
[272] SAPRU, 1945, Appendices: xxvii, bold in the original.
[273] A. V. Thakkar: *Presidential address to the Servants of India Society*, July 24 1931, reprinted in ILO Delhi Office, July 1931, p. 17.
[274] ILO Delhi Office, July 1931, p. 18–19.
[275] Mohandas Gandhi, the *Hindustan Times*, July 1 1931, reprinted in ILO Delhi Office, July 1931, p. 19.

stating in his research that the *hali* "has been called an indentured labourer, a free man de jure but serf or slave de facto."[276]

Reliable information on the enforcement status of the abolition of slavery and also bonded labour was hardly available. In November 1945 the Government of India appointed a Committee of Enquiry to research the issue of forced labour chaired by Varahagiri Venkata Giri, who became India's President from 1969 to 1974. Commenting on the committee, the daily newspaper the *Hindu* noted that "[i]t is pointed out that forms of forced labour are still found in certain areas in British India, including some Zamindaries, and in the Indian States, where agricultural labourers are generally compelled to work often without payment of wages."[277] But the committee never came into being, and, according to Giri, this was because the rulers of the princely states resisted this initiative.[278]

Evidence regarding slavery and forced labour can be found in the submissions of the Indian States and the presidencies to the Advisory Committee on Slavery of the LN during the 1930s. As discussed earlier, these submissions suggested that in the directly ruled British Raj and in the princely states, bonded labour and forced labour were prevalent and not only a matter of border regions. Follow-up reports to the LN and the Advisory Committee of Experts on Slavery's evaluation of the performance of British India during the reporting period between 1934 and 1938 were negative.[279] Due to the beginning of World War II, the Advisory Committee ceased to exist,[280] and only in the next episode was the issue again brought to life at the international level.

In the communication with the League the Government of India initially styled the issue of slavery as a problem of the border areas and un-administered territories. But with later reports on the *kamiauti* system, for instance, it was clear that the labour exploitation which the *Slavery Convention* aimed to abolish, were an all-India problem. But the government mobilised against slavery at the border regions: In 1927 the government representative Deny Bray reported in the Central Legislative Assembly that military expeditions had been conducted at the Burma Frontier in 1926 and 1927. During these

[276] SHUKLA, 1937, p. 115.
[277] Quoted in ILO Delhi Office, November 1945.
[278] GIRI, 1974, p. 483.
[279] League of Nations, 1937, 1936.
[280] The ILO received barely any report on forced labour between 1940 and 1945 because of the war, International Labour Conference, 1949.

expeditions more than 4000 slaves were freed.[281] Similar actions for the liberation of bonded labourers do not appear in the records and probably did not take place.

The most comprehensive attempts to investigate labour conditions, which also touched upon the issue of bonded labour, were conducted in 1928, 1931 and 1944 by the Royal Commission on Agriculture,[282] the Royal Commission on Labour, also known as the Whitley Commission,[283] and the Labour Investigation Committee, also referred to as the Rege Committee.[284] Since 1946 the Ministry of Labour published the series of the *Indian Labour Year Book* compiled by the Indian Labour Bureau. The bureau was established in October 1946 and it addressed the issue of forced and bonded labour in the *Indian Labour Year Book*.[285]

Referring to the *Census of India* of 1921, the Royal Commission on Agriculture highlighted the importance of its report, because 73.9 percent of the Indian population depended on labour in agriculture.[286] Among other topics, such as the improvement of soils or animal husbandry, the commission dealt with the issue of labour, as well as indebtedness of agricultural labourers. The commissioners observed that landless farmers took up credits and often became indebted for life, while also binding their offspring. Based on an earlier report of Sifton,[287] they described the *kamiauti* system of Bihar and Orissa,[288] as well as the similar *vetti* and *khambar* system, as "vicious system[s] of bond-service."[289] Because labourers were unable to ever repay their debt, the commissioners remarked that bonded labour under the *kamiauti* system lasted for life[290] and concluded that "the *kamia* [was] nothing better than a slave."[291] The report explained that farmers took credits to buy cattle, tools, or other necessities for the agricultural undertaking, also for daily expenses, and ceremonies which the

[281] Legislative Council of India, 1927, p. 3544; Government of Burma, 1930, p. 24.
[282] Royal Commission on Agriculture in India, 1928.
[283] WHITLEY/Royal Commission on Labour in India/Government of India, 1931.
[284] Labour Investigation Committee/Government of India, 1946, p. 388.
[285] Government of India/Ministry of Labour: Indian Labour Bureau, 1946, p. 73–74.
[286] Royal Commission on Agriculture in India, 1928, p. 83 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]; *Census of India*, 1921, MARTEN/Census Commissioner, 1924, 239, 241.
[287] SIFTON/Government of Bihar and Orissa/Department of Land Records and Surveys, 1917.
[288] Royal Commission on Agriculture in India, 1928, p. 575–576 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[289] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 362.
[290] Royal Commission on Agriculture in India, 1928, p. 575 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[291] Royal Commission on Agriculture in India, 1928, p. 575 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].

commissioners explained to be "often extravagant,"[292] and thereby blaming the labourers for their enslavement.

Regarding the *Bihar and Orissa Kamiauti Agreements Act* of 1920, the report observed that the labourers' poverty prevented them from making use of the law that was supposed to protect them.[293] The solution drawn out by the commission went along the lines of addressing bonded labour through the debt: Mortgaging of agricultural land as well as moneylenders should be strictly controlled; state banks should give out credits.[294] The committee requested more statistical studies, since there was not sufficient information on the problem of indebtedness.[295]

The report of the Royal Commission of 1931 also dedicated a chapter to indebtedness of workers and advances from employers. It concluded that "the majority of industrial workers are in debt for the greater part of their working lives. Many, indeed, are born in debt (…) commonly a son assumes responsibility for his father's debt."[296] Altogether the commission estimated that about 66 percent of all workers in India were indebted.[297] According to the report most cases of debt were incurred with money lenders. These money lenders charged sky rocketing interest rates[298] that kept the debtor in "his own enslavement for years."[299] Labourers took credits because their wages did not meet daily needs.[300] The commissioners explained that indebtedness was a great problem, since the labourers were never able to free themselves from the debt and, as a consequence, labourers were discouraged to put any effort into their labour.[301] They observed that "[t]he debt tends to increase rather than to diminish, and the man, and sometimes his family, is bound for life. Serfs are even sold and mortgaged."[302] Obviously some of the debt relations observed were descriptions of bonded labour. Not all debt-relations were necessarily bonded labour relations,

[292] Royal Commission on Agriculture in India, 1928, p. 558 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[293] Royal Commission on Agriculture in India, 1928, 574, 576 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]
[294] Royal Commission on Agriculture in India, 1928, p. 582 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[295] Royal Commission on Agriculture in India, 1928, p. 764 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[296] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 224.
[297] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, 224, 227.
[298] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 224–225.
[299] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 227.
[300] Labour Investigation Committee/Government of India, 1946, p. 281–293.
[301] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 226.
[302] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 362.

and one question is how many bonded labour relations vanished from sight and became subsumed under indebtedness.

The Commission on Labour also referred to the report of the Commission on Agriculture and their description of the bonded labour systems in Bihar and Madras.[303] One commissioner concluded that "conditions in parts of Bihar and Madras, for example, from which recruits [for the Assam tea plantations] are drawn are not far removed from slavery."[304] In the report's section on factories and mills, the commissioners observed the pledging of children—bonded child labour.[305] They compared the phenomenon to indentured labour, but they described the adult labourer as entering these contracts of indenture as 'free agents,'[306] while children did not possess this agency. The report recommended the prohibition of the mortgaging of the child's labour. Implicitly, the commissioners still argued in the line of the contractual obligation and the ideology of work: The labourer could give up his freedom and submit to an exploitative contract. The authors of the report explained in the chapter on *Disabilities* that poverty was one of the driving forces that pushed the workers to the factories. Another reason was the labourers attempt to evade caste-based discrimination and bonded labour: "There are traces of feudalism to be found in many parts of the country; and in a few areas there is still a system of bond-service which is not far removed from slavery."[307]

In a dedicated paragraph the report addressed the practice of advances by employers which served the purpose of binding the labourers to the factory[308] or the plantation.[309] The commissioners found this practice less prevalent than indebtedness, but admitted that the practice of advance payments, which they described as a form of unproductive debt, was misused by employers.[310] They suggested continuing to allow this practice of advance payment under certain conditions.[311] The report also commented on the effect of the repeal of the WBCA: While repealed, employers reportedly still invoked the *Act XIII* as a threat. Labourers continued to file their complaints with magistrates and convictions under the WBCA continued to be registered.[312]

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[303] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 362; Royal Commission on Agriculture in India, 1928, p. 434.
[304] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 377.
[305] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 102.
[306] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 102.
[307] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 15.
[308] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 236.
[309] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 355.
[310] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 236.
[311] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 236.
[312] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 107; ANDERSON, 2004, p. 449.

The commissioners concluded that labour conditions had improved. Yet, the report reiterated "evidence that workers who wanted to leave even a good garden without permission found it advisable to do so by night,"[313] since the overseer at the plantation would probably try to stop him from leaving. This observation did not prevent them from suggesting that places, such as Assam, could function as a safe haven for bonded labourers: The commissioners explained that labour opportunities in distant places such as Assam offered a great chance to escape from "depressed conditions (…) and perhaps the most effective means of breaking down the vicious systems of bond-service."[314] This argument implied a contrast that virtually did not exist: The bonded labourer is described as the victim of caste and tradition. By going to Assam the labourer would free him- or herself by escaping to the tea plantations, the British run, civilized location, where the labourer would find work and end his economically destitute situation.

There was no mention of bonded labour in in the *Main Report* of the Rege Committee. Even though investigators looked into the plantations and agriculture, there were no explicit references to labour exploitation in the form of debt bondage.[315] Only the *Children (Pledging of Labour) Act* of 1933 was discussed. The commission found that the act was effective: No violations were reported for the carpet factories and cotton mills in Amritsar and Ahmedabad, in which many children had been bonded. Only in the *bidi* (small cigarettes) production in Madras City, Vellore and Mysore State were children found to be working as bonded labourers.[316]

Also in this report indebtedness received its own small chapter.[317] The commissioners referred to the chapter in the report of the Royal Commission on Labour of 1931, but left out the exploitative dimension and treated debt relations of labourers simply as an issue of indebtedness.[318] In all industries in rural and urban areas investigated—carpet production, leather works, shellac, *bidi*, jute, and sugar production, rice and cotton processing, mining for mica, manganese, iron, salt and gold, as well as the railways—between 50-100 percent of the workers were found to be indebted, either to a money lender or their employer.[319] In the case of the carpet weaving industry, the commissioners observed that the system of advance

[313] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 377.
[314] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 362.
[315] Labour Investigation Committee/Government of India, 1946.
[316] Labour Investigation Committee/Government of India, 1946, p. 65.
[317] Labour Investigation Committee/Government of India, 1946, p. 281–293.
[318] Labour Investigation Committee/Government of India, 1946, p. 281.
[319] Labour Investigation Committee/Government of India, 1946, p. 288.

payments led "to perpetual indebtedness."[320] The average amount given ranged between Rs. 40 and 390.[321]

As in the report of 1931, this report also blamed the workers for their own misery, which was created by "the extravagant habits and vices of the workers themselves,"[322] when it came to weddings, funerals, or the consumption of drugs. That in Balrampur the interest rate for debts was around 600 percent, is listed at the end of given reasons.[323] While this report does not mention any exploitation of labourers, the numbers themselves are indicative of a large number of people vulnerable to exploitation. The report once again repeated the vices and extravagances of the workers in its conclusion on the issue, but also mentioned "that in the majority of cases indebtedness has a great deal to do with the low earnings of workers."[324] And while caste is also mentioned in the other reports,[325] it was not interrogated on its role in establishing labour relations. The report on labour from 1931 was the only report which highlighted a link between exploitation in "a system of bond-service"[326] and caste. Pouchepadass argues that relations between the employer and worker went beyond pure economics: Particularly the ritual in handing over of the wages, the bowing of the agricultural labourer, signified the social difference and "symbolic domination of the master."[327]

The *Indian Labour Year Book* was compiled in order to publish collected statistical data on labour issues. Already in the first volume the authors discussed the *Forced Labour Convention* of the ILO (C29).[328] They also reported the existence of "serf labour" or "serfdom," which "mostly [took] the form of debt bondage."[329] But also this labourer/employer relationship was addressed from the angle of indebtedness. Relying on the report of the Labour Investigation Committee of 1946, the *Year Book* concluded that "the low wage level cannot be the only cause of indebtedness."[330] The second report was published by the end of this episode, and only contained short legal discussions and descriptions of bonded labour,[331] but not an estimate of the number of people trapped in debt bondage.

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[320] Labour Investigation Committee/Government of India, 1946, p. 281.
[321] Labour Investigation Committee/Government of India, 1946, p. 281–292.
[322] Labour Investigation Committee/Government of India, 1946, p. 282.
[323] Labour Investigation Committee/Government of India, 1946, p. 282–283.
[324] Labour Investigation Committee/Government of India, 1946, p. 369.
[325] Royal Commission on Agriculture in India, 1928, 6, 478, 506-07, 572, 575; Labour Investigation Committee/Government of India, 1946, 9, 78.
[326] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 15.
[327] POUCHEPADASS, 1990, p. 15.
[328] Government of India/Ministry of Labour: Indian Labour Bureau, 1946, p. 280.
[329] Government of India/Ministry of Labour: Indian Labour Bureau, 1946, p. 244.
[330] Government of India/Ministry of Labour: Indian Labour Bureau, 1946, p. 195.
[331] Government of India/Ministry of Labour: Indian Labour Bureau, 1948, 124, 268.

Concluding from the available evidence, bonded labour was not an isolated phenomenon, neither limited to particular geographical locations nor restricted to particular sectors or communities. Bonded labour could be found everywhere in India. The references to bonded labour varied and were either subsumed under forced labour or slavery; the development of international legislation rather proliferated the terminological confusion. The reports discussed above addressed bonded labour separately, but beyond adding original research results, they relied on a report published in 1917.[332] The commissions' own findings were on indebtedness of workers and the question is, how many cases of bonded labour relations were subsumed and disguised under the umbrella of indebtedness. Since indebtedness was found to be a widespread problem, bonded labour was probably equally rampant.

The Judiciary and Magistrates

The unenforceability of bonded labour was taught to law students at least since 1916:[333] Prosanto Kumar Sen, professor of law at Calcutta, addressed bonded labour in his lectures, which were published in 1922.[334] Regarding the issue of 'slavery bond cases,' he explained:

> There is a class of cases in which (…) the contract (…) is in restraint of personal freedom. In such cases it has been held that the courts will not enforce a contract fettering a man's liberty of action as being contrary to public policy (…). It was observed that such a contract—in which a labourer engages to work without any payment whatsoever under conditions that make it practically impossible for him to discharge the debt until some other capitalist redeems him—is indistinguishable from slavery and in practice compels the debtor and his descendants to a perpetual serfdom.[335]

While indicating that bonded labour amounted to slavery, Sen also took note of case law, in which bonded labour arrangements were found to be legal. Referring to *Ponnusami v. Palayathan* (1919), he noted "that a stipulation in a bond to work for a specified term in lieu

[332] The report of the Royal Commission on Agriculture in India of 1928 relied on Sifton (SIFTON/Government of Bihar and Orissa/Department of Land Records and Surveys, 1917), Royal Commission on Agriculture in India, 1928, p. 575–576 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]. The report of the Royal Commission on Labour of 1931 drew its information on bonded labour from the report of the Royal Commission on Agriculture in India of 1928, WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 362. And the Labour Investigation Committee's information on the issue of debt was based on the report of the Royal Commission on Labour of 1931, Labour Investigation Committee/Government of India, 1946, p. 281.
[333] SEN, 1922, v.
[334] SEN, 1922, his *Lecture IX* on *Contracts in Restraint of Trade*, which was published in his book, was held in 1916.
[335] SEN, 1922, p. 379–380.

of payment of interest is enforceable."[336] In this case, the judge Phillips sitting on the Bench of the Madras High Court referred to *Ram Sarup* (1915, debt bondage amounts to slavery). Phillips decided in the case *Ponnusami* that the bonded labour contract, set to last for five years, was enforceable, since it was limited in time. He concluded that the labour completed was in lieu of interest to the debt and therefore legal.[337]

In *Sundara Reddi v. Jagannathan And Anr.* (1926) an employer's appeal was discussed. Sundara had filed a case against his two bonded labourers in order to get back the principal. Concluding from the little information in the report, the District *Munsif* had either convicted Sundara Reddi for executing a 'slavery bond,' or simply rejected the case for being unenforceable. The judge dismissed the appeal, since the meagre wages were contrary to 'public policy,' and even though the father of Jagannathan was free to work somewhere else, he had to support his son. The judge noted in addition that Sundara had set the interest rate of the bond to "afford the appellant handsome remuneration."[338] In light of the minimal wage paid to the labourer, the court found the question whether the relation constituted slavery or not irrelevant:

> The lower Courts have found that the contract was opposed to public policy and I agree. Whether the bond in question is exactly of the nature of a slavery bond, or is something closely approaching that nature does not affect the matter, for in either case it is equally opposed to public policy.[339]

In May 1927 the Madras High Court dealt with the appeal of a creditor in *Rama Sastriar v. Pakkiri Ambalakaran*. The *Munsif* had dismissed Rama's claim against his bonded labourer, since the wages he paid were too low. He argued that the relationship constituted a "slavery bond."[340] Judge Phillips, who had also ruled the case *Ponnusami* (1919, debt bond enforceable because limited to five years), sitting on the case, followed the *Munsif*'s decision arguing that the provisions of the contract were set in such a way as to perpetuate the relation for an unlimited time; he also criticised that not only the debtor, but also his wife were made to work. The judge followed the *Munsif* and dismissed the creditor's appeal.[341]

A similar case was ruled in October 1944: Govinda Kandyian received a cash advance of Rs. 86 and signed a bonded labour contract, while his son-in-law, Vayira Padayachi was

[336] SEN, 1922, p. 380.
[337] *Ponnusami v. Palayathan*, Madras High Court, March 7 1919.
[338] *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926.
[339] *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926.
[340] *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927.
[341] *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927.

the one to undertake the work. Vayira Padayachi left the work place and also the bond contract in May 1942. As a consequence, the creditor Sreenwasa Iyer requested the repayment of the advance including interest. The creditor filed a case in the court but the *Munsif* rejected it on the ground that it was a 'slavery bond.' In the appeal, the high court reversed this judgment. The judge argued that the debtor was allowed to work somewhere else and would only be charged to pay the two percent interest. Judge Leach ruled in favour of the creditor. He explained that "[t]he system of granting advances to agricultural laborers on these terms may be a very bad one; but it is quite a different thing to say that they bind persons entering into such bonds as slaves to their masters."[342] The lower court had made use of the discretion of interpretation, but the higher court reversed the decision and explained that bonded labour did not constitute slavery.

In the cases presented above, the judges invoked the following offences in attempting to define slavery in the judicial processes: (1) Payment of wages, that are either very low or make it impossible to end the debt relation,[343] (2) the time frame provided for the bonded labour relation (legal if it is indicated and maximally set to last for five years),[344] (3) the labourer may work somewhere else,[345] and (4) penal provisions for defections.[346] The repayment of a debt by labour was found to be legal.[347] In several cases judges overruled decisions at the lower level of *Munsifs* or magistrates who used their discretion of interpretation in a manner to effectively criminalise bonded labour under antislavery legislation. The judges overruled the *Munsifs*' or magistrates' decisions to reject claims over debts and advances.

During this period international legislation was adopted, as well as regional law regulating bonded labour. But the judges in the cited cases did not refer to international conventions. Since most of the cases were based on rejections to prosecute employer's claims, but not convictions of employers violating the IPC or the *Act V*, the courts dealt with the question of the enforceability of bonded labour contracts. As a consequence, they were not concerned with the question of defining slavery, as it was the case in the previous episode.

[342] Madras High Court, October 9 1944.
[343] *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926; SEN, 1922, p. 379–380; *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927.
[344] *Ponnusami v. Palayathan*, Madras High Court, March 7 1919; *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927.
[345] *Sreenivasa Iyer v. Govinda Kandiyar and Anr.*, Madras High Court, October 9 1944.
[346] *Karuppannan (Minor) by Mother and Next Friend Kannakkal v. Pambayan Alias Karuppan Samban*, Madras High Court, September 8 1925.
[347] *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926; SEN, 1922, p. 380.

Conclusion

During the period between 1920 and 1946, the definition of slavery and its relevance towards coping with bonded labour gained new qualities. Bonded labour in the previous episode was not encompassed in legal provisions, and the definition of slavery primarily evolved around the definition of chattel slavery; the judges of the discussed court cases attempted to fit bonded labour into this definition. This episode is marked by attempts to explicitly address bonded labour. At the international level, the League of Nations found debt bondage to be one form of labour exploitation abolished by the *Slavery Convention*. At the national level, the WBCA and its abuse were brought into the realm of violations of the abolition of slavery, and at the presidency level, several laws were adopted that addressed bonded labour. While debt bondage was not explicitly defined as slavery but described as such in the internal communications with the India Office on the *Slavery Convention*, the British colonial power and the Indian representatives in the Legislative Councils attempted to change the institution of the abolition of slavery in order to also include forms of debt bondage.

Chatterjee's argument that the abolition of slavery was consequential for the eradication of the term 'slavery' from the official record[348] could not be substantiated. In this episode, as in the previous episode, civil servants describe forms of slavery, namely debt bondage, and the difficulty to abolish it. Only with the reports of the royal commissions did the lines become blurred by treating bonded labour relations rather as an issue of indebtedness. It was not mentioned in these reports that these relations could be criminal offences punishable under the IPC. In this episode, the court cases' treatment of bonded labour relations also showed a tendency to look at them as debt relations. Interestingly, in the internal communications on the *Bihar and Orissa Kamiauti Agreements Act*, the administrators referred to case law— *Ram Sarup* (1915) and *Satish Chandra* (1918)[349]— which found bonded labour cases to constitute a criminal offence, but the *Bihar and Orissa Kamiauti Agreements Act* itself did not provide criminal charges for offences.

Already before, but vigorously since the 1920s, actors in the legislative arena acted towards change of the institution of the abolition of slavery. The gap between the spirit of the abolition of slavery and high discretion of interpretation, and particularly the existence of undermining legislation inspired actors to actively induce change. They were acting as

[348] CHATTERJEE, 2005, p. 139.
[349] Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, National Archives of India, November 1920, 36, Item No. 1.

defenders, who were not in favour of preserving the status quo as it was but rather in advancing and protecting the spirit of the abolition of slavery. The antislavery actors tried to induce change by displacement of rules that undermined the spirit of the abolition of slavery—the WBCA. These changes, I suggested, can be explained by hypothesis 4b): The institutional discretion for interpretation and implementation was high, with a combination of weak laws and low level of enforcement, as well as weak veto possibilities for the preservers of the status quo. Simultaneously, additional layers were added on top of existing legislation at the presidency level, which were intended to support the spirit of the abolition of slavery, including bonded labour.

All antislavery actors behaved like insurrectionaries, who first failed to induce change due to the resistance of the government. The government appeared as opportunist, undecided on whether to support employers' expressions to maintain the status quo or to follow the request of the assembly to support change. It only became active and their actions meaningful with the change of the political environment as well due to international developments: The increasing number of Indian participants, the inclusion of members representing the interest of labour and the actual possibility of the legislative assemblies to make laws, became possible with the implementation of the Montagu-Chelmsford-Reforms. But only after several years and debates in the assembly, the government proposed a bill for the repeal and the members of the Legislative Assembly voted in favour. The reforms of the political system were one of the crucial changes that enabled change at the rules level. It allowed anti-slavery actors to access the legislative arena and to actively press for change. Compared to other colonial variants of breach of contract legislation, India was one of the first colonies to remove it. In other colonies it prevailed up until the 1940s when the ILO adopted a convention[350] specifically targeting penal law on contract violations.[351]

From the interrogated sources it is not explicitly clear what contributed to the Government of India changing its position—resisting the removal of the *Act XIII* for years and then 'suddenly' exposing it to the vote of the Central Legislative Assembly. This move coincides with the compilation of reports on labour in India, and the communication between the agencies of the British Raj and the League of Nations, the ILO and the adoption of the *Slavery Convention*. Consequently, I argue that the changing *Zeitgeist* towards being

[350] *The Penal Sanctions (Indigenous Workers) Convention* (C65), adopted 1939, abrogated 2018, International Labour Conference, 1939.
[351] BANTON, 2004.

antislavery and gaining a 'taken-for-grantedness'[352] quality is one causal factor. It appears that the repeal, already requested in 1917, was only a question of time and it is no coincidence that the Government of India chose to put the vote on the repeal of the *Act XIII* of 1859 just a year before the adoption of the *Slavery Convention*. Removing this layer of legislation some sixty-six years after its adoption constitutes change in the form of displacement.

After modifying the original hypothesis of Mahoney and Thelen, who suggest the change agents would be opportunists who cause change via conversion, I assumed that the antislavery actors would be the change agents who are interested in actively changing the institution towards aligning with the spirit of the abolition of slavery. While, as predicted by Mahoney and Thelen, opportunists appeared, they were the preservers of the status quo. Here the Government of India was not an active supporter of laws penalising breaches of contract, nor a defendant of the antislavery project. The government succeed in stalling motions of repeal by members of the Central Legislative Council for some time, making requests to other political entities to provide their opinion on the issue. When the Legislative Council finally voted, the majority of the members were in favour of repealing the *Breach of Contract Act* and the Sections 490 and 492 of the IPC. The government was leaving the veto power to the majority of the legislature. The change was, as predicted, displacement of the removal of the penal legislation for breaches of contracts.

The outcome at the presidency merits a closer look. As observed, the *Orissa and Bihar Kamiauti Agreement Act* was a compromise that allowed for the temporal bonding of labourers in agriculture and other sectors. This act allowed for administrative control of the labourer/employer relationship, reasserting the state's claim to the monopoly of violence, and simultaneously supporting the assumption that the complete abolition of bonded labour was probably impossible. It still adhered to the principle of upholding contractual obligations but limited them to one year and requested fair remuneration. Future research can reveal in more detail of the coming about of the regional provisions regulating bonded labour and explain for instance, the absence of criminal provisions against employers.

The paradigm of the ideology of work and the protection/paternalist paradigm were still prevalent in the second episode. With international developments, the legitimacy of coercing labour on a large scale or exposing the general population to forced labour became targeted. Instead, the international community removed private actors and secured pockets of forced labour for the state, where slavery or forced labour could still be morally defendable—

[352] FINNEMORE/SIKKINK, 1998, p. 895.

the workhouses, the prison, the army, and public works.[353] To expose large groups of people to slavery became unacceptable, as the increasingly pronounced antislavery policy proposals of Indian political parties demonstrate: The rights paradigm took a clear shape and the aim of the independence movement was the promise to liberate not just the Indian nation from colonial power, but also a significant number of the population from labour exploitation and bonded labour. The INC moved from rough circumscriptions of fundamental rights, discussed in the previous episode, to the effective call for the abolition of bonded labour in this episode. The acceptance of slavery or practices which "approximate to slavery"[354] as a necessary evil—a tool to provide security for the poor, at the expense of the integrity of the poor—was slowly replaced by the idea of justiciable rights. As a consequence, this entailed a changed role of the state and how it should behave towards its future citizens. While the British colonial government expressed a passive sit-and-wait strategy—reflected in explanations that slavery and bonded labour would 'die out by itself,'[355] or sending out questionnaires to the presidencies requesting their opinion on the repeal of the WBCA—the changing normative goal to formulate rights also involved a call for an active state.

[353] International Labour Organisation, 1930, Art. 4; cf. O'CONNELL DAVIDSON, 2015, 20, 50, 187.
[354] Undated Memo (sent to the India Office approximately between December 1922 and January 1923), National Archives of India, 1923, p. 33–35.
[355] Mr. A. Forbes, Commissioner of Chota Nagpur, 1898, quoted in a letter from the Hon'ble Mr. J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, item No. 1, dated September 12 1919, National Archives of India, November 1920, p. 35.

3rd Episode: 1946-1990s

That future is not one of ease or resting but of incessant striving so that we may fulfil the pledges we have so often taken and the one we shall take today. The service of India means the service of the millions who suffer. It means the ending of poverty, ignorance, disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.
—Jawaharlal Nehru: Speech: Freedom at Midnight (Tryst with Destiny), August 14 1948[1]

On August 15 1947 India gained its independence, and the new Constitution became effective on January 26 1950. During the first years of this episode, between 1946 and 1949, the Constituent Assembly, which also constituted the interim government and interim legislature, occupied the core role in policymaking for India—they developed the constitutional and legal foundations of the future independent Indian state. The phase of drafting the constitution was a critical juncture for the political system of India. This phase was important since it opened the window of opportunity to diverge from the path the British had set in terms of dealing with bonded labour. It was an opportunity to adopt new laws and the question is, whether this was also a critical juncture for the abolition of bonded labour in India.

The third episode begins shortly before independence. India's future outlook was not yet fully determined. I follow up on the outcome and consequences of this period's constitutional changes and political decisions on bonded labour including emergency rule between 1975 and 1977 and its aftermath until the 1990s. The whole chapter on this episode is split into two parts: The first part is dedicated to the years from 1946 to 1952, when the Constituent Assembly and the Provisional Parliament were operative. The second part begins with the first sitting of the newly elected parliament, the Lok Sabha and the Rajya Sabha, and ends with the appointment of the National Human Rights Commission to monitor the implementation of the *Bonded Labour System (Abolition) Act* in 1976.

[1] NEHRU, August 14 1947.

Chapter 5
3rd Episode Part 1: Constituent Assembly, 1946-1952

The Constituent Assembly (CA) held its first session on December 9 1946 and functioned in two ways: As a constitution making body[1] and as the Provisional Parliament, also referred to as Dominion Legislature.[2] On November 11 1947 the Dominion Legislature had its first session. A few months into their work, the members of the CA decided to make a clear distinction between the two tasks, the constitution making and the daily legislative functions: The members decided that the Constituent Assembly (Legislative) would work in the mornings, and in the afternoon the same people would sit in the Constituent Assembly to discuss the making of the Constitution.[3] The ministers of the Interim Government were also members of the Constituent Assembly.[4] On September 2 1946, the Interim Government was formed, headed by Jawaharlal Nehru. This government was replaced with the Dominion Government on August 15 1947. The Dominion Government remained operative until India became a republic on January 16 1950. Since both, Interim and Dominion Government constituted the provisional government and the provisional parliament, I refer to them as provisional government and the provisional parliament.

The first part of this chapter relies on the debates of the Constituent Assembly and the Constituent Assembly (Legislative). All debates are available online on the website of India's Parliament.[5] Additional sources discussed in this chapter are the *Draft Constitution*, and the *Constitution of India*, as it was adopted. The Minutes of the Sub-Committee on Fundamental Rights, the Advisory Committee, as well as submissions of committee members have been collected and edited by Rao in four volumes of *The Framing of India's Constitution: Select*

[1] In the publications of the debates referred to as 'Constituent Assembly (Debates).'
[2] *Indian Independence Act* of 1947, Parliament of the United Kingdom, 1947, Chapter 30, Art. 6, 8. The documentation of the parliamentary sessions of the CA are entitled 'Constituent Assembly (Legislative).'
[3] AUSTIN, 2012, 9, 15.
[4] AUSTIN, 2012, p. 15.
[5] Available at: CLPR.

Documents (1966-1968) and accompanying volume—*The Framing of India's Constitution: A Study* (1968).[6] These source books provide detailed insight into the work of the committees of the Constituent Assembly. This work has been made available digitally by the Internet Archive.[7] The secondary literature on which I rely includes a publication by Austin (1966), who contributed a tremendously detailed work on the writing of the Constitution. Among his sources were private papers, such as the *Prasad Papers*, the *Munshi Papers*, and the *Ayyar Papers*, as well as minutes and letters produced and exchanged between the members of the Constituent Assembly.[8] For the second part, the debates of the Lok Sabha, as well as the Rajya Sabha, are made available online by the Parliament of India, Lok Sabha Digital Library.[9] Several governmental reports on agriculture, Scheduled Castes (SCs) and Scheduled Tribes (STs) are available at the South Asia Institute Library, at the University of Heidelberg. The discussion of court cases was possible thanks to the online sources already enumerated in episode 1. Further sources are the ILO Delhi Office records, made available online by the Georg-August University at Göttingen, Germany, as well as the National Archives of India and the Parliament Library, both in Delhi, India,[10] and the India Office Records at the British Library in London, Great Britain.

Institutional Characteristics

Between the two parts of this episode are only a few years. While the discretion of interpretation varies between these two parts because the *Constitution of India* came into force in January 1950, this and the following chapter have their own discussion.

Discretion of Interpretation

The point of departure of the Constituent Assembly and the provisional parliament was the *Indian Penal Code* and the *Act V* of 1843, as well as the *Slavery Convention* of the League of Nations of 1926. Since the policies of the presidencies were not applicable to the whole of India, I do not include them here. The following table visualises whether the rules provided in the existing legislations in 1946 were ambiguous or not:

[6] Vol. 1, RAO, 1968d, Vol. 2, RAO, 1968b, Vol. 3, RAO, 1968c, Vol. 4, RAO, 1968a.
[7] Available at: The Internet Archive.
[8] AUSTIN, 1966, p. 6–7.
[9] Available at: Lok Sabha Secretariat.
[10] Georg-August Universität Göttingen/CeMIS.

Table 12. Characteristics of the formal institution, 1946

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Act V, 1843	No	N.A.	No	No	No	No
IPC, 1862	No[11]	No	Yes[12]	Yes	No	No
Slavery Convention, 1926	Yes	Yes[13]	No[14]	Yes[15]	No	No
Case law since 1915	Yes[16]	Conditional yes[17]	N.A.	Yes[18]	N.A.	N.A.

The IPC makes the absence of free will part of the defining element of "unlawful compulsory labour;"[19] it does not refer to the different denominations of bonded labour and it offers no definition of what slavery is.[20] The requirement of the absence of free will could mean that the IPC does not criminalise the use of bonded labour, since labourers enter 'freely' into debt bondage. In the first and second episodes I demonstrate in the discussion of the case laws how the judges were not unanimous in their evaluation of the provisions of the *Act V* or the IPC, or

[11] IPC Sec. 370 punishes the buying and disposing of a person as a slave "against his will;" Sec. 375 prohibits unlawful compulsory labour, prescribing punishment for compelling "any person to labour against the will of that person." Beyond these qualifications, there is no definition of what a slave or slavery is.
[12] With coming into force of the act.
[13] But not explicitly. Art. 1 holds that "[s]lavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Bonded labour would fall under Art. 2 (b) ("[t]o bring about (…) the complete abolition of slavery in all its forms.")
[14] Art. 2 (b): "progressively and as soon as possible."
[15] Art. 6.
[16] In *Ram* (1915), *Satish* (1918) and *Koroth* (1917) the judges identified elements of chattel slavery in the cases of bonded labour and found them therefore illegal.
[17] Following cases considered: *Ram Sarup Bhagat v. Bansi Mandar* (1915), debt bond contracts amount to slavery; *Koroth Mammad and Another v. The King-Emperor* (1917), the transfer of debt from one creditor to another creditor, falls within the legislation prohibiting slavery; *Ram Sarup Bhagat v. Bansi Mandar* (1915), debt bond contracts amount to slavery; bonded labour contracts are criminal under slavery offences of the IPC if, (1) payment of wages are either very low or the interest rate make it impossible to end the debt relation (*Sundara Reddi v. Jagannathan And Anr*., Madras High Court, November 15 1926), SEN, 1922, p. 379–380, *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927); (2) the time frame indicated for the bonded labour relation exceeds five years (*Ponnusami v. Palayathan*, Madras High Court, March 7 1919; *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927); (3) the labourer may not work somewhere else (*Sreenivasa Iyer v. Govinda Kandiyar and Anr.*, Madras High Court, October 9 1944); (4) the contract contains penal provisions for defections (*Karuppannan (Minor) by Mother and Next Friend Kannakkal v. Pambayan Alias Karuppan Samban*, Madras High Court, September 8 1925). The repayment of a debt by labour was legal (*Sundara Reddi v. Jagannathan And Anr*., Madras High Court, November 15 1926).
[18] Based on the IPC.
[19] IPC Sec. 374.
[20] *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 726; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917.

how to treat bonded labour cases.[21] And while by the end of the first episode we saw a proactive interpretation of the IPC to include bonded labour contracts in the provisions of the IPC, the judges in the second episode tended to treat bonded labour arrangements as issues of debt, which did not entail criminal sanction and was even found legal, as long as it did not bind labourers over longer periods of time or for life, including their offspring.[22]

At the international level, several conventions were developed and adopted that were also relevant to the institution of the abolition of slavery in India. The ILO *Forced Labour Convention* (C29) had come into force in 1932, but since the Indian government ratified it on November 30 in 1954, it did not apply earlier to India. Nonetheless, the *Forced Labour Convention* constituted a reference point for policymakers, as the example of the submission of Parulekar in the Bombay Presidency showed.[23] According to a special officer nominated by the Dominion Government in 1948, bonded labour did not fulfil the definition of forced labour as provided by the *orced Labour Convention*, because the convention's definition excludes situations in which a person has offered him- or herself voluntarily into bondage.[24] The members of the Temporary Commission on Slavery intended to include debt bondage within the purview of the *Slavery Convention*. The Advisory Committee of Experts on Slavery addressed the issue of bonded labour in India explicitly and requested reports on this issue.[25] During the CA debates, the United Nations General Assembly in Paris proclaimed the *Universal Declaration of Human Right*s (UDHR) on December 10 1948. Article 4 of the UDHR formulates the right to be free from slavery: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."[26] This was the first time that slavery became enshrined in terms of a positive right at the international level, but only as a declaration, not a binding obligation for states.

The institution of the abolition of slavery in India was still weak at the beginning of this period and left a high degree of discretion of interpretation. Particularly the absence of a

[21] For instance, in the case *Madan Mohan Biswas v. Queen Empress* the plaintiff was found not guilty of treating his bonded labourers as slaves, Calcutta High Court, April 20 1892, while in *Koroth Mammad and Another v. The King-Emperor*, the final decision was in favour of the bonded labourer whose employer labour relationship was found to fall under the IPC Sec. 370, Madras High Court, August 27 1917, p. 351.
[22] *Ponnusami v. Palayathan* (1919), bonded labour is legal since contract is set to last for five years, SEN, 1922, p. 380; *Rama Sastriar v. Pakkiri Ambalakaran* (1927), the interest was set to never end the employer/labour relationship, Madras High Court, May 4 1927.
[23] The *Free or Forced or Compulsory Labour Punishment Bill* was in part copied from the ILO Forced Labour Convention, Bombay Legislative Council, April 13 1939, p. 2796.
[24] DHAMNE/GOVERNMENT OF INDIA, 1956, p. 13.
[25] League of Nations, 1937, p. 12.
[26] United Nations, 1948.

definition of what constitutes slavery and the question of where to locate bonded labour have concerned the courts in the first two episodes,[27] and were still not solved.

Enforcement

The evaluation of the performance of the British Raj in abolishing slavery and all its forms by the League of Nation's Advisory Committee of Experts on Slavery was negative during the reporting period between 1934 and 1938.[28] Regional legislation against bonded labour was found ineffective by the Royal Commission on Agriculture,[29] and this and other reports on labour published in 1931 and 1946 found that indebtedness of workers was a widespread problem.[30] This can be read as an indicator for a high prevalence of bonded labour, since some bonded labour relations were established by debt, and one of the reports, for instance, treated bonded labour as a pure issue of indebtedness.[31] In addition, several court cases dealt with bonded labour as an issue of indebtedness. Governmental reports referred to bonded labour and observed instances of abuse,[32] bonded child labour,[33] and that debts were used to bind workers to their employer, with interest rates so high that workers were often bound for life and generations.[34] Particularly prominent political figures like Mohandas Gandhi[35] expressed their concern that bonded labour was a problem affecting thousands of people—Thakkar believed that in some regions up to 80-90 percent of the people working in agriculture, a sector in which about 70 percent[36] of the Indian population were employed,[37] were bonded.[38]

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[27] Cf. G. G.Morris, Sessions Judge of Backerganj, in a letter to the Registrar of the High Court, dated November 14 1871, referred to in CHATTERJEE, 2005, p. 139; *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871; *Ram Kuar* (1880), *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880, p. 727; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917, p. 349.
[28] League of Nations, 1936; League of Nations, 1937.
[29] Royal Commission on Agriculture in India, 1928, p. 576 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[30] Royal Commission on Agriculture in India, 1928, p. 764 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]; WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 224; Labour Investigation Committee/Government of India, 1946, p. 281–293; Government of India/Ministry of Labour: Indian Labour Bureau, 1946, p. 244.
[31] Government of India/Ministry of Labour: Indian Labour Bureau, 1946, p. 244.
[32] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 236.
[33] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 102.
[34] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, 226, 236, 355.
[35] Mohandas Gandhi, in the *Hindustan Times*, July 1 1931, reprinted in ILO Delhi Office, July 1931, p. 19.
[36] The *Census of India* of 1931 came to a similar number with 68 percent, HUTTON/Census Commissioner, 1933, p. 276.
[37] Royal Commission on Agriculture in India, 1928, p. 83 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document]; *Census of India*, 1921, MARTEN/Census Commissioner, 1924, 239, 241.
[38] A. V. Thakkar: *Presidential address to the Servants of India Society*, July 24 1931, reprinted in ILO Delhi Office, July 1931, p. 17.

The level of enforcement appeared inefficient from the reports and also in the perception of political actors enforcement of the abolition of forced labour was not satisfying.

Paradigms and *Zeitgeist*

I do not suggest that the Greek City States were perfect; they had their own short-comings and blemishes. Who can defend their system of slavery, for example?
—Shriman Narayan Agarwal, 1946[39]

In the second episode the norm cascade entered its tipping point and merged into the third stage of the norms cycle.[40] The internalisation of the norm of the abolition of slavery was in full progress during the third episode and had acquired "a taken-for-granted quality"[41] at the international as well as the national level in India during the previous episode. This is exemplified by the above given quote of S. N. Agarwal, who expressed the notion that, at the time when he was writing, no one would defend slavery anymore. As I show in the discussions of the CA debates, the question of whether slavery, bonded labour, forced labour or *begar* should be abolished or not, was no longer contested. During the 'norm cascade'[42] in the previous episode "a fundamental shift in the perception of long-term national interests"[43] could also be observed: Around the 1920s political parties and political actors began to explicitly formulate the goal to abolish bonded labour in draft constitutions[44] and political manifestos.[45]

The paradigms discussed earlier were: (1) non-interference, (2) protection or paternalist, (3) ideology of work, and (4) rights paradigm. The first paradigm lost its significance during the first episode. The rights paradigm gained momentum in the second episode. In this third episode, the protection and paternalist paradigm, the ideology of work and the rights paradigm, continued to constitute the sets of ideas that influenced the political outcomes. The paternalist paradigm remained strong in the previous episode, but underwent some changes. With increasing demands for political participation and endeavours towards a

[39] Agarwal, Shriman Narayan, 1946.
[40] FINNEMORE/SIKKINK, 1998, p. 895.
[41] FINNEMORE/SIKKINK, 1998, p. 895.
[42] FINNEMORE/SIKKINK, 1998, p. 895.
[43] SIKKINK, 1998, p. 519.
[44] National Convention India, 1925, p. 3; The Committee Appointed by The All Parties' Conference, 1928, p. 101.
[45] Compare for instance: Lokmanya Tilak: *Manifesto for the Congress Democratic Party*, 1920, reprinted in SITARAMAYYA, 1935, p. 327–380; *Policy and Programme of the Swarajya Party as Approved by the All-India Party Conference, 16-17 August 1924*, reprinted in APPADORAI/GWYER, 1957, p. 4.

democratic polity, the questions of presentation and representation became salient topics. This issue continued to stand in tension with the protection or paternalist paradigm. Within the discussion of the All India Parties' Conference committee, the question of political participation and electoral franchise was addressed in the *Nehru Report* in 1928. The authors trusted that democracy would mend bad electoral decisions by trial and error. But they also trusted that uneducated voters would know what their interests were when casting their vote.[46]

But even though the *Nehru Report* expressed the trust of the political elite in the Indian people, the elite were not free of ambivalence towards the lower classes, the poor, and uneducated. The example of the Champaran agitation and the indigo disturbances in the 1910s, discussed in the second episode, showed that the political actors were not in touch with the rural population and shared their doubts of political agency of the poor and uneducated with the British.[47] The following quote highlights the paternalist approach:

> We feel strongly however that the 'depressed' classes must be abolished or rather that they should be raised socially and economically so that they may take their proper place in the community. The only effective way to do this is to give them educational and other facilities for this advance and to remove all obstacles in the way of this advance.[48]

This quote gives the impression that the elite perceived the poor as apart from society, something to be 'abolished.' 'They should be raised' and 'they should be given,' are expressions of othering: It is 'them, not us,' 'they' have to change, not 'us.' And it is 'we' who know what 'the proper place' is and how to get there.

The rights paradigm is the new paradigm that has its roots in the independence movement. The idea to enshrine fundamental rights in an Indian Constitution was already set forth by the Indian National Congress in 1918.[49] The INC adopted a resolution, the *Declaration of Indian Rights*.[50] Among these rights the INC enumerated "(b) [t]hat no Indian subject of His Majesty shall be liable to suffer in liberty, of life, property, or of association (…), except under sentence by an ordinary Court of Justice, and as a result of lawful open trial."[51] Other suggestions for constitutional provisions for the assurance of fundamental

[46] *Nehru Report*, The Committee Appointed by The All Parties' Conference, 1928, p. 164–165; *Swaraj Resolution*, SIDHWA/LALWANI, 1932, p. 140.
[47] For examples and judgment of the elite view on the rural population, cf. POUCHEPADASS, 1999, 192-94, 205-08.
[48] The Committee Appointed by The All Parties' Conference, 1928, p. 60.
[49] JAYAL, 2013, p. 137; ZAIDI, 1979, p. 322.
[50] ZAIDI, 1979, p. 322.
[51] ZAIDI, 1979, p. 322.

rights reappeared in the constitutional bill, the *Commonwealth of India Bill*, of Annie Besant, member of the Swaraj Party: "7. (a) No person shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered, confiscated, save in accordance with law and by duly constituted Courts of Law."[52] In the 1930s policymakers clearly spelled out the abolition of bonded labour as a policy goal: In the Karachi Session of 1931, the INC adopted the *Swaraj Resolution*, in which the INC explained that labour should "be freed from serfdom or conditions bordering on serfdom."[53] And in 1945 the Sapru Committee, initiated by Tej Bahadur Sapru after the Non-Party Conference,[54] suggested a constitutional provision that "[n]o form of forced labour shall be permitted,"[55] and "**Begar** should be made a crime."[56]

The Working Committee of the All-India Scheduled Castes Federation had requested Ambedkar "to prepare a Memorandum on the Safeguards for the Scheduled Castes for being submitted to the CA on behalf of the Federation."[57] In his *The State of Minorities*, published during the work of the CA in 1947, Ambedkar suggested provisions for fundamental rights. He explained many workers had "to relinquish their constitutional rights in order to gain their living,"[58] and asked "[h]ow many have to subject themselves to be governed by private employers?"[59] The liberty that would arise from a privately run market economy with employers and workers acting freely, would result in the liberty of the capitalists and the landlords but not the workers.[60] One of Ambedkar's suggestions to realise and secure fundamental rights was to turn agriculture into a state-owned sector as a form of state socialism. He was determined that this was the only way to secure the rights of agricultural labourers. It would remove the labourers from the capitalist mechanisms, which, according to his insights, always resulted in the exploitation of the labourers.[61] Regarding forced labour, he offered a provision in his publication's list of Fundamental Rights of Citizens: "Subjecting a person to forced labour or to involuntary servitude shall be an offence."[62]

But while the right to liberty and freedom from slavery or *begar* featured prominently in these constitutional drafts, the ideology of work still remained a strong influential idea. In

[52] National Convention India, 1925, p. 3.
[53] SIDHWA/LALWANI, 1932, p. 140.
[54] THILAKAVATHY/MAYA, 2019, p. 154.
[55] SAPRU, 1945, p. 219.
[56] SAPRU, 1945, Appendices: xxvii, bold in the original.
[57] AMBEDKAR, 1947, Preface.
[58] AMBEDKAR, 1947, p. 32.
[59] AMBEDKAR, 1947, p. 32.
[60] AMBEDKAR, 1947, p. 33.
[61] AMBEDKAR, 1947, 31, Art. II, Sec. II.
[62] AMBEDKAR, 1947, 11, Art. I, Section II, Art. 9.

the report of the National Planning Committee of which Netaji Subhas Chandra Bose and Pandit Jawaharlal Nehru were members, the authors made suggestions for a general use of the labour of the population in terms of forced labour. The goal was the development of India, and "it was suggested that all citizens should be conscripted for some social service (...) no student should be awarded his academic degree unless and until he puts in six months or a year of some kind of social service."[63] For the development of the whole nation, the extraction of forced labour was legitimated.

Political Context

The *Cabinet Mission Plan* laid the foundational rules for the transition of India towards independence. The 299 members of the Assembly were indirectly elected in the provincial assemblies; 290 of them were men. Franchise was conditional on different qualifications, such as education and taxation,[64] and elections were based on community membership: Moslem, Sikh, and General, which comprised Hindus and all other communities.[65] The seats afforded to the assembly also included representatives of the not yet formed new state of Pakistan (East and West Pakistan), who resigned after the decision to partition India. From the beginning, the Muslim League boycotted the CA and did not participate in the sessions.[66]

The decision to divide India into two separate states was made on June 3 1947.[67] During three to four months following the decision, about fifteen million people crossed the new borders between India and Pakistan. About eight million Hindus and Sikhs left the territory of the newly founded Pakistan and moved to India; approximately seven million Muslims left the Indian territory to move to West or East Pakistan. This massive movement of people was accompanied by mass violence and massacres, and about one million people died during this short period.[68] Because of the formation of the independent state of Pakistan, the number of participating members of the CA changed. The accession of the princely states

[63] Constituent Assembly Debates, December 3 1948.
[64] Franchise was based on residency, taxation (i.e. income tax), property (i.e. landholders or *ryotwars*), literacy; women were franchised when they or their (deceased) husbands fulfilled certain qualifications. Sixth Schedule of the *Government of India Act* of 1935, Parliament of the United Kingdom, 1935, p. 251–298.
[65] AUSTIN, 1966, 5, 332.
[66] AUSTIN, 1966, p. 6–7.
[67] AUSTIN, 1966, p. 8.
[68] METCALF/METCALF, 2006, p. 222; WAGNER, 2006, p. 14.

contributed to another change in numbers of the Constituent Assembly.[69] The populations of the colonial territories of Portugal and France in India, were not represented in the CA.[70]

Executive and Legislative Arena

The members of the CA were elected representatives of the provincial assemblies, therefore indirectly elected. Initially, by December 1946, 389 people were expected to represent the Indian population, with 296 representatives from the British Indian provinces, and 93 from the princely states.[71] The members were organised in political parties, and earlier elections of the provincial legislatures had taken place already with an eye on the formation of the CA. The INC won 69 percent of the seats in the provincial legislatures, and, after partition, Congress occupied 82 percent of the seats in the CA.[72] Austin explains that "[t]he Constituent Assembly was, in effect, a one-party assembly, in the hands of the mass party, the INC. Yet it was representative of India.[73] The INC also exercised the party whip with designated members functioning as Chief Whip, who required party members in the assembly to vote according to party line.[74] Austin adds that "[t]he Congress Party Assembly was the unofficial private forum that debated every provision of the Constitution, and, in most cases, decided its fate before it reached the floor of the House."[75] This forum was constituted by Nehru, Patel, Prasad and Azad which is also known as the "oligarchy within the Assembly."[76]

From these depictions it appears that there was no veto point at the executive arena: Party cohesion was required, and decisions of the inner circle within the INC were unlikely to be overturned by other representatives in the Constituent Assembly. This translates into strong veto possibilities for actors within the CA to block attempts of change within this arena. Without any veto options outside of the assembly, the members of the assembly, and particularly those with access to the inner circle of the INC, were privileged.[77] This is also the

[69] WAGNER, 2006, p. 13.
[70] Portuguese Dadra and Nagar Haveli became part of the Indian Union in 1954; Goa, Daman and Diu followed in 1961. Among the last colonial possessions of France in India that became part of the Indian Union in 1954 were Pondichéry, Karikal, and Mahé, HARDGRAVE/KOCHANEK, 2008, 160, 481; WAGNER, 2006, p. 190–191.
[71] WAGNER, 2006, p. 13.
[72] AUSTIN, 1966, p. 10.
[73] AUSTIN, 1966, p. 2.
[74] AUSTIN, 1966, p. 24.
[75] AUSTIN, 1966, p. 22. See also: BRANDT/COTTRELL/GHAI *et al.*, 2011, p. 337–338.
[76] AUSTIN, 1966, p. 21; cf. TINKER, 1967, p. 250.
[77] IMMERGUT, 1990, p. 396.

case for the provisional government and its relation to the interim parliament, which was constituted by the very same representatives of the CA.[78]

Under those circumstances, changing the substance of legislative proposals from outside and against the INC and against the provisional government was difficult or impossible to achieve. Deducing from earlier policy suggestions,[79] the INC favoured a strong institution against slavery and was interested in preventing attacks on the legislative provisions against the abolition of slavery. Therefore, if the INC or the provisional government were striving for change of the institution of the abolition of slavery, the political context afforded proslavery actors acting as defenders of the status quo only weak veto possibilities. There were several notable members in the assembly who were active in the labour movement and dedicated to and familiar with the grievances of agricultural labourers. Among them were N. M. Joshi, who had pushed for the removal of the WBCA in the 1920s; and Prasad and Patel, who were active in the indigo disturbances which the INC and Gandhi supported in the 1920s with *satyagrahas* in Champaran and Bardoli.[80] Austin concludes that even though they were not unanimous on how to improve the conditions of labour, the members of the cabinet and the INC oligarchy agreed that "[i]f the good of the many demanded the sacrifice of the few—as in *zamindari*-abolition[81]—it would be done."[82]

Electoral & Public Arena

One quarter of the Indian population was eligible to vote for the legislative assemblies in the presidencies. The regional assemblies then indirectly elected the CA and the interim parliament. The majority of the Indian people were not able to express their interest by vote. The population had no other means of influencing the constitution making or legislative process beyond the elections of 1947.[83] The final version of the *Draft Constitution* was published and opened for public debate—the whole population was able to express its opinion, but not to influence the outcome: Indian citizens could not overturn the decisions of the CA or the interim parliament. Without the electorate overturning the assemblies'

[78] AUSTIN, 1966, p. 17.
[79] *Swaraj Resolution*, SIDHWA/LALWANI, 1932, p. 140.
[80] AUSTIN, 1966, p. 42.
[81] *Zamindari* is the right of landlords to collect taxes, MITRA, 2017, 49, footnote 40.
[82] AUSTIN, 1966, p. 43.
[83] AUSTIN, 1966, p. 10.

decisions, nor exercising influence with shifting votes or a referendum, the electoral arena constituted no veto point.[84]

Hypothesis

Scholars have pointed out that regime change and constitution making periods often pose moments in time in which a "dramatic reorientation"[85] takes place. In Latin American states, for instance, periods of reform and constitution making posed critical junctures during which autocratic regimes were replaced by democratic ones.[86] The constitution making for the independent Indian state was such a critical juncture. Regime changes are "hypothesized to produce distinct legacies."[87] But as discussed earlier, a critical juncture may also turn out not to be critical.[88] Consequently, the evaluation of the significance of a certain change can only be made in retrospect. How critical the changes turned out for the abolition of slavery and particularly bonded labour is the question guiding the following pages.

Formulations of rights, such as in the *Commonwealth of India Bill*, or the *Nehru Report*, rendered the status quo within which bonded labour prevailed untenable. Political actors could seize this opportunity of regime transformation as a chance to change the institution of the abolition of slavery. In the discussion on the discretion of interpretation of the institution, it becomes clear that policymakers also evaluated the existing policy as weak. The rights provisions discussed above were usually one-liners that stated the goal of the abolition of slavery and *begar* or bonded labour, and in some cases requested the criminalisation of violations.[89] More stringent policy suggestions that went beyond already existing policy provisions were not formulated.

By 1946 the characteristics of the formal institution of the abolition of slavery were weak: The discretion of interpreting the rules was high; the enforcement level was ineffective and not satisfactory to political actors. Proslavery actors were probably content with the weak rules and their low level of implementation. But within a political environment—an antislavery *Zeitgeist* and an independence movement in support of the rights of workers, and

[84] IMMERGUT, 1990, p. 397.
[85] COLLIER/COLLIER, 1991, p. 745; cf. CAPOCCIA/KELEMEN, 2007, p. 348.
[86] COLLIER/COLLIER, 1991, p. 6–8.
[87] COLLIER/COLLIER, 1991, p. 29.
[88] COLLIER/COLLIER, 1991, p. 44.
[89] Compare for instance: *Swaraj Resolution*, SIDHWA/LALWANI, 1932, p. 140; Sapru Committee, SAPRU, 1945, Appendices: xxvii.

rights to freedom and equality—proslavery actors were unlikely to voice their interests and act in direct resistance towards legislative measures abolishing slavery or bonded labour. Having gained a status of 'taken-for-grantedness,'[90] at the international and the national level, slavery as a legitimate labour relation was completely out of discussion—at least as long as its definition required legal ownership claimed by private actors. The use of forced labour for the state was not off the table. Consequently, in the opening window for radical change, the question of defining slavery and where to place bonded labour, as well as identifying the bodies and mechanisms to enforce the rules, were the important issues that needed to be addressed and solved.

The rules were weak, enforcement was ineffective, and the veto possibilities for the defenders of the status quo were weak as well. The *Zeitgeist* was antislavery; therefore, I test hypothesis 4a) in the first part of the third episode. Proslavery actors were the preservers of the status quo, endowed with weak veto possibilities to block change; antislavery actors were the actors of change, acting towards change at the rules level,[91] who behaved either as insurrectionaries, causing displacement of rules,[92] or, sought to improve existing legislation and thereby behaved like subversives, adding layers on top of existing rules.

Gradual Changes

The CA met for the first time on Monday, December 9 1946 at 11 am at the Constitution Hall in New Delhi. The last session was on January 24 1950.[93] The *Cabinet Mission Plan* suggested the installation of an Advisory Committee to develop a list of fundamental rights which should be protected by the future Indian constitution. On January 24 1947 the CA voted in favour of the installation of such a committee—the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas. This committee commissioned four sub-committees, of which one was the Fundamental Rights Sub-Committee.[94] The submissions of the sub-committees were then discussed by the Constituent Assembly. The CA of India also established the Interim Government, which was in place

[90] FINNEMORE/SIKKINK, 1998, p. 895.
[91] MAHONEY/THELEN, 2010b, p. 29.
[92] MAHONEY/THELEN, 2010b, p. 24.
[93] Parliament of India.
[94] The other three committees were: (1) the Minorities Sub-Committee, (2) the North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee, and (3) the Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee.

from September 2 1946 until the proclamation of independence on August 15 1947. After independence the Dominion Government was formed: The so-called First Nehru ministry, with Nehru as Prime Minister and fifteen ministers, of which several were members of the CA. The CA continued to function parallelly as interim parliament. In the following chapter I describe and discuss the work of these different political bodies regarding the issue of bonded labour, forced labour and slavery.

Advisory Committee & Fundamental Rights Sub-Committee

Altogether, seventeen sub-committees for the drafting of the constitution were formed. Members of these committees were the members of the CA—some of them occupied several functions since they were also members of the government, as for instance Ambedkar, who served as minister for the Department of Law, or Jagjivan Ram, who served as Labour Minister. The committees' reports formed the basis on which the Draft Committee formulated the final version of the *Draft Constitution*, which was then debated by the CA. The Fundamental Rights Sub-Committee, with J. B. Kripalani as chair,[95] was concerned with the question of which rights were to be enshrined as fundamental rights in the Indian constitution.[96] Ambedkar, who was never a Congress member,[97] worked in the Advisory Committee, the Fundamental Rights Sub-Committee and chaired the Draft Committee.

In harmony with the idea of equal representation of minorities, the Congress decided to reflect the diversity of Indian society in the Fundamental Rights Sub-Committee.[98] The members[99] of the sub-committee represented Hindus, Scheduled Castes, Christians, Parsi, Sikhs and Muslims.[100] Austin asserts that there was no correlation between community

[95] AUSTIN, 1966, p. 341.
[96] Parliament of India.
[97] AUSTIN, 1966, p. 19.
[98] AUSTIN, 1966, p. 62.
[99] The members were M. R. Masani, K. T. Shah, Rajkumari Amri Kaur, Mrs Hansa Mehta, A. K. Ayyar, K. M. Munshi, Harnam Singh, Maulana Abdul Kalam Azad, B. R. Ambedkar, Jairmandas Daulatram, K. M. Panikkar, see AUSTIN, 1966, p. 334.
[100] The background of the members of the Fundamental Rights Sub-Committee collected by Austin: A. K. Ayyar (Dewan Bahadur (Sir) Alladi Krishnaswami) (Hindu, Brahmin): General. The Congress (Madras) elected him in the CA. He was a Standing Counsel for Zamindars of Madras Presidency; Azad, Maulana Abdul Kalam (Muslim): Muslim, elected by Congress (NWFP and UP); B. R. Ambedkar (Hindu, Scheduled Caste—Mahar): General. The Scheduled Castes Federation (Bengal) and then Congress (Bombay) elected him to sit in the CA. He was in opposition of Gandhi and the Congress; Daulatram, Jairmandas (Hindu, Amil—near Brahmin): General, Congress (Sind, E. Punjab); Kaur, Mrs Rajkumari Amri (Christian): General, Congress (CP, Berar); Kripalani, Archya J. B. (Hindu, Amil—near Brahmin): General, Congress (UP); Masani, Minoo R. (Parsi): General, Congress (Bombay); Mehta, Mrs Hansa (Hindu, Brahmin) : General, Congress (Bombay); Munshi, K.

membership and the actors' behaviour in representing the respective communities' interest.[101] But he asserts "because the Congress and its candidates covered a broad ideological spectrum, those elected to the assemblies did represent the diverse viewpoints of voters and non-voters alike."[102] But nominating minorities explicitly, Congress attempted to achieve exactly that: Community representation and the protection and integration of their interests in the Constitution.[103] Explaining his participation in government, Ambedkar, for instance, wrote that he "joined the Government because he did not believe in opposition for opposition's sake and because '(1) The offer was without any conditions, and (2) one could serve the interests of the Scheduled Castes better from within the government.'"[104] This statement shows: His participation in the legislative processes was inspired by community representation and his motivation was to safeguard the interests of the Dalits.

The Fundamental Rights Sub-Committee met for the first time on February 27 1947. The discussion on forced labour and slavery took place during the second and third sitting, between March 24-31 and April 14-16 1947. Among others, the groundwork for the discussions of the fundamental rights were the submissions of the members B. N. Rau,[105] K. T. Shah,[106] Alladi Krishnaswami Ayyar,[107] K. M. Munshi,[108] Ambedkar,[109] and Harnam Singh.[110] Their contributions were inspired by different sources, for instance, constitutions of other states, the *Government of India Act* of 1935, and case law, such as of the United States.[111] The United Nations Declaration of Human Rights was also a source of inspiration.[112] Rau's submission to the committee, the *Constitutional Precedents*, contains a list of fundamental rights including the abolition of slavery and forced labour,[113] as could be

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M. (Hindu, Brahmin): General, Congress (Bombay); Panikkar, K. M. (Hindu, non-Brahmin): Princely States (Bikaner); Shah, K. T. (Hindu, Brahmin): General, Congress (Bombay); Singh, Harnam (Sikh): Sikh, Akali (East Punjab). AUSTIN, 1966, p. 337–338.

[101] AUSTIN, 1966, xvi.

[102] AUSTIN, 1966, p. 10.

[103] *Govind Ballabh Pant's Speech, Constituent Assembly, setting up the Resolution for the installation of the Advisory Committee*, January 24 1947, reprinted in RAO, 1968b, p. 60.

[104] AUSTIN, 1966, p. 19; quotation in single quotation marks are from Ambedkar, in a letter from Ambedkar to Nehru, April 28 1948, quoted in AUSTIN, 1966, p. 20.

[105] *Notes on Fundamental Rights by B. N. Rau*, September 2 1946, in RAO, 1968b, p. 21–36.

[106] *A Note on Fundamental Rights by K. T. Shah*, December 23, 1946, in RAO, 1968b, p. 36–55.

[107] *A Note on Fundamental Rights by Alladi Krishnaswami Ayyar*, March 14 1947, in RAO, 1968b, p. 67–69.

[108] *Munshi's Note and Draft Articles on Fundamental Rights*, March 17 1947, in RAO, 1968b, p. 69–80.

[109] *Ambedkar's Memorandum and Draft Articles on the Rights of States and Minorities*, March 24 1947, in RAO, 1968b, p. 84–114.

[110] *Harnam Singh's Draft on Fundamental Rights*, March 18 1947, in RAO, 1968b, p. 81–84, AUSTIN, 1966, p. 62.

[111] AUSTIN, 1966, p. 78–79.

[112] *A Note on Fundamental Rights by K. T. Shah*, December 23 1946, in RAO, 1968b, p. 36–55.

[113] RAU, 1947, 95, 100.

found in the US Constitution, namely the *Thirteenth Amendment*,[114] and the Constitution of Czechoslovakia.[115]

Shah suggested the protection of the right to be free from enslavement in his *Note on Fundamental Rights*:

> 39. Slavery of any kind is forbidden. No rights which would amount to property of any kind in human beings, or enslavement of one individual by another, or by groups or corporations, shall be recognized. All human beings in the Union of India are and shall be free and equal before the law.
>
> 40. All labourers attached to land and working thereon in any degree of servile condition shall be deemed to be free workers, remunerated for this toil by wages at prescribed or agreed rates. All forced labour or begar of any kind is forbidden.[116]

And K. M. Munshi's Draft also contained provisions for the Rights of Workers, in Article VII:[117]

> (3) Every form of slavery or traffic in human beings or compulsory labour other than public service equally incumbent upon all or as part of the punishment pronounced by a court of law is abolished and if such form of traffic or labour is enforced it shall be punishable by the law of the Union.[118]

These examples show that there was an agreement among the assembly members to explicitly abolish slavery. Several of them made use of the term slavery, but none contained a definition and only Shah's suggestion indicated that slavery was understood as the right to ownership in a person. Shah also addressed regionally specific labour conditions, such as the granting of freedom to workers attached to the land, and also used an Indian term: *begar*.

Instead of discussing all the different documents at once, the members of the sub-committee used Munshi's draft as basis for discussion.[119] As quoted above, Munshi's draft contained an article prohibiting slavery. In the discussion of the articles on *Rights to Freedom*, the members of the committee agreed that "the right to maintain his person secure by the law of the Union from exploitation in any manner contrary to law or public morality" should be

[114] RAU, 1947, 32, 44, 49; Congress of the United States of America, December 18 1865.
[115] RAU, 1947, 34, 53.
[116] *A Note on Fundamental Rights by K. T. Shah*, December 23 1946, in RAO, 1968b, p. 53.
[117] *Munshi's Note and Draft Articles on Fundamental Rights*, March 17 1947, in RAO, 1968b, p. 69–80.
[118] *Munshi's Note and Draft Articles on Fundamental Rights*, March 17 1947, in RAO, 1968b, p. 77.
[119] *Minutes of the Meeting of the Fundamental Rights Sub-Committee February 27-March 31 1947*, March 24 1947, in RAO, 1968b, p. 116.

moved to the provision prohibiting "*begar* or other forms of forced labour"[120]—*begar* being defined as "a form of forced labour."[121]

On March 27 Munshi's prohibition of slavery article 7 (3) was discussed.[122] The members agreed on the part that "[e]very form of slavery or traffic in human beings" should be abolished and added that a "contravention of this prohibition shall be an offence."[123] Disagreement among the members surfaced on the issue of forced labour for public works and conscription. The members agreed that private actors should never have the right to use slave labour, but some members intended to save the state's right to require forced labour. The removal of military service from the purview of the abolition of forced labour was negated by majority vote.[124] The revision of the sub-committee then read:

> VII. Clause (3).—(a) Every form of slavery or traffic in human beings is hereby prohibited and any contravention of this prohibition shall be an offence.
>
> (b) No *begar* (a form of forced labour) shall be permitted within the Union.
>
> (c) No involuntary servitude, except as a punishment for crime whereof the party shall be duly convicted, or as a compulsory service under any general scheme of education shall exist within the Union or any place subject to its jurisdiction.
>
> (d) Conscription for military service or training or for any work in aid of military operations is hereby prohibited.[125]

After reworking the wording of this passage, the members of the committee accepted the criminalisation of slavery.[126] The *Final Draft Report*[127] and the completed *Report of the Sub-Committee on Fundamental Rights*[128] with which the Advisory Committee continued its work contained the provisions under Rights to Freedom quoted above, including the prohibition of child labour in hazardous occupations.[129] With the addition of the Indian term *begar*,[130] the

[120] *Minutes of the Meeting of the Fundamental Rights Sub-Committee February 27-March 31 1947*, March 26 1947, in RAO, 1968b, p. 121.
[121] *Minutes of the Meeting of the Fundamental Rights Sub-Committee February 27-March 31 1947*, March 27 1947, in RAO, 1968b, p. 125.
[122] *Minutes of the Meeting of the Fundamental Rights Sub-Committee February 27-March 31 1947*, March 27 1947, RAO, 1968b, p. 125–126.
[123] *Minutes of the Meeting of the Fundamental Rights Sub-Committee February 27-March 31 1947*, March 27 1947, in RAO, 1968b, p. 125.
[124] *Minutes of the Meeting of the Fundamental Rights Sub-Committee February 27-March 31 1947*, March 27 1947, in RAO, 1968b, p. 126.
[125] RAO, 1968b, p. 126–127.
[126] *Minutes of the Meeting of the Fundamental Rights Sub-Committee*, April 14-15 1947, in RAO, 1968b, p. 165.
[127] *Draft Report of the Sub-Committee to the Advisory Committee*, and *Annexure Fundamental Rights*, submitted April 3 1947, in RAO, 1968b, p. 137–143.
[128] *Report of the Sub-Committee on Fundamental Rights to the Advisory Committee*, and *Annexure Fundamental Rights*, submitted April 16 1947, in RAO, 1968b, p. 169–176.
[129] *Annexure to the Draft Report to the Advisory Committee on Minorities, Fundamental Rights, etc.*, April 3 1947, in RAO, 1968b, p. 140.

sub-committee "kept in view the complexity of Indian conditions and the peculiarities of the Indian situation."[131]

The members of the sub-committee submitted comments on this draft article to the Advisory Committee.[132] Two members of the sub-committee, Amrit Kaur and Hansa Mehta, expressed in their *Minutes of Dissent* their dissatisfaction with the explanatory note to Clause 15, which provides for compulsory service for educational purposes.[133] They argued that they "look upon compulsion as against all tenets of democracy and would point to the danger of giving the State power of compulsion in any sphere of life."[134] They suggested that any activities should be paid, since in a populous country like India, compulsion would not be necessary by any means.[135] Ayyar, on the other hand, explicitly asked for a provision that would allow the state to coerce labour in times of emergency in his notes of dissent. He probably had the recent end of World War II in mind, because he pointed out that in times of war the right to conscription should be retained for the state—even though, he admitted, such a provision would be in contravention to the ideal of non-violence.[136] K. T. Shah[137] and Ambedkar also expressed their reservation against the prohibition of compulsory military service. They argued that a state needed to secure its defence—prohibiting military service would amount to "wilful self-immolation."[138]

The Fundamental Rights Sub-Committee also addressed the question of enforcing fundamental rights. Following the British example, the members of the committee suggested the method of the prerogative writ, now enshrined in the *Constitution of India* in Article 32 (2) and Article 226.[139] It would allow the Supreme Court and the high courts to issue orders, for instance *habeas corpus*—the release of individuals from state or private detention; and *mandamus*—the order to the administration and executive to exercise their duty in protecting fundamental rights. But pleading for the issuance of a writ was limited to persons affected by

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[130] *B. N. Rau's Notes on the Draft Report*, April 8 1947, in RAO, 1968b, p. 149.
[131] *Report of the Sub-Committee on Fundamental Rights*, April 16 1947, in RAO, 1968b, p. 169.
[132] *Notes and Comments on the Draft Report*, April 4-15 1947, in RAO, 1968b, p. 143–163.
[133] *Annexure to the Draft Report to the Advisory Committee on Minorities, Fundamental Rights, etc.*, April 3 1947, in RAO, 1968b, p. 140.
[134] *Amrit Maur & Hansa Mehta*: *Minutes of Dissent to the Report*, April 17-20 1947, IV, in RAO, 1968b, p. 178.
[135] *Amrit Maur & Hansa Mehta*: *Minutes of Dissent to the Report*, April 17-20 1947, IV, in RAO, 1968b, p. 178.
[136] *Alladi Krishnaswami Ayyar*: *Minutes of Dissent to the Report*, April 17-20 1947, VI, in RAO, 1968b, p. 180–181.
[137] *K. T. Shah*: *Minutes of Dissent to the Report*, April 17-20 1947, X, in RAO, 1968b, p. 193–194.
[138] *B. R. Ambedkar*: *Minutes of Dissent to the Report*, April 17-20 1947, VIII, in RAO, 1968b, p. 183.
[139] Art. 226 was substituted by the *Constitution of India (Forty-second Amendment) Act*, 1976.

the rights violation.[140] The policymakers clearly saw that fundamental rights needed protection from state agents and private actors, but victims also needed active assistance. Ambedkar, Ayyar and Munshi supported the empowerment of courts to issue writs and the other members agreed. N. G. Ranga, with an eye on poor people who could not afford a lawyer, suggested that the state should bear the costs for cases in which fundamental rights were affected.[141] This suggestion has not been adopted. Austin offers an explanation: Such a provision would have been impossible to implement, because of the amount of administrative paperwork and the immense costs.[142]

The Advisory Committee discussed the report of the Fundamental Rights Committee on April 21 1947;[143] Clause 15 was discussed in two sessions.[144] The discussion continued as to whether the state should be able to make use of forced labour or not. Ambedkar and Rajagopalachari spoke in favour, while Ambedkar insisted that even though it might be forced labour it must be paid. Amrit Kaur repeatedly spoke against any right of the state to extract compulsory labour.[145] Upon the request of Rajagopalachari, the term 'slavery' was dropped from the clause. He remarked that the term slavery was outdated and explained: "[W]e need not adopt the laws of America as enacted at the time of slavery. What is intended is that forced labour and any form of involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted are prohibited."[146] Within this line of reasoning, the CA members apparently defined slavery as chattel slavery, the legal ownership over persons. The way Rajagopalachari used the term 'forced labour' indicates that he also meant bonded labour. Within the minutes of the discussion are barely any recorded attempts to define these terms. Responding to the question of whether Clause 15 included bonded labour, Rajagopalachari affirmed. He specified that bonded labour "is involuntary labour."[147] This was the most explicit statement regarding bonded labour in all of the discussions so far.

[140] "A person is not entitled to file a writ petition until any of his rights have been infringed," Allahabad High Court, May 26 1958.
[141] Constituent Assembly Debates, April 29 1947.
[142] AUSTIN, 1966, 68, footnote n. 72.
[143] *Proceedings of the Meeting of the Advisory Committee*, April 21 1947, in RAO, 1968b, p. 213–289.
[144] *Proceedings of the Meeting of the Advisory Committee*, April 21 1947, in RAO, 1968b, 255-56, 263-64.
[145] *Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc*., April 21 1947, in RAO, 1968b, 255-56, 263-64.
[146] *C. Rajagopalachari: Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc*., April 21 1947, in RAO, 1968b, p. 255.
[147] *C. Rajagopalachari: Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc*., April 21 1947, in RAO, 1968b, p. 256.

The issue of defining 'voluntary' had already played a role in the previous episodes. The British had described forms of bonded labour as 'voluntary enslavement,'[148] and the IPC specifies that slavery is committed 'against the will' of the person (Sec. 370, 374). The League of Nations Temporary Committee on Slavery intended to include "voluntary or involuntary subjections,"[149] as well as debt bondage as forms of slavery prohibited by the *Slavery Convention*. The members of the Advisory Committee did not attempt to define 'voluntary'—this question was later specified in the Constituent Assembly debates, which I discuss in the following sub-chapter. Rajagopalachari avoided the discussion by simply stating that bonded labour was involuntary.

Because of deletions and rearrangements, the clause concerning slavery became Clause 11. The protection of children, as well as compulsory services under educational schemes, were moved into separate clauses.[150] The final version on which the Advisory Committee agreed reads as follows:[151]

> 11 (a) Traffic in human beings, and
> (b) forced labour in any form including begar, and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted are hereby prohibited, and any contravention of this prohibition shall be an offence.
> Explanation.—Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, case or class.[152]

Forced labour appeared as the umbrella term of which slavery was one form. Since the members of the committees seemed to agree that slavery described the ownership right and particularly an outdated form of labour exploitation specific to the US, the term slavery was removed from the draft article. While none of the terms were clearly defined, the CA members intended to enclose the abolition of bonded labour by the provision against forced

[148] Indian Law Commission, January 15 1841a, 194, 281.
[149] ALLAIN, 2008, p. 76.
[150] *Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc.*, April 21 1947, in RAO, 1968b, p. 256.
[151] *Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc.*, April 22 1947, in RAO, 1968b, p. 290.
[152] *Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc.*, April 21 1947, in RAO, 1968b, p. 288; Interim Report of the Advisory Committee on the Subject of Fundamental Rights, April 23, 1947, Annexure, in RAO, 1968b, p. 297–298.

labour. The version of Clause 11 quoted above was submitted by the Advisory Committee in the form of an Interim Report to the CA by the end of April 1947.[153]

Constituent Assembly

The members of the Assembly debated Clause 11 for the first time during the sessions in May 1947, and then again as Article 17 on December 3 1948. The participants of the Indian Constituent Assembly welcomed the proposition to protect the right to freedom from slavery. But even here, the debate on the ban of forced labour was less concerned with bonded labour, but centred primarily on the question of compulsory labour in prisons, during emergencies, and in the form of prostitution, as well as the question of whether conscription would qualify as forced labour.[154] Karimuddin wanted to make sure that forced labour for penal purposes was in place—the article as suggested would not allow forced prison labour.[155] Since the CA members were still divided on the question of conscription, they decided to commission an *ad hoc* committee[156] to resolve the issue.[157] The members of the *ad hoc* committee, among them Munshi and Ambedkar, submitted that "Clause 11 (b) does not, in our opinion, include conscription for military service. But the expression 'forced labour' being very comprehensive, we think that the Explanation should be retained in order to make an exception in the case of compulsory service for public purposes."[158]

While there was no disagreement expressed in the CA on what forced labour or *begar* could mean, there was no agreement on the use of terminology either. Ambedkar noted that "'*begar*' is (…) something which is imposed by the State."[159] In light of this, the members of the assembly discussed whether military service or conscription could be outlawed by this clause.[160] K. T. Shah defined *begar* in a way that also included forms of labour extraction committed by private agents: "Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word 'begar,' that is to say of compulsory work without payment, and

[153] RAO, 1968b, p. 293.
[154] Constituent Assembly Debates, May 1 1947, December 3 1948.
[155] Kazi Syed Karimuddin, Constituent Assembly Debates, May 1 1947, December 3 1948.
[156] RAO, 1968b, p. 293.
[157] *Report of the ad hoc committee on Clause 11 of the Annexure to the Interim Report of the Advisory Committee on the Subject of Fundamental Rights*, submitted May 1 1947, in RAO, 1968b, 299, 302.
[158] *Report of the ad hoc committee on Clause 11 of the Annexure to the Interim Report of the Advisory Committee on the Subject of Fundamental Rights*, submitted May 1 1947, in RAO, 1968b, p. 299.
[159] B. R. Ambedkar, Constituent Assembly Debates, May 1 1947.
[160] Constituent Assembly Debates, May 1 1947.

work at command, should also be stopped."[161] Dakshayani Velayudan expressed her endorsement of Clause 11. She explained that particularly agricultural workers but also all those workers who were not remunerated for their labour and exposed to penal sanctions, would profit from this provision, indicating that her understanding of trafficking and *begar* included bonded labour.[162]

Raj Bahadur's contribution highlights the terminological disagreement as well: "[B]egar, that is, forced labour, not only for ordinary purposes of agriculture but even for menial and humiliating jobs."[163] He referred not only to bonded labour, but also to unpaid labour extracted on the ground of caste. This assessment seemed to also be shared by T. T. Krishnamachari. He addressed bonded labour when he explained "call it 'begar' or anything like that and in my part of the country, the tenant oftentimes is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave."[164]

The terms '*begar*' and 'forced labour' were used in the discussion interchangeably and seemingly without an attempt to clearly define what was meant by those terms. The discussants appeared to share a notion of labour exploitation they wanted to address but used the terms to describe what they meant at random. Based on this shared understanding, the members of the CA and sub-committee saw no need to define either slavery or forced labour, *begar* or bonded labour. They agreed that all of these forms of exploitation, with the exception of forced labour reserved for the state, should end. The term 'slavery' was used indiscriminately, but numerous mentions indicate that several speakers understood slavery in terms of chattel slavery: Shah referred again to slavery meaning "the right to own human beings."[165] Earlier he included trafficking when he pointed "out that by '*Traffic in human beings*' I understand the possibility of buying and selling as if these human beings were chattels, and as such ought to be prohibited. The common understanding interprets these words to mean slavery as it was practised in olden countries."[166] Nehru referred also to slavery as "property in human beings."[167] These examples depict a definition of slavery tied to the concept of ownerships rights in humans, and the nomenclature to refer to bonded labour was the term forced labour.

[161] K. T. Shah, Constituent Assembly Debates, December 3 1948.
[162] Dakshayani Velayudan, Constituent Assembly Debates, May 1 1947, italics in the original.
[163] Raj Bahadur, Constituent Assembly Debates, November 22 1948.
[164] T. T. Krishnamachari, Constituent Assembly Debates, December 3 1948.
[165] K. T. Shah, Constituent Assembly Debates, September 10 1949.
[166] K. T. Shah, Constituent Assembly Debates, December 3 1948, italics in the original.
[167] Jawaharlal Nehru, Constituent Assembly Debates, September 10 1949.

Another issue was the gravity and prevalence of forced labour, but there was no agreement among the discussants in the CA upon this question. Das asserted that the "practice [of forced labour] does not exist among the major States."[168] Patel explained during the debate on fundamental rights that people in India were exposed to "slavery"[169] in the past, but that this condition had ended completely. On the other side, Krishnamachari explained that he believed that "forced labour"[170] was prevalent everywhere in India. This disagreement on the prevalence of forced labour or slavery reflects the issue of having not defined those terms. For instance, Krishnamachari referred to bonded labour in agriculture,[171] while Das referred to forced labour or *begar* exercised by the state.[172] Therefore, Krishnamachari was able to see forced labour everywhere in India, while Das, focusing only on forced labour extracted by the state, detected its extraction only in the princely states.

Das worried about the implementation of the constitutional right to be free from *begar* and pointed at the problem of this very provision: He insisted that this right needed to be monitored and enforced—the police or labour inspectors would be necessary to conduct fieldwork, identify individuals working under the condition, and liberate the workers. Das already anticipated implementation problems of the right to be free from forced labour and *begar* and requested "further assurance from the representatives of the Indian States[173] (…) whether they will persuade their colleagues in the less advanced States to abolish forced labour."[174]

Other members were more optimistic. Speaking in favour of the constitutional article, Dakshayani Velayudan explained that "this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social structure existing in India."[175] T. T. Krishnamachari expressed his optimism that *begar* and forced labour would disappear, but spoke against the adoption of the article:

> [I]f public opinion is sufficiently mobilised against those abuses, I do not think we ought to put a blot on the fair name of India, possibly, by enacting in our constitution a ban on such abuses. Abuses which will disappear in course of time cannot disappear

[168] Biswanath Das, Constituent Assembly Debates, May 1 1947.
[169] Vallabhbhai J. Patel, Constituent Assembly Debates, April 29 1947.
[170] T. T. Krishnamachari, Constituent Assembly Debates, December 3 1948.
[171] T. T. Krishnamachari, Constituent Assembly Debates, December 3 1948.
[172] Biswanath Das, Constituent Assembly Debates, May 1 1947.
[173] The Indian States were also called the Princely States or Native States, which were governed by Indian rulers.
[174] Biswanath Das, Constituent Assembly Debates, May 1 1947.
[175] Dakshayani Velayudan, Constituent Assembly Debates, May 1 1947, italics in the original.

> all at once by our putting a ban on them in the constitution. (…) [A]ge-old peculiarities of ours that still persist, bad as they are in particular parts of society which can be made to disappear by suitable legislation in due course, perhaps in two, three or four years.[176]

In his eyes, fixing the term 'forced labour' or '*begar*' in the *Constitution of India* would reflect badly on India's reputation. This incrimination could be avoided by simply not mentioning these practices in the Constitution, since Krishnamachari hoped that they would vanish soon anyway—British administrators had expressed the same hope five decades earlier.[177]

The *Draft Constitution* was published in February 1948 and open for comments and suggestions by the public. The Socialist Party published its own version of a constitutional draft, but its provision for the abolition of forced labour was rather similar to what the Fundamental Rights Sub-Committee had produced, including references to trafficking, forced labour, and *begar* and no mentioning of bonded labour.[178] The submitted suggestions by the public were again examined by the Drafting Committee. For the then Article 17 on the *prohibition of traffic in human beings and forced labour* no suggestions or comments were considered.[179]

All versions of the prohibition of slavery, *begar*, bonded labour, trafficking and forced labour discussed above, did not formulate a right. Instead, they offer what Donnelly describes as a negative right[180]—a prohibition requiring an abstention from certain behaviour. By formulating a negative right, the constitution makers focused on the perpetrators rather than on the empowerment of the victims. They did not offer a state machinery to secure the right to be free from enslavement[181] and Article 23 could only "be enforced by legal action."[182] Such a provision was therefore likely ineffective, since affected individuals could not afford a court case.[183]

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[176] T. T. Krishnamachari, Constituent Assembly Debates, December 3 1948.
[177] Mr. A. Forbes, Commissioner of Chota Nagpur, 1898, quoted in a letter from the Hon'ble Mr. J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 35, item No. 1.
[178] Socialist Party, 1948.
[179] RAO, 1968a, 3, 39-40.
[180] DONNELLY, 2013, p. 42–43, Art. 21 which provides for the right to freedom is also framed in terms of a negative right: "No person shall be deprived of his life or personal liberty except according to procedure established by law," *Constitution of India*, 1950.
[181] Jayal argues that this difference between positive and negative rights cannot be upheld, since negative rights also require state action, such as, for instance, surveillance by the police, JAYAL, 2013, p. 156.
[182] AGGARAWALA/AIYAR, 1950, p. 23.
[183] Law Commission of India/Government of India/Ministry of Law, 1958, p. 587.

The authors of the Indian Constitution did not define *begar* or forced labour, and a recourse to the minutes of the debates does not give a finite answer to the definitional question either. Earlier, several judges at the high courts remarked upon the absence of a definition of slave or slavery in the IPC—the new constitutional provision did not fill this gap.[184] The members of the CA acknowledged international legislation and referred to it. Biswanath Das, for instance, who had represented India at the ILO during the making of the *Forced Labour Convention*, made a reference to this convention.[185] The CA members did not incorporate international provisions into the *Constitution*. Furthermore, they diverged from international terminological convention: While the LN included bonded labour within its definition of 'similar forms of slavery,'[186] and supervised the abolition of bonded labour under the *Slavery Convention*, the members of the CA used the term 'forced labour' for bonded labour. With Rajagopalachari's explanation that bonded labour was "involuntary labour,"[187] the CA moved around the exclusion for bonded labour from the purview of the ILO *Forced Labour Convention*, which requires that the working condition has not been entered voluntarily.[188] Despite a new legal provision, the rules of the institution of the abolition of slavery remained ambiguous.

Provisional Parliament & Government

Like the Constituent Assembly, the provisional parliament and government were concerned with the issue of forced labour and bonded labour. As Labour Member of the Viceroy's Executive Council between 1942 and 1946, Ambedkar studied the phenomenon of forced labour in India for several months. He explained to the provisional parliament in 1949, that "[t]he subject appeared to me to be assuming so many different forms in different parts of India that I could not come to the conclusion that a simple measure applying generally to all parts of the country would solve this problem."[189] He argued that more information on the forms of forced labour in India was needed, in order to frame "a proper legislation."[190] He had

[184] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871; *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917.
[185] Biswanath Das, Constituent Assembly Debates, May 1 1947.
[186] CECIL, February 5 1927, p. 218.
[187] *C. Rajagopalachari: Minutes of the Advisory Committee on Minorities, Fundamental Rights, etc*., April 21 1947, in RAO, 1968b, p. 256.
[188] International Labour Organisation, 1930, Art. 2 (1).
[189] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 400.
[190] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 401.

intended to study all of these forms with the help of an Enquiry Committee that would tour the country, but these and other proposals,[191] according to Ambedkar, had been rejected at the governmental level by individuals who had an interest in *begar*.[192]

Figure 8. The first Union Cabinet, 1950

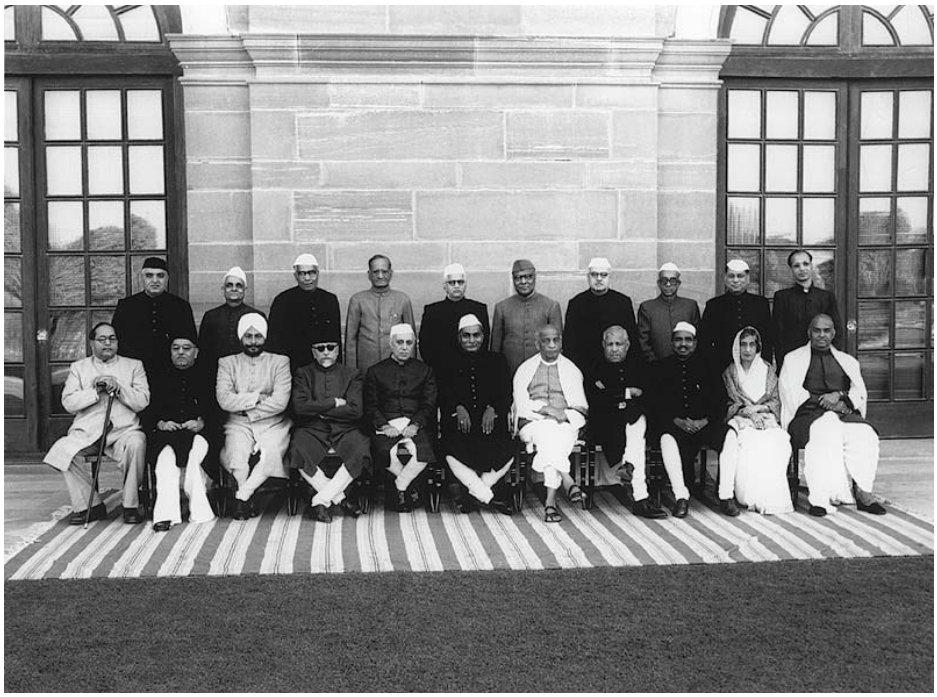

Figure 8, the first Union Cabinet, 1950. Source: Author unknown/Wikimedia Commons. The first Union Cabinet, at the Government House in New Delhi, on January 31 1950. From left to right, front: Dr. B. R. Ambedkar, Rafi Ahmed Kidwai, Sardar Baldev Singh, Maulana Abul Kalam Azad, Jawaharlal Nehru, Dr. Rajendra Prasad, Sardar Patel, Dr. John Mathai, Jagjivan Ram, Rajkumari Amrit Kaur, Dr. S. P. Mukerjee. In the back, left to right: Khurshed Lal, R. R. Diwakar, Mohanlal Saxena, Gopalaswami Ayyangar, N. V. Gadgil, K. C. Neogi, Jairamdas Daulatram, K. Santhanam, Satya Narayan Sinha and Dr. B. V. Keskar.

Ram, who became head of the Department of Labour in 1946, followed up on Ambedkar's suggestion, but Partition made the work of such a committee impossible. Instead of conducting an enquiry into the situation of slavery and forced labour in India, Ram decided to address the question from the legal perspective.[193] In August 1948, the Ministry of Labour commissioned Dhamne as the Officer on Special Duty to carry out research and to draft

[191] Jagjivan Ram, Minister of Labour, Constituent Assembly of India (Legislative), December 16 1949, p. 674; B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 400.
[192] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 400.
[193] MISHRA, 2011, p. 325.

recommendations to reform the laws on forced labour.[194] The provisional parliament discussed his *Summary of the Report on Forced Labour* in December 1949.[195]

Dhamne identified three different forms of forced or compulsory labour in India. The first form, agrestic serfdom, included "personal services […] arising out of tenure."[196] Ultimately agrestic serfdom was a term used by Dhamne that in fact described forms of bonded labour in agriculture: Agricultural labourers were forced to offer their labour to their tenant in return for low or no tenancy. The second form which Dhamne described was debt bondage;[197] the third form concerned forced labour carried out because of the workers' caste and the occupation that came along with it. Pottery or leather works belonged to the category of labour carried out by lower caste members. Upper caste members profited from these services and products and remunerated the worker only in kind. If the labourer did not deliver the service or product, she or he could be punished.[198] Dhamne discussed the extent of forced labour without giving any numbers. He summarised that all three forms of forced labour were 'prevalent' in India.[199] He identified the provisions of the ILO *Convention on Forced Labour* of 1930 and constitutional Article 23 against forced labour and *begar* as the relevant legal foundations and concluded: "*No new Legislation considered necessary*."[200] This conclusion is noteworthy since he stated a few pages earlier in the report that the ILO *Forced Labour Convention* does not cover bonded labour and that the *Constitution of India* does not define forced labour or *begar*.[201] In no instance did he mention the *Slavery Convention*.

Even though Dhamne had not found any further legislation necessary, R. K. Sidhva had already introduced a private bill called *Prevention of Free or Forced or Compulsory Labour Bill* (see Appendix) to the provisional parliament on February 29 in 1948, before the appointment of Dhamne as Special Officer.[202] The bill was discussed in two sessions, on February 11 1949 and December 16 1949. Dhamne submitted his report before the session in December 1949, after the CA adopted Article 17, which later became Article 23.[203] During the first discussion of the bill, the members of the assembly decided to send out the bill to

[194] SHARMA, 2006, p. 199; DHAMNE/GOVERNMENT OF INDIA, 1956, i.
[195] Constituent Assembly of India (Legislative), December 16 1949, p. 675.
[196] DHAMNE/GOVERNMENT OF INDIA, 1956, p. 13.
[197] DHAMNE/GOVERNMENT OF INDIA, 1956, p. 13.
[198] DHAMNE/GOVERNMENT OF INDIA, 1956, p. 13.
[199] DHAMNE/GOVERNMENT OF INDIA, 1956, 1, 13, 35-45.
[200] DHAMNE/GOVERNMENT OF INDIA, 1956, p. 49, italics in the original.
[201] DHAMNE/GOVERNMENT OF INDIA, 1956, p. 13.
[202] Constituent Assembly of India (Legislative), July 1 1948, p. 155.
[203] Constituent Assembly of India (Legislative), February 11 1949, p. 397–398.

solicit the opinion of the Indian states. The states were requested to submit their comments by June 30 1949 and to publish the bill in their respective regional Gazettes. This was done to inform and enable the public and relevant bodies to submit their comments. Then in December 1949 the bill was discussed again.[204]

The bill consists of two pages. It gives a definition of free (unpaid) labour as any work "without providing remuneration in cash at the prevailing market rates in the locality for that kind of Labour."[205] The idea of force in the definition of forced or compulsory labour is tied to "the menace of any penalty and for which the said person has not offered himself voluntarily."[206] A labour relation qualified as forced labour when wages were too low or not paid at all. In the statement of objectives of the bill, the author explains that "[t]he mischief does not lie in compulsion alone, but in non-payment of wages and often inadequate payments."[207] This bill also seems to rest on the assumption that forced labour was only forced when the labourer had not submitted him- or herself 'voluntarily.'[208] At the League of Nations, the discussants of the *Slavery Convention* found that workers submitted to bonded labour or debt bondage voluntarily. But nonetheless, this labour relation amounted to a form of slavery that the League intended to abolish, and the League monitored the British Raj on the issue of bonded labour. The bill of the provisional parliament provides that if the remuneration of bonded labour did not meet the "prevailing market rates"[209] the employer should be prosecuted. The bill also applied if "the menace of any penalty"[210] could be proven. But the disqualification of forced or compulsory labour "for which the said person has not offered himself voluntarily"[211] would exclude bonded labour or debt bondage as long as remuneration was high enough.

In the interim parliament's discussion, the members gave examples and delineated the aim of the bill in a way that shed some light on the intention of the bill: One central goal was the eradication of the extraction of forced labour by private actors. This, according to Sidhva, would also fulfil the requirement of the ILO *Forced Labour Convention*.[212] But neither in the discussion nor in the bill was a single reference made to the *Slavery Convention* of 1926.

[204] Constituent Assembly of India (Legislative), February 11 1949, p. 407.
[205] Constituent Assembly of India (Legislative), April 5 1949, p. 141.
[206] Constituent Assembly of India (Legislative), April 5 1949, p. 141.
[207] Constituent Assembly of India (Legislative), July 1 1948, p. 156.
[208] Constituent Assembly of India (Legislative), April 5 1949, Art. 2 (b).
[209] Constituent Assembly of India (Legislative), February 11 1949, p. 396.
[210] Constituent Assembly of India (Legislative), February 11 1949, p. 397.
[211] Constituent Assembly of India (Legislative), February 11 1949, p. 397.
[212] Constituent Assembly of India (Legislative), February 11 1949, p. 396.

Sidhva described the use of forced labour by *zamindars* to cultivate the land or construct canals without cash payment. He explained that this extraction of forced labour would be a violation of the IPC Section 374, but he also explained that this section was never used against perpetrators.[213] He also mentioned the hill tribes and the working conditions which he wanted to address with this bill. Yet he did not give a description of these working conditions.[214] Instead, Kamath explained "that the spirit of the Bill is absolutely in conformity with and not a whit at variance with Article 17 of the Constitution."[215] In the discussion of the sub-committee the members had clarified that Article 17 would encompass bonded labour, therefore, also this bill intended to address it. Tyagi, member of the assembly, gave an explanation that moved in this direction: Where historical obligations were used to render forced labour and where the affected individuals or groups were not able to leave, this bill would protect the labourers.[216]

Tyagi also highlighted the question of what constituted 'force:' A person was forced to submit to forced labour when the "economic conditions" left no other option.[217] Force was at play, according to Tyagi, when labourers did not have housing and could be evicted by their landlords.[218] He explained: "It is not by force of weapon or by physical force that a man is put to forced labour or has to work against his will."[219] Tyagi's explanation moves the possibility of choice and compulsion beyond the individual and into the realm of economic circumstances. While, as described in the first episode, British administrators also made the observation that economic conditions forced people into self-enslavement during famines,[220] the members of the CA were willing to move these conditions into the realm of forced labour legislation. This constituted a redefinition of forced labour and voluntary submission to forced labour.

Contrary to some participants in the debate on forced labour in the CA,[221] the author of the *Prevention of Free or Forced or Compulsory Labour Bill*, as well as several participants of the discussion in the Dominion Parliament, opined that free, forced and compulsory labour

[213] Constituent Assembly of India (Legislative), February 11 1949, p. 396.
[214] Constituent Assembly of India (Legislative), February 11 1949, p. 396.
[215] Constituent Assembly of India (Legislative), February 11 1949, p. 398.
[216] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[217] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[218] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 402–403.
[219] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 402.
[220] Minute of C. H. Cameron, Indian Law Commission, January 15 1841a, p. 13; ST. TUCKER, 1833, p. 346; cf. Indian Law Commission, January 15 1841a, p. 8.
[221] See for instance the comments of Biswanath Das, Constituent Assembly Debates, May 1 1947, and Vallabhbhai J. Patel, Constituent Assembly Debates, April 29 1947.

were highly prevalent and a serious problem in India, particularly in rural areas where feudal structures perpetuated these labour conditions.[222] The discussants in the provisional parliament found that the issue of forced labour, free labour or compulsory labour were rampant. Sidhva pointed at the distinction between the behaviour of the government under the British and of the new regime that was just about to come. He reminded his audience of the ILO and the *Forced Labour Convention* and the inertia of the colonial power to implement the convention.[223] Referring to the tribal population in Orissa and Bihar, Sidhva argued that the Constitution offered general provisions for their protection, only a specific law could end rampant labour exploitation in the form of forced labour.[224] He supported his judgment on the prevalence of forced labour with the work of Thakkar, who had presided over the Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee of the Constituent Assembly. Tyagi added, also based on Thakkar's report, that thousands of workers were exposed to "this sort of slavery."[225] Minister of Labour Ram remained more general and remarked with reference to Dhamne's report "that forced labour is prevalent in the country."[226] Sidhva concluded that the adoption of the bill would be a contribution to the realisation of the fundamental right formulated in the constitutional Article 23.[227]

Sidhva enumerated several reasons to move this bill: On the one hand it served the fulfilment of international obligations.[228] On the other hand, the author and members of the assembly found existing legislation, as well as the adopted constitutional article, insufficient: The IPC Section 374 "is so vague that it has failed to root out this evil."[229] Similarly, Thakkar explained that the IPC had been "a dead letter"[230] throughout the past nine decades. Sidhva furthermore suggested that a specific law that ensured that the constitutional provisions against forced labour were implemented.[231] In order to give the courts a direction on how to

[222] *Statement* of *Objects and Reasons*, Constituent Assembly of India (Legislative), April 5 1949, p. 142.
[223] Constituent Assembly of India (Legislative), February 11 1949, p. 396. Sidhva seems to refer to the ILO *Forced Labour Convention*, but British India never became a party to the convention; only the United Kingdom ratified the convention in 1931, International Labour Organisation; cf. HORSEY, 2011, p. 10.
[224] Constituent Assembly of India (Legislative), February 11 1949, p. 396.
[225] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[226] Constituent Assembly of India (Legislative), December 16 1949, p. 675.
[227] Constituent Assembly of India (Legislative), December 16 1949, p. 673.
[228] Constituent Assembly of India (Legislative), February 11 1949, p. 395–396.
[229] *Statement of Objects and Reasons*, Constituent Assembly of India (Legislative), April 5 1949, p. 142, February 11 1949, p. 397–398.
[230] A. V. Thakkar, Constituent Assembly of India (Legislative), December 16 1949, p. 673.
[231] Constituent Assembly of India (Legislative), December 16 1949, p. 673.

rule in cases of violations of Article 23, the law would make sure that provisions for punishments were in place.[232]

The abolition of forced labour and slavery also carried metaphorical weight. The adoption of the bill, to some actors, marked a significant step towards independence and a clear demarcation between the Indian democratic regime and despotic colonial rule. CA member Kamath stressed the role of the members of the Dominion Parliament as the representatives of the Indian people. The bill would signify "the direction of the social and economic emancipation of the vast masses."[233] He added that "[i]t is high time, now when we have emerged from the night of slavery into the light of freedom, that we put an end to all the vestiges of slavery which may still exist in our social structure."[234] Not only had workers been enslaved, it was the whole Indian nation that had endured "centuries of slavery."[235] Now with independence, India was "able to break the shackles of slavery and to secure freedom for this country."[236] Saxena even suggested a change of the preamble to the *Constitution*, which would have read: "In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom."[237] If accepted, this would have been the only instance where the word slavery had appeared in the *Constitution of India*.

Jagjivan Ram argued against the bill, stating that a simple legislative provision would not end forced labour.[238] Only with a change in the mentality of the victims as well as the perpetrators bonded labour would end.[239] He confirmed that there were also legal provisions in the provinces banning forced labour, but in general, these provisions were ineffective and forced labour widespread, particularly in rural India.[240] Labour Minister Ram clarified the issue in his statement, explaining that forced labourers were not even able to turn to the police, let alone to afford appealing to the Supreme Court.[241] Sidhva countered this observation by explaining that "[t]heir consciousness has now risen,"[242] indicating that labourers were more likely to turn to the police than they were before independence. Ram

[232] Constituent Assembly of India (Legislative), December 16 1949, p. 673.
[233] H. V. Kamath, Constituent Assembly of India (Legislative), February 11 1949, p. 398.
[234] H. V. Kamath, Constituent Assembly of India (Legislative), February 11 1949, p. 398.
[235] Arun Chandra Guha, Constituent Assembly Debates, November 21 1949.
[236] Jaspat Roy Kapoor, Constituent Assembly Debates, November 21 1949.
[237] Shibban Lal Saxena, Constituent Assembly Debates, October 17 1949.
[238] Jagjivan Ram, Constituent Assembly of India (Legislative), December 16 1949, p. 675.
[239] Jagjivan Ram, Lok Sabha Secretariat, 2005, p. 133–134.
[240] Lok Sabha Secretariat, 2005, p. 134.
[241] Constituent Assembly of India (Legislative), December 16 1949, p. 675.
[242] Constituent Assembly of India (Legislative), December 16 1949, p. 675.

expressed his hope that Sidhva would withdraw the bill because no law could solve this problem, only the awareness of worker and their resistance to become forced labourers.[243] Therefore, one solution proposed to solve the issue was education, to increase literacy, since with education affected labourers would know their rights.[244]

Tyagi supported Ambedkar's point on the lack of information regarding the forms of forced labour prevalent in India. He explicitly requested officers who were not 'England-returnees,' to constitute an enquiry committee with members who were familiar with rural life.[245] The one officer—Dhamne—whom Ram had appointed, was not enough in his view, since particularly in rural India the issue was pressing.[246] Tyagi also implied that a non-official bill, such as this one submitted by Sidhva, and one which has not been drafted by the government, was reflective of public opinion but lacked the necessary statistical information and was therefore not formulated adequately.[247] He expressed the expectation that if a committee was installed and a sufficient bill was produced, the Dominion Parliament would support it without hesitation.[248] Tyagi also argued, similarly to Ram's reasoning, that the submitted bill would not be effective.[249] Since the affected individuals had no alternative, practically nowhere to go to evade their enslavement, "drastic action"[250] of the state was required. These actions, he envisioned, were the development of cottage industries by the government and the withdrawal of governmental attention from urban development to rural development.[251] He added that next to legal provisions, additional measures were necessary to offer the landless population, so that they "have something to fall back upon which they may call their own."[252]

Satyanarayan Sinha successfully stalled votes on the bill and requested repeated circulations of the bill for comments by the people and public institutions.[253] In his short biographical entrance, Austin notes: Sinha "[h]as spent life as a Congressman and a legislator, although maintaining his agricultural and zamindari interests; he came from a family of minor

[243] Jagjivan Ram, Constituent Assembly of India (Legislative), December 16 1949, p. 675.
[244] A. V. Thakkar, Constituent Assembly of India (Legislative), February 11 1949, p. 400.
[245] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 404.
[246] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 404.
[247] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 404.
[248] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 404.
[249] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[250] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[251] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[252] Mahavir Tyagi, Constituent Assembly of India (Legislative), February 11 1949, p. 403.
[253] Constituent Assembly of India (Legislative), February 11 1949, p. 397.

zamindars."[254] Sidhva found the circulation unnecessary, and wondered "who is going to state that this condition [of forced labour] should remain."[255] As the Chief Whip, Sinha was representing the government's position. One member, Ahmad, questioned whether this bill was in the interest of the government, and also found Sinha's request at odds. Sinha explained:

> It is a common joke in the country that whenever a certain thing is not wanted it is relegated to a committee, and whenever a Bill is not wanted it is sent for circulation. (…) Perhaps it is to revolve round its own axis and then come to a dead stop.[256]

The Chief Whip rejected this accusation by pointing at the government's intention to form a committee to investigate the issue.[257] Sinha's contribution and attempts to stall the development of the bill was the only instance that could be identified as a defence of the proslavery interest during the CA debates.

Yet, another actor speaking against the adoption of the bill was Ambedkar. He was convinced that there was not sufficient information gathered to formulate a proper law. He argued that "it is much better if this legislation came after the Constitution was passed because we could then get the power to administer the law that we make."[258] Knowing the different forms of forced labour would allow the government "to frame a measure which may be fool-proof and knave-proof,"[259] since Ambedkar was convinced that a rather general provision would constitute the solution to eradicate forced labour.[260] Ahmad spoke strongly against the suggestions to postpone the adoption of the bill in order to gather more information. He argued that such an endeavour was not necessary since any kind of forced labour was to be ended, not matter in which transfiguration.[261] Like Das in the CA sessions,[262] Ambedkar mistrusted the provinces in implementing the law and expressed his satisfaction that the new constitution would allow the central government to enact and implement labour laws for the whole of India.[263]

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[254] AUSTIN, 1966, p. 346.
[255] Constituent Assembly of India (Legislative), February 11 1949, p. 397.
[256] Naziruddin Ahmad, Constituent Assembly of India (Legislative), February 11 1949, p. 404.
[257] Satyanarayan Sinha, Constituent Assembly of India (Legislative), February 11 1949, p. 407.
[258] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 401.
[259] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 400.
[260] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 400.
[261] Naziruddin Ahmad, Constituent Assembly of India (Legislative), February 11 1949, p. 404.
[262] Biswanath Das, Constituent Assembly Debates, May 1 1947.
[263] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 401.

The Labour Minister promised that the government would take measures to abolish and penalise forced labour in India after receiving and reviewing the *Agricultural Labour Inquiry Report*. Ram also explained that steps were already taken: The provinces had been contacted with a request to remove legislation that permitted forced labour. Indicating that he trusted Labour Minister Ram's assurance to adopt legislation, Sidhva withdrew his bill.[264]

In August 1950 Sidhva followed up on Ram's word. He asked the government what it had done to fulfil the promise it had made when he repealed the *Prevention of Free or Forced or Compulsory Labour Bill*. Ram informed the MP that the All India Agricultural Labour Enquiry would also include information on forced labour; suggestions, as well as further action to deal with forced labour, were under consideration.[265] Almost exactly a year later, another MP, Deshmukh, followed up on this statement and requested to know what the government intended to do against forced labour.[266] Ram responded that regarding the constitutional articles against forded labour, "it is the opinion of the experts [Dhamne] that further legislation may not be necessary. But the question, as I said, is being examined and if it is found that legislation is necessary, to prevent forced labour, it will be undertaken."[267]

Conclusion

This episode began with a critical juncture. The hypothetical expectation for changes of the institution of the abolition of slavery was either displacement or layering. To briefly conclude—change occurred via layering, but not in a substantial manner: The Constituent Assembly adopted a constitutional provision against slavery, but left the term 'slavery' out, since one member insisted that it referred to a form of labour exploitation that applied to the US and no longer existed. Other terms that have been addressed in other documents or regional legislation, like *kamiauti*,[268] *gothi*,[269] *bethi*,[270] *dasa*,[271] or *devadasis*,[272] were not used in the discussions of the Constituent Assembly, nor found entry into the *Constitution of India*. But most importantly: The CA did not provide a definition, neither of forced labour and

[264] Constituent Assembly of India (Legislative), December 16 1949, 675: 674, 677.
[265] Lok Sabha, August 4 1950, p. 274.
[266] Lok Sabha, August 7 1951, p. 22.
[267] Lok Sabha, August 7 1951, p. 24.
[268] *The Bihar and Orissa Kamiauti Agreements Act* of 1920, Government of Bihar and Orissa, 1920.
[269] League of Nations, 1939, p. 8.
[270] MISHRA/International Labour Office, July 2001, p. 5.
[271] *Dasa* can be translated as slave and has been used in classical Hindu and Muslim scriptures, KUMAR, 1993, p. 114.
[272] Female temple slaves, PINHEIRO, 2009, p. 187.

slavery, nor of *begar*. A recourse to the debates does not shed light on the question of the definition. Clearly, the intention was to end bonded labour, but even this term was barely used and not defined. The provisional parliament discussed legislation against forced labour, which would have addressed bonded labour. But this bill did not contain a clear definition of its subject matter or enumerate competent authorities to ensure enforcement. Furthermore, the bill does not contain any provision for compensations for the victims of a violation—even if enacted, the *Prevention of Free or Forced or Compulsory Labour Bill* would have been a weak law.

As in the constitutional article, the bill used the term 'forced labour', but did not follow the definition of the ILO *Forced Labour Convention* since the convention excludes labour exploitation that has been entered voluntarily.[273] The discussants in the assembly overcame the exclusion of bonded labour by extending their interpretation of 'not voluntary' to the economic circumstances within which the workers found themselves. According to them, poverty left the workers without choice; therefore, their commitment to a debt was not incurred voluntarily and, subsequently, the labour extracted qualified as forced labour.

The bill Sidhva submitted in the provisional parliament was an almost complete copy of the *Prevention of Free or Forced or Compulsory Labour Bill*[274] that S. V. Parulekar had submitted to the Legislative Assembly of the Bombay Presidency ten years earlier.[275] It remains open, why Sidhva chose to copy most parts of the text and not to improve it substantially. The provisional parliament did not adopt the bill and the introducing member withdrew it, and the question is why this critical juncture was not used to enact a change through layering. From the debates in the assemblies and committees it appears that the reasons are mainly due to "cognitive limits."[276] Several members during the CA debates expressed their belief that bonded labour and forced labour were not rampant,[277] an assumption that was contradicted in the debates in the provisional parliament. While not in agreement regarding the magnitude of the issue, all actors in the assembly, committee and parliament agreed that forced labour or slavery had to end, and many hoped that these forms of labour exploitation would vanish by themselves with independence.

[273] ALLAIN, August 2018, p. 5.
[274] The bill is reprinted in The Millowners' Association Bombay, 1939, p. 319–321.
[275] Bombay Legislative Council, April 13 1939, p. 2796.
[276] MAHONEY/THELEN, 2010b, p. 12.
[277] Cf. Biswanath Das, Constituent Assembly Debates, May 1 1947.

Another argument the members of the CA brought forward was that with a democratised society, bonded labour would have no place any longer, and the bill would be obsolete. Interestingly, some of the assembly members pointed at the mental change which had already developed in the victims of bonded labour since the freedom struggle, and which grew with the democratisation of India since independence. Some members in the assembly argued that this mental change allowed labourers not to commit to debt bondage relations any longer, or, if they had, they would now, in increasing numbers, turn to the police. But the mental change of the exploiters was not addressed or only addressed through the legal limits of the criminalisation of caste discrimination. On the other side, there was the promise made by Labour Minister Ram to Sidhva and the assembly to gather information on the matter in order to devise a better law, and to submit it to parliament as soon as possible. Ram, a Dalit himself, expressed strong doubts that a law would bring any change to the situation of bonded labourers. He asked for social change and seemed rather reluctant to adopt any law in the direction of criminalising bonded labour; this position appears strange, since a governmental actor, in this case, apparently did not assign a significant role to the purpose to which he had committed: policymaking.

The deliberations and the output of the Constituent Assembly are reflective of the ideas actors held: They expressed their hope that with regime change would come economic growth, the equality of all citizens, and the abolition of caste discrimination.[278] In 1928 the Committee of the All India Parties' Conference explained that "[t]he seat of autocracy, as far as we are concerned, has been Whitehall (…) whatever else may happen it is clear that no kind of autocracy is going to be tolerated in India."[279] Similar radical changes were expected for the conditions of workers: The end of slavery and bonded labour appeared as the self-evident outcome of regime change and the new law, as expressed by Dakshayani Velayudan,[280] or T. T. Krishnamachari.[281] The members of the CA trusted that the Constitution would be followed by a social revolution, which "would bring about fundamental changes in the structure of Indian society."[282] The liberation from colonial power was

[278] CORBRIDGE/HARRISS/JEFFREY, 2013, 11, 13-14.
[279] The Committee Appointed by The All Parties' Conference, 1928, p. 160.
[280] Constituent Assembly Debates, May 1 1947.
[281] Constituent Assembly Debates, December 3 1948.
[282] AUSTIN, 1966, xi; cf. BAJPAI, 2000, May 27 - Jun. 2, p. 1839.

recurrently interpreted as the end of the enslavement of the Indian nation[283]—its liberation would translate into the liberation of all and also mean the end of the enslavement of Dalits and tribal people.[284] But not all members of the CA shared the trust in this self-fulfilling prophecy. Thakkar urged the government not to delay the adoption of the bill any longer and explained: "We are now independent. Let even the poorest and humblest people in the country feel independence."[285] Consequently, some actors expected that the bill would be effective in a short period, particularly since the colonial administration had been inactive regarding the eradication of forced labour.[286]

The political environment was influenced by the fact that members of the INC occupied prime positions and antislavery actors were visible. While not strong, the *Constitution* did have a prohibition clause against forced labour. Proslavery voices were virtually absent in the debate. The strongest counter position, taken by Ambedkar and Ram, was to delay the adoption until more information was gathered to be able to develop a strong policy. Ultimately, it was Jagjivan Ram, who has been described as the key defender of Dalit rights,[287] who asked for the withdrawal of the *Prevention of Free or Forced or Compulsory Labour Bill*. As a member of the government, he occupied the core veto position. He made use of his power to effectively prevent further changes to the institution of the abolition of slavery, and he promised to lay the foundations for the development of a law against forced labour.

Without a definition, compensation for victims, or the installation of a machinery to supervise and enforce the rules, the additional layer of the *Constitution* had rather symbolic value. The CA succeeded in including the abolition of forced labour, *begar*, and free labour in the *Constitution of India*, and even though bonded labour was not explicitly mentioned, this provision was intended for its abolition. The members of the CA wrote a law that was applicable to the whole of India and the Indian people. But it should not go unmentioned that the right to extract forced labour was secured for the state: Conscription was included in the abolition of forced labour, but the state retained the power to extract forced labour for public

[283] See for instance the following contributions in the CA: H. V. Kamath, Constituent Assembly of India (Legislative), February 11 1949, p. 398; Jaspat Roy Kapoor, Constituent Assembly Debates, November 21 1949; Arun Chandra Guha, Constituent Assembly Debates, November 21 1949.
[284] See the comments of: H. V. Kamath, Constituent Assembly of India (Legislative), February 11 1949, p. 398; Arun Chandra Guha, Constituent Assembly Debates, November 21 1949; Jaspat Roy Kapoor, Constituent Assembly Debates, November 21 1949.
[285] A. V. Thakkar, Constituent Assembly of India (Legislative), February 11 1949, p. 399.
[286] R. K. Sidhva, Constituent Assembly of India (Legislative), February 11 1949, p. 396.
[287] Lok Sabha Secretariat, 2005.

works and penal purposes.[288] Only two members spoke strictly against any legalised extractions of forced labour, but they were not successful.

On January 26 1950 the *Constitution of India* came into force. With its adoption the Constituent Assembly was dissolved, and the interim parliament became the Provisional Parliament in November 1949, which was then replaced by the new parliament after the first general elections held between 1951 and 1952, based on universal adult suffrage. The first Indian Parliament, consisting of the Lok Sabha and the Rajya Sabha, took over the functions of the Dominion Parliament on April 17 1952 as the first democratically elected parliament of independent India.[289] In the following chapter I follow up on the promise Ram gave and discuss how the high courts interpreted the constitutional provision in bonded labour cases.

[288] AUSTIN, 1966, p. 65–66.
[289] The Office of Speaker Lok Sabha.

Chapter 6
3rd Episode Part 2: Independent India, 1952-1990

With the coming into force of the *Constitution of India*, the political context changed from colonial rule to democracy. In 1951 the first round of elections began. 173.2 million citizens were franchised, of which around 46 percent cast their vote. During four months between the years 1951 and 1952 elections were held. 1,874 candidates competed for 489 seats in the Lok Sabha (lower house) elections.[1] Between the dissolution of the Constituent Assembly (CA) and the first general elections, the Dominion Parliament continued its work until 1952. After the elections the first Lok Sabha was constituted in April 1952. In the same month, the Raja Sabha (upper house) also formed and held its first sitting on May 3 1952. The two houses constitute the bicameral parliament of India. Representatives of the Lok Sabha, which holds three sessions per year—the Budget, Monsoon and Winter Sessions—are elected to five-year terms.[2]

Before I address the changes of the political context in greater detail, I first discuss the institutional characteristics of the abolition of slavery and bonded labour in India. This chapter relies mainly on the discussions of the Lok Sabha. All debates are available online at the website of the Parliament of India.[3] Most of the governmental reports are available online, as well as at the South Asia Institute Library in Heidelberg.

Institutional Characteristics

The spirit of ideas carved out in the beginning of this episode's chapter, remain substantially the same, as well as the level of enforcement, which I will therefore address only briefly.

[1] HARDGRAVE/KOCHANEK, 2008, 372, 374-75.
[2] WAGNER, 2006, p. 46–48; MITRA, 2017, p. 130–131.
[3] Available at: Lok Sabha Secretariat.

Discretion of Interpretation

The authors of the *Constitution of India* provided that existing legislations, such as the IPC or the *Act V*, would continue to be in force after independence, except the government or legislature of independent India decided to repeal them.[4] In case of conflict, the *Constitution* would trump older legislation.[5] Therefore, the *Act V* of 1843, the IPC, and the *Slavery Convention* of 1926 continued to stand as the rules of the institution of the abolition of slavery and bonded labour in India. The *Constitution of India* contained, and continues to contain, the prohibition of slavery in Article 23; the only provision for the enforcement of the constitutional ban on slavery was its quality as a fundamental principle. The Fundamental Principles are justiciable, which means that they can only "be enforced by legal action"[6] in a court. In addition, the Directive Principles in Part IV of the Indian constitution define the nature of work relations that the state should be aiming at. The Directive Principles of the Indian constitution provide a set of moral guidelines, "for just and humane conditions of work and maternity relief."[7] The states should align their laws and policies with these provisions. They are meant as guidelines, but they do not "confer (…) legal rights and create[d] no legal remedies."[8] The implementation and interpretation of what "just and humane conditions"[9] means was left open,[10] but the courts do not have the ability to make use of the Directive Principles.[11]

Did the institution of the abolition of slavery in India change with the adoption of the constitutional Article 23? The following table compares the different policies that were applicable to the new independent Indian state. I also consider the *Prevention of Free or Forced or Compulsory Labour Bill* and earlier legislation. Even though the CA had not adopted the bill, the same draft was submitted again in 1954.[12]

[4] Constituent Assembly of India, January 26 1950, Art. 372.
[5] JAIN, 2016, 578-79, footnote 22.
[6] AGGARAWALA/AIYAR, 1950, p. 23.
[7] Constituent Assembly of India, January 26 1950, Part IV, Art. 42.
[8] AGGARAWALA/AIYAR, 1950; STEIN/ARNOLD, 2010, p. 360.
[9] Constituent Assembly of India, January 26 1950, Part IV, Art. 42.
[10] JAYAL, 2013, 154, 222.
[11] Constituent Assembly of India, January 26 1950, Part IV, Art. 37.
[12] Lok Sabha, April 9 1954, p. 4527; Government of India, April 9 1954, p. 223–224.

Table 13. Characteristics of the formal institution, 1950

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
Act V, 1843	No	N.A.	No	No	No	No
IPC, 1862	No[13]	No	Yes[14]	Yes	No	No
Slavery Convention, 1926	Yes	Yes	No[15]	Yes[16]	No	No
Article. 23	No[17]	Yes	No	Yes[18]	No	No[19]
Prevention of Free or Forced or Compulsory Labour Bill, 1948	Yes[20]	Yes[21]	Yes[22]	Yes	No	No[23]
Case law since 1915	Yes[24]	Conditional yes[25]	N.A.	Yes[26]	N.A.	N.A.

[13] IPC Section 370 punishes the buying and disposing of a person as a slave "against his will" and Section 375 prohibits unlawful compulsory labour, prescribing punishment for compelling "any person to labour against the will of that person." Beyond these qualifications, there is no definition of what a slave or slavery is.
[14] With coming into force.
[15] Art. 2 (b): "[P]rogressively and as soon as possible."
[16] Art. 6.
[17] The definition of slavery can only be derived from reading the minutes and debates of the Fundamental Rights Sub-Committees and the Constituent Assembly, not from the article itself.
[18] With Art. 17, Art. 23 is the only fundamental right which contains an offence clause, GALANTER, 1961, p. 230. But it is left to the Parliament (Art. 35 of the *Constitution*) or existing legislation to provide for punishment.
[19] By endowing the courts with the powers of writs, enforcement provisions against violations of fundamental rights were set in place, Constituent Assembly of India, January 26 1950, Art. 32, Art. 226.
[20] It defines free (unpaid) labour, forced labour and compulsory labour.
[21] The bill does not explicitly include bonded labour, but from the *Statement of Objects and Reasons'* reference to 'feudalism' and 'rural areas' in which forced labour "survive[s] and thrive[s]," it can be safely deduced that bonded labour was one of the problems addressed, Constituent Assembly of India (Legislative), April 5 1949, 137, 141-42.
[22] Immediately.
[23] It is a cognisable offence, but only an aggrieved person can file a complaint after the violation of his or her fundamental right.
[24] Defined in the terms of chattel slavery: In *Ram* (1915), *Satish* (1918) and *Koroth* (1917) the judges compared identified elements of chattel slavery in the cases of bonded labour and therefore found bonded labour illegal.
[25] Bonded labour contracts are criminal under slavery offences of the IPC if, (1) payment of wages are either very low or the interest rate makes it impossible to end the debt relation, see *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926, SEN, 1922, p. 379–380, *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927; (2) the time frame indicated for the bonded labour relation exceeds five years, see *Ponnusami v. Palayathan*, Madras High Court, March 7 1919, *Rama Sastriar v. Pakkiri Ambalakaran*, Madras High Court, May 4 1927; (3) the labourer may not work somewhere else, see *Sreenivasa Iyer v. Govinda Kandiyar and Anr.*, Madras High Court, October 9 1944; (4) the contract contains penal provisions for defections, see *Karuppannan (Minor) by Mother and Next Friend Kannakkal v. Pambayan Alias Karuppan Samban*, Madras High Court, September 8 1925; the repayment of a debt by labour is legal, see *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926.
[26] Based on the IPC.

The table highlights visually that the adoption of the *Prevention of Free or Forced or Compulsory Labour Bill* would not have constituted a vital change to the already existing institution of the abolition of slavery. The *Statement of Objects and Reasons'* reference to 'feudalism' and 'rural areas' in which forced labour "survive[s] and thrive[s]" indicates that bonded labour was one of the problems addressed.[27] Until the end of the last episode, the courts continued to struggle in terms of how to treat bonded labour[28]—because the IPC left the terms 'slave' and 'slavery' undefined, and this issue was not resolved by the adoption of the constitutional Article 23. This definitional gap can be expected to cause continued debates regarding if and under what conditions bonded labour constitutes a criminal offence under the IPC, or now under the new provision of the *Constitution of India*. The rules of the institution of the abolition of slavery remained weak: The only provision that actually defined slavery and included bonded labour was the *Slavery Convention* of the League of Nations (LN). But the LN had been dissolved since April 1946 and the UN was just about to discuss the destiny of the *Slavery Convention* of 1926.

Enforcement

The chapter on the level of enforcement showed that bonded labour and forced labour were still prevalent in India. Obviously, employers still believed in this form of labour extraction. But, at the same time, I did not come across any statement or observation in the records that *zamindars* or other employers openly contested the adoption of the Article 23. In the CA not one member spoke of the advantages of bonded labour. A hundred years earlier administrators of the colonial government defended "self-sale"[29] "as the Indian Poor Law,"[30] and in the 1840s *zamindars* had sent thousands of petitions to the Government of India.[31] Neither the records, nor the secondary sources indicate that there was a similarly open contestation of the new rules for the institution of the abolition of slavery in the late 1940s. The governmental reports implied that bonded labour was probably a highly prevalent issue—great attention was given to the indebtedness of workers and to the treatment of potential bonded labour cases;

[27] Constituent Assembly of India (Legislative), April 5 1949, 137, 141-42.
[28] Cf. *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915; *Koroth Mammad and Another v. The King-Emperor*, Madras High Court, August 27 1917; *Empress of India v. Ram Kuar*, Allahabad High Court, March 8 1880.
[29] Indian Law Commission, January 15 1841a, p. 12.
[30] Mr. Cameron's Minute, Indian Law Commission, January 15 1841a, 340-43: 13.
[31] GUHA, 1977, p. 11; CASSELS, 2010, 206, footnote no. 129; BANAJI, 1933, p. 402.

the attention to the debt and treating cases of bonded labour could also be observed in the high court cases.

Continuing its publications, which began in 1947, the Indian Labour Bureau discussed the Article 23 of the Constitution in its third report, as well as the issue of debt bondage, which the authors brought into the purview of the constitutional article.[32] By the time this third report was written, the first test investigations for the Agricultural Labour Enquiry of the Government of India were completed. Among other aspects, the committee collected data on the "earnings from forced labour (…) and indebtedness."[33] But none of the reports gave an estimate on the extent of forced labour. Basing its insights on Dhamne's report, the Indian Labour Bureau agreed with Jagjivan Ram's conclusion "that forced labour is prevalent in the country."[34]

Paradigms and *Zeitgeist*

The *Zeitgeist* outlined in the previous chapter for the beginning of this episode was reconfirmed by the constitutional Article 23. The debates of the CA clarified that the abolition of slavery, including bonded labour, was a norm that stood unquestioned. But only two members explicitly spoke for a complete prohibition of forced labour in any case for any actors, including the state. Still, the extraction of forced labour in the service of the community and the state was upheld by several members of the assembly.[35] Within this debate, the ideology of work element reappeared in the CA debates: Some members suggested the conditionality of rights by tying rights to duties. Member Shah listed in his collection of rights the "duty to work as 'an inescapable obligation of citizenship.'"[36] The educational value of labour was upheld in the discussion on forced labour.[37] Shah portrayed the attending of schools as the fulfilment of the duty to work, since education already constituted one stage that prepared one for work. And he described those who did not work without a valid reason, such as old age or maternity, as 'parasites.'[38] This type of language dehumanised people and opened the door to treat them accordingly; in this case, it allowed for the use of force to compel those to work who do not want to work.

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[32] Government of India/Ministry of Labour: Indian Labour Bureau, 1949, p. 124.
[33] Government of India/Ministry of Labour: Indian Labour Bureau, 1949, p. 266.
[34] Jagjivan Ram, Constituent Assembly of India (Legislative), December 16 1949, p. 675; cf. DHAMNE/GOVERNMENT OF INDIA, 1956, 1, 13, 40-5.
[35] *Amrit Maur & Hansa Mehta*: *Minutes of Dissent to the Report*, April 17-20 1947, IV, in RAO, 1968b, p. 178.
[36] K. T. Shah, in RAO, 1968b, p. 193.
[37] K. M. Munshi, Constituent Assembly Debates, May 1 1947.
[38] K. T. Shah, in RAO, 1968b, p. 196–197.

But normatively the abolition of slavery and bonded labour gained the 'taken-for-grantedness'[39] status—in India and at the national level. The nomenclature vis-à-vis bonded labour was also fixed: Rather than follow the League of Nations convention of referring to 'slavery,' of which bonded labour was defined as one form,[40] Indian policymakers instead used the term 'forced labour' of which bonded labour constituted one form.[41]

Political Context

The new polity reorganised power arrangements as well as veto possibilities in the political arena. In the following pages I present the new veto possibilities in the context of the election results after the first and following elections since the early 1950s. Based on the British administrative organisation the former presidencies and the princely states became the new Indian States with bicameral parliaments and elected chief ministers.[42] In 1950, the *Constitution* provided bicameral legislatures for eight states[43] and provided for the creation of 29 states all together.[44] This number changed with the formation of new states due to decolonisation of the French and Portuguese territories and reorganisation of existing states.[45] In this last episode, I focus again on the central state, but also mention the Indian States in passing.

Executive and Legislative Arena

The Lok Sabha is one of the two legislative bodies with the main function to adopt laws and to control the government. 10 percent of the members of the Lok Sabha are required to be present in the house to pass new legislation. The Lok Sabha can pass laws, and the Prime Minister and his or her cabinet are responsible to Parliament. But the members of parliament have limited power over changing governmental decisions. As "premier institution of representative democracy,"[46] one of the procedural control mechanisms of parliament over the government is the Question Hour, where the Prime Minister and his or her ministers have to

[39] FINNEMORE/SIKKINK, 1998, p. 895.
[40] League of Nations, 1926, Art. 2 (b), for a more detailed discussion refer to Chapter 5 of this dissertation.
[41] Cf. *Prevention of Free or Forced or Compulsory Labour Bill*, 1949, Constituent Assembly of India (Legislative), April 5 1949.
[42] WAGNER, 2006, 88, 94.
[43] AGGARAWALA/AIYAR, 1950, Art. 168.
[44] *First Schedule, the States and the Territories of India*, *Constitution of India*, AGGARAWALA/AIYAR, 1950, p. 318–320.
[45] WAGNER, 2006, p. 88–90.
[46] KAPUR/METHA, 2006, p. 1.

respond to questions from MPs.[47] Standing committees are the forums for discussing and finding compromise in the policymaking process. The parliamentary forum was and is primarily used to debate and to present the positions of parties, the government and the ministers on political issues.[48] Usually, the government proposes bills, but also members of the Lok Sabha or the Rajya Sabha can submit bills, so-called private bills.

The Rajya Sabha is elected indirectly by an electoral college of the Indian States. Every two years, one third of the members of the Rajya Sabha seats are open for election. Both houses have to support a bill, which finally becomes a law when the president also ascents to the bill. The Seventh Schedule of the Indian Constitution provides for the distribution of the powers between the Central State and the states. The concurrent list enumerates the shared power over policymaking—two of them concern criminal law and labour. This means the Union State can pass legislation, but it must be implemented by the states of India.[49] In the case of bills related to labour, two thirds of both houses are needed to vote in favour of the bill.[50]

The ratification of international legislation is within the power of Parliament, provided by Article 246 of the *Constitution*. The Government of India can decide whether to ratify an international convention or not without the approval of Parliament.[51] Therefore, the ratification of conventions, such as the *Supplementary Slavery Convention* of 1956, needed no approval by the Lok Sabha or Rajya Sabha. But since international conventions do not automatically become domestic law, as the Monist system provides for instance in France or the Netherlands, national legislation needs to be adjusted either by amendments or by new laws in India. Within this process of integration of international legislation into national law, the Indian parliament can exercise its influence.[52]

Regarding the question of veto possibilities, Parliament can only overturn executive decisions if the opposition possesses the party majority. But the historical context of the struggle for independence and the strength of the Congress Party contributed to a particular feature of policymaking and governance in independent India: Potential veto possibilities were virtually annihilated by the strength of the Congress Party, also at the federal level.[53] The INC consecutively occupied the majority of Parliament's both houses and constituted the

[47] WAGNER, 2006, p. 46–48.
[48] WAGNER, 2006, p. 47.
[49] Constituent Assembly of India, January 26 1950, Seventh Schedule, List III, 1, 24.
[50] WAGNER, 2006, p. 51–52.
[51] KAPUR/METHA, 2006, p. 26–29.
[52] KAPUR/METHA, 2006, p. 23; HANNUM, 1995/1996, p. 298.
[53] WAGNER, 2006, p. 95.

government.[54] The so-called Congress system[55] described the ability of the Congress Party to incorporate internal fractions and internal as well as external opposition. Thereby, the INC managed within a multi-party system to maintain the majority within parliament's both houses during the first four decades of India's independence.[56] The following diagram (Figure 9) illustrates the INC occupied the majority of seats in the Lok Sabha between 1952 1967:

Figure 9. Lok Sabha seats, 1952-1975

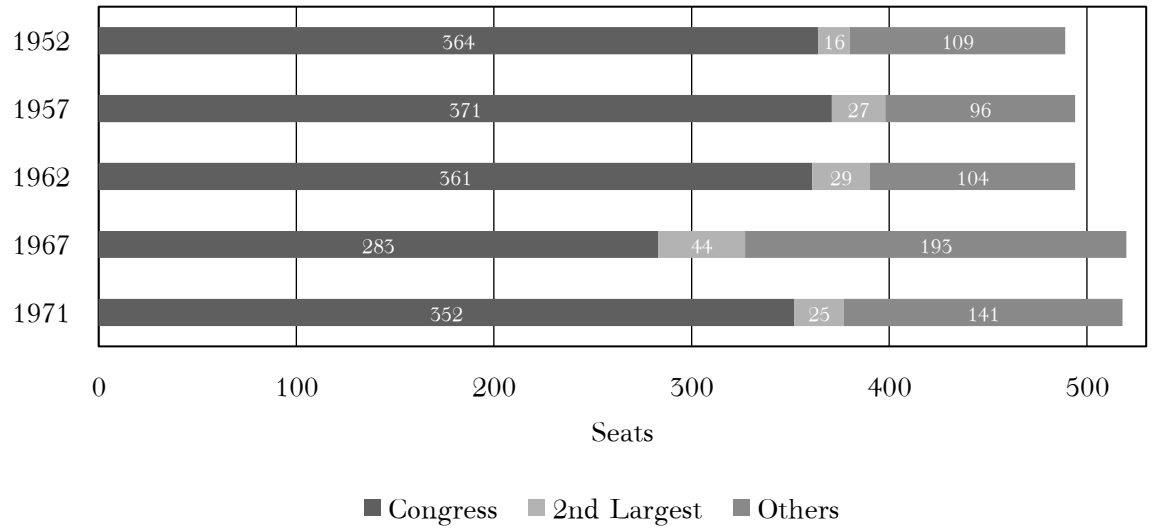

Figure 9, Lok Sabha seats, 1952-1975. Source: Data derived from HARDGRAVE/KOCHANEK, 2008, 375, 398-399. In 1952, 1957 and 1962 the second largest party was the Communist Party of India, in 1967 the Swaraj Party and in 1971 the Communist Party of India (Marxist).

Because opposition from outside the INC did not possess enough power to challenge governmental proposals between 1952 and 1989,[57] Jain concludes: "The role of the legislature in policy-making in India has mostly been *ex-post facto*, that is, a post-performance review of the policies of the government and their execution."[58] Similarly, Kapur and Mehta summarise that the respective elections up until the 1980s "were no more than a means to rubber stamping the dominance of a single party, the Congress, or even the dominance of a single family, the Nehrus."[59]

[54] WAGNER, 2006, p. 47–48.
[55] KOTHARI, 1964.
[56] KOTHARI, 1964, p. 1162–1163.
[57] Only interrupted between 1977 and 1980, when the Janata Party won the majority after India Gandhi's Emergency Rule, HARDGRAVE/KOCHANEK, 2008, p. 260–261.
[58] JAIN, 1984, p. 144, italics in original.
[59] KAPUR/METHA, 2006, p. 4.

The executive is constituted by the president who has to approve of legislative proposals of the Prime Minister, and who effectively has withheld his assent in the past.[60] The Prime Minister occupies the central role in the political process and can make decisions over ministries and ministers. Backed by a majority in parliament, the function of the Prime Minister as head of government was so powerful in the first decades of independent India that he was barely in need of compromise with the opposition.[61] In some instances, such as the decision to perform atomic bomb tests, or the conclusion of bilateral treaties with the Soviet Union, not even the cabinet was involved in Prime Minister Jawaharlal Nehru's policymaking.[62] In terms of veto points, the executive can overturn parliamentary decisions, while the legislative cannot overturn executive decisions. With the Congress system in place and a party majority of the INC in parliament, which was probably backing governmental decisions, the Lok Sabha and Rajya Sabha did not constitute a veto point. The MPs could suggest bills or question the government but not overturn executive decisions.[63]

Electoral or Public Arena

The first general elections were conducted in several rounds during 1951 and 1952. The whole Indian population aged 21[64] or above was franchised and called to vote for the first time. Because this gave citizens the possibility to express themselves politically by vote, particularly lower class and low caste citizens participated in the elections.[65] In principle, shifting voters could have constituted a veto point in this episode, which would have allowed for political actors from the electoral arena to influence behaviour of actors in the legislative and executive arena.[66] But the particularities of the Congress system balanced the problem of swing voters. By offering a platform within its ranks to major opposition to its politics,[67] the INC "was the party of consensus, pinned down to a centrist position because of the pressure exerted on it by the parties of the opposition, acting in unofficial collusion with factions within the Congress Party sympathetic to their ideological inclinations."[68] Therefore, the

[60] WAGNER, 2006, p. 64–65.
[61] WAGNER, 2006, p. 60–70.
[62] WAGNER, 2006, p. 55; KOTHARI, 1964, p. 1171.
[63] IMMERGUT, 1990, p. 397.
[64] HARDGRAVE/KOCHANEK, 2008, p. 371.
[65] In 1988 the age for suffrage was lowered to 18 years, *Constitution (Sixty-first Amendment) Act*, 1988: HARDGRAVE/KOCHANEK, 2008, p. 371.
[66] IMMERGUT, 1990, p. 393.
[67] KOTHARI, 1964, p. 1162; MITRA, 2017, p. 151.
[68] MITRA, 2017, p. 151.

electoral arena constituted no veto point,[69] also because the Indian political system does not allow voters to control legislative outcomes via referendum.[70] As under British rule, citizens continued to have the opportunity to express their grievances through petitions, as well as through political activism of the civil society.

Hypothesis

At the starting point of this episode the characteristics of the institution of the abolition of slavery were weak. The rules were ambiguous and implementation appeared ineffective. During the beginning of the new democratic regime, veto points in the legislative and electoral arena were weak—neither parliament nor the electorate could overturn executive decisions, with the Congress Party dominating parliament and the executive; the *Zeitgeist* was antislavery. Within this context, the preservers of the status quo were likely actors interested in bonded labour. They profited from weak laws, and the low level of enforcement allowed them to continue their business undisturbed. Because of the antislavery *Zeitgeist*, proslavery actors probably did not directly or openly defend their position and behaved like opportunists who neither tried to preserve nor change the institution, but undermined its spirit by violating its rules.[71]

Antislavery actors' dispositions towards the institution of the abolition of slavery were potentially ambiguous: The constitutional provision did not fundamentally change the rules; some actors were alarmed by the weakness of the rules and worried particularly about its implementation.[72] At the same time, several members of the Constituent Assembly had expressed their satisfaction with the adoption of the Article 23 and were optimistic regarding its effective implementation. They believed that with the democratisation of the polity, a democratisation of society would come along and bonded labour and forced labour would vanish by themselves.[73] Antislavery actors were probably seeking change at the rules level[74]—the abolition of bonded labour and forced labour being the defined goals of the *Constitution* and an explicit goal of the Congress Party, the costs to induce change at the rules level were low because Congress occupied the majority in parliament and did not need to

[69] IMMERGUT, 1990, p. 397.
[70] WAGNER, 2006, p. 75.
[71] MAHONEY/THELEN, 2010b, 23, 26.
[72] Biswanath Das, Constituent Assembly Debates, May 1 1947.
[73] Dakshayani Velayudan, Constituent Assembly Debates, May 1 1947, T. T. Krishnamachari, Constituent Assembly Debates, December 3 1948.
[74] MAHONEY/THELEN, 2010b, p. 29.

search for a supporting majority.[75] The executive had strong veto possibilities, which means that if Congress turned out to be the agent of change, the defenders of the status quo were afforded with weak veto possibilities, the scenario described in hypothesis 4a. But if Congress chose to preserve the status quo, actors interested in inducing change were confronted with strong veto possibilities, which is the scenario described in hypothesis 3a. If Congress chose to be the dominant change agent as antislavery actor, it might have behaved like an insurrectionary, actively seeking change through displacement of legislation,[76] or like subversives, adding layers to the existing rules (H4a). If Congress chose to preserve the status quo, antislavery actors were probably either trying to induce change by conversion and behave like defenders or they probably acted like subversives trying to induce displacement (H3a).

Gradual Changes

In the following chapters I describe and analyse the changes that took place between 1952 and 1975. I follow the discussion of the Lok Sabha and also interrogate the developments at the international level, particularly the work of the United Nations (UN) and the adoption of the *Supplementary Convention on the Abolition of Slavery* of 1956, with which I begin.

International Level

In 1945, after the end of World War II, fifty states met in San Francisco for a conference that laid the foundation of the United Nations Organisation, the successor organisation of the League of Nations. The ILO continued to operate as specialised organisation of the UN. The foundational document of the UN, the *Charter of the United Nations*, already contained a commitment to the principles of human rights. The request of several Latin American states to include human rights beyond simply mentioning them in the charter of the UN had not been accepted. But early on the UN focused on human rights. The United Nations Economic and Social Council (ECOSOC) installed the UN Commission on Human Rights (UNCHR) in 1946. The UNHCR drafted the *Universal Declaration of Human Rights*, which the General

[75] MAHONEY/THELEN, 2010b, p. 19.
[76] MAHONEY/THELEN, 2010b, p. 24.

Assembly of the UN adopted on December 10 1948, with India being one of the states voting for its adoption.[77]

The cold war set the stage for the discussion and formulations of rights and respective institutions at the international level. But it did not completely paralyse[78] the work of the UN on slavery.[79] The United Nations began to continue the work of the League in 1949. The Economic and Social Council (ECOSOC) appointed the Ad Hoc Committee on Slavery in December 1949.[80] This committee was commissioned to work on the question of how the UN should divide its work on slavery and also whether the *Slavery Convention* of 1926 was sufficient or if a new convention should be drafted.[81] The ECOSOC also appointed the Ad Hoc Committee on Forced Labour, with the agreement of the Governing Body of the ILO in March 1951.[82] In 1952 the ILO and the UN expressed their intention to collaborate on the matter of forced labour, but they also clarified that they would uphold the distinction between forced labour and slavery and would not infringe upon each other's domain of authority.[83] Within this collaboration the joint Ad Hoc Committee on Forced Labour clarified, that debt bondage would fall under the authority of the Ad Hoc Committee on Slavery:[84]

> The Committee found that this practice [of keeping workers in perpetual debt] would be very similar to debt bondage as investigated by the Ad Hoc Committee on Slavery (…). The Committee came to the conclusion that, in these circumstances, payment in kind involves hardships, but does not constitute a system of forced labour within the meaning of its terms of reference.[85]

The committee split into subcommittees in order to work on slavery by regions and began its work by sending out questionnaires to the member states asking for reports on the legal status and prevalence of slavery. Completing its work in April 1951 the Ad Hoc Committee on Slavery submitted its report. The Government of India had not yet responded to

[77] FORSYTHE, 2006, p. 37–38.
[78] MCCORMICK, 1997, p. 730–732; MATHEW, 2012, p. 15.
[79] MIERS, 2003, p. 318. The Eastern bloc favoured the protection of social and economic rights, while the Western bloc advocated for provisions of civil and political rights. This division found its legal reflection in the adoption of two different covenants, the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966). Within the work of the UN the two blocs tried to expose each other's weak spots: The Eastern bloc pointed at colonial labour exploitation, and the Western bloc at the labour camps in the UDSSR, MIERS, 2003, p. 318–322.
[80] MIERS, 2003, p. 324.
[81] ALLAIN, 2008, p. 207.
[82] The Governing Body of the ILO is the executive organ of the ILO, meeting three times per year and has the power to decide ILO policies and agenda of the ILO tripartite conference.
[83] International Labour Office, 1952, p. 29.
[84] United Nations/International Labour Office, 1953, p. 54.
[85] United Nations/International Labour Office, 1953, p. 54.

the invitation to fill out the questionnaire.[86] The Home Ministry sent the questionnaire to the individual states, and all of the states' responses to the questions on slavery were "No."[87] The internal communications within the Indian ministries highlighted, though, that forms of bonded labour were prevalent.[88] India's submission was eventually included in the later report of the rapporteur Hans Engen on slavery.[89] Engen made use of several sources: The official Indian commission reports, submissions by missionaries, the reports of the commissioner of the Ad Hoc Committee on Slavery, and information provided by the ILO.[90] The report concluded:

> Not only do old tribal practices akin to slavery survive, but in some districts the position of certain 'depressed classes' was even in recent times almost indistinguishable from that of community-owned slaves. This status has now disappeared in law; but the Governments concerned realize that it will take long and comprehensive programmes on many social and economic fronts to provide the basis for a society of free men and women.[91]

On the question of serfdom and traditional and unpaid labour, Engen referred to scavenging and other caste-related labour conducted as free labour, as well as share cropping-arrangements.[92] He mentioned *begar* and the extraction of bonded labour in agriculture.[93] Debt bondage received the greatest attention, and Engen estimated that it constituted the gravest problem. Contrary to the findings of the *Report of the Commissioner for Scheduled Castes and Scheduled Tribes*,[94] the Indian government reported to the Ad Hoc Committee on Slavery that "the Kamiauti system has practically ceased to exist except in a few isolated places."[95] To the contrary, Lasker, the commissioner responsible for Asia in the Ad Hoc Committee on Slavery, observed that forms of debt bondage prevailed everywhere in India,

[86] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 12.
[87] "1. Does slavery as defined in Article 1 of the International Slavery Convention of 1926 exist in any territory subject to the control of your Government? 2. Does the slave trade (…) exist in any territory subject to the control of your Government? 3. Does any practice exist (…) which are restrictive of the liberty of the person and which tend to subject that person to a state of servitude, as for instance (a) Serfdom (compulsory and hereditary attachment to the land accompanied by obligations to render service to the landlord); (b) Traditional forms of involuntary unpaid service exacted by land owners and other employers of labour; (c) Debt bondage; (d) Pledging and pawning of third persons as security for debt; (…)."National Archives of India, 1950.
[88] National Archives of India, 1950, p. 1–4.
[89] Hans Engen was appointed in April 1954.
[90] United Nations Economic and Social Council, February 9 1955, 7, 21, 38-9, 57-8, 71-2.
[91] United Nations Economic and Social Council, February 9 1955, p. 21.
[92] United Nations Economic and Social Council, February 9 1955, p. 37–39.
[93] United Nations Economic and Social Council, February 9 1955, p. 59–60.
[94] SHRIKANT, 1952, p. 22–27.
[95] United Nations Economic and Social Council, February 9 1955, p. 72.

and concluded that this form of slavery "found its largest and socially most devastating development"[96] in Pakistan and India.

Discussing the governmental reports produced and published between the 1920s and the 1940s,[97] I noted that bonded labour relations were potentially addressed as indebtedness. Observing that millions were affected, Lasker, and Engen's references to Lasker, made the connection between the government's observations on indebtedness and its potential relation to slavery: Lasker noted in this respect that the action of the state against indebtedness "shows that the existence of such indebtedness in itself (…) is not regarded as a form of servitude,"[98] and remarked in addition that the conditions under which debt bondage was carried out meant that labourers agreed to "terms of service little short of slavery."[99]

The Ad Hoc Committee came to the conclusion "that slavery, even in its crudest form, still exists in the world today."[100] The committee suggested that the UN should take over the role formerly covered by the LN vis-à-vis slavery and formulate a supplementary convention[101] to ensure that all forms of slavery were addressed and ended.[102] The Ad Hoc Committee on Slavery decided not to change the definition of slavery given in the *Slavery Convention* of 1926,[103] but instead described the servile statuses it recommended explicitly addressing: The first was debt bondage. The committee added that one of three conditions needed to be met in order for debt bondage to become servitude: The labour done was not factored into the down payment of the debt, the time of services was undefined, and along with the bond came infringements on the enjoyment of rights of the bonded person as compared to other citizens.[104] The practice where a labourer was tied to the land and could not "freely dispose of the produce of his labour"[105] was also mentioned. Yet the committee was not only concerned with the question of abolishing slavery, but also with how to assist the

[96] Lasker, quoted in the report of Engen: United Nations Economic and Social Council, February 9 1955, p. 72.
[97] Cf. Royal Commission on Agriculture in India, 1928, p. 764 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document], WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 226; Labour Investigation Committee/Government of India, 1946, p. 281.
[98] Report submitted by Lasker, quoted in United Nations Economic and Social Council, February 9 1955, p. 74.
[99] Report submitted by Lasker, quoted in United Nations Economic and Social Council, February 9 1955, p. 74.
[100] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 13.
[101] Summary Report of the Twenty-Seventh Meeting, UN Doc. E/AC.33/SR.27, 21 March 1950GREEN, 1978 [1956], p. 767.
[102] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 8.
[103] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 7.
[104] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 9.
[105] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 11.

victims; they suggested, for instance, that states should make funds available to assist slaves in buying their freedom.[106]

In October 1953, the General Assembly adopted a resolution that transferred the LN *Slavery Convention* into the powers of the UN.[107] The next task was to follow up on the suggestion of the committee to adopt an additional convention. In January 1956, the drafting committee met for the first time,[108] and on September 7 1956, the General Assembly adopted the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*.[109] The original title, *Draft Supplementary Convention on Slavery and Servitude*, based on the draft convention submitted by the British, was changed. Allain indicates two different reasons: The term 'servitude' was difficult to translate into certain languages in which there existed just one word for both;[110] and due to the influence of the Russian representative who, for unexplained reasons, wanted to have the term 'servitude' removed from the convention.[111] The articles clarify which other forms of labour relations were similar to slavery: The article 1 a) and b) cover debt bondage and the extraction of slave labour based on either caste or the tying of labourers to the soil.[112] With the provisions for punishment in Article 6, the convention also clarified that slavery and practices similar to slavery still constituted an offence, even if submitted to voluntarily.[113] The suggestion to implement a monitoring system[114] was not realised with the *Supplementary Convention*.

While the UN debated the *Slavery Convention*, the joint ILO/UN committee on forced labour discussed the issue of forced labour. Only a year after the adoption of the *Supplementary Convention on the Abolition of Slavery* the ILO adopted the *Abolition of Forced Labour Convention* on June 25 1957. The ILO/UN committee wondered whether the definition of forced labour given in the ILO convention of 1930 was still applicable and decided to put forth a new definition after reviewing all submissions on the question of forced labour.[115] The focus of the ILO was on two particular forms of forced labour: Political

[106] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 21–24.
[107] United Nations General Assembly, October 23 1953, p. 50.
[108] MIERS, 2003, p. 328.
[109] *Supplementary Slavery Convention*, United Nations Economic and Social Council, 1956.
[110] ALLAIN, 2008, p. 220–221; cf. United Nations/International Labour Office, 1953, p. 229.
[111] ALLAIN, 2015, p. 26.
[112] *Supplementary Slavery Convention*, United Nations Economic and Social Council, 1956.
[113] *Supplementary Slavery Convention*, United Nations Economic and Social Council, 1956, Art. 6; ALLAIN, 2008, p. 490.
[114] Ad Hoc Committee on Slavery/United Nations, May 4 1951, p. 24–25.
[115] United Nations Economic and Social Council/International Labour Organisation, October 30 1951, p. 4–5.

prisoners, who are held in camps and are forced to work, and the extraction of forced labour for the development of the economy of a state.[116]

Regarding India's submission, the committee summarised that forced labour was used as punishment for sedition, convict labour, and the legal extraction of forced labour during emergencies.[117] The Government of India not only reported on bonded labour to the Ad Hoc Committee on Slavery, but also to the Ad Hoc Committee on Force Labour.[118] Effectively, bonded labour or debt bondage were not the domain of the ILO. India signed the *Forced Labour Convention* of 1930 in 1954, and joined the *Forced Labour Convention* of 1957 in 2000; therefore, since 1954, India has been obliged to report on forced labour on a regular basis under the convention of 1930.[119] The division of labour between the ILO and the UN changed in 1976 when the ILO took note of bonded labour as an issue that would fall under the provisions of the convention of 1930.[120]

Lok Sabha 1952-1969

Several members of the Constituent Assembly believed that the constitutional change would go hand in hand with a change in society—that the freedom of the nation would also mean the liberation of the workers; inequalities would be overcome, lower caste members and Dalits would be empowered to turn to the police, and the new economic structure would raise the poor out of poverty and bonded labour would end without direct intervention by the state.[121] The members of the provisional parliament supported a bill against forced labour. But Ambedkar wanted to first gather information on forced labour and its forms in India, to be able to write a good policy.[122] Ram followed the same reasoning but in addition did not believe that such a law would contribute to the improvement of the bonded labour situation.[123] The members of the Constituent Assembly had pointed out also that it would be the duty of the new legislature to pass a specific legislation to interpret the *Constitution* and to realise the

[116] United Nations Economic and Social Council/International Labour Organisation, October 30 1951, p. 4.
[117] United Nations/International Labour Office, 1953, 164, 167, 172.
[118] United Nations/International Labour Office, 1953, p. 170.
[119] Until 1959 states had to report on ratified convention on a yearly basis; between 1960 and 1977 the intervals were extended to two years, THOMANN, 2011, p. 70.
[120] SWEPSTON/International Labour Organisation, p. 10; THOMANN, 2011, p. 221.
[121] Cf. T. T. Krishnamachari, Constituent Assembly Debates, December 3 1948; Dakshayani Velayudan, Constituent Assembly Debates, May 1 1947.
[122] B. R. Ambedkar, Law Minister, Constituent Assembly of India (Legislative), February 11 1949, p. 401.
[123] Jagjivan Ram, Constituent Assembly of India (Legislative), December 16 1949, p. 675; Lok Sabha, August 4 1950, p. 274.

abolition of forced labour and *begar*.[124] This promise, along with the constitutional Article 35, explicitly obliged the Parliament of India to adopt legislation:

> Parliament shall have, and the Legislature of a State shall not have, power to make laws for prescribing punishment for those acts (…)
> (ii) which are declared to be offences [Art. 17 and Art. 23] under this Part [III on Fundamental Rights] and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii) (…).[125]

As promised, the Government of India conducted several enquiries on agricultural labour and the situation of Scheduled Castes (SCs) and Scheduled Tribes (STs) between 1950 and 1977. The reports highlighted the gap between the constitutional rule and the lived experience of many people in India who were exposed to bonded labour. I discuss these reports in conjunction with the debates in the Lok Sabha.

The *First Agricultural Labour Enquiry* conducted between 1950 and 1951 in the different states of India found that the working conditions of the agricultural labourers were destitute. The report, a compilation of several reports based on field research in the Indian states, did not use the terms 'bonded labour' or 'forced labour.' The authors of the reports used the term 'attached.'[126] To this group of 'attached labourers' belonged the "less skilled indigent worker who gets himself attached often for reasons of debt and other forms of obligation."[127] The attached workers constituted the majority of interviewed agricultural labourers, with about 45 percent or 7.8 million agricultural labour families.[128] The description of workers being 'attached' by debt suggests that bonded labour relations were concealed in this category, but this is not necessarily the case, since the report mentions employers, shopkeepers, as well as co-operative societies, but also friends as sources of borrowing.[129] As in the earlier reports, for instance the *Report of the Royal Commission on Agriculture*,[130] the angle from which bonded labour was addressed was indebtedness. Within the different reports, the definition of attached labourers varied and was not coherent and the investigators used different variables to determine attachment.[131] This result is rather frustrating,

[124] Constituent Assembly of India (Legislative), December 16 1949, 675: 674, 677.
[125] Constituent Assembly of India, January 26 1950.
[126] Government of India/Ministry of Labour, 1955b, p. 70.
[127] Government of India/Ministry of Labour, 1955b, p. 70.
[128] Government of India/Ministry of Labour, 1955b, 155, 157.
[129] Government of India/Ministry of Labour, 1955b, p. 158.
[130] Royal Commission on Agriculture in India, 1928, p. 575 [the pagination of this document is inconsistent, therefore I refer to the page number of the pdf document].
[131] THORNER, 1956, 762, 760.

particularly in light of the promise of the Labour Minister: The categories bonded labour, slavery, or forced labour were not defined and not explicitly addressed in this report and based on these results, a legislative provision that would address all forms of coercive labour relations in India could not be completed, since there was simply no information gathered on this issue.[132]

The *Report of the Commissioner for Scheduled Castes and Scheduled Tribes* was the first report that initiated a discussion in the Lok Sabha on *begar*, slavery and forced labour since the inauguration of the first parliament.[133] In December 1952, the Special Officer Shrikant reported on the situation of *Harijans*[134] and the tribal people in the Indian states. For several communities and regions, he found that the lower caste and tribal communities were exposed to grave working conditions. Regarding Madras for instance, he wrote: "About 60.000 Scheduled Castes people in Malabar are doing agricultural labour under semi-slavish conditions, in the fields of the landlords to whom they are indebted and have no house sites of their own."[135] In a complete chapter on forced labour and the Article 23 of the Constitution, Shrikant pointed out that forced labour still existed in India on a large scale.[136] Also referring to the *First Agricultural Labour Enquiry* for the years 1950 to 1951,[137] he suggested "that the Government should issue very clear instructions to the authorities concerned to deal with the cases of forced labour in a very strict manner and give exemplary punishments to the offenders—whether Government servants or private individuals and bodies."[138]

On December 13 1952 the Lok Sabha debated the abolition of untouchability and also covered the issue of bonded labour in this context. The Deputy-Minister Abid Ali referred to the *Agricultural Labourer Enquiry Committee Report*, which showed that bonded labour existed in several states.[139] Ali explained that

> [s]uch forced labour in some cases took the form of contractual obligations to continue to service of the same employer till the loan advanced was cleared. In some other cases, it took the shape of depressed wages for attached workers who were not free to work with other employers, or of work by family members without separate remuneration or at a nominal wage. Since these facts came to light, the State

[132] Constituent Assembly of India (Legislative), December 16 1949, 674-75, 677.
[133] SHRIKANT, 1952; *Motion Re. Report of Commissioner for Scheduled Castes and Scheduled Tribes*, Lok Sabha, December 13 1952, p. 2231.
[134] Hindi: Children of the God Hari Vishnu, used by Mohandas K. Gandhi as denomination for Dalits or 'untouchables.'
[135] SHRIKANT, 1952, p. 19.
[136] SHRIKANT, 1952, p. 22–27.
[137] Government of India/Ministry of Labour, 1955a, 1955b.
[138] SHRIKANT, 1952, p. 27.
[139] Deputy Minister of Labour Abid Ali, Lok Sabha, December 18 1952, p. 1805.

> Governments concerned have taken appropriate measures to eradicate forced labour and have reported that there is no longer any forced labour in existence as defined in the I.L.O. Convention.[140]

Later reports on agricultural labour and the situation of the SCs and STs showed that this evaluation was premature and the states had not succeeded in ending bonded labour. Ali's statement was also contradicted by other MPs: Thimmaiah requested "that forced labour prevalent in all Indian villages should be abolished at once considering it as *ultra vires* of the provision of the Constitution and be declared as cognizable offence."[141] Thereby, he reminded the government to propose legislation against forced labour. Nanadas, drawing his information from the Bihar Harijan Enquiry Committee, constituted by the Government of Bihar, added that

> forced labour exists in many parts of Bihar. The majority of Harijans are *Kamias* and though the past practice of selling themselves and their heirs into bondage has ostensibly disappeared, the *Kamia* continues to be in a state of slavery, which has assumed an even more different and more spacious form and exists in the shape of what is euphemistically called 'voluntary assistance.'[142]

Nanadas explained that in Bihar about five million people lived in a state of agrestic serfdom.[143]

In this discussion, forced labour was addressed as one of the hardships the Dalit community was exposed to. The discussants at Parliament offered different suggestions on how to deal with the exploitation of Dalits: Education, quotas in the administration and political positions, distribution of land, the installation of a specialised ministry, and special district committees dedicated to the issues of STs and SCs, and particularly the abolition of untouchability and effective implementation thereof. At least two members expressed their expectation that untouchability would be overcome in the next seven to ten years.[144] Several members of the Lok Sabha made reference to the value of education and the 'psychological development' that would contribute to the abolition of untouchability—they did not mean the education of the exploiters, absent was the suggestion to transform their attitudes.[145]

Shortly after the discussion, one MP submitted a written question to the government, which was one tool at his disposal. In December 1952, Morarta asked the Minister of Labour

[140] Deputy Minister of Labour Abid Ali, Lok Sabha, December 18 1952, p. 1805.
[141] Thimmaiah, Lok Sabha, December 13 1952, p. 2223.
[142] Nanadas, Lok Sabha, December 13 1952, p. 2232.
[143] Nanadas, Lok Sabha, December 13 1952, p. 2232.
[144] Nanadas and P.N. Rajabhoj, Lok Sabha, December 13 1952, 2218, 2223, 2230, 2339, 2244, 2253.
[145] Lok Sabha, December 13 1952, p. 2341–2342.

why the government had not yet ratified the *Forced Labour Convention*. He requested information on the existence of and measures undertaken by the government against forced labour, as provided for by the ILO *Forced Labour Convention* (C29).[146] The Deputy-Minister Abid Ali explained that the government had not yet ratified the convention because of legislation in contravention to the C29. This was namely the *Criminal Tribes' Act of 1924*,[147] which the interim parliament had just repealed on February 28 1952. With those changes in place, the Deputy Labour Minister promised that the government would now consider the ratification of the convention.[148] On November 30 1954 the Government of India finally ratified the convention.

The next *Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the Year 1953* was published in 1954. The commissioner found *begar* in Madhya Pradesh,[149] forced labour in Madras and Hyderabad,[150] and debt bondage in Travancore-Cochin. D. C. Sharma introduced the *Bill to Provide Punishment for Free, Forced or Compulsory Labour*[151] as a private bill in the Lok Sabha on April 9 1954.[152] Compared to the earlier versions, this bill, with the exception of some words, was a complete copy of the bill submitted to the interim parliament in 1948.[153] Sharma explained in his introduction that he thought the bill was extraordinarily short and simple but in "conformity with the spirit of the times in which we are living."[154] Speaking of the village population, which still made up the majority of the people in India, he drew the connection between caste relations and the extraction of forced labour, which he also described as slavery.[155] The major solutions he focused on were policy change as well as education. Sharma also evaluated the IPC Section 374 as "so vague that it has failed to root out the evil."[156] He explained that, in addition, the victims of forced and free (unpaid) labour were not aware of their legal rights and requested that every person in those areas should be informed of their rights.[157] In defining forced labour, he followed the ILO *Forced Labour Convention*, which excludes voluntarily entered forced labour relations.[158] But

[146] Lok Sabha, December 18 1952, p. 1804–1805.
[147] *Act No. VI*; first adopted as *The Criminal Tribes' Act* of 1871 (*Act XXVII* of 1871).
[148] Deputy Minister of Labour Abid Ali, Lok Sabha, December 18 1952, p. 1805.
[149] SHRIKANT, 1954, p. 81.
[150] SHRIKANT, 1954, 41, 413.
[151] Government of India, April 9 1954, p. 223–224.
[152] Lok Sabha, April 9 1954, p. 4527.
[153] Constituent Assembly of India (Legislative), July 1 1948, p. 155, April 5 1949, 137, 141-42.
[154] Lok Sabha, December 24 1954, p. 4117–4118.
[155] Lok Sabha, December 24 1954, p. 4118–4119.
[156] Lok Sabha, December 24 1954, p. 4120.
[157] Lok Sabha, December 24 1954, p. 4119.
[158] Lok Sabha, December 24 1954, p. 4124.

he added that the bill covered also free labour, which means work that "a man is required to give without expectation of any wages of remuneration."[159] His definitions did not necessarily support the case of the abolition of bonded labour.

The Minister of Labour Khandubhai Desai expressed his discontent with the bill. He opposed it and pointed out that the government intended to suggest an amendment to the IPC and also to consider amending the IPC Section 374. After having observed that the situation of the labourers had improved, and in the light of the existing legislation as well as some states adopting regional legislation, he hoped D. C. Sharma would withdraw the bill.[160] Deeming the bill "clumsy,"[161] the Minister of Labour was particularly disappointed with the bill's provisions for the payment of labourers, limitations to hours of work and making violations of these provisions cognisable, which would allow the police to act without a warrant or court order.[162] Despite the Minister of Labour's objection, the bill was sent out to the states and remained open for suggestions until the end of March of 1955.[163]

In the next discussion in March 1955 the present members of the Lok Sabha supported the bill.[164] The major focus of the discussion was on forced labour, free labour and *begar* extracted by state agents. According to the testimonies of some members of the Lok Sabha, state agents used the *Indian Forests Act* of 1927 and the *Bombay Irrigation Act* of 1879 to extract forced labour for clearing forests and to coerce workers to till the land.[165] But also the extraction of forced labour by private actors in Assam and the evidence of the 1953 *Report of the Commissioner for Scheduled Castes and Scheduled Tribes* were referred to.[166] The Minister of Labour Khandubhai Desai again explained that the bill was redundant, since with the *Minimum Wages Act* of 1948, wages, as well as the working hours, were covered. The goal to make forced labour cognisable was a concern of the government, but the bill Sharma had proposed "would mean the setting up of a very huge machinery to enforce it."[167] The Minister of Labour wished Sharma would withdraw the bill. Sharma expressed his concerns that the question of implementation was not ensured.[168] But upon the promise that the

[159] Lok Sabha, December 24 1954, p. 4126.
[160] Lok Sabha, December 24 1954, p. 4122.
[161] Lok Sabha, December 24 1954, p. 4123.
[162] Lok Sabha, December 24 1954, p. 4122–4123.
[163] Lok Sabha, December 24 1954, p. 4127.
[164] Lok Sabha, March 4 1955, p. 1133.
[165] Lok Sabha, March 4 1955, 1118, 1121-123, 1129.
[166] Lok Sabha, March 4 1955, 1128, 1133-134.
[167] Desai, Minister of Labour, Lok Sabha, March 4 1955, p. 1131.
[168] Lok Sabha, March 4 1955, p. 1136.

government would "take every step, by legislation and otherwise, to implement the principles underlying this Bill,"[169] Sharma withdrew the bill.

In the following two decades, from the 1950s until the 1970s, the issue of forced labour, slavery, and *begar* or bonded labour was mostly addressed only briefly in other contexts in the Lok Sabha debates.[170] For instance, during the discussion on the Five-Year-Plan one MP explained that "begar or forced labour was abolished after the police action there, but in many parts of the Hyderabad State begar is still in practice."[171] On a yearly basis the issue resurfaced during the discussions of the latest yearly report of the commissioner for SCs and STs.[172] On December 6 1961 an MP in the Lok Sabha questioned the government again whether it still intended to adopt additional legislation against debt bondage. The Deputy Minister of Labour Abid Ali responded: "The Central Government do not propose to take any such action since the State Governments concerned have already done the needful wherever necessary to abolish or check undesirable practices connected with the grant of loans."[173] The following table lists some of the regional legislations to which the Deputy Minister referred:

[169] D. C. Sharma, Lok Sabha, March 4 1955, p. 1137.
[170] Between 1952 and1972, the Lok Sabha discussed directly or within other contexts, the issue of *begar*, bonded labour, forced labour and slavery in 99 sessions, or on average four to five times per year.
[171] Lok Sabha, May 26 1956, p. 9686.
[172] Cf. Lok Sabha sessions on December 13 1952; December 20 1957; April 27 1959; September 6-7 1962; August 27 1963; September 3-4 1963; December 14 1964; August 18 1966; March 28 1968; August 11 and 18 1970; May 24 1972.
[173] Lok Sabha, December 6 1961, p. 3480–3481.

Table 14. Regional legislation against bonded labour

Title
Bihar and Orissa Kamiauti Agreements Act of 1920
Madras Agency Debt Bondage Abolition Regulation of 1940[174]
Madras and Orissa Debt Bondage Abolition Regulations of 1940[175]
Hyderabad Bhagela Agreement Act of 1943
Kabadi System Regulation in Bastar in Madhya Pradesh of 1943 (Cent. Provinces & Berar)
The Orissa Debt Bondage Abolition Regulation of 1948[176]
Sagri System Abolition Act of 1961 (Rajasthan)

In the second episode I discussed the *Bihar and Orissa Kamiauti Agreements Act* of 1920, which regulated rather than abolished bonded labour. Similarly, the *Madras Agency Debt Bondage Abolition Regulation* of 1940 regulated bonded labour, insofar as it required that a *gothi* agreement be made in writing, that a minimum amount of prepayment be fulfilled, and that it could not be longer than a year. And while an employer was able to seek legal redress against his labourer, the option was not provided for the worker; furthermore, it was limited in application, since it only applied to the tribal areas.[177] The Government of Rajasthan adopted the *Sagri System Abolition Act* in November 1961 which criminalised money lending under the regional systems of debt bondage called *sagri* and *hali*.[178] This was a first act that clearly addressed bonded labour and criminalised the giving of advances in return for labour. The other provisions, particularly the *Bihar and Orissa Kamiauti Agreements Act* of 1920 and the *Madras Agency Debt Bondage Abolition Regulation* of 1940 were not sufficient to abolish bonded labour.

The following reports of the Commissioner for SCs and STs recurrently provided evidence of the existence of bonded labour, *begar* and forced labour. Shrikant explained in the repot that bonded labour continued to prevail.[179] While Shrikant referred to the *Constitution of India* and used the terms forced labour, bonded labour, as well as *begar*, he

[174] Regulated bonded labour: *Gothi* agreements had to be made in writing; required a minimum amount of advance payment; could not last longer than a year; only the employer could to seek legal redress. It only applied to the tribal areas, DINGWANEY, 1985, 326-28, 330.
[175] DINGWANEY, 1985, p. 342
[176] Government of Orissa, 1948; similar to the provisions of the *Madras Agency Debt Bondage Abolition Regulation*, DINGWANEY, 1985, 326-28, 330.
[177] Government of Orissa, 1948; DINGWANEY, 1985, 326-28, 330
[178] Rajasthan, 1961, p. 22–24.
[179] SHRIKANT, 1962b, p. 47–49.

did not indicate how he defined these terms in his report. According to him, employers extracted forced labour in different ways. Some forced the worker to comply through the moral obligation to pay back his or her debt. In other regions employers threatened to arrest their workers with the help of the local police when the labourers searched for alternative workplaces or wanted to run away. The duration of enslavement was different: Some individuals inherited their enslavement, while others were bound by temporary arrangements. The report also revealed differences on the question of forced labour and compensation; for instance, some arrangements granted loans or remuneration in cash or kind to the workers, but others did not provide for any compensation; some were based on contracts, while others were agreed upon without a contract.[180] In a separate chapter Shrikant spoke of the indebtedness of tribal people and referred to instances of private money lending where lenders requested up to 75 percent interest.[181] The Commissioner for SCs and STs observed in the *Twelfth Report* (1962-1963) and *Fifteenth Report* (1965-1966) that these regional acts and their provisions, such as for instance, keeping registers of the written *gothi*-agreements, had not been implemented. The *Rajasthan Sagri System Abolition Act* of 1961 seemed to also be ineffective.[182] The *sagri* system in Rajasthan continued according to the *Twentieth Report of the Commissioner of the Scheduled Castes and Scheduled Tribes* (1970-1971).

Looking at the parliamentary discussions between 1952 and 1972, several observations can be made: The topic of bonded labour was regularly addressed. Particularly in light of new reports, either on SCs and STs, or the *Agricultural Labour Reports*, labour exploitation drew the attention of Parliament.[183] But also individual incidences of forced labour, *begar*, slavery and bonded labour were addressed in parliament, as for instance reported cases of slavery in the NEFA (North-East Frontier Agency).[184] Coerced labour was also mentioned in contexts such as the *Essential Services Maintenance Bill*[185] or land reforms,[186] as well as in debates on the lives and working conditions of Dalits (referred to in the debates as Harijans) and the SCs and STs.[187] No member in those discussions suggested

[180] SHRIKANT, 1962b, p. 47–49.
[181] SHRIKANT, 1962b, p. 54; SHRIKANT, 1962a, p. 15.
[182] DINGWANEY, 1985, p. 331.
[183] See for instance Lok Sabha Debates, December 14 1964, August 18 1966, August 5 1969, August 11 and 18 1970, and November 15 1972.
[184] Lok Sabha Debates, September 9 and 16 1963.
[185] Lok Sabha Debates, December 5, 12, 16, and 17 1968.
[186] Lok Sabha Debates, March 6 1964, April 11 1969.
[187] Lok Sabha Debates, November 25 and December 14 1957 (debate on Nagas and ST); March 29 1965 (debate on social security); March 28 1968, May 8 1968, March 18 1969 (debate on Dalits); March 25 1969 (debate on Adivasis and ST).

that bonded labour was on the verge of self-extinction, as some British administrators did.[188] The debates about and references to the situation of the workers in bonded labour were marked by a general understanding of bonded labour being a common problem that needed to be addressed.

In the early 1960s the members of the Lok Sabha began to use the term bonded labour or debt bondage in conjunction with the term slavery. From then on, the terms slavery or forced labour were used interchangeably when MPs described debt bondage. It was also since the 1960s that MPs began to actually look more closely at the issue of bonded labour, and members of the SCs and STs in particular drew attention to the prevalence of bonded labour and other forms of labour exploitation prohibited under the constitutional Article 23. Also noteworthy is that in the Lok Sabha the *Supplementary Convention on the Abolition of Slavery* was neither discussed nor even mentioned. The Government of India signed the convention on the date of its adoption, September 7 1956, and ratified it in June 1960,[189] but there was no debate in parliament.

As Union Minister and Member of the Indian government, Jagjivan Ram was an important actor to move a policy[190] against bonded labour, and he had promised to do so before the first general election. He had not believed in the force of the law, but rather in the change of attitudes.[191] Then, in 1969,[192] Jagjivan Ram addressed the Congress Party in its Bombay session as the INC President; he explained:

> It was to be expected that when the condition of these communities improved they would aspire to live as decent human beings. It was equally to be expected that with the growth of consciousness and an understanding of their rights, they would refuse to be treated as before. But wherever this trend has manifested itself, particularly in the rural areas, oppression and harassment have been renewed. It is an indication of the fact that upper caste psychology has not undergone any real change, there has only been some kind of grudging adjustment.[193]

Ram explained that the system of exploitation and inequality continued between the lower and upper castes because the *zamindars*, landholders of big estates, continue to dominate the village community. He added that the administrative and governmental structures were

[188] Cf. Letter to the Government of India from J. A. Huback, Secretary to the Government of Bihar and Orissa, Revenue Department, dated September 12 1919, National Archives of India, November 1920, 35, item No. 1; Letter from the Chief Secretary to the Government of Bihar and Orissa, dated March 26 1926, National Archives of India, 1926 June.
[189] United Nations, India.
[190] WAGNER, 2006, p. 51; HARDGRAVE/KOCHANEK, 2008, p. 94.
[191] Jagjivan Ram, Constituent Assembly of India (Legislative), December 16 1949, p. 675.
[192] All India Congress Committee.
[193] Lok Sabha Secretariat, 2005, p. 55.

stratified also along caste lines, which supported the continuance of labour exploitation in the villages.[194]

The Judiciary

Since the *Constitution of India* came into force on January 26 1950, the courts of independent India had the constitutional Article 23 at their disposal. After the ratification of international conventions and non-binding declarations, such as the *Universal Declaration of Human Rights* (UDHR), the Indian Courts also referred to them in their decisions.[195] But already in a 1957 case, the Orissa High Court clarified that in a case of conflict between national and international legislation the primary source for rulings is the *Constitution of India*.[196]

The first high court case which concerned Article 23 was *State Through Gokul Chand v. Banwari and Others* (1951). But rather than invoking the article to protect themselves from exploitation, this case described an impertinence of the defence: Encouraged by the abolition of discrimination on the basis of caste, the *Chamars*[197] of a village requested the local *dhobis*[198] to wash their clothes. *Chamars* being below the caste of the *dhobis*, the washer men refused to do this service for them. The *dhobis* were prosecuted for having acted in violation of Article 17, the abolition of untouchability. The defence of the applicants argued that asking the *dhobis* to offer their service to the *Chamars* would amount to *begar*. The court rejected this allegation. The judge clarified that refusing to do a service on the basis of caste does not constitute forced labour.[199]

The next case was the first lawsuit against the state of India based on the Article 23. In *Dubar Goala And Anr. v. Union of India (Uoi) Representing* (1951), porters at the Railway requested a writ of *mandamus*, because the contract they had entered with the state-owned railway allegedly forced them to do *begar*. The Railway gave the porters a licence allowing them to offer their service at the station. In return the porters were requested to pay three Rupees for the licence and also to offer at least two hours of free porterage. The contract indicated that this was in "consideration of your not charging a higher licence fee."[200] The judge ruled against the alleged extraction of *begar* that "[t]he petitioners have voluntarily

[194] All India Congress Committee, italics in the original.
[195] HANNUM, 1995/1996, p. 299–300; in a bonded labour case decided in 1961 the court referred to the UDHR: *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.
[196] Orissa High Court, April 25 1957; Supreme Court of India, April 24 1973; cf. HANNUM, 1995/1996, p. 299–300.
[197] Members of a low caste.
[198] Clothes washers.
[199] Allahabad High Court, January 24 1951.
[200] *Dubar Goala And Anr. v. Union of India (Uoi) Representing*, Calcutta High Court, August 13 1951.

entered into the contract. There is no suggestion that at the initial stage when they first came into contact with the Railway Contractor (…) they were compelled to enter into the agreement under threat or duress."[201] While the judge explained that the contract allowed the porters to remove themselves from the contract, he interestingly added: "The very idea of a contract or agreement negates any suggestion of forced labour."[202] He thereby submitted to the concept of the previously held court decision in *Madan*[203] that, if voluntarily entered, these relations are neither forced labour nor slavery—but in the present case, the judge also noted the exit option, which in the earlier case of *Madan* was non-existent. The judge additionally explained that since the porters were paid, the two hours of extra work did not amount to forced labour or *begar*:

> The petitioners are paid some remuneration, however insignificant it may be, for their two hours' labour. Further- they get the benefit of a reduced licence fee and in addition they are allowed the privilege of free user [*sic*] of the Railway premises for earning their livelihood. In the circumstances the petitioners cannot be said to be doing Begar or forced labour within the meaning of Article 23(1) of the Constitution of India.[204]

The porters received remuneration between 1/4/- and 2/8/- per month.[205] 'Insignificant' is an accurate observation that unfortunately did not result in a different judgment. Earlier judges clarified that minimal payment does amount to forced labour and this insignificant remuneration could have merited another decision. Cleaners, for instance were paid 2/1/10 daily;[206] the difference cannot even be balanced by the reduced licence fee.

In 1961 the advocate general in Kerala suggested that the Kerala High Court should not accept the judgment in *Dubar*. He argued in *Kadar v. Muthukoya Thangal* that:

> whether the party has entered voluntarily into a contract to do personal service and whether remuneration is paid for such personal service do not really matter. If a party is not willing to do personal service, the remedy of the other party to the contract may be by way of damages or to this case, to take proceedings for resumption of the lands from the defendant.[207]

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[201] *Dubar Goala And Anr. v. Union of India (Uoi) Representing*, Calcutta High Court, August 13 1951.
[202] *Dubar Goala And Anr. v. Union of India (Uoi) Representing*, Calcutta High Court, August 13 1951.
[203] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892.
[204] *Dubar Goala And Anr. v. Union of India (Uoi) Representing*, Calcutta High Court, August 13 1951.
[205] *Rupee/Anna/Paisa*, *Dubar Goala And Anr. v. Union of India (Uoi) Representing*, Calcutta High Court, August 13 1951.
[206] Rate for Bengal, fixed for the years 1948-1957, Government of India/Ministry of Labour: Indian Labour Bureau, 1959, p. 128.
[207] Judge Vaidialingam quoting the advocate general, *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.

In 1952, another case against the state was discussed at the High Court of Himachal Pradesh. A local officer of Churah had imposed a fine on Jorawar and convicted him for declining to do *begar*, carrying material for the government. The judge argued that the extraction of *begar* when there was no emergency was in violation of the constitutional Article 23. Jorawar was to be acquitted and refunded the fine. The available documentation of the case does not highlight if the government official had been convicted for violating Article 23.[208]

In January 1958, the Calcutta High Court decided *Dulal Samanta v. the District Magistrate, Howrah.* The District Magistrate had forced Dulal to conduct the night watch for the railway station without pay for several months. When Dulal did not show up for work, the magistrate ordered his imprisonment, where he was held for seven days as punishment. While questioning the legality of the deployment of Dulal for the night watch, the judge rejected Dulal's petition for a writ *mandamus* arguing:

> Conscription for police or military service cannot in my opinion be considered as either (1) traffic in human beings or (2) begar. (…). I cannot persuade myself to come to the conclusion that the conscription for police service or military service can come under either. (…) I would then hold that this forced labour of conscription is permitted by Sub-article (2) of Article 23, of the Constitution.[209]

In 1960, the Madhya Pradesh High Court *Suraj Narain v. State of Madhya Pradesh and Ors*. decided a petition for the issue of a writ *mandamus* submitted by a teacher. The Education Department had discontinued paying the salary of a teacher on the grounds that his work had not been satisfactory. The judge Khan issued the writ *mandamus* explaining that: "To ask a man to work and then not to pay him any salary or wages savours of Begar. It is a fundamental right of a citizen of India not to be compelled to work without wages."[210] The judge added: "[T]he petitioner's salary is high handed, arbitrary and without jurisdiction. This is, therefore, a clear case for the issue of mandamus."[211]

Another case that involved a public servant was decided in the same year at the Bombay High Court. Several public servants had been on strike and they found that an ordinance that prohibited them to strike would constitute forced labour. The judge clarified why prohibiting strikes for employees in essential services did not amount to forced labour:

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[208] *The State v. Jorawar*, Himachal Pradesh High Court, September 13 1952.
[209] *Dulal Samanta v. the District Magistrate, Howrah*, Calcutta High Court, January 13 1958.
[210] *Suraj Narain v. State of Madhya Pradesh and Ors*., Madhya Pradesh High Court, March 1 1960.
[211] *Suraj Narain v. State of Madhya Pradesh and Ors*., Madhya Pradesh High Court, March 1 1960.

> It would be seen that every form of forced labour is not prohibited by the clause [1 of Art. 23]. In fact, clause (2) of Article 23 permits the State to impose on the citizens compulsory service for public purposes. What is prohibited by the first clause is imposing on the citizens forced labour which is similar in form to begar. It is true that begar is not defined but it is a well understood term which means making a person work against his will and without paying any remuneration therefor [*sic*]. Molesworth at page 580 gives the meaning of begar as 'Labour or service exacted by a Government or a person in power without giving remuneration for it.' In Wilsons [*sic*] Glossary the meaning of the word is given as 'Forced labour, one pressed to carry burden for individuals or to public; under old system when pressed for public service, no pay was given."[212]

The judge pointed out that a definition of forced labour or *begar* was missing. Therefore, he referred to common sense ("it is a well understood term"[213]), explaining that the attributes necessary for Article 23 to apply are that there was no payment and that the labourer did work against his or her will.

The first bonded labour case since the *Constitution of India* came into force was decided at the High Court in Kerala. On an island north of the Maldives, the landowner Kadar allowed Muthukoya Thangal and his family to live on his land and use his coconut trees on the condition that Muthukoya and his family were at his disposal for services for free (unpaid) labour, based on a regional custom and form of bonded labour called *nadappu*.[214] Muthukoya and his family did not comply as requested. Kadar sued Muthukoya to secure the labour he owed him and payment as compensation for the damages Muthukoya had allegedly caused.[215] Based on the regional provisions regulating *nadappu*, Muthukoya was found guilty and sentenced to render the service and pay for the damage; furthermore, the Special Court of Karnavans, as well as the Collector of Malabar threatened to hold him criminally liable if he continued to default on fulfilling his obligation.

Referring to some of the above cases, the high court judge did not find them enlightening in the case before him.[216] He concluded that payment was not a necessary condition to disqualify a labour/employer relationship as forced labour. The relevant issue was if a person had voluntarily agreed to do the service. Her argued that as "long as a person is not willing, to do personal services voluntarily and is compelled to do it at risk of a criminal

[212] *S. Vasudevan and Others v. S. D. Mital and Others*, Bombay High Court, January 18 1961.
[213] *S. Vasudevan and Others v. S. D. Mital and Others*, Bombay High Court, January 18 1961.
[214] *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961. For a description of *nadappu* as bonded labour see PANDHE, 1976, p. LII–LV.
[215] This case was also referred to in the United Nations publication *Yearbook on Human Rights*, United Nations, 1964, p. 112.
[216] Among others, he referred to *State Through Gokul Chand v. Banwari and Others*, (1951), *Dubar Goala And Anr. v. Union of India (Uoi)*, (1951), *The State v. Jorawar*, (1952), *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.

punishment (…) it will amount to 'forced labour.'"[217] He supported his interpretation of Article 23 with reference to other states' constitutions, the UDHR Article 4, and particularly the *Thirteenth Amendment* of the American constitution. Referring to the US Supreme Court Case *Bailey v. Alabama* (1911),[218] he rejected the criminal prosecution of Muthukoya as a violation of the prohibition of forced labour and *begar*.[219] According his interpretation, bonded labour fell under the prohibition of forced labour. As a response to the legal uncertainty persisting despite the Article 23, the judge referred to US case law to support his decision.

The criminal reports *Crime in India* of the Ministry of Home Affairs, unfortunately published only aggregate numbers. From these numbers it is impossible to deduce convictions for crimes committed against the IPC's slavery sections or for violations of the constitutional Article 23.[220] Regarding the article's use, Verma summarises that the Article 23 "lay dormant for almost thirty-two years and [was] hardly ever invoked by any litigant."[221]

Lok Sabha and Emergency Rule 1970-1977

After independence, the Indian economy still relied largely on agriculture. By 1939 India had become self-sufficient, producing its own cotton, iron and other materials and consuming these goods within its own market.[222] Several of these industries relied, and rely until today, on bonded labour: For instance, *bidi* (small cigarettes) production or brick kilns, where bricks are made by hand, or mining and other sectors.[223] The early economic reforms after independence focused on industrialisation and heavy industry.[224] Reforms that would have profited bonded labourers, particularly in agriculture, were largely neglected under Nehru and the economic five-year plans. Of the public spending of Rs. 163 billion distributed by the first

[217] *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.
[218] Judge Vaidialingam referred to the passage of the judgment, which reads as follows: "The fact that the debtor contracted to perform the labour which is sought to be compelled does not withdraw the attempted enforcement from the condemnation of the statute. The full intent of the constitutional provision could be defeated with obvious facility if through the guise of contracts under which advances had been made, debtors could be held to compulsory service. It is the compulsion of the service that the statute inhibits, for when that occurs, the condition of servitude is created which would be not less involuntary because of the original agreement to work out the indebtedness. The contract exposes the debtor to liability for the loss due to the breach, but not to enforced labour," *Bailey v. Alabama*, United States Supreme Court, January 3 1911, p. 242, *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.
[219] *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.
[220] For all publications of the *Crime in India*, refer to National Crime Records Bureau/Ministry of Home Affairs/Government of India.
[221] VERMA/KUSUM, 2000, p. 17.
[222] MUKHERJEE/MUKHERJEE, 1988, p. 532.
[223] SRIVASTAVA/International Labour Office, 2005, p. 12–18; MUKHERJEE/MUKHERJEE, 1988.
[224] BASU, 2012, p. 365; ROTHERMUND, 2003, p. 131.

three five-year plans, Rs. 19 billion were invested in agriculture.[225] Prime profiteers of these measures were rich peasants.[226]

Economically poor and disadvantaged people do not automatically profit from economic development. An example are Adivasis.[227] They live in regions all over India, mostly in the Northern areas and the central Indian states. Already under British rule, but also after independence, land acquisition, deforestation, dam projects, and forest conservation laws drove Adivasis out of their living areas.[228] These circumstances contributed to the creation of a growing impoverished and landless population among Adivasis, who are, as a result, vulnerable to labour exploitation.[229] Evaluating the development efforts of the newly independent state, scholars conclude that the initial five-year plans, as well as the 'green revolution'[230] of the early 1970s, the technological advances in agriculture and the focus on industrial development, have mainly served the rich peasantry.[231] Breman even concludes that "because of the green revolution, the economic and social gap between landowners and landless labourers in the rural areas has widened further."[232]

India successfully bolstered economic growth and advanced its industries, and also became self-reliant in food production. But the issue of continuing poverty became apparent during the drought of 1965.[233] In some states this led to violent outbursts by left-wing actors, as for instance state-citizen confrontations with the Naxalite movement, which challenged the central state because it failed to accommodate the needs of the people in these regions. Indira Gandhi, leader of the INC and Prime Minister after L. B. Shastri had passed away in 1966, decided to reorient the INC's attention on another constituency: Focused previously on local, better-off elites, Gandhi tried to attract the support of the lowest castes and classes. In the general elections held during February of 1967, the Congress again won the majority of seats, but reached the lowest result since independence, with 54 percent of the seats.[234] In March 1971 Indira Gandhi again ran for the office of the Indian Prime Minister. The election slogan

[225] ROTHERMUND, 2003, p. 131–132Cf. BASU, 2012, p. 371.
[226] CHANDRA, 2003, p. 26.
[227] Adivasi is a term that refers to a heterogeneous group of tribal and indigenous people in India.
[228] BAVISKAR, 1995, vii, 58, 70, 73, 80-2, 177-79, 184-87, 199-219; SHRIKANT, 1962a, p. 346–365; MEHER, 2010a, 2010b.
[229] SRIVASTAVA/International Labour Office, 2005, p. 17–18; Human Rights Watch, January 2003, p. 10; BAVISKAR, 1994, p. 2493; NILSEN, 2013, p. 615–616; BATES, 1995, 109, 116-17.
[230] The governmental programme that supported the industrialisation of agricultural production in India began in the 1960s, MITRA, 2017, p. 182.
[231] ROTHERMUND, 2003, p. 143–144.
[232] BREMAN, 1974, p. 229.
[233] ROTHERMUND, 2003; MITRA, 2017, p. 181–184.
[234] BOSE/JALAL, 2003, p. 175–176.

garibi hatao—remove poverty—stood as a promise of her political programme.[235] The strategy to formulate a populist programme in which she demanded land reforms, or the nationalisation of banks, for instance, paid off:[236] Her INC (R)[237] won 44 percent of the Lok Sabha seats and became the strongest party, but did not have the majority of the house anymore.[238]

The 1970 reports of the Commissioner for SC and ST and the Committee on Untouchability were discussed at length in the Lok Sabha in August 1970. Dinkar Desai expressed his embarrassment and explained:

> Many foreign countries will be surprised to learn that there is some kind of slavery in this country even today; I will call it serfdom. In the report it is called bonded labour. But it is not labour, it is slavery or serfdom. (…) It is a matter of shame for us that in free India we have not [*sic*] lakhs of person's [*sic*] who are slaves in this way. The Government of India and the state Governments should take stringent measures. They must see to it that this slavery system is abolished in this country.[239]

MPs criticised the inaction of the government despite its promise to 'abolish poverty.'[240] In August 1970, the Minister of Labour responded to the question of what action the government had taken against forced labour by stating that forced labour was not prevalent. Yet, he could not deny that there were occasional incidents of forced and bonded labour.[241] He indicated that the government intended to mitigate "the economic backwardness"[242] which he identified as the cause of bonded labour, and he maintained that the government had no intention to propose further legislation against forced labour.[243]

After the elections of early 1972, Gandhi's INC had again profited from promises to promote social justice. In the shadow of the report of the Commissioner for SC and ST and a report of the Committee on Untouchability, the Lok Sabha again discussed the issue of bonded labour for several days in November 1972.[244] Nurul Hasan, Minister of Education, Social Welfare and Culture, indicated that if a central act was found to be necessary—by whom, the government or parliament, he did not specify—the government would propose

[235] HARDGRAVE/KOCHANEK, 2008, p. 281–286; RAJAGOPAL, 2011, p. 1011.
[236] BOSE/JALAL, 2003, p. 184; HARDGRAVE/KOCHANEK, 2008, p. 279.
[237] The INC had split into two factions, INC (R) under Gandhi, and INC (O) in 1969, HARDGRAVE/KOCHANEK, 2008, p. 279.
[238] BOSE/JALAL, 2003, 175-76, 184; HARDGRAVE/KOCHANEK, 2008, p. 283.
[239] Dinkar Desai, Lok Sabha, August 18 1970, p. 287.
[240] Saradish Roy, Lok Sabha, July 21 1971, p. 251–252.
[241] R. K. Khadilkar, Minister of Labour and Rehabilitation, Lok Sabha, August 12 1971, p. 80.
[242] R. K. Khadilkar, Minister of Labour and Rehabilitation, Lok Sabha, August 12 1971, p. 80.
[243] R. K. Khadilkar, Minister of Labour and Rehabilitation, Lok Sabha, August 12 1971, p. 80.
[244] November 17, 21 and 29 1972.

such a legislative measure. Furthermore, Hasan pointed out that Prime Minister Gandhi followed up on the matter by contacting the Chief Ministers in the states.[245] In 1973 the Union Minister of Labour sent inquiries to the Chief Ministers of the states suggesting the development of a national act to ban bonded labour. Kerala, Uttar Pradesh, Gujarat and West Bengal were among the states that agreed to adopt central legislation in India, while Madhya Pradesh, Assam and Rajasthan did not respond.[246] But neither the government nor members of parliament submitted a bill to abolish bonded labour.

On March 6 1975, another member of the Lok Sabha requested to know what steps the government had taken to abolish slavery. The Minister of Labour Raghunatha Reddy explained that the states adopted regional legislation, the IPC Section 374 and constitutional Article 23 were in place, and, therefore, no further legislation was considered necessary.[247] About two months after this session, on June 25, Gandhi proclaimed emergency rule, which became effective the following day.

Gandhi was accused of election fraud and in 1974, the Allahabad High Court ruled that Gandhi had abused state institutions while running her election campaign. Among other issues, the court found that a gazette officer had assisted Gandhi during her election campaign to promote her election prospects.[248] The court declared her election void and requested her resignation. As she was also under increasing pressure from other political leaders, Gandhi declared the state of emergency, and the majority of the INC supported her. Political opponents were arrested,[249] parliament was unable to use its control of a no-confidence motion,[250] and the president could pass laws by ordinance which meant that the Indian Parliament's approval was not necessary. Ordinances were valid for six months and could only become permanent when adopted by Parliament at a later point in time.[251] By declaring emergency, which lasted until March 1977, Gandhi saved her position as Prime Minister of India.[252]

Gandhi made clear that the fight against bonded labour would be one of several economic and social policies to be implemented: In her *Broadcast to the Nation* on July 1 1975, she announced, "[t]he practice of bonded labour is barbarous and will be abolished. All

[245] Lok Sabha, November 22 1972, p. 279.
[246] TIWARI, 2011, p. 41–42.
[247] Lok Sabha, March 6 1975, p. 49.
[248] *Indira Nehru Gandhi v. Shri Raj Narain & Anr*, Supreme Court of India, July 11 1975.
[249] HARDGRAVE/KOCHANEK, 2008, p. 284.
[250] KAPUR/METHA, 2006, p. 9.
[251] KAPUR/METHA, 2006, p. 26.
[252] KULKE/ROTHERMUND, 2010, p. 304.

contracts or other arrangements under which services such as bonded labour, are now secured will be declared illegal."[253] She also announced an economic 20-Point Programme, which addressed the issue of bonded labour, as well as other social and economic matters, and she explained that emergency provided India with "a new opportunity to go ahead with our economic tasks."[254] In point four of the programme,[255] Gandhi proposed to implement the abolition of bonded labour, which had been stalled by the earlier governments. She sent letters to the Indian Chiefs in the states asking for their support on July 4 1975. She explained three general objectives she wanted to achieve: The realisation of equality in society, act against economic offences, increase production and thereby employment.[256] In the letter she referred to the benefactors of her reforms and legitimised the reforms she intended by explained that "[i]t is only through our sincere efforts in the sphere of agrarian reforms that we can establish the credibility of our political and administrative structure in the eyes of the under-privileged sections of our society."[257]

In the following months, the topic of bonded labour was discussed in the Lok Sabha and the promise was welcomed in general by the MPs. The programme as such was portrayed as a move to overcome administrative problems in implementing the abolition of forced labour. One MP explained: "The programme has brought forward new hopes in the minds of the people and the people think that the sluggishness the tardiness and the inefficiency that have plagued this land, especially the bureaucracy and other sectors, will be eliminated once for all."[258] It appears that Parliament would have adopted the *Bonded Labour System Abolition Bill*, but the Lok Sabha was not in session, and, therefore, Gandhi decided to move ahead with promulgating the bill as an ordinance that would then be adopted by parliament.[259] On October 15 1975, the Government of India promulgated the *Bonded Labour System (Abolition) Ordinance*.[260]

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[253] GANDHI, July 1 1975, Minute 3:52-4:05.
[254] GANDHI, July 1 1975, Minute 1:42-1:48.
[255] (1) Decreasing the prices for essential commodities; (2) land reform; (3) housing; (4) abolition of bonded labour; (5) liquidation of debts of agricultural labourers; (6) increase of wages in agriculture; (7) irrigation supply for agriculture; (8) electric power programme; (9) cloth production; (10) improvement of cloth production; (11) socialisation of urban land; (12) prevention of tax evasion; (13) confiscation of smuggled products; (14) liberalisation of investments; (15) organising industrial labour; (16) transportation; (17) income tax relief; (18) student support; (19) control prices of books and stationeries; (20) employment programme, BRIGHT, 1976, p. 17–19.
[256] Indira Gandhi: *Draft Letter to the States*, GANDHI, July 4 1975.
[257] Indira Gandhi: *Draft Letter to the States*, GANDHI, July 4 1975.
[258] Narain Chand Parashar, Lok Sabha, August 1 1975; see also Lok Sabha, August 4 1975, p. 11–167.
[259] Ministry of Law, Justice and Company Affairs, October 24 1975, p. 687.
[260] TIWARI, 2011, p. 48.

The *Rajya Sabha* (upper house) debated the *Bonded Labour System (Abolition) Bill* in 1976 (introduced to the *Rajya Sabha* January 6 1976, debated on January 12 1976). During the *Rajya Sabha* debates of the *Bonded Labour System (Abolition) Bill* in 1976, Saroar Amjad Ali remarked that it had taken 26 years since independence until parliament finally debated a law on bonded labour.[261] About two weeks later, on January 23 and 27 1976 the Lok Sabha debated the bill.[262] Raghunatha Reddy, Minister of Labour, introduced the bill and although all contributing members of the Lok Sabha endorsed the bill across party lines, this was not without criticism towards the government. Biren Dutta reminded the government that it had failed to take action, despite the last 20 reports of the Commissioner for SCs and STs, that had shown that bonded labour existed, the government failed to implement the Article 23.[263] Dutta appreciated the bill but criticised the government's inaction and described the adoption of the *Bonded Labour System (Abolition) Ordinance* as a populist move.[264]

Yet, according to Dutta, the government's behaviour had also contributed to the continued problem of bonded labour: He noted that the Congress's reliance on so-called vote-banks[265] impeded the implementation of Article 23: "The most difficult problem is that the members of the Congress Party are the landlords and (…) they form the vote catching machinery of the Congress Party. That is why this thing is still persisting. Even if you pass this Bill this practice will continue."[266] While supportive of the bill without a single member speaking against its adoption, several members expressed their doubt that the bill would succeed in abolishing bonded labour. One member pointed out the problem of unemployment and lack of alternatives.[267] Kathamuthu explained that the states denied the existence of bonded labour because they were not interested in stemming the administrative and financial burden; additionally, the ties of landlords to the state government had undermined the implementation of the abolition of bonded labour, and would presumably continue to do so in the future.[268]

During the following session, the Lok Sabha again discussed the bill, and worked in some amendments; the majority of the members adopted the bill. The act replaced the ordinance, and the *Bonded Labour System (Abolition) Act*, adopted in 1976, immediately

[261] Rajya Sabha, January 12, p. 126.
[262] TIWARI, 2011, p. 48.
[263] Contribution of Biren Dutta, PREMCHANDER/PRAMELLA/CHIDAMBARANATHAN *et al.*, 2015, p. 162.
[264] Biren Dutta, Lok Sabha, January 23 1976, 162, 164.
[265] Groups of voters whose choice in elections is controlled by local leaders, MITRA, 2017, xxii, 191.
[266] Biren Dutta, Lok Sabha, January 23 1976, p. 164; see also: CHANDRA, 2003, p. 28.
[267] Biren Dutta, Lok Sabha, January 23 1976, p. 162–163.
[268] M. Kathamuthu, Lok Sabha, January 23 1976, 169, 171; cf. Dharnidhar Das, Lok Sabha, January 23 1976, p. 174; S. M. Siddayya, Lok Sabha, January 23 1976, p. 1181.

came into force and stood as enforced since October 25 1975, the date when the ordinance was promulgated.[269]

This new layer to the constitutional provision explicitly abolishes bonded labour in India. The BLSA provides a definition of what constitutes bonded labour and clarifies that "'bonded labour system' means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor."[270] It provides a list of the names of the different systems of bonded labour, among them the *hali* and *sagri* systems, terms used for bonded labour arrangements in agriculture prevalent in Bihar and Gujarat. The Labour Minister explained that this enumeration of bonded labour systems was not exhaustive and prepared to clarify what the intention of the act was, so that the courts could apply it to the respective cases.[271] The BLSA, still effective today, prescribes how the Indian states should give effect to this act. It provides for the establishment of vigilance committees by the states of India, the assignment of Magistrates to implement the act,[272] the punishment of perpetrators, the prohibition of accepting advances, and the payment for rehabilitation of liberated bonded labourers—half funded by the central state, half by the Indian states. In short, the BLSA clearly formulates a policy with the aim to abolish bonded labour. By prescribing that "[t]he existence of an agreement between the debtor and creditor is ordinarily presumed, under the social custom, in relation to the following forms of forced labour,"[273] the act shifts the burden of proof from the bonded labourer to the creditor.[274] With all those provisions, the BLSA offers a low level of discretion to interpret this act and constitutes until today a strong law against bonded labour.

Table 15. Characteristics of the formal institution, 1976

Law	Definition	Bonded labour	Timeline	Punishment	Rehabilitation	Competent authorities
BLSA, 1976	Yes	Yes	Yes	Yes	Yes	Yes

[269] Ministry of Law, Justice and Company Affairs, October 25 1975, Art. 1 (3).
[270] Art. 24g, Ministry of Law, Justice and Company Affairs, October 25 1975.
[271] Minister of Labour, Raghunatha Reddy, Lok Sabha, January 27 1976, p. 161.
[272] Ministry of Law, Justice and Company Affairs, October 25 1975, Chapter V.
[273] Ministry of Law, Justice and Company Affairs, October 25 1975, Art. 2, Explanation.
[274] DINGWANEY, 1985, p. 334.

Aftermath of Emergency Rule 1977-1990s

In an internal evaluation of the progress of implementing the BLSA in June 1976, the report summarised that bonded labour was prevalent in nine states.[275] So far, only Kerala had completed a survey and had identified and released 42,769 bonded labourers and highlighted that liberations were only "symbolic"[276] if not supported by rehabilitation. The author of the report added that this task was "clearly the most difficult and time consuming and involve[d] some financial expenditure."[277] The report also noted that not all released bonded labourers received their rehabilitation package.[278] The states offered different items to bonded labourers for their rehabilitation. In Andhra Pradesh for instance, released bonded labourers received Rs. 200, housing, as well as agricultural tools or livestock.[279] But the 1981 report of the Commission for SCs and STs indicated that not all bonded labourers received rehabilitation,[280] and that there were differences between states and regions regarding making efforts to implement the BLSA.[281]

By June 1976, 75,337 bonded labourers were identified; in the following four years, until November 1980, an additional 45,224 identifications followed.[282] Despite those actions, a governmental committee of the Ministry of Labour declared in November 1979 that "in practice, the system [of bonded labour] is still prevailing."[283] The first Indian national survey on bonded labour conducted by the Gandhi Peace Foundation, published in 1981, estimated that 2,617,000 bonded labourers were living in India by 1978.[284] The study even observed an increase of bonded labour in agriculture, brick-kilns and quarries, and showed that bonded labour remained prevalent in many Indian states.[285] The Gandhi Peace Foundation identified the main causes of debt bondage as debt and land allotment, but also social, customary and

[275] Andhra Pradesh, Bihar, Karnataka, Kerala, Madhya Pradesh, Orissa, Rajasthan, Tamil Nadu and United Provinces.
[276] Abolition of Bonded Labour, Review of Progress as of June 30 1976, letter by J. N. Renjen, dated July 7 1976, 2, GANDHI, July 4 1975.
[277] Abolition of Bonded Labour, Review of Progress as of June 30 1976, letter by J. N. Renjen, dated July 7 1976, 3, GANDHI, July 4 1975.
[278] Abolition of Bonded Labour, Review of Progress as of June 30 1976, letter by J. N. Renjen, dated July 7 1976, 2, GANDHI, July 4 1975.
[279] Ministry of Home Affairs, 1981, p. 85.
[280] Ministry of Home Affairs, 1981, p. 86.
[281] QUIRK, 2008, p. 548.
[282] Ministry of Home Affairs, 1981, p. 86.
[283] Sub-Committee on Bonded Labour Ministry of Labour, quoted in Commissioner for Scheduled Castes and Scheduled Tribes, 1981, p. 32; cf. DINGWANEY, 1985, p. 336.
[284] MARLA, January 1981, p. 144.
[285] MARLA, January 1981, p. 35, the organisation conducted field research in Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh.

traditional obligations were reasons why people were trapped in bonded labour.[286] This also included inherited bonded labour relations.[287]

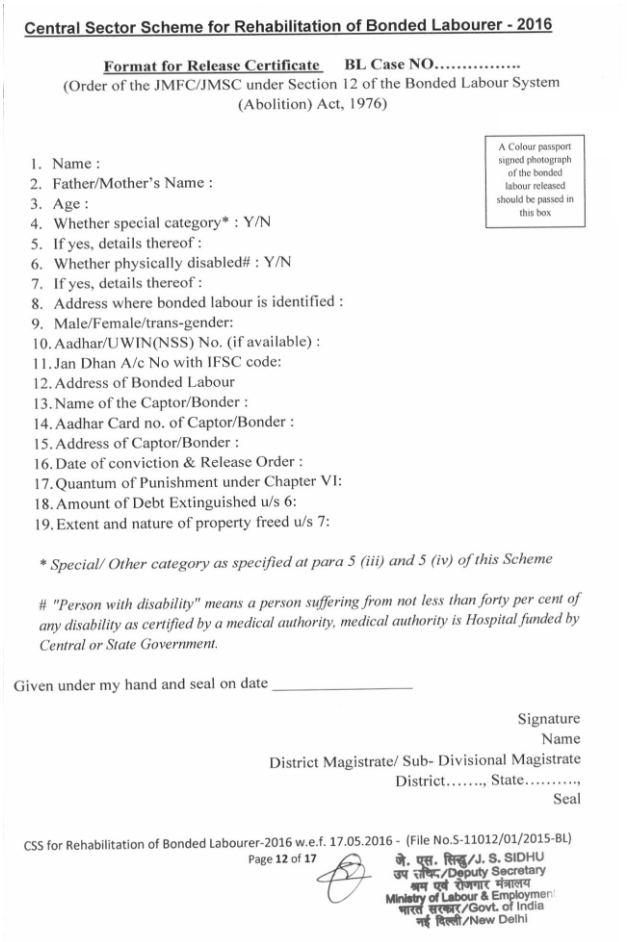
Almost all Indian states, both before and after the Gandhi Peace Foundation's report, denied[288] having a bonded labour problem. Tamil Nadu reported having a negligible number of bonded labour cases, yet, the Gandhi Peace Foundation suggested that about six percent of Tamil Nadu's agricultural workers were in debt bondage.[289] In 1995, two commissioners appointed by the Supreme Court to investigate bonded labour in Tamil Nadu found that in over 20 districts more than one million people worked as bonded labourers, of which 10 percent were children.[290] In 2000, the Government of India offered special financial assistance to "13 bonded labour prone States."[291] The Gandhi Peace Foundation estimated that there were 2,617,000 bonded labourers for the year 1978, but the government recorded only a total of 120,561 recorded releases as of November 1980. The state governments contested the accuracy of the Foundation's estimate and suggested that the number of identified and released labourers were accurate. Assuming that the Gandhi Peace Foundation's numbers were correct, the state efforts reached about five percent of all bonded labourers. During the period between 1977 and 2008, the judiciary and police had prosecuted 5,893 cases of bonded labour, 1,289 of which led to the conviction of the perpetrators.[292] The gap between officially counted bonded labourers and subsequent convictions is quite disparate and demonstrates that implementation was still weak.

As stated above, the institution of the abolition of slavery and bonded labour had become strong, but the enforcement level continued to lag behind. According to my theoretical framework, further institutional changes were to be expected at the enforcement level, as suggested in chapter 2. Within an anti-slavery *Zeitgeist*, two hypotheses, H7a and H8a, indicate that antislavery actors are likely to appear as the dominant change agents, acting as defenders of the spirit of the institution and thereby causing change through layering at the implementation level, regardless of whether the political context afforded strong or weak veto

[286] MARLA, January 1981, 131-33, 189.
[287] MARLA, January 1981, p. 145.
[288] National Human Rights Commission India, 2001, p. 77; DINGWANEY, 1985, p. 335; KULKARNI, 1979, p. 562.
[289] MARLA, January 1981, p. 112
[290] Sugirtharaj, Felix and Sait, Siraj: *Report of the Commission on Bonded Labour in Tamil Nadu*, 1995, Report submitted to the Supreme Court of India in Civil Writ Petition No. 3922 of 1985, referred to in SRIVASTAVA/International Labour Office, 2005.
[291] The 13 states are: Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh, SRIVASTAVA/International Labour Office, 2005, p. 32; National Human Rights Commission India, 2002, p. 115.
[292] International Labour Conference, June 2009, p. 39.

possibilities. In the following paragraphs on the events after emergency rule, I test these two hypotheses.

Figure 10. Format for bonded labour release certificates, 2016



Central Sector Scheme for Rehabilitation of Bonded Labourer - 2016

Format for Release Certificate **BL Case NO.....**
(Order of the JMFC/JMSC under Section 12 of the Bonded Labour System (Abolition) Act, 1976)

A Colour passport signed photograph of the bonded labour released should be passed in this box

1. Name :
2. Father/Mother's Name :
3. Age :
4. Whether special category* : Y/N
5. If yes, details thereof :
6. Whether physically disabled# : Y/N
7. If yes, details thereof :
8. Address where bonded labour is identified :
9. Male/Female/trans-gender:
10. Aadhar/UWIN(NSS) No. (if available) :
11. Jan Dhan A/c No with IFSC code:
12. Address of Bonded Labour
13. Name of the Captor/Bonder :
14. Aadhar Card no. of Captor/Bonder :
15. Address of Captor/Bonder :
16. Date of conviction & Release Order :
17. Quantum of Punishment under Chapter VI:
18. Amount of Debt Extinguished u/s 6:
19. Extent and nature of property freed u/s 7:

** Special/ Other category as specified at para 5 (iii) and 5 (iv) of this Scheme*

 # "Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority, medical authority is Hospital funded by Central or State Government.

Given under my hand and seal on date _____

Signature
Name
District Magistrate/ Sub- Divisional Magistrate
District....., State.....,
Seal

CSS for Rehabilitation of Bonded Labourer-2016 w.e.f. 17.05.2016 - (File No.S-11012/01/2015-BL)
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जे. एस. सिद्धू/J. S. SIDHU
उप सचिव/Deputy Secretary
श्रम एवं रोजगार मंत्रालय
Ministry of Labour & Employment
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Figure 10, Format for bonded labour release certificates, 2016. Source: Ministry of Labour and Employment, May 18 2016, p. 13.

In the aftermath of the state of emergency, the Supreme Court (SC) of India developed a new notion of judicial activism. The initial concern of the SC was the issue of imprisonment of political dissidents and the earlier support of human rights infringements by the courts under Gandhi's emergency rule.[293] By reinterpreting the constitutional powers granted to the judiciary, the states' high courts and the Indian Supreme Court assumed the special capacity to act *suo motu*—on their own behalf. This allowed the courts to become active without another party requesting the action. A bonded labour case, which I discuss further below, was

[293] HARDGRAVE/KOCHANEK, 2008, p. 120.

in fact one contributing case for the extension of powers which the SC assumed as well: Accepting cases through public interest litigation (PIL), allowed the SC to rule on cases initiated by individuals or organisations who were not directly affected by the crime.[294] The SC also interpreted this power so as to intervene in certain rights violations, such as bonded labour, when they were only reported in the newspaper or received as letters or postcards by a judge.[295] The legal justification to approach bonded labour this way was the fact that the Article 23 was a fundamental right.[296]

The adoption of PIL and the simplified accessibility to the courts brought another actor to the fore: Non-governmental organisations (NGOs). A large number of regional NGOs that were founded in response to the Court's powers in the early 1980s[297] have become crucial actors in filing court cases and actively freeing bonded labourers. The National Human Rights Commission (NHRC) concluded in 2010 that "a small number of bonded labourers are actually identified, almost always due to the persistent efforts of NGOs."[298] According to Mishra the number of people liberated by NGOs was around 30,000 between the 1970s and 2011.[299] Under the governmental Centrally Sponsored Plan Scheme for the identification, release and rehabilitation of bonded labourers funded by the state, 300,175 bonded labourers were recorded between 1978 and 2015.[300]

From the 1980s on, the Supreme Court became involved in enforcing the abolition of bonded labour. Reading those cases, it appears that the definitional question continued to be contested despite the BLSA's clarity: The question of voluntariness was reopened in a 1982 judgment of the Supreme Court. In *People's Union for Democratic Rights and Others v. Union of India & Others* (also known as *Asiad* case), Judge Bhagwati explained that those who became bonded labourers, even though they offered themselves voluntarily, did not have a choice. He specified:

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[294] AHUJA/MURALIDHAR, 1997a, xxxv.
[295] Supreme Court of India, December 16 1983; AHUJA/MURALIDHAR, 1997a, xliii, 302.
[296] People's Union for Civil Liberties, December 1981. See also P. N. Bhagwati: *Guidelines to be followed for entertaining letters/petitions received in this court as public interest litigation*, dated December 1 1988, reprinted in AHUJA/MURALIDHAR, 1997b, p. 860–861
[297] For instance, regionally active: The Karnataka State Farmers' Organisation (Karnataka Rajya Ryota Sanghamor KRRS, founded in 1980); the Shramjeevi Sangathana (Society for Rural Urban and Tribal Initiative-SRUTI, founded in 1983); the Volunteers for Social Justice (VSJ, founded in 1985); active at the national level: Bonded Labour Liberation Front (Bandhua Mukti Morcha, founded in 1981); Bachpan Bachao Andolan (Save the Childhood Movement, founded in 1980); Peoples for Civil Liberties (PUCL, founded in 1980); People's Union for Democratic Rights (PUDR, founded in 1977); Mines Labour to Protection Campaign (MLPC, founded in 1994); cf. QUIRK, 2008, p. 547.
[298] National Human Rights Commission India, 2010, p. 32.
[299] MISHRA, 2011, p. 423.
[300] Ministry of Labour and Employment/Press Information Bureau Government of India Ministry of Home Affairs, August 10 2015.

> Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children (...) he would have no choice but to accept any work that comes his way (...). He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour of service provided by him would be clearly 'forced labour.'[301]

By defining the term 'force' judge Bhagwati referred not only to physical compulsion, but explicitly included external factors that contributed to workers accepting debt bondage. He also explained that the non-payment of wages or remuneration below the minimum wage amounted to forced labour. This line of reasoning was not entirely new: In *Rama Sastriar v. Pakkiri Ambalakaran* (1927), the judge argued that the low wages constituted a 'slavery bond' and was therefore not enforceable.[302] But contrary to the high court cases, the rulings of the Supreme Court were, and are as of today, binding to all judicial levels.

In *Sanjit Roy v. State of Rajasthan* (1983), the SC reminded the State of Rajasthan that also in the case of relief work during famines the minimum wages needed to be paid. When the Public Works Department had engaged a number of people for the construction of roads, payment was conditional on performance and could end up below the minimum wages. If minimum wages were declined, the extraction of labour in return for famine relief would constitute a violation of Article 23.[303]

The probably best-known bonded labour case in India[304] was initiated by an NGO. In 1981, the NGO named Bandhua Mukti Morcha (Bonded Labour Liberation Front) sent a letter to justice Bhagwati at the Supreme Court, complaining about the occurrence of bonded labour in state-owned stone quarries in Haryana that had leased out licences to private contractors. The SC accepted the letter as writ petition and thereby overruled the objections of the Government of Haryana. The judge explained that the "State is under a constitutional obligation to see that there is no violation of the fundamental right of any person."[305] The Court sent a commission to enquire on the conditions, and this commission found the working

[301] *People's Union for Democratic Rights and Others v. Union of India & Others*, Supreme Court of India, September 18 1982.
[302] *Sundara Reddi v. Jagannathan And Anr.*, Madras High Court, November 15 1926.
[303] *Sanjit Roy v. State of Rajasthan*, Supreme Court of India, January 20 1983.
[304] AHUJA/MURALIDHAR, 1997a, p. 302.
[305] *Bandhua Mukti Morcha v. Union of India & Others*, Supreme Court of India, December 16 1983; see also P. N. Bhagwati: *Guidelines to be followed for entertaining letters/petitions received in this court as public interest litigation*, dated December 1 1988, reprinted in AHUJA/MURALIDHAR, 1997b, p. 860–861.

conditions in the mines to be in violation of several laws, among them the BLSA and constitutional Article 23.[306]

Dissatisfied with the performance of the states' implementation efforts of the BLSA, the Supreme Court issued an order to the NHRC of India in June 1997. The NHRC had been created four years earlier, in 1993.[307] The Court requested that the NHRC monitor the implementation of the BLSA.[308] The NHRC set up an Expert Group to supervise the identification of "bonded labour prone Districts"[309] in 2000. By bringing in the NHRC as an additional actor, the Supreme Court was able to circumvent the failing implementation structure of magistrates, the police and vigilance committees provided by the BLSA.[310] The action of the Supreme Court reflects a global trend of the "justice cascade,"[311] as part of the norm cascade at the national level, and through the appearances of additional actors—the Supreme Court, the NHRC and NGOs—the institution of the abolition of bonded labour was fundamentally changed at the implementation level. While the framers of the *Constitution* envisioned that the Supreme Court would become an actor in the implementation of the *Constitution of India*, the role of NGOs could not have been foreseen. The Supreme Court, the NHRC and the NGOs constitute an additional institutional layer to the institution of the abolition of slavery and bonded labour in India. The state of emergency was the facilitating process for the appearance of these actors. But only the new role of the SC constituted a critical juncture, since it set the path of a new way of implementing the abolition of bonded labour.

Conclusion

This second part of the third episode on the institution of abolition of bonded labour is dedicated to the independent Indian state, encompassing the first democratically elected parliament, emergency rule under Indira Gandhi, and its aftermath. Starting off with weak provisions against bonded labour that included the *Act V*, the IPC antislavery sections and the constitutional Article 23, the Lok Sabha tried to initiate layering by promoting private bills, as well as putting pressure on the government to make use of the Question Hour. Particularly

[306] *Bandhua Mukti Morcha v. Union of India & Others*, Supreme Court of India, December 16 1983.
[307] The founding document is the *Protection of Human Rights Ordinance* promulgated by the President of India on September 28 1983.
[308] Supreme Court of India, May 5 2004.
[309] SRIVASTAVA/International Labour Office, 2005, p. 7.
[310] National Human Rights Commission India, 2010; QUIRK, 2008, p. 548.
[311] SIKKINK/KIM, 2013, p. 270.

around the release of the reports of the Commissioner for SC and ST, the issue of bonded labour was brought regularly on the agenda of the Lok Sabha. But the government made use of its veto power, and it never even came to a vote on any bill against bonded labour. The governmental ministers either referenced the state governments and the action that was taken in the states, or stated that because of the legislation already in place, no further policies were necessary. The government was the preserver of the status quo. Members of parliament tried to induce change, but were not successful given the veto position of the government. This is also highlighted by the fact that the Government of India became party to the *Supplementary Convention on the Abolition of Slavery* in 1956 and ratified the convention on June 23 1960, but this convention was not addressed once in Parliament between 1952 and 1975. Only the ILO *Forced Labour Convention* (C105) was mentioned.

The initial institutional characteristics were weak and the MPs as well as the Commissioner of SCs and STs regularly pointed to the weakness and failure of the state governments to implement Article 23. As expected according to my evaluation of the Article 23, the court cases show that the definitional question was still contested—dictionaries and a United States Supreme Court case supported the definition found in *Kadar* (1961). Particular to this case is that the lower court actually wanted to enforce the local form of bonded labour, *nadappu*.[312]

Several MPs tried to induce change as defenders, attempting to strengthen the institution by adding a stronger policy, but did not succeed. Beyond the government's resistance to adopt another legislation, the actual reasons for this behaviour are hardly highlighted through the parliamentary discussions. One recurring element were the expected expenses which would come along with vigorous enforcement, and which the Constituent Assembly was already unwilling to shoulder.[313] The first two decades still seemed carried by the enthusiasm about independence, the democratisation of the political system, economic plans and the development of the country. Only with time did it become visible, that these changes did not facilitate the vanishing of bonded labour. The Commissioner of SCs and STs reports highlighted this regularly. Indira Gandhi's success can be explained by her move to speak to the poor and low caste members of the constituency, thereby abandoning previous well-established connections of the Congress Party to the high caste and better-off landed society. These were crucial in securing votes through vote-banks and the strong majority of

[312] *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.
[313] Desai, Minister of Labour, Lok Sabha, March 4 1955, p. 1131.

the Congress[314] but which were also part of the structure that prevented access of the poor to the political and judicial system.[315]

Gandhi's decision and also political and economic reorientation[316] came after two decades of independent India. From the comments of the Lok Sabha members it appears that, in their estimation, the BLSA was overdue. As some MPs noted, 20 years of reports of the Commissioner on SCs and STs highlighted the continued labour exploitation in the form of bonded labour, yet not much had changed, and this situation seemed not feasible anymore. Until the very last moment before emergency rule, the then Labour Minister explained that no additional legislation was necessary;[317] two months later, Indira Gandhi removed all obstacles to adopt legislation against bonded labour. Emergency constituted a strong facilitating moment which allowed the government to adopt a strong legislation. But the resistance to act on bonded labour would not have come from parliament; its veto possibility was strong since the late 1960s, when Congress did not occupy the majority of the Lok Sabha seats anymore. There was cohesion on the question of abolishing bonded labour: During the debates, the Lok Sabha and Raja Sabha endorsed the *Bonded Labour System (Abolition) Bill*, and the bill was adopted without any opposition, aside from criticism that the government had waited so long. With emergency, Gandhi secured her political position and pre-empted obstacles from within the government's own ranks against adopting a policy that provided for vigorous enforcement of the abolition of bonded labour. In this chapter I could not find explicit explanations beyond the Lok Sabha debates that explain the resistance within the government to adopt the *Bill to Provide Punishment for Free, Forced or Compulsory Labour* or to come forward with other policies. Other authors, as well as one MP,[318] indicate that the ties of the INC at the regional level were strongly related to vested interests which prevented action against bonded labour.[319]

During this episode, both initially proposed hypotheses, H4a and H3a, as well as two additional ones, H7a and H8a, came to the test. First the INC constituted the government and occupied the majority of seats in parliament, endowed with strong vetoes blocking any attempts to change the institutional status quo at the central level. During emergency, the veto position remained virtually the same compared to the 1950s and 1960s, but this time with

[314] MITRA, 2017, p. 152–153.
[315] CHANDRA, 2003, 12, 24, 28
[316] MITRA, 2017, p. 197.
[317] Minister of Labour, Raghunatha Reddy, Lok Sabha, March 6 1975, p. 49.
[318] Biren Dutta, Lok Sabha, January 23 1976, p. 164.
[319] DHAR, 2001, p. 266; KOHLI, 1988, p. 7.

Congress becoming the actor of change. Gandhi and the Congress Party added layers to the existing institution and thereby induced meaningful change at the rules level: The new policy explicitly addressed and defined bonded labour and its abolition as the policy issue, and provided clear instructions for implementation, rehabilitation and punishment for perpetrators. By 1975 the legal abolition of bonded labour in India was realised. The final layer constituted by the SC, NGOs and the NHRC happened outside of the political arena, in the judicial arena at the enforcement level. This ultimately changed the enforcement of the abolition of bonded labour in India.

Discussion and Conclusion

In this concluding chapter I briefly reiterate the findings of the prior case descriptions and analysis and bring the three episodes together. The structure of the discussion follows the variables which I used to understand institutional change. At times I insert suggestions for future research. I end with a final conclusion and highlight further research enquiries on the abolition of bonded labour in India and South Asia.

Discussion

Treating the abolition of slavery as an institution allowed me to follow its formal changes between the delegalisation of slavery in 1843 and the adoption of the *Bonded Labour System (Abolition) Act* in 1976. I argue that neither the *Act V* nor the IPC clearly abolished bonded labour and that this ambiguity, the open question of whether these two provisions covered bonded labour or not, caused changes at the formal as well as the enforcement level, represented also by the judicial treatment of bonded labour and slavery cases at the high courts. Thereby I diverged from scholarly evaluations of the abolition of slavery as policy failure. Instead, by applying Thelen and Mahoney's theoretical framework, the implementation gap turned into an independent variable that helped to make visible and explain changes of the abolition of slavery in India.

I suggested a few modifications to the theoretical framework of Mahoney and Thelen: By splitting one of the variables—the discretion in interpretation and enforcement—into two—the quality of the institutional rules and the actual enforcement level—I could account more realistically for the characteristics of the institution. In addition, I explicitly considered ideas in the form of the *Zeitgeist* and paradigms related to bonded labour, forced labour and slavery, namely the non-interference paradigm, the paternalist paradigm, the ideology of work paradigm and the rights paradigm. Altogether, I considered six variables: (V5) The *Zeitgeist* and (V6) prevailing paradigms; actors' predisposition towards the institution and (V4) expected actor behaviour in light of the political context; the institutional characteristics—(V1) the quality of the institution and (V2) its actual implementation status—as well as (V3) the political context. Based on these variables I formulated a set of hypotheses to describe and explain how the abolition of slavery in India changed over time.

For my purpose, I adjusted the parameters of the theory of gradual institutional change to fit the theoretical assumption more closely to the particular case of a human right. Such an

adaptation included considering beforehand the ideational environment, or *Zeitgeist*, within which actors would behave, as well as their predisposition towards the institution, depending on them either being proslavery or antislavery actors. These specific considerations resulted in an extensive set of hypotheses, of which I tested only a few, but this allowed for a refined description and analysis of the changes the institution underwent.

The hypotheses proved useful and accurate for the analysis and explanation of the changes of the institution abolishing bonded labour in India. By assuming that proslavery and antislavery actors would occupy particular dispositions towards the institution depending on the institutional characteristics, I was able to make fairly accurate predictions about which actors would be the ones inducing change. This approach allowed me to model actors' behaviour for the particular case of the abolition of slavery. And while my approach appears highly specific to the case of the abolition of slavery and bonded labour, I suggest that it is transferable to other human rights or sets of cases that study the abolition of coerced labour.

The *Zeitgeist* changed during the period I considered. The first two episodes were marked by a proslavery *Zeitgeist* at the international level, but the norm of the abolition of slavery gained a status of 'taken-for-grantedness.'[1] At the national level, the *Zeitgeist* in India began to turn antislavery with the adoption of the *Indian Penal Code* (IPC). Consequently, open resistance to the abolition of bonded labour, forced labour or slavery could be observed in the 1840s when the abolition of slavery was instituted. Later, open resistance of employers to the abolition of slavery or *begar*, as by the *Constitution of India* for instance, did not occur. This absence does not mean that proslavery actors vanished, which they apparently did not. But they did not express their discontent in the public sphere.

The identification of sets of ideas that both contradicted and supported the realisation of the abolition of slavery allowed me to develop a framework, within which progress towards the abolition of slavery, but also drawbacks, were possible. The ideas subsumed under the paternalist paradigm, or the ideology of work and ideas related to the 'sanctity of the contract,'[2] explain the adoption of the *Workman's Breach of Contract Act* (WBCA). The formulation of citizenship rights brought forward by the Indian National Congress (INC) and other Indian political organisations undermined the legitimacy of the WBCA and also formed the basis for the rights enshrined in the *Constitution of India*.

[1] FINNEMORE/SIKKINK, 1998, p. 895.
[2] WHITLEY/Royal Commission on Labour in India/Government of India, 1931, p. 230.

The abolition of slavery underwent several changes at the formal and the enforcement level: In the first two episodes it transformed from a weak provision that merely delegalised[3] slavery and was undermined by a layer of contradicting rules, the WBCA, into a weak norm enshrined in the constitutional Article 23. Furthermore, during this time the rules did not establish whether bonded labour was criminalised by antislavery legislation. The courts were unanimous regarding the treatment of bonded labour cases under abolition of slavery legislation, but depicted a tendency to treat bonded labour under the IPC antislavery sections from the 1910s on. To make things worse, the WBCA undermined the abolition of slavery by criminalising breaches of contract, which in effect legalised bonded labour and which was also used by employers to enforce bonded labour. By displacement—the removal of the WBCA—the spirit of the abolition of slavery was strengthened, and through additional layers at the presidency level, policymakers tried to regulate bonded labour.

The changes at the rules level are first and foremost explained by the continued failure of the colonial state, as well as the independent Indian state, to implement the abolition of slavery, which in this case included bonded labour. Throughout the three episodes, governmental and non-governmental reports showed that bonded labour remained a problem. This recurrent confrontation with the implementation gap kept the issue on the agenda and gave impetus to policymakers and antislavery activists to strive for change. This statement seems trivial—the law does not work, therefore policymakers change it—but it becomes nuanced when considering the timing of those changes. The first layer on top of the *Act V* was the WBCA. Earlier lobbying efforts failed, but after the Indian rebellion and large-scale labour resistance, the Government of India adopted this legislation which in practice undermined the abolition of slavery. These political events were facilitating processes. The changes enacted through the WBCA were in line with the current paradigms and also already present in regional legislations on contract law.[4] Since neither the *Act V* nor the IPC defined slavery and were silent on debt bondage, the WBCA did not constitute an aberration from these legal provisions, but effectively undermined them.

The removal of the WBCA was not a question of 'if,' but 'when.' The timing of the displacement of the WBCA can only be explained in conjunction with other variables: The change of the political context set by the Montague-Chelmsford reforms adopted in 1919 allowed for an increase of Indian nationals to the legislatures. While the veto power was fully occupied by the government, the changing *Zeitgeist* towards antislavery and the pressure

[3] CHATTERJEE, 2005, p. 139.
[4] CRAVEN/HAY, 1994, p. 71–73; AVINS, 1967, p. 33.

exercised by MPs in the legislature to realise the rights of labourers created the necessary environment to remove the WBCA. The Government of India's stalling might have continued—and did, according to Hay, in other places until after the 1930s and 1960s[5]—if the Indian members in the Legislative Assembly had not repeatedly requested the removal of criminal sanctions for breaches of contract. The tipping point[6] appears to be the enacting of the *Slavery Convention*, which cast its shadow over the recurrent debates in the Central Legislative Assembly.

Additionally, the question of labour exploitation became entrenched in the discourse between the independence movement and the colonial power. Then the removal of the WBCA served not only to improve the situation of labourers, but it also became a site in the struggle between the independence movement and the colonial power in which both tried to style themselves as the better suited protectors of the interests of the poor. Having won this struggle, the newly independent state and its governing policymakers failed to adopt a strong policy for the abolition of bonded labour for two reasons. The adoption of the Article 23 and the withdrawal of the *Prevention of Free or Forced or Compulsory Labour Bill* can only be understood when considering the political context, as well as the ideas of the policymakers in the Constituent Assembly (CA): There was a clear understanding that bonded labour had to be addressed, also by additional laws. At the same time, several members of the CA believed that with regime change and the end of colonialism, the rights of citizens would automatically be realised, economic development could be fostered, and bonded labour would vanish. Some members were less enthusiastic, but were appeased upon the promise that the new government would investigate bonded labour in India and formulate a strong law. Yet both, the independent state and the colonial state resisted from building an infrastructure that would enforce actively the abolition of slavery and bonded labour. The unwillingness of the government after independence to make bonded labour a cognisable offence is not fully explained by the sources I could access. The ministers of the central government either argued that existing national or regional law was sufficient, or that a law providing for a vigorous enforcement would be too costly to actually enforce.[7] Future research could highlight in more detail what in fact the motives of the government were to resist the adoption of such a policy.

MPs wanted legal change, and the support of the BLSA 26 years after India's independence confirmed the position of the Indian Parliament regarding this issue. But due to the political context, with the governing party occupying the veto power, change initiated by

[5] HAY/CRAVEN, 2004, p. 26.
[6] MUKHERJI, 2014, p. 24.
[7] Cf. statements of Desai, Minister of Labour, Lok Sabha, March 4 1955, p. 1131.

the Lok Sabha could not succeed, as evidenced by another submission of the *Bill to Provide for Free, Forced or Compulsory Labour* in 1954. This governmental inertia was only overcome by Gandhi's seizure of power under emergency rule. Gandhi's INC moved towards accommodating the interests of the lower castes, Dalits and the poor. Gandhi's economic programme tailored to realise the promises of independence and the *Constitution*, and the fact that more than 20 years had passed without visible changes for bonded labourers, explains why it took emergency rule to finally adopt a strong law against bonded labour. Up to the last moment the Minister of Labour argued that new legislation regarding bonded labour was not necessary. With emergency rule, Gandhi removed any veto possibilities and enacted a programme of economic policies already outlined before emergency. This included the abolition of bonded labour.

The ambiguity of the legal provisions played out markedly in the court cases: Bonded labour was not addressed in the legal provisions, but magistrates and judges were confronted with bonded labour cases and resorted to antislavery legislation to handle these cases. Over the course of the first two episodes, judges increasingly interpreted antislavery provisions of the IPC in such a way as to criminalise bonded labour; tracing how these cases came about revealed that several magistrates also interpreted the *Act V* and the IPC in such a way that allowed them to prosecute employers of bonded labourers under antislavery legislation. The changes at the judicial level constituted conversion: Judges expanded their interpretation of antislavery laws to include bonded labour. Simultaneously, there were also instances of drift: Several cases instigated under the WBCA were dismissed on the basis that these actually constituted slavery. The courts suggested neglecting the given rules in instances where the WPCA was to coerce labour by employers only making minimal advances of payment. The prevalence of bonded labour throughout all episodes, as well as the low conviction rate indicated by the criminal records of Punjab and Bengal suggest that most magistrates did not interpret bonded labour as a violation of the antislavery section of the IPC. Future research could reveal how magistrates generally treated bonded labour cases.[8]

The adoption of the *Constitution of India* and its provision against *begar* and forced labour constituted a clear, even though still weak, change by layering: Added on top of the existing rules, the intention of the constitutional provision was to prohibit bonded labour. Contrary to earlier provisions regarding bonded labour at the presidency level, this rule applied to the whole of India. But the few court cases on the Article 23 derived for the

[8] Kerr remarks that if records survived at all, magistrates' decisions would have been collected as aggregated tables revealing only little about the cases they dealt with, KERR, 2004, p. 19; see also HAY/CRAVEN, 2004, p. 2.

discussion of the judicial treatment of bonded labour in the third episode show that employers continued to attempt to use the administrative and judicial machinery to enforce bonded labour. The rules of Article 23 still lacked a definition; consequently, the courts still referred to other sources of inspiration to argue that bonded labour constituted an offence against Article 23. By 1975 India abolished bonded labour, clearly formulated in a policy providing guidance on how to implement the norm with the BLSA.[9] This change also constituted a layer on top of the existing rules that strengthened the spirit of the institution of the abolition of slavery: For the first time an Indian policy defined explicitly bonded labour as forced labour and therefore as a criminal offence. *The Bihar and Orissa Kamiauti Agreements Act* for instance does not suggest a potential criminal offence and does not mention forced labour, *begar* or slavery to describe the *kamiauti* system.[10] The characteristics of the institution became strong, but enforcement was still weak. The reaction of the Supreme Court to Gandhi's emergency rule—the assumption of the power to act *suo motu* and a reformed application of legal standing under PIL, legally justified by Article 23's quality as a fundamental right—paved the ground for new actors proactive in implementing the BLSA: The courts and the NHRC. These changes constituted another layer that transformed the enactment of the rules and allowed the courts to become proactive without a litigant, and NGOs could file court cases on behalf of bonded labourers.

One of the most prominent elements which was missing in all considered policies was a definition of slavery. All the episodes I compared reveal two constant elements: The rules of the institution of the abolition of slavery were weak, as well as the level of implementation. The courts repeatedly remarked upon the lack of definitions and made use of their discretion of interpretation. But the observed tendency to support antislavery charges in bonded labour cases only becomes tangible when considering the *Zeitgeist* and the prevalent paradigms. Before the turn of the nineteenth century, the non-interference paradigm, the paternalist paradigm and the ideology of work paradigm, the latter upholding contractual obligations, can explain the reluctance of several judges to apply the antislavery sections of the IPC on bonded labour: In the case of *Madan* for instance, contractual obligations trumped the working conditions, and in *Firman*, the judge feared that if he convicted Firman under the IPC Section 370, a large number of people could be charged with the same offence. At the international level the League of Nations, and at the national level the *swaraj* movement, pushed the rights paradigm, which gained momentum after the 1920s. This coincided with an increasing

[9] MAHONEY/THELEN, 2010b, p. 1.
[10] Government of Bihar and Orissa, 1920.

number of judgments recommending convictions under the IPC for the extraction of bonded labour by defining bonded labour as slavery. Unfortunately, the judges did not discuss in detail why they diverged from earlier judgments and found bonded labour relations to constitute offences under the antislavery sections of the IPC. One judge explained that bonded labour was "opposed to public policy."[11] Furthermore, the idea that a labourer could voluntarily submit to his own enslavement lost ground, and other factors, such as poverty, were invoked to argue that bonded labour was not voluntarily entered or continued.[12] After independence, the rights paradigm is clearly referred to in *Muthukoya* when the judge invoked the *Universal Declaration of Human Rights*.[13]

The legitimisation of bonded labour as a poor law disappeared with the emergence of the rights paradigm. By the turn of the nineteenth to the twentieth century, a number of courts acknowledged that bonded labourers had not submitted voluntarily to exploitative arrangements, but that the economic circumstances warranted their decisions—bonded labour was no longer interpreted as a voluntarily entered condition. Within the court system this resulted in convictions of employers under antislavery legislation; in the political arenas, the turn to the formulation of rights implicitly took the economic situation into account. Policymakers described bonded labour as slavery or forced labour which was not voluntary, even if the labourers had entered their bondage by free will.

International legislation was a reference point for policymakers, as well as for the courts. They mentioned the *Forced Labour Convention* and the *Universal Declaration of Human Rights* in the context of following up on the government's actions against forced labour, as it happened in the Central Legislative Assembly; and as inspiration for legislative provisions, such as the *Free or Forced or Compulsory Labour Bill*. In the case of the British Raj, the attention of the League of Nations on bonded labour in India put pressure on the Government of India, which administrators remarked upon. The League's comparison of the good example of the princely state Hyderabad, to the comparatively weak accomplishments of the British Raj, were responded to with some embarrassment on the side of the British administration and certainly motivated the colonial government to enable policy change against bonded labour.

Acknowledging forced labour and *begar* as a prevalent problem in India, the authors of the Indian Constitution did not concede to international pressure to comply with

[11] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 744.
[12] *Ram Sarup Bhagat v. Bansi Mandar*, Calcutta High Court, March 15 1915, p. 744; *Satish Chandra Ghosh v. Kashi Sahu*, Patna High Court, April 8 1918.
[13] *Kadar v. Muthukoya Thangal*, Kerala High Court, July 17 1961.

international labour law. Although they made a reference to their obligation and used international conventions as tools to exercise pressure, the discussions on the fundamental rights and the abolition of slavery would not have been much different without these legislative developments at the international level. To a certain extent, the members of the CA and earlier in the Central Legislative Assembly seemed immune towards some of the discourses at the international arena, such as the League's choice to include bonded labour within the definitional framework of slavery, and the ILO's exclusion of voluntarily entered forced labour relations. The CA and the Lok Sabha, as well as the BLSA, described bonded labour as a form of forced labour, while even the Indian commissioner Dhamne found that bonded labour was not covered by the ILO *Forced Labour Convention* of 1930 and probably due to the terminological confusion completely ignored the applicability of the *Slavery Convention* of 1926.

In this history, bonded labourers remained largely silent. Part of this observation is owed to the focus of this dissertation on the political arenas. One might expect the voice of the people to be marginalised within autocratic system, while democracies have higher stakes when failing to serve their population.[14] Grievances of labourers at the bottom of the social hierarchy were structurally excluded and treated as irrelevant to the policymaking process. Commissioners ignored workers' voices in the knowledge gathering processes that informed the legislative development—the workers were often presented without representation.[15] For the *Reports of the Indian Law Commission upon Slavery in India* of 1841, not a single worker was interviewed. Their grievances, political claims or visions of a better life and better working conditions were not reflected in the sources between the 1840s and 1920s. This is one expression of the paternalist paradigm: The state discovered and defined the needs of its subject citizens and formulated the respective measure to satisfy those needs.[16] Slaves and bonded labourers were therefore (un)suspiciously silent or rather silenced in the political discursive processes regarding matters of their own concern. Policy developments, the formulation of problems and solutions were elite centred.[17] Particularly in the first episodes, the fact that the main actors concerned with bonded labour remained silent is reflective of the power matrix in which the policymaking was embedded.[18] One of these issues was addressing

[14] DAHL, 1991, p. 283–284.
[15] For a similar observation in the case of the abolition of the slave trade, see QUIRK, 2008, p. 537.
[16] For a similar observation in reviewing the governmental reports on indentured labour, the trafficking of Indian labourers to the British Caribbean, see KALE, 1998, p. 84.
[17] See also, for instance, on the case of the white slave traffic in the United States: RODRÍGUEZ GARCÍA, 2016, p. 28–29.
[18] See also for the case on the debate and abolition of *sati*, the burning of widows on the funeral pyre, MANI, 1987, p. 1.

the behaviour of employers. While the CA, for instance, as well as the policymakers of the new independent Indian state, spoke of lifting up the lower castes and improving their mental state, the behaviour of the upper castes towards their underlings was not seen as an issue. A closer interrogation of the discourse on caste could reveal a clearer picture on the integration of people affected by the policy issue in the policymaking process.

Conclusion

The test of orderliness of a country is not the number of millionaires it owns, but the absence of starvation among its masses.[19]
—Mohandas Gandhi, 1916

Colonial policymaking and enforcement cannot be treated as a monolithic exercise that either failed or succeeded to abolish slavery, forced labour and bonded labour. Colonial policies were applied, contested and interpreted in relation to bonded labour by different actors, the judiciary, magistrates, policymakers and employers, and underwent several changes. The WBCA and the non-implementation of the antislavery law and its application on bonded labour served interests that were in part colonial in that they were consequential for the extraction of revenue and the maintenance of colonial power.[20] But the initial aim of the abolition of slavery was not to make a large and cheap labour force available. The state tried to abolish slavery, but also tried to gain control over its subjects by attempting to regulate bonded labour and the masters; but the colonial state, as well as the independent state, shied away from stemming the costs that would have grown out of active manumission and liberation of labourers.[21] Justifying slavery and bonded labour as poor laws, as it happened in the nineteenth century, was the dishonest acknowledgement for failing to offer remedies developed at the political level. Without offering rehabilitative measures, policymakers of the colonial as well as the independent state knew that labourers' alternatives were either to submit to coercive labour relations or to starve. This non-treatment of slavery and bonded labour was therefore highly political, since it maintained the power relations as they were, while at the same time depoliticised the issue of bonded labour, by treating it as mere individual cases of indebtedness or exploitation—the judgment in the slavery case of *Firman* is the most explicit example in this direction, where the judge decided not to apply antislavery legislation because of its political consequences.

[19] GANDHI, 1997, p. 158.
[20] Cf. KOLSKY, 2010, p. 5.
[21] *The Queen v. Firman Ali*, Calcutta High Court, December 2 1871.

In this dissertation I argue that the abolition of slavery and bonded labour in India changed gradually over time. Conceiving of bonded labour as one form of slavery, this dissertation expands our knowledge of the history after the abolition of slavery in Britain in 1833, and after the abolition of slavery in India after 1843. The process of this development of the abolition of slavery in conjunction with bonded labour has hardly been appreciated; instead, it is commonly viewed negatively as attesting to the failure of respective policies to abolish slavery vis-à-vis continued labour exploitation in the form of bonded labour. Beyond the implementation gap, the abolition of slavery and bonded labour in India offers rich insight into the changes of an institution and the development of a human right. I also show that institutional change took place simultaneously at the rules level and the implementation level. The theoretical framework of gradual institutional change and respective modifications helped to depict and explain the transformation of a weak policy into one of the strongest bonded labour abolition laws in South Asia.

In 1892, the judge of the case of *Madan*[22] had only weak legal tools to interpret a situation in which labourers allegedly submitted to bonded labour voluntarily. More than a hundred years after the delegalisation of slavery, judges could rule along legislation that explicitly abolished bonded labour and could resort to powers that allowed the court to become active on its own behalf. By the 1990s Madan would have been convicted for employing bonded labourers; his guilt would have been established by the evidence that the labourers were indebted to him, regardless of the fact that the labourers had agreed to serve as bonded labourers voluntarily. He could have faced up to three years of prison time instead of one. The workers Honto Lahang, Hoibori Lahingani and Bagi Musulmani would have received release certificates and ideally received assistance for their rehabilitation.

Future research

The case of the abolition of bonded labour in India merits future historical research. One research gap is the treatment of bonded labour cases at the lower judicial levels before and after India's independence. I relied on case law that is not necessarily reflective of the general interpretation of the law by magistrates and the lower courts. While the earlier years are probably impossible to reconstruct, later periods might be fruitful topics to research regarding the implementation of the *Act V* and the IPC at the lower judicial levels.

[22] *Madan Mohan Biswas v. Queen Empress*, Calcutta High Court, April 20 1892.

Another research gap already highlighted in the first chapters are publications on the abolition of slavery and bonded labour in the princely states. The example of Travancore, or Hyderabad, which was praised for its exemplary legislation by the League of Nations, could be one case to study more closely. Such studies could also serve as foundational work for comparisons within India: Beer and Mitchell observed that cross national comparisons—of which the figures for the estimated prevalence of bonded labour and slavery in India are one example—fail to account for inner state variations.[23] The identification of "bonded labour prone states"[24] in India by the NHRC indicates that there might be variations in the occurrence and treatment of bonded labour among and within the Indian states and which could be interrogated regarding historical legacies.

In some recorded instances, the Indian media has played an important role in highlighting the issue of slavery and informing the public, such as on the conditions of the coolies on the tea plantations. No systematic work has yet been undertaken, particularly on the vernacular press, analysing the reporting of the press in India on bonded labour and slavery. Related questions would be how the media actually presented the issue of slavery, bonded labour and forced labour, as well as the issue of the political context within which this media presentation took place, for instance during the freedom struggle and anti-British agitation.[25]

Treating the abolition of bonded labour as a phenomenon in its own right and the fluidity of its features sets bonded labour apart from slavery. As such, it poses a challenging academic but also judicial problem that merits further research. Thinking about the definitional problem and the policymakers', jurists' and academia's struggle over defining bonded labour and its boundaries highlights an important point: Ultimately, this discussion is about defining labour conditions that are morally repugnant, unacceptable and worth ending. Which qualifications fall under this judgement is historical and changes over time—the British colonial power could justify slavery or bonded labour as poor law, but today we reject such ideas as a violation of human rights. Notwithstanding the elite's evaluation, the history of slavery and bonded labour is replete with examples of violence that was necessary to keep labourers, servants and slaves 'in their place.' The full spectrum of labour resistance—ranging from running away, violent attacks against exploiters or self-mutilation—shows that people exposed to these forms of labour exploitation did not want to be treated the way they experienced. It is time to create social, economic and legal conditions in which people are not

[23] BEER/MITCHELL, 2006, p. 998.
[24] National Human Rights Commission India, 2002, p. 115.
[25] VARMA, 2011, 174, footnote 439; PIERSON, 2016, p. 127.

left with the alternatives of either starving or being bonded, but have real choices that allow each individual to live a life of dignity.

Appendices

Hypotheses

Table 16. Hypotheses, expected institutional change under antislavery Zeitgeist

Antislavery *Zeitgeist*		Characteristics of the Targeted Institution		
		Unambiguous rules, strong law/ Effective Enforcement	Strong law/ ineffective enforcement	Ambiguous rules, weak law/ Ineffective Enforcement
Characteristics of the Political Context	Strong Veto Possibilities	Proslavery actors: Insurrectionaries/ opportunists → drift (H1a)	Strong law/ ineffective enforcement antislavery actors: Defenders → layering (H7a)	Antislavery actors: Subversives → displacement/ defenders → conversion (H3a)
			Weak law/strong enforcement proslavery actors: Insurrectionaries/ opportunists → layering (H5a)	
	Weak Veto Possibilities	Proslavery actors: Subversives → layering (H2a)	Strong law/ ineffective enforcement antislavery actors: Defenders → layering (H8a)	Antislavery actors: Insurrectionaries → displacement/ subversives → layering (H4a)
			Weak law/strong enforcement → stability (H6a)	

Table 17. Hypotheses, expected institutional change under proslavery Zeitgeist

Proslavery *Zeitgeist*		Characteristics of the Targeted Institution		
		Unambiguous rules, strong law/ Effective Enforcement	Ambiguous rules, strong law/ ineffective enforcement	Ambiguous rules, weak law/ Ineffective Enforcement
Characteristics of the Political Context	Strong Veto Possibilities	Proslavery actors: Insurrectionaries → layering symbionts → drift (H1b)	Strong law/ ineffective enforcement antislavery actors: Defenders → stability (H7b)	Proslavery actors: Parasitic symbionts → drift (H3b)
			Weak law/strong enforcement proslavery actors: Insurrectionaries/ opportunists → drift (H5b)	
	Weak Veto Possibilities	Proslavery actors: Insurrectionaries/ opportunists → displacement (H2b)	Strong law/ ineffective enforcement proslavery: Insurrectionaries → displacement (H8b)	Antislavery actors: Insurrectionaries → displacement/ → layering (H4b)
			Weak law/strong enforcement proslavery actors: Subversives → layering (H6b)	

Based on the work of Mahoney and Thelen and taking into account expectations of the output depending on the prevalent *Zeitgeist*, I formulate the following eight hypotheses, each of which is split into version a) antislavery *Zeitgeist* and b) proslavery *Zeitgeist*. The formulation of the first four hypotheses a) and b) rest strongly on the relationships provided by Mahoney and Thelen.[26] The explanation and arguments regarding how I arrived at the hypotheses is given below.

If antislavery law is strong and enforcement is effective and…
Hypothesis 1: preservers of the status quo have strong veto possibilities…
- H1a proslavery actors are insurrectionaries/opportunists causing drift.[27]
- H1b proslavery actors behave like insurrectionaries causing layering, or, on the enforcement level, cause drift as symbionts.

Hypothesis 2: if preservers of the status quo have weak veto possibilities…
- H2a proslavery actors act like subversives causing layering.
- H2b proslavery actors behave like insurrectionaries or opportunists and cause displacement.

If antislavery rules are weak and enforcement ineffective and…
Hypothesis 3: preservers of the status quo have strong veto possibilities…

[26] MAHONEY/THELEN, 2010b.
[27] Thelen and Mahoney suggest for the combination of these variables that change agents are subversives, MAHONEY/THELEN, 2010b, p. 28.

H3a antislavery actors behave like subversives causing displacement to remove contravening legislation or[28] like defenders causing conversion.
H3b proslavery actors cause drift as parasitic symbionts.

Hypothesis 4: if veto possibilities of the preservers of the status quo are weak…
H4a antislavery actors are the change agents and induce change by layering as subversives, or displace contravening legislation as insurrectionaries.[29]
H4b antislavery actors act like insurrectionaries causing displacement or layers.

If the institutional characteristics are mixed, with weak antislavery law and effective level of enforcement…
Hypothesis 5: and veto possibilities are strong…
H5a proslavery actors covertly try to undermine effective implementation. As insurrectionaries or opportunists they cause change through layers at the implementation level through illegal behaviour.
H5b proslavery actors seek change and behave like insurrectionaries or opportunists, trying to induce change at the enforcement level causing drift.

If the rules are weak but enforcement is effective…
Hypothesis 6: and veto possibilities are weak…
H6a both actors might appear as change agents, but none is likely to induce change; the result is stability of the status quo.
H6b proslavery actors acting like subversives cause change by layering.

If rules are strong and enforcement ineffective…
Hypothesis 7: and veto possibilities are strong…
H7a antislavery actors change the institution as defenders by layering (i.e. new actors).
H7b both actors might appear as change agents; likely outcome is stability of the status quo.

If the institution has a strong policy but enforcement is ineffective…
Hypothesis 8: and veto possibilities are weak…
H8a antislavery actors are likely to be the actors of change as defenders causing layering.
H8b proslavery actors acting like insurrectionaries induce change by displacement.

Hypothesis 1: If the institutional discretion for interpretation and implementation is altogether low (strong antislavery law and strong level of enforcement) and if veto possibilities are strong from the side of those who want to preserve the status quo, antislavery actors are satisfied with implementation being effective and the law sufficient. They aim to preserve the status quo and block change. For proslavery actors, the existing antislavery policy grants them no discretion to interpret the law and they have difficulties practicing any forms of slavery.

[28] Thelen and Mahoney suggest for the combination of these variables that change agents will be parasitic symbionts, MAHONEY/THELEN, 2010b, p. 28.
[29] Under those conditions Thelen and Mahoney suggest the mode of change to be conversion, MAHONEY/THELEN, 2010b, 17, 18, 27.

H1a: If the *Zeitgeist* is antislavery, actors favouring slavery might not behave as proslavery actors but undermine it by secretly violating it. Their proslavery behaviour is disguised and they covertly try to change the status quo. Proslavery actors can induce change only at the enforcement level. With the institutional characteristics and veto possibilities, Thelen and Mahony suggest that actors behave like subversives, but I suggest proslavery actors behave rather like insurrectionaries or opportunists. Change most likely occurs through drift. An example might be human trafficking and forced prostitution in contemporary Europe. Profiteers of forced prostitution exercise their businesses illegally. They clearly violate and undermine the institution of the abolition of slavery. Due to other provisions, such as immigration laws, traffickers are able to threaten victims who fear deportation, causing drift at the enforcement level.[30] If antislavery actors are actively interfering in the business of proslavery actors, changes could also occur in the form of layering, additional refinements of the rules to adjust the existing institution to new challenges. For instance, with the increased number of asylum seekers and migrants coming to Europe, drift was the potential change. But antislavery actors adapted the rules to these changed circumstances: German antitrafficking legislation, for instance, was altered to provide better victim protection and a clearer definition of additional offences.[31]

H1b: Under the same conditions, but proslavery *Zeitgeist*, proslavery actors are also the agents of change as insurrectionaries. They speak in public in favour of slavery and act openly against antislavery laws. But confronted with strong veto possibilities, the only changes at the rules level are layering, in the form of legal provisions that allow for slavery. An example for layering is the adoption of indenture legislation after the abolition of slavery and the slave trade.[32] On the implementation level, proslavery actors may cause drift as symbionts, when acting covertly against the institution. The abolition of the slave trade and subsequent move of carriers on the high seas to change their shipping flag and sail under a nation not bound to the abolition of the slave trade,[33] is an example of drift.

Hypothesis 2: If the institutional discretion for interpretation and implementation is altogether low (strong antislavery law and strong level of enforcement) and if veto possibilities for the preservers of the status quo are weak, the actors' position towards the institution are the same as in H1.

[30] International Labour Office, 2005, 2, 5; US State Department, June 2017.
[31] US State Department, June 2018, p. 196–198.
[32] LINDNER/TAPPE, 2016, p. 9–10; VAN ROSSUM, 2016.
[33] SHERWOOD, 2007, 34, 40, 95.

H2a: If the *Zeitgeist* is antislavery, proslavery actors seek to induce change. They might seek the preservation of the institution and the status quo, and only act against it in disguise. In this environment, proslavery actors behave like subversives. Mahoney and Thelen predict displacement, the removal of old rules and the installation of new ones.[34] But under the given conditions, open change of the rules towards the removal of abolitionist rules or the reinstitution of slavery laws, are highly unlikely: Strong antislavery policies, effective implementation and a supporting *Zeitgeist* make this impossible. But, with weak veto possibilities on the side of antislavery actors, the outcome could be pockets of reinstitution of slavery where it appears legitimate to use it for singled-out groups, and where antislavery actors cannot prevent it, for instance in the case of forced prison labour or the army, which then resembles layering. The case of the German Democratic Republic (GDR) could be one example. The abolition of slavery was arguably not strongly protected by the Constitution, and GDR only joined the ICCPR (*International Covenant of Civil and Political Rights*)[35] in 1973, but even after the ratification of the ICCPR the GDR adopted legal provisions that allowed for forced prison labour.[36]

H2b: If under the same conditions the *Zeitgeist* is proslavery, antislavery actors are the preservers of the status quo. It can be expected that proslavery actors speak openly in favour of slavery and act towards its relegalisation. In this environment, proslavery actors behave like insurrectionaries or opportunists. Displacement of antislavery laws, and the (re)installation of slavery and forced labour are possible. Without looking too closely at this case, the example of revisions of Stalinist Soviet Union since the 1920s could be an example of displacement of achievements regarding the abolition of slavery and forced labour made by revolutionary Russia in 1905.[37]

Hypothesis 3: The institutional discretion for interpretation and implementation is altogether high (weak law and low level of enforcement) and veto possibilities are strong from the perspective of those who want to preserve the status quo. In this scenario, antislavery actors are disappointed with the ineffective implementation and the insufficiency of the law. They strive towards change of the status quo while preserving the spirit of the institution. They attempt to change the status quo at the rules level as well as at the implementation level, maybe towards legal reform offering a definition at the rules level. Proslavery actors profit from this situation and occupy veto possibilities. The existing antislavery law grants them

[34] MAHONEY/THELEN, 2010b, p. 16.
[35] The ICCPR Art. 8/ 3. (a) provides for the abolition of forced and compulsory labour.
[36] WÖLBERN, 2015; Deutsche Demokratische Republik, April 6 1968, Prämble, Art. 2 (3), Art. 19 (3); United Nations.
[37] HELLIE, 2014, p. 119.

enough discretion to interpret the law and allows them to continue their business. They intend to preserve the status quo, block any forms of change, and ultimately undermine the institution.

H3a: If the *Zeitgeist* is antislavery, proslavery actors can prevent attempts of antislavery actors to change the institution, but they cannot do so openly. Under the institutional conditions, Mahoney and Thelen suggest parasitic symbionts to be the major change agents. But I suggest that antislavery actors are likely to behave like subversives when there are rules in contravention to the abolition of slavery and cause displacement, or conversion on the implementation level behaving like defenders, as in the discussed case of Lieberman.[38] Another example of this scenario is the case of Brazil which denied having a forced labour problem until 1995. The new government, elected in 1994, changed its attitude and in cooperation with civil society, began to establish extensive law enforcement programmes.[39]

H3b: Under the institutional conditions but in times of proslavery *Zeitgeist*, antislavery actors are likely to be the preservers of the status quo while the proslavery actors attempt to (re-)legalise slavery. With strong veto possibilities on the side of the preservers of the status quo, proslavery actors are likely to behave as Mahoney and Thelen predict: Like parasitic symbionts, who seek to change enforcement but not the rules and thereby contribute to the drift of the institution**.**

Hypothesis 4: If the institutional discretion for interpretation and implementation is altogether high (weak law and low level of enforcement) and if veto possibilities for the preservers of the status quo are weak, the position of pro- and antislavery actors towards the institution is the same as in H3.

H4a: If the *Zeitgeist* is antislavery, proslavery actors are the upholders of the status quo. Antislavery actors are the change agents. Mahoney and Thelen suggest that the change agents behave like opportunists, actors who "do not actively seek to preserve"[40] the institution but also do not try to change it because of the high costs of trying to induce change. With proslavery actors as preservers of the status quo but endowed with weak veto possibilities to block change, antislavery actors are probably seeking change at the rules level, not the implementation level.[41] They behave like insurrectionaries who actively seek change through

[38] Measured in backlog of the bureaucracy and the absence of impositions of remedies, LIEBERMAN, 2007a, p. 11–12.
[39] COSTA, 2009, v.
[40] MAHONEY/THELEN, 2010b, p. 26.
[41] MAHONEY/THELEN, 2010b, p. 29.

displacement of contravening legislation.[42] If there is no contravening legislation, antislavery actors likely seek to improve existing legislation and thereby behave like subversives, adding layers. According to Mahoney and Thelen, change takes place rather at the outcome level—changing the interpretation of the rules instead of the actual rules. Therefore, their predicted mode of change is conversion, where the formal rules remain unchanged but new interpretations change the enactment of these rules.[43] I diverge from this interpretation and suggest that under the given circumstances displacement and/or layering are likely.

H4b: If the *Zeitgeist* is proslavery, proslavery actors are the defenders of the status quo and antislavery actors the change agents. Mahoney and Thelen suggest that the change agents in this scenario behave like opportunists, who "do not actively seek to preserve institutions."[44] They argue that mobilisation for active change of rules is more costly than the reinterpretation of the rules; consequently, the latter is more likely the choice of action.[45] Therefore, they predict the mode of change is conversion, where the formal rules remain unchanged but new interpretations change the enactment of these rules.[46] Taking the *Zeitgeist* into consideration, the change probably looks different: Antislavery actors striving for change and proslavery actors having only weak veto possibilities at their disposal, formal change is potentially less costly. Antislavery actors either induce change as insurrectionaries in the form of displacement, removing the old rules, or by adding new layers, behaving like subversives. This situation compares to the move of the British Parliament to displace the rules of the *Slavery Abolition Act* that provided provisions for apprenticeships and which inherently violated the spirit of abolition.[47]

The following four pairs of hypotheses account for mixed institutional characteristics regarding discretion of interpretation and level of enforcement.

Hypothesis 5: If the institutional characteristics are mixed with weak institutional rules but a strong level of enforcement, and veto possibilities are strong for those who want to preserve the status quo, actors' positions towards the institution are probably the following: Antislavery actors are satisfied with the effective implementation. Change being costly but the spirit of the weak institution being effectively implemented, antislavery actors preserve rather than change the institution. The existing antislavery law grants implementers a high level of

[42] MAHONEY/THELEN, 2010b, p. 24.
[43] MAHONEY/THELEN, 2010b, 17, 18, 27.
[44] MAHONEY/THELEN, 2010b, p. 26.
[45] MAHONEY/THELEN, 2010b, p. 29.
[46] MAHONEY/THELEN, 2010b, 17, 18, 27.
[47] *An Act to amend the Act for the Abolition of Slavery in the British Colonies,* Parliament of the United Kingdom, April 11 1838; cf. DRESCHER, 2009, p. 264.

discretion to interpret the rules, but they choose to interpret it stringently. The proslavery actors are the change agents at the outcome level, but they act illegally.

H5a: Proslavery actors act against the institution in disguise. They might uphold the spirit of the law but violate it on the ground, where possible. According to Mahoney and Thelen, these actors behave like insurrectionaries or opportunists. If they dominate, they cause change through layers at the implementation level. The outcome is comparable to (H1a) with pockets of illegal slavery, such as the suggested example of individual instances of forced prostitution, or forced labour in agriculture in Europe.[48]

H5b: If the *Zeitgeist* is proslavery, proslavery actors speak in public in favour of slavery and act against antislavery laws. Despite effective enforcement, proslavery actors work openly against antislavery legislation and either attempt to remove existing antislavery legislation, by adding undermining layers, or cause change at the enforcement level by moving the administration and enforcement agencies to apply less stringent implementation. Also, they behave like insurrectionaries or opportunists. In this environment, proslavery actors seek change at the formal level but are confronted with the veto possibilities on the side of the antislavery actors and are therefore more successful at inducing change at the enforcement level. Mahoney and Thelen associate insurrectionaries with displacement and opportunists with conversion,[49] but the most likely mode of change under the condition of a weak law and strong implementation is either conversion or drift. Drift as change at the enforcement level is the most likely outcome.

Hypothesis 6: If the rules are weak but enforcement is strong; and veto possibilities to prevent change are weak, pro- and antislavery actors have the same disposition towards the institution as in H5.

H6a: If the *Zeitgeist* is antislavery, antislavery actors are satisfied with the implementation status, but probably seek to change the legal status quo in order to secure the spirit of the rules and improve legal provisions in cases of violations. At the rules level, only antislavery actors are likely to be the change agents. Proslavery actors might want to preserve the weak legal status quo but only can act for change at the implementation level, even though violations are rather low in number and change at the implementation level. This scenario is probably marked by stability of the institution.

H6b: If the *Zeitgeist* is proslavery, proslavery actors act against the institution, not necessarily in disguise. Slavery has been abolished, but the norm has not become *Zeitgeist* or

[48] US State Department, June 2018, 69, 83, 97, 106, 156, 161, 164, ff.
[49] MAHONEY/THELEN, 2010b, p. 28.

changed into an antislavery *Zeitgeist*. A comparable case for this situation is the American South after the adoption of the *Thirteenth Amendment*—as discussed in the case of the norm development, the adoption of an act does not necessarily mean that it has become a *Zeitgeist*. Proslavery actors were able to make use of and pass new legislation at the regional level for share cropping, for instance. These laws allowed for the continued exploitation of the liberated slaves which virtually translated into the continuation of slavery after its abolition, essentially undermining the spirit of the law by layering.[50]

Hypothesis 7: If the institutional rules are strong and enforcement weak, and veto possibilities are strong, the positions of actors vis-à-vis the institution are the following: Antislavery actors are satisfied with the rules but strive for changing enforcement. Proslavery actors, on the other hand, are content with the enforcement level and, under those conditions, are probably not interested in changing the rules. Since the status quo does not affect them, for instance due to the absence of criminal prosecution, they defend the status quo at the implementation level.

H 7a: If the *Zeitgeist* is antislavery, antislavery actors are the drivers for change and the level of enforcement. Because of the strong veto on the side of the proslavery actors, they cannot change the institution at the rules level. Since the rules are strong this is also not necessarily the preferred option. Antislavery actors behave like defenders, supporting and abiding by the rules and undertaking active moves to realise the spirit of the institution. An example discussed in this dissertation is the case of the BLSA (*Bonded Labour System (Abolition) Act*) of 1976. After initial success in liberations, the government failed to continue liberations. NGOs stepped in, making use of the judicial system and administration to enforce the spirit of the institution, causing layering by the addition of new actors.[51]

H7b: If the *Zeitgeist* is proslavery, proslavery actors profit from the situation and therefore defend the status quo and potentially strive for change at the rules level. The *Zeitgeist* is on their side. Antislavery actors attack the status quo and attempt to improve implementation. Antislavery actors try to prevent changes at the rules level but strive for change at the implementation level as defenders. Under the given conditions change is unlikely, and a probable outcome is stability of the status quo.

Hypothesis 8: If the institutional discretion for interpretation and implementation is mixed with strong law and ineffective enforcement, and veto possibilities are weak, the disposition of actors regarding the institution are similar to those of H7.

[50] Winters discusses the example of Tennessee, WINTERS, 1988, p. 2–3.
[51] See a first preliminary attempt to describe these developments in my own publication, MOLFENTER, 2016, p. 66–69.

H8a: Antislavery actors are interested in changing the enforcement status of the institution. Since the law is strong, their efforts target the implementation level. Proslavery actors profit from the status quo since the strong law does not translate into an effective implementation status, but because of the antislavery *Zeitgeist*, an open attack against antislavery legislation is unlikely. Antislavery actors are the actors of change as defenders and the scenario is similar to the situation in H7a: The BLSA provided strong rules but weak implementation; therefore, civil society and the judiciary stepped into this gap causing layering as new actors.

H8b: If the *Zeitgeist* is proslavery, proslavery actors violate the institution and are not interested in its defence. Antislavery actors are eager to preserve the legal status quo but not the enforcement status. Not endowed with strong veto possibilities, proslavery actors can induce change at the rules level acting like insurrectionaries. In this situation the actual removal of antislavery provisions becomes likely, therefore change by displacement. An example for this case is post-slavery-abolition France: In 1774 the French National Convention abolished slavery. Overriding the opposition of the senate, Napoleon reinstituted slavery and the slave trade in April 1802.[52]

[52] RODRIGUEZ, 2007, p. 456–457.

Act V, 1843[53]

ACT No. V. OF 1843.

Passed by the Honourable the President of the Council of India in Council on the 7th of April 1843, with the Assent of the Right Honourable the Governor-General of India.

AN ACT for declaring and amending the Law regarding the condition of Slavery within the Territories of the East India Company.

I. It is hereby enacted and declared, that no public officer shall, in execution of any decree or order of Court, or for the enforcement of any demand of rent or revenue, sell or cause to be sold any person, or the right to the compulsory labour or services of any person, on the ground that such person is in a state of slavery.

II. And it is hereby declared and enacted, that no rights arising out of an alleged property in the person and services of another as a slave, shall be enforced by any civil or criminal court or magistrate within the territories of the East India Company.

III. And it is hereby declared and enacted, that no person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person, or that the person from whom the property may have been derived, was a slave.

IV. And it is hereby enacted, that any Act which would be a penal offence if done to a free man, shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.

[53] Governor-General in Council, April 7 1843, p. 4.

Workman's Breach of Contract Act, 1859[54]

PRESIDENCY TOWNS.—MASTERS AND WORKMEN.

ACT No. XIII. OF 1859.

[*Passed on the 4th May*, 1859.

1, 2, 3. Entitles employers in Presidency towns to complain to magistrate against artificers, &c. for not doing work according to contract, for which they have received an advance; and (2) empowers Magistrate to order performance, and on default to sentence artificer to be imprisoned &c. and (3) on making order for performance may require artificer to give security for performance, and on default of giving security may commit to prison.

4, 5. Act to extend to all contracts in whatever form for specified work, and (5) may be extended by government to the mofussil.

An Act to provide for the punishment of breaches of contract by Artificers, Workmen, and Laborers in certain cases.

Whereas much loss and inconvenience are sustained by manufacturers, tradesmen, and others in the several Presidency Towns of Calcutta, Madras, and Bombay, and in other places, from fraudulent breach of contract on the part of Artificers, Workmen, and Laborers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment; It is enacted as follows:—

Preamble.

I When any Artificer, Workman, or Laborer shall have received from any master or Employer resident or carrying on business in any Presidency Town, or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, or from any person acting on behalf of such Master or Employer, an advance of money on account of any work which he shall have contracted to perform, or to get performed by any other Artificers, Workmen, or Laborers, if such Artificer, Workman, or Laborer shall wilfully and without lawful or reasonable excuse neglect or refuse to perform or get performed such work according to the terms of his contract, such Master or Employer or any such person as aforesaid may complain to a Magistrate of Police, and the Magistrate shall there-

If workman neglect to perform work, on account of which he has received an advance of money, complaint may be made to the Magistrate.

[54] Legislative Council of India, May 5 1859, p. 275–277.

upon issue a summons or a warrant, as he shall think proper, for bringing before him such Artificer, Workman, or Laborer, and shall hear and determine the case.

Magistrate may order re-payment of advance or performance of contract.

II. If it shall be proved to the satisfaction of the Magistrate that such Artificer, Workman, or Laborer has received money in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant, either order such Artificer, Workman, or Laborer to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform or get performed, such work according to the terms of his contract; and

Penalty if workman fail to comply with the order.

if such Artificer, Workman, or Laborer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned with hard labor for a term not exceeding three months, or if the order be for the repayment of a sum of money, for a term not exceeding three months, or until such sum of money shall be sooner repaid; provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any Civil remedy by action or otherwise which he might have had but for this Act.

Magistrate may require workman to give security for due performance of order.

III. When the Magistrate shall order any Artificer, Workman, or Laborer to perform or get performed any work according to the terms of his contract, he may also at the request of the complainant, require such Artificer, Workman, or Laborer to enter into a recognizance with sufficient security for the due performance of the order; and in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labor for a period not exceeding three months.

To what contracts the Act extends.

IV. The word "contract," as used in this Act, shall extend to all contracts and agreements whether by deed, or written or verbal, and whether such contract be for a term certain, or for specified work, or otherwise.

Act may be extended by Government.

V. This Act may be extended by the Governor General of India in Council, or by the Executive Government of any Presidency or place, to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such Officer or Officers as shall be specially appointed by Government to exercise such powers.

Indian Penal Code, 1862, Sec. 367, 370, 371, 374[55]

IPC, Sec. 367: "Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.--Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

IPC, Sec. 370: "Buying or disposing of any person as a slave.--Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

IPC, Sec. 371: "Habitual dealing in slaves.--Whoever habitually imports, exports, removes, buys, sells traffics or deals in slaves, shall be punished with transportation for life,[56] or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."

IPC, Sec. 374: "Unlawful Compulsory Labour.-Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

[55] *Indian Penal Code*, Legislative Council of India, October 6 1860.
[56] Changed into "imprisonment for life" by Act 26 of 1955, Sec 117.

The Bihar and Orissa Kamiauti Agreements Act, 1920[57]

An Act to make provision regarding agreements for the performance of certain kinds of labour in 2 [the States] of Bihar [and Orissa.]

Whereas it is expedient to limit the period and regulate the terms of, and otherwise to make provision regarding agreements for, the performance of certain kinds of labour;
And Whereas the previous sanction of the Governor General has been obtained under Section 79 of the Government of India Act, 1915, to the passing of this Act;

It is hereby enacted as follows :-

1. Short title and extent. –

(1) This Act may be called the Bihar and Orissa Kamiauti Agreement Act, 1920.

(2) It extends to the whole of [the States] of Bihar [and Orissa] including the Santhal Parganas [and district of Angul].

2. Definitions. - In this Act, unless there is something repugnant in the subject or context, -

(1) 'advance' means an advance of money or in kind or partly of money and partly in kind, and includes any transaction which is, in the opinion of the Court, substantially an advance;

(2) 'executant' means the party to a Kamiauti agreement who undertakes that he or some other person shall perform labour;

(3) 'kamia' means a person who under the terms of a Kamiauti agreement is to perform labour;

(4) 'kamiauti agreement'.

(a) means an agreement written or oral, or partly written and partly oral, wherein the consideration for the performance of labour by any person is or includes one or more of the following, namely, an advance made or to be made to any person, the interest on such advance, a debt due by any person, the interest on such debt; and

(b) includes any transaction which, in the opinion of the Court, is substantially such an agreement; but

(c) does not include

(i) an agreement to work entered into by a skilled workman,

(ii) an agreement to work outside the area to which this Act extends, or

(iii) an agreement to supply a cart and cartman.

(5) 'labour' means agricultural labour and includes domestic service or labour whether indoor or outdoor.

3. In subsisting kamiauti agreements, labour deemed performed and advance and debt discharged after one year. In respect of every Kamiauti agreement subsisting at the commencement of this Act, each of the following shall, if it has not previously occurred, be deemed on the expiry of one year from such commencement to have occurred. -

(a) all the stipulated labour to have been duly performed, and every obligation to perform labour or to provide a kamia to have been discharged;

(b) the advance, principal and interest, to have been repaid;

(c) the debt and interest thereon to have been discharged.

4. Future kamiauti agreement unless satisfying certain conditions void and inadmissible to registration. –

(1) A Kamiauti agreement entered into after the commencement of this Act shall be wholly void -

(i) unless the full terms of the agreement between the parties are expressed in an instrument duly stamped according to the law for the time being in force;

[57] Government of Bihar and Orissa, 1920.

(ii) unless the person making the advance or to whom the debt is due, delivers to the executant a counterpart of the said instrument at the time of the execution of the instrument;
(iii) if the period expressed or implied during which the labour is to be performed exceeds, or might in any possible event exceed, one year;
(iv) unless it provides that on the expiry of the period during which the labour is to be performed, all liability shall be extinguished in respect of any advance, debt or interest which is the consideration or part of the consideration of the agreement;
(v) unless it provides for a fair and equitable rate of remuneration for the labourer.

[(2) No Kamiauti agreement which is void under clauses (i) to (iv) of sub-section (1) of this Section shall be admitted to registration.]

5. Kamiauti agreement void on death of labourer or other executant, and liability to labour extinguished. - A Kamiauti agreement shall become void on the death either of the kamia or of the executant, or if such kamia or executant is dead at the commencement of this Act, as such commencement; and notwithstanding anything to the contrary in the Kamiauti agreement or in any law, no liability to perform labour or in respect of the non-performance thereof shall survive against the estate or against any heir of the deceased, nor shall any suit be brought to enforce such liability.

6. Bar to suits on kamiauti agreements when void. - Notwithstanding anything contained in the Indian Contract Act, 1872, when a Kamiauti agreement is void under Section 4 or otherwise, or becomes void under Section 5, no suit shall lie for restoration of or compensation for any advantage received by the executant, or, in particular, for the recovery of any advance, debt or interest which is the consideration or part of the consideration of the agreement.

7. Bar to suits on kamiauti agreements except for recovery of value of labour not performed without just cause. –

(1) Except as provided in this section, no suit shall lie against the executant of a Kamiauti agreement or any other person in respect of non-performance of labour, or in respect of any advance, debt or interest which is the consideration or part of the consideration of the agreement.
(2) If during the period of a valid Kamiauti agreement the kamia without just cause withholds the stipulated labour or does not perform it with reasonable assiduity, then, subject to the provisions of Section 5 and notwithstanding the provisions of section 3 (a), a suit shall, if brought within three months after the termination of the period, lie against the executant for recovery of the net value of the labour so withheld or not performed, but no decree shall be passed in such suit for a sum exceeding the principal of the advance or of the debt, and the costs in the suit.

LN Slavery Convention, Art. 1-2, 1926[58]

Article 1

For the purpose of the present Convention, the following definitions are agreed upon:

(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

Article 2

The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps:

(a) To prevent and suppress the slave trade;

(b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.

[58] League of Nations, 1926.

Children (Pledging of Labour) Act, 1933[59]

THE CHILDREN (PLEDGING OF LABOUR) ACT, 1933.

ACT NO. II OF 1933.[1]

[*24th February, 1933.*]

An Act to prohibit the pledging of the labour of children.

WHEREAS it is expedient to prohibit the making of agreements to pledge the labour of children, and the employment of children whose labour has been pledged; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Children (Pledging of Labour) Act, 1933.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) This section and sections 2 and 3 shall come into force at once, and the remaining sections of this Act shall come into force on the first day of July, 1933.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

"an agreement to pledge the labour of a child" means an agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilised in any employment:

Provided that an agreement made without detriment to a child, and not made in consideration of any benefit other than reasonable wages to be paid for the child's services, and terminable at not more than a week's notice, is not an agreement within the meaning of this definition;

"child" means a person who is under the age of fifteen years; and

"guardian" includes any person having legal custody of or control over a child.

Agreements contrary to the Act to be void.

3. An agreement to pledge the labour of a child shall be void.

Penalty for parent or guardian making agreement to pledge the labour of a child.

4. Whoever, being the parent or guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend to fifty rupees.

Penalty for making with a parent or guardian an agreement to pledge the labour of a child.

5. Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child shall be punished with fine which may extend to two hundred rupees.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1932, Pt. V, p. 195.

[59] Reforms Office/Government of India, 1939, p. 119–129.

Penalty for employing a child whose labour has been pledged.

6. Whoever, knowing or having reason to believe that an agreement has been made to pledge the labour of a child, in furtherance of such agreement employs such child, or permits such child to be employed in any premises or place under his control, shall be punished with fine which may extend to two hundred rupees.

Prevention of Free or Forced or Compulsory Labour Bill, 1949[60]

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PART III-A—BILLS (CENTRAL)

CONTENTS

Bills introduced in the Constituent Assembly of India (Legislative), Reports of Select Committees presented to the Constituent Assembly of India (Legislative) and Bills published under Rule 39 of the Constituent Assembly (Legislative) Rules of Procedure and Conduct of Business.

[60] Constituent Assembly of India (Legislative), April 5 1949, 137, 141-142; The bills circulated in 1948 and in 1949 are exactly the same, cf. Constituent Assembly of India (Legislative), July 1 1948, p. 155–156.

The following Bill of the Central Legislative Assembly has been circulated for the purpose of eliciting opinion. Any person or public body desiring to submit an opinion on the Bill should send it through the Commissioner of Labour so that it may reach the Secretary to the Government of Madras in the Development Department not later than the 10th May 1949. Any opinion which is submitted direct to the Central Legislative Assembly Department or to any other Department of the Government of India will not be accepted.

[As introduced in the Constituent Assembly of India (Legislative).]

A Bill to provide punishment for free or forced or compulsory labour.

WHEREAS it is expedient to provide punishment for free or forced or compulsory labour; It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Prevention of Free or Forced or Compulsory Labour Act of 194 .

(2) It shall extend to the whole of India.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless there is anything repugnant in the subject or context,—

(*a*) " Free labour " means labour without providing remuneration in cash at the prevailing market rates in the locality for that kind of Labour;

(*b*) " Forced or compulsory labour " shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily :

Provided that the term forced or compulsory labour shall not include any work or service exacted under the Indian Forest Act, 1927 (Act XVI of 1927) and the Bombay Irrigation Act, 1879 (Bombay Act VII of 1879).

3. *Punishment for taking free or forced or compulsory service.*—Whoever takes or attempts to take or abets the taking of free or forced or compulsory service of any manual labour from any person shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

4. *Offences to be cognizable.*—The offences under this Act shall be cognizable and triable by any magistrate within whose local jurisdiction either the free or forced labour is taken or the person from whom such free or forced labour is taken resides.

5. *Working hours.*—The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary

labour and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.

6. *Rates of remuneration.*—Forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kind of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be higher.

Explanation.—For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.

STATEMENT OF OBJECTS AND REASONS.

All forms of free or forced labour have their roots in the feudal form of society. This evil prevails in its most aggravated form in rural areas where feudal remnants still survive and thrive. They have outlived their age and it is high time to put a stop to it.

The International Labour Conference which met in 1930 passed a convention for the abolition of forced or compulsory labour.

The principle that no person can be compelled to labour against his will is recognized by section 374 of the Indian Penal Code. But the working of the section is so vague that it has failed to root out this evil. The mischief does not lie in compulsion alone, but in non-payment of wages and often inadequate payments.

This Bill seeks to make free or compulsory or forced labour an offence punishable with imprisonment or fine or both. It recognizes two exceptions to compulsory labour. It allows impressed labour provided for in the Indian Forest Act, 1927 and the Bombay Irrigation Act, 1879. As it is, but just that such labour ought to be adequately remunerated, the Bill makes provision for such payment.

R. K. SIDHVA.

(Republished by order of His Excellency the Governor)

A. ALAGIRISWAMI,
Additional Deputy Secretary to Government,
Legal Department.

Forced Labour Convention (C29), Art. 1-2, 1930[61]

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and

Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.
3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

Article 2

1. For the purposes of this Convention the term ***forced or compulsory labour*** shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
2. Nevertheless, for the purposes of this Convention, the term ***forced or compulsory labour*** shall not include--

    (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

[61] International Labour Organisation, 1930, bolt and italics in the original.

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

The Bonded Labour System (Abolition) Act, 1976[62]

(ACT NO. 19 OF 1976)

[9th February, 1976.]

An Act

to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Bonded Labour System (Abolition) Act, 1976.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 25th day of October, 1975.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "advance" means an advance, whether in cash or in kind, or partly in cash or partly in kind, made by one person hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor);

(b) "agreement" means an agreement (whether written or oral, partly written and partly oral) between a debtor and creditor, and includes an agreement providing for forced labour, the existence of which is presumed under any social custom prevailing in the concerned locality.

Explanation—The existence of an agreement between the debtor and creditor is ordinarily presumed, under the social custom, in relation to the following forms of forced labour, namely:

Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garru-Galu, Hali, Hari, Harwai, Holya, Jana, Jeetha, Kamiya, Khundit-Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit-Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti;

(c) "ascendant" or "descendant", in relation to a person belonging to a matriarchal society, means the person who corresponds to such expression in accordance with the law of succession in force in such society;

(d) "bonded debt" means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system;

(e) "bonded labour" means any labour or service rendered under the bonded labour system;

(f) "bonded labourer" means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

(g) "bonded labour system" means the system of forced, or partly forced,

[62] Ministry of Law, Justice and Company Affairs, October 25 1975.

labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,—

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on him by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would—

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

[*Explanation*.—For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is "bonded labour system" within the meaning of this clause.]

(h) "family", in relation to a person, includes the ascendant and descendant of such person;

(i) "nominal wages", in relation to any labour, means a wage which is less than,—

(a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and

(b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers working in the same locality;

(j) "prescribed" means prescribed by rules made under this Act.

3. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act, or in any instrument having effect by virtue of any enactment other than this Act.

CHAPTER II
ABOLITION OF BONDED LABOUR SYSTEM

4. Abolition of bonded labour system.—(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour.

(2) After the commencement of this Act, no person shall—

(a) make any advance under, or in pursuance of, the bonded labour system, or

(b) compel any person to render any bonded labour or other form of forced labour.

5. Agreement, custom, etc., to be void.—On the commencement of this Act, any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act), by virtue of which any person, or any member of the family or dependant of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

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