

“Enslaved for Life”: Construing Slavery in Nineteenth Century India

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Introduction

The history of slavery in India has been the central theme of many researches. These studies however suffer primarily at two levels. Firstly, they have largely focused on Southern India where the slaves constituted the bulk of agrarian labour and were closely affiliated to the caste system.¹ This approach has led to negation of slavery studies in Northern India where the slaves were employed largely in the households as domestic servants. Secondly, an integral element of studies on Indian slavery has been the elements of similarity and dissimilarity vis-a-vis the Atlantic form of slavery. Although this comparative approach is useful in many respects, this is also marred by many flaws. The immense importance given to Caribbean variant of slavery in the New World primarily because of the role it paid in the Atlantic economy tends to ignore and undermine the significance of slavery in the socio-economic milieu of the Indian Ocean and the surrounding lands. Many slave systems have been castaway under the baggage of the monolithic concept of Anglo-American slavery. It has not only led scholars to disregard the active agency of the slaves in the Indian subcontinent but have also resulted in locating Indian slavery in a continuum between bondage and freedom, without really taking into account the contexts and conjunctures that produce specificities. The tendency has been to cast Indian slavery in mild and paternalistic terms so as to bring out its domesticated nature compared to severely exploitative chattel slavery prevalent in the west. Any such classification and generalization is inherently problematic as it views servitude only through the lens of western orientated understanding of economy, underpinned by its commercial lucrativeness. This perspective perhaps emerged in response to extensive debates and discussions during the colonial period on the nature of Indian slavery, wherein most debates converged on how Indian slavery was different from Atlantic slavery. Nevertheless, later studies such as that of Indrani Chatterjee and Richard M. Eaton nudged scholars to rethink slavery in world history. Through the study of several variants of slavery in India from ancient to colonial times, they were able to reposition Indian slavery in global setting. Taking cue from there, this article intends to bring about the transmutation of Indian slavery into dependent servanthood through legal alchemy during the nineteenth century

¹ See Tanika Sarkar, “Bondage in the Colonial Context”, in M. Dingwaney, and U. Patnaik (eds.), *Chains of Servitude* (1985); Gyan Prakash, *Bonded Histories: Genealogies of Labor Servitude in Colonial India* (1990); Dharma Kumar, *Land and Caste in South India* (1965).

in Northern India. It also probes the colonial concerns that paved the way for domesticating the institution of slavery through law and other normative discourses. It delves into the transformation of slavery into different forms through legal procedures and their approbation by the colonial state as well as the natives², especially after the Abolition of Slavery Act of 1843. An analysis of this transformation is significant to understand the pedigree of labour bondage in South Asia, without which the study of history of enslavement in the India Ocean world would remain incomplete.

Colonial responses to slavery

The manner in which the East India Company officials responded to slavery in India was set against a bunch of assumptions encompassing the Indian identity, family, and gender relations.³ The nature of the legislation itself reflected ambivalence on the part of the colonial state to completely do away with the system of slavery in India. The ideological backdrop proved to be a crucial factor determining the extent of legal intervention in the native society. In the mid nineteenth century, 'liberty' had become the core guiding philosophy of the English polity. Derived from the mother country, similar philosophy was adopted by British East India Company (henceforth EIC) officials in India too, although in a more subtle and muted manner. It did not allow the colonial state to proactively engage with any aspect of the Indian society that seemed to be an integral part of the domestic life. There was a clear distinction that was maintained between the domestic and the political realm of the State vis-a-vis the people. Colonial state's interference in the lives of the people was considered to be an expression of its meddling with the native lives and customs which was unacceptable to the indigenous population as well as to the English public back home who hailed the ideals of liberty. Moreover, it was economically not viable for the government to completely abolish slavery, as that would have led to heavy economic burden on the exchequer to pay as compensation to the masters for the release of their slaves. There was also real fear of a backlash and reaction from the elite strata of the society that constituted the bulk of the master class. It was this class of landlords, aristocrats and higher bureaucrats which employed maximum number of slaves that also buttressed the colonial rule in India and acted as a bulwark against any mass protest. The imperial policy making hence revealed the conflict between ideological, moral, political and pragmatic imperatives. Andrea Major has suggested that the "British debates about slave trading in the princely states saw the juxtaposition of anti-slavery sentiment and concerns with the stability and integrity of their borders with a political

² Throughout the article, the word 'natives' has been used to refer to the Indians in the British Presidencies and local population of the Princely States.

³ Andrea Major, "Enslaving Spaces: Domestic Slavery and the spatial, ideological and practical limits of Colonial control in the nineteenth century Rajput and Maratha States", *The Indian Economic and Social History Review*, Vol. 46, No. 3, (2009), 316.

discourse about the limits of acceptable British intervention in semi-independent states."⁴

This brings us to a very pertinent question of why did the colonial state take up the cause of delegating slavery in the first place when it was economically burdensome, socially unacceptable to the most influential classes of the society and politically unviable? The answer lies in the larger socio-political context that initiated the abolitionist drive across the globe. While on one hand there were genuine humanitarian concerns with the persistence of slavery in the modern world, there were also specific socio-economic reasons for gradually waning off slavery in the Indian sub-continent. The abolitionist leaders vehemently debated the dilemma of coexistence of an ancient exploitative system in a very modern capitalist production system like that of a plantation. It was not only ideologically contradictory that slavery permeated all aspects of production in the Atlantic but also politically against the moral obligations of the modern state that relied heavily upon the ideas of liberty, equality and democracy. Thereupon, EIC's encounter with the slave trading and the institution itself became a point of negotiation between the immediate political demands and the moral authority of the state seeking legitimacy. The half-hearted attempts at ending slavery in India were a result of an ensuing intermingling of economic imperatives, social ideals and humanitarian goals. The apprehensiveness of the colonial state was also clearly reflected in its ambivalence to implement the regulations promulgated in the first half of the nineteenth century. Apart from exposing the political expediency of the colonial rule, it echoed the need to maintain political stability and also reduce expenditure by ruling through indigenous structures.⁵

Howard Temperley too suggested that the surplus landless labour in India provided an altogether different dimension and context to slavery than what existed in the New World where slavery was premised upon critical shortage of free labour to work on the lands.⁶ Moreover, slavery was considered to be mutually beneficial for both, the master and the servant. Famous English orientalist and the founder of the Royal Asiatic Society, H.T. Colebrooke noted, "Indeed, throughout India, the relation of master and slave appears to impose the duty of protection and cherishment on the master as much as that of fidelity and obedience on the slave, and their mutual conduct is consistent with the sense of such an obligation; since it is marked with gentleness and indulgence on the one side, and with zeal and loyalty on the other."⁷ Thus the Government wanted to impose abolition through indirect means without upsetting the social or economic status quo. The primary preoccupation of the

⁴ Ibid.

⁵ Ibid, p. 318.

⁶ Howard Temperley, "The Delegalisation of Slavery in British India" in Temperley, ed. *After Slavery: Emancipation and its Discontents* (2000), 173.

⁷ William Adam, *Law and Custom of Slavery in British India* (1840), 244.

EIC in the context of slavery was not the holding of slaves per se but the immoral and illegitimate acquiring of slaves through kidnapping, murdering of parents etc. Andrea Major asserts that ‘humanitarian rejections of the ‘moral’ legitimacy of such routes into slavery were often secondary to pragmatic considerations about the impact of the trade on social and economic stability of the regions affected and the implementation of law and order in British India.’⁸ The ‘frontier’ states such as Delhi, Agra, Dacca and Nepal received significant attention in debates on slave trade in the official circles. This suggested ‘a concern with settling and pacifying turbulent areas and asserting state authority over its subjects and borders, rather than slavery as a static institution.’⁹

Despite the British Government having passed orders to eradicate the open sale and purchase of slaves in the British territory, it was unable to check its secret filtration because of the customs in neighbouring districts.¹⁰ The slave trade, whether overt or clandestine, especially the overseas trade remained very lucrative throughout the nineteenth century. A letter addressed to the Agent to the Governor General, in Ajmer in 1832, paints a vivid picture of slave trading in Rajputana carried out nefariously by the *Burda furosh* (slave-dealers) under the due protection of the Chiefs. The constant demand to furnish slaves for the *Zenana* (secluded inner chambers of the house meant exclusively for women) of the Chiefs’ households was met by importing slaves from different parts of India, which was “an avowed and considerable source of revenue.”¹¹ The regular demand for domestic slaves in the Hindu and Muslim households was also fuelled and swelled by the demand from European households.¹² The British, the Portuguese and the Dutch settlers in India trying to imitate the lifestyles of India’s elite and wealthy, frequently demanded a retinue of servants at their disposal who were employed as cook, butler, maid, household servant, *Punkah* (a large cloth fan suspended on a frame) puller, coolie etc. They believed that by mirroring the lifestyle of the Indian elites, they would be able to endorse their status in Indian society and also legitimize their domination over the subject population.

Early attempts at abolition

Despite the fact that persistence of slavery served many purposes for the colonial state, it did carry out a protracted programme to abolish slavery in India throughout the nineteenth century. In 1811, an Anti-Slavery statute (Felony Act of 1811 or 51 Geo. III, C. 23) was enacted by the British Parliament, which was applicable to all British Dominions. It intended to

⁸ Andrea Major, *Slavery, Abolitionism and Empire in India 1772-1843* (2012), 164.

⁹ *Ibid.*

¹⁰ Cons. 25th January, 1831, no. 65, Foreign (Political) Department, National Archives of India (Henceforth NAI).

¹¹ Cons 13th August, 1832, no. 25-26, Foreign (Political) Department, (NAI).

¹² Bengal Political Consultations, 30th May, 1808, West Bengal State Archives (Henceforth WBSA).

repress the sale of human beings. This was adapted by the British Indian Government as Bengal Regulation X of 1811. It declared the importation of slaves, by land or sea, to be strictly prohibited. It also affixed a penalty of six months imprisonment and a fine not exceeding Rupees 200 to the offence, in default of which liability to be imprisoned for another six months was further added. It was also extended to the removal of female children in order to bring them up as *nautch* (dancing) girls.¹³ However, this Regulation remained a dead letter in the context of India due to several reasons. Firstly, there was great divergence of opinion amongst the Supreme Government, the Governments of Bombay and the Madras Presidency regarding its applicability and implementation. Secondly, it had no effect on the cases of slaves being brought by their owners from foreign lands, if they were not meant for sale. This was a cause of much concern as many slave dealers in the British territories devised means to transfer slaves into areas under Government jurisdiction by restoring to a simple expedient of first landing the slaves in a neighbouring state and then transporting them to British territories.¹⁴ Thirdly, it also did not have any provisions for the slaves held legally and transported within the British provinces as this would have made great majority of Indian inhabitants liable to punishment under this Regulation.

During the two decades between 1811 to 1833, the Governments of Bengal, Bombay and Madras enacted several local Acts in order to abolish slavery, but without much success. On a larger scale, legislative measure was taken up with the Charter Bill of 1833. It contained a provision for the abolition of slavery in India on or before 12th April, 1837. However, the reply of Court of Directors to the official communication by Charles Grant cautioned 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 the rights of property, cannot fail to meet with the court's cordial approbation."¹⁵ This wary hostility became more apparent in the meeting of Court of Directors on the 5th of July, 1833, when Henry St. George Tucker (English financier, who later became the Chairman of the EIC) and Richard Jenkins, (Director of the EIC) vehemently opposed it. As a result the clause was modified during the second reading of the bill, and it was stated as "And whereas it is expedient that slavery should cease throughout the said territories. Be it enacted, that the said governor general in council shall, and he is hereby required to frame laws and regulations for the extinction of slavery, having due regard to the laws of marriage and the rights and authorities of fathers and heads of families..."¹⁶ Even after the Bill was cleared

¹³ D.R. Banaji, *Slavery in British India* (1933). p. 297.

¹⁴ Bengal Judicial Consultations, 19th December, 1812, (WBSA).

¹⁵ *Slavery and Slave Trade in British India* (by the British and Foreign Anti-Slavery Society) (1841), 47.

¹⁶ *Ibid.*

in the House of Commons, it was forced to undergo further modifications in the House of Lords. It encountered severe resistance from the Duke of Wellington, Lord Ellenborough, the Earl of Harrowby, and the Marquis of Salisbury. Lord Ellenborough pronounced the clause as “useless and unnecessary”, adding further that if it passed, “it would not only ignite the indignation of the landed proprietors, but it would, at the same time, shake the confidence and the allegiance of the native officers.” The Marquis of Salisbury considered slavery to be “nothing more than an affair of caste.”¹⁷ This kind of reductionism of slavery in India to a system entwined with caste and equating slave labour with servitude emanating out of obligatory and customary relationship between the persons of high and low caste, was widely prevalent in the English officialdom.

Finally this Bill was amended on a motion by Lord Lansdowne, which called for “leaving the question to be settled in India.”¹⁸ Section 88 of the Charter Act of 1833 directed the Government of India to take into immediate consideration “the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery throughout the said territories, so soon as such extinction shall be practicable and safe.”¹⁹ The government was further required to submit annual reports before the Parliament regarding the implementation of the above directive.

Sixteen months after India Bill had become law, the Court of Directors transmitted their instructions respecting slavery to the Governor General. They argued that certain kinds of restraints are required and stated that “in legislating therefore on slavery, it may not be easy to define the term precisely, it is necessary that the state to which your measures are meant to apply should be described with due care”; they also thought that remedial measures should generally begin with the cases of the greatest hardship.²⁰ Domestic slavery was assumed to be mild with its origin resting in the seasons of scarcity and was hence seen as a measure of social service and humanity. The British officials argued that to dissolve such a connection by forcible measures would mean inflicting injury upon emancipated individual. They also suggested that the slaves should “perhaps be set at liberty by degrees” as their immediate and unqualified enfranchisement was not warranted by “the degree of civilization which the society had attained”.²¹ Skepticism around abolition was most explicit in carefully worded statement of D.M. Smith who wrote- “to themselves it might be a questionable benefit, while such a measure would undoubtedly affect, in a very serious manner, the interests of a large

¹⁷ *Ibid*, 49.

¹⁸ R.K. Tiwari, *Human Rights and Law-Bonded Labour in India* (2011), 19.

¹⁹ *Ibid*.

²⁰ *Slavery and Slave Trade in British India* (by the British and Foreign Anti-Slavery Society) (1841), p. 53

²¹ *Ibid*.

class of the landholders of this province."²² It was finally laid out that for the emancipation of any slave, legally or illegally held in bondage, three things were required. First, "the desire for it on the part of the slave should always be previously ascertained." Second, "every case for emancipation should be a judicial proceeding, investigated and decided the judge." Third, "compensation should be given to the owner."²³ Eventually, the Parliamentary session of 1840 carried the law of 1833 into effect.

C.H Cameron, a British Jurist and a prominent member of the Law Commission in India in 1830s and 40s, deliberating on the origin of slaves wrote that "slaves could originate in two ways – Firstly, in a contract by which a free man sells himself and his posterity or sells his child (or other relatives) and his posterity; and secondly, by a birth of a child which has been begotten by a man of a superior caste upon a woman of inferior caste. Such child is a slave and may become of course the stock of a race of slaves." He further observed that except in cases of abuse, the continuance was in great measure voluntary. In case of disobedience or fault committed by the slave, the master had power to beat his slave with a thin stick or to bind him with a rope and if the slave was considered to deserve more severe punishment, the master may pull his hair, or expose him upon an ass. Cameron compared a usage of a stick by the master upon his slave to the right of Englishman to correct his wife with a similar instrument.²⁴

In the draft Penal Code published in 1837, in the Chapter on Kidnapping, except in Clause 357, there is no reference to slavery. However, on the basis of the information collected from every part of India, the report of the Commissioners recognized slavery as existing and that there was no law whatever defining the extent of the power of a master over his slaves and that everything depended on the disposition of the particular functionary who happened to be in charge of the district. The Minutes by the Governor General (27th May, 1839), noted that the law regarding powers of a master over his slave "partly depends upon the opinion of those by whom it is administered, and is liable of some degree to fluctuate with a change of functionaries".²⁵ Because of marked inconsistency amongst them, the Law Commissioners recommended to the Governor General in Council that no act falling under the definition of an offence should be exempted from punishment because it was committed by a master against a slave.²⁶ It was thought that by framing the law in this manner they were in fact virtually abolishing slavery in British

²² Kumaun Division Judicial Letters Issued, Vol. 30 (1834-38), Letter from D.M. Smith to Govt. of Agra, Uttar Pradesh State Archives (Henceforth UP SA).

²³ *Slavery and Slave Trade in British India* (by the British and Foreign Anti-Slavery Society) (1841), 54.

²⁴ Parliamentary Papers (PP), *Special Reports of the Indian Law Commissioners*, 1842. p. 222.

²⁵ *Ibid*, p. 245.

²⁶ Minutes by Justice Spankie in *Empress of India v Ram Kuar* on 8 March, 1880. Citation: (1880) ILR 2 All 723

India. In reality their prime objective was to deprive slavery of those evils that were its essence. According to the Commissioners, the circumstance that made slavery the worst of all social evils was not that the master had a legal right to certain services from the slave but that the master had a legal right to enforce the performance of those services without having recourse to the tribunals.

Despite the distinction between moderate and immoderate correction of the slave by the master, the boundary between the two remained blurred. Thus the effect of the proposed law was to abolish the right of corrective moderating of slave. Many servants were under the contract, the performance of which was compelled by severe punishment under several Regulations (especially the Bye-Laws of Calcutta). The officials viewed the proposed Act as leaving the master of the slave without means, either by his own personal correction or through the intervention of a magistrate, of compelling the service of his slave.

Regarding the legal effect of the Act, the Law Commissioners opined that it would have no significance in ameliorating the condition of slavery. They firmly believed that the magistrates and the courts would invariably decide doubtful cases in favour of the slave.²⁷ The Law Commissioners were also apprehensive regarding the knowledge of the investigators on the subject of slavery and were as much wary of the abuse of law by the slaves.²⁸

Governor General, Lord Auckland noted in his minutes of 6th May, 1839 that the abuse of violent punishment was nowhere legal and that the Government has taken an authoritative stand over other issues which had become synonymous with the practice of slavery such as child stealing and capture of children after their parents have been murdered.²⁹ In spite of all the efforts, it could not do much to prevent the sale of children by their own parents especially during famines. The Government celebrated the fact that 'most of the slaves in Hindustan have all lost their freedom by the act of their parents'³⁰ as an expedient measure in times of dearth. The apologetics of slavery argued that this was the only way by which thousands of children could be saved from starving to death. C. H. Cameron commenting on Hindu Slavery, stated, "Our researches into the subject of Indian slavery have led me to believe that it operates in a great degree in mitigation of the evils which are incident to the state of society prevailing in a greater part of this country. I believe that it 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 prevention of

²⁷ Parliamentary Papers, Special Reports of the Indian Law Commissioners, 1842. p. 241.

²⁸ *Ibid.* p. 243.

²⁹ Consultations- 21st Jan, No.65, 1831; 13th Sept, No.82-83, 1834; 23rd Oct No.33, 1834. Foreign Department, Political Branch, NAI.

³⁰ House of Commons Parliamentary Papers, Ireland University Press, 1831-32, Vol. 5. Appendix. p. 23.

infanticide..."³¹ Furthermore, passing of children into slavery in order to redeem their parents from debt or to repay the loans that their parents had accrued over the years was not unusual. The government also could not do much in this regard as transfer of the burden of debt in this form was a norm of the society, legitimized by years of tradition and customary law. In fact the relationship between dependent servants and masters, earlier construed as a matter of rights and duties, was transformed into a tie betwixt debtor and creditor. This change was brought about by the juridical process that turned bonded labourers into persons with suspended rights.³² Lalla Ram Chaman Lal, Agent to the Maharajah of Ramghur, testified before the Law Commissioners that *Kamias* were absolute slaves until the repayment of loan and were called *Sounkia*. He further added that there was no such thing as the sale of a man for life without his offspring.³³ The origin of slavery of *Kamia* and many of his likes was self-sale, and sale by the father or other who exercised parental authority.³⁴

The sale and purchase of child slaves remained a very contentious issue in the debates that preceded the passing of Act V of 1843. It became even more serious and critical as the connection between debt bondage and slave trade was brought to light. It was clearly acknowledged that "all the peculiar hardship and the cruelty of the slave trade was perpetuated by sanctioning the free introduction of slave debtors".³⁵ Hamilton citing an example from Gorakhpur wrote, "a native, for a loan of fifty one rupees, at twelve percent interest, comes under an obligation to give his own labour and that of his family to the lender at all times and in all forms, for an indefinite period, until the amount of the loan shall be repaid, principal and interest, in full."³⁶ Therefore the effect of such arrangement was that on the death of the father, his wife and children were left in bondage. Such bond service often practically transformed into perpetual slavery by the inability of the bond-servant to discharge the pecuniary obligations which had been incurred. To end this it was suggested that after the 1st of July, 1836, no contract for

³¹ *Special Reports of the Indian Law Commissioners*, House of Commons Parliamentary Papers, 1842(585), p. 221.

³² See Gyan Prakash's *Bonded Histories: Genealogies of Labor Servitude in Colonial India*, (1990). The book explores the relationship between the *Kamia* (Dependent labourer) and the *Malik* (Patriarchal master) and within it the power of money to bind people. In an attempt to trace the history and roots of bonded labour in Southern Bihar, it also shows how the reciprocal power and dependence between the labourers and their lords got transformed into a monetary relation based on *kamiauti* (advances/ loans) reflecting the changes in the political economy.

³³ *Reports of the Indian Law Commissioners*, House of Commons Parliamentary Papers, 1841(262), p. 257.

³⁴ *Ibid.* Also see the testimony of Sarvanand Rai, Zamindar (Landlord) in Mymensingh district in *Reports of the Indian Law Commissioners*, House of Commons Parliamentary Papers, 1841(262), p. 246.

³⁵ PP 1841, p. 241.

³⁶ *Ibid.*

debtor's slavery under any shape, should be deemed valid in the courts. There was strong opposition in Governor General's Council to the banning of the sale of children into slavery. The suggestion for a system of apprenticeship with due registration of such sales before a Magistrate was refuted citing administrative unfeasibility.³⁷

The Act of 1843 and its aftermath

At last, the Act V of 1843 carried out the original recommendations of the Law Commissioners, which is considered a landmark in the legislative history of British India. It did nothing to prevent possession of child slaves or traffic in them and the issue was only addressed by the Penal Code of 1860. However, it did lay down certain procedures delegating slavery in British India.³⁸ The Act did not declare possession of slaves to be a penal offence and therefore was only an enabling Act. Dharma Kumar rightly argued that "essentially the government solved the problem of slavery by ignoring it, the courts would not recognize the master's rights. The Indian institutions were too deeply rooted for a more direct attack."³⁹ Therefore, in practical terms, the Act only abolished the legal state of slavery, which meant that any claim to the labour or services of a slave could no longer be recognized or upheld by any Court of Law. Moreover, the transmission of knowledge to the slaves never happened. As a matter of fact, the Indian officials who were vested with the responsibility of implementing this Act, were themselves slave owners.

Later in 1846, the Indian Law Commissioners again submitted a report on the Indian Penal Code (IPC). In Clauses 426 to 438 of their report, the Commissioners referred to kidnapping and sale of children. In Clause 435 they referred to Act V of 1843, and observed that the private sale of a free person for the purpose of being dealt with as a slave is not prohibited by this law. But as, under Section 4 of it, no person so sold could be dealt with as a slave against his will, which amounted to a virtual prohibition and which was

³⁷ S.V. Desika Char, *Centralised Legislation-A History of the Legislative System of British India*, (1965), 193.

³⁸ First, "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 on the ground that such person is in a state of slavery";

Second, "and it is hereby declared 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 east India company";

Third, "and it is hereby declared enacted that any 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 request shall not 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";

Fourth, "and it is hereby enacted that any act, which would be penal offences if done to a free man, shall be equally an offence if done to any free person on the pretext of his being in a condition of slavery." George S. Fagan, *The Unrepealed and Unexpired Acts of the Legislative Council of India* (1862), 383-4.

³⁹ Dharma Kumar, *Land and Caste in South India*, 74.

regarded as effectual in regard to adults who could avail themselves of the law.⁴⁰ But with respect to children, it was suggested that it should be made penal to sell or purchase a child under any circumstance. As a result of this recommendation in the report of 1846, the Sections 370 and 371 of IPC were prepared. However, Section 370 provided for specific offences only which included (i) the importation and exportation of a person as a slave; (ii) the disposal of a person as a slave (and here the presumption is that the act is against the will of the person); (iii) the acceptance, reception or detention of any person against his will as a slave, that is, it must be shown that the act was done against the will of the person, who cannot be accepted, received or detained as a slave. In majority of cases these conditions were not fulfilled and therefore Section 370 was mostly not applied. In the case of *Empress of India v Ram Kuar*, 1880 Justice Oldfield noted, "To bring the act of the accused in the case before us within the meaning of Section 370, there must be a selling or disposal, of a girl as a slave, that is, a selling or disposal whereby one who claims to have a property in the person as a slave transfers that property to another...The girl appears to have come under the protection of accused when in a state of destitution, and she was given over to Udai Ram in order that she might become his brother's wife, the accused receiving a gratification for her trouble. The facts do not, therefore, appear to me to constitute an offence under Section 370."⁴¹ This opinion was seconded by Justice Straight who also stated, "there is no sufficient evidence that the girl Deoki was 'sold or disposed of' to the brother of Udai Ram for the purpose of her being dealt with as a slave."⁴²

There was a lot of debate around Section 370 of the IPC and the four sections under the Act V of 1843 in the 1880s. In the light of the Act of 1843, the intention behind Section 370 of IPC was not clear to many judges and law commissioners. Section 370 provides that "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." In the case mentioned above, of *Empress of India v Ram Kuar*, 1880, Chief Justice Robert Stuart commented that Section 370 seems to assume the condition of slavery as a possible fact within the cognizance of the law but such a situation was as much ignored by the law of India as it was by the law of England.⁴³ According to him, 'the slave was a creature without any rights or status whatsoever, who was or may become property of another as a mere chattel, the owner having absolute

⁴⁰ Minutes by Justice Spankie in *Empress of India v Ram Kuar* on 8 March, 1880. Citation: (1880) Indian Law Reports (ILR) 2 All 723

⁴¹ Minutes by Justice Oldfield in *Empress of India v Ram Kuar* on 8 March, 1880. Citation: (1880) ILR 2 All 723

⁴² Minutes by Justice Straight in *Empress of India v Ram Kuar* on 8 March, 1880. Citation: (1880) ILR 2 All 723

⁴³ *Ibid.*

power of disposal by sale, gift, or otherwise, and even of life or death, over the slave, without being responsible to any legal authority.’ This was such a determinate and fixed condition of the slave in the eyes of the law and therefore not a condition capable of degrees. But at the same time such a position of any human being under the Government of India was thoroughly repudiated by the Act of 1843 which denied by law not only of the condition of slavery as a possible state of things, but of any rights or interests or estate which could be asserted in respect of it.

Justice Spankie citing the precedents of the Court elaborated that ‘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 jailor.’⁴⁴ At the same time it was also widely acknowledged that children were purchased from their parents or strangers, and were brought up as domestic servants, having little or no personal liberty conceded to them. These children were practically slaves and the persons who detained them in their houses were liable to punishment under the Penal Code.

This confusion regarding the interpretation of Act V of 1843 and Section 370 of IPC continued well into the twentieth century. In the case of *Koroth Mammad v Unknown*, 1917, the judgment by Justice Ayling clearly deliberated upon the lack of any proper definition of the term ‘slave’.⁴⁵ It also referred to other cases which included a definition very short of slavery in its most extreme forms wherein the master had absolute and unlimited power over the life, fortune and liberty of the slave.⁴⁶

Persistence of bonded labor relations

The above description regarding the persistence of slavery into the twentieth century has a thematic dimension as well. As has been argued before, the relations between the masters and servants were defined by customs and traditions, in which caste played a very crucial role in determining the hierarchy of relationships. The lender-debtor aspect of the relationship was only one of the many aspects that connected the servant to the master. In post 1843 period, how the credit relationship became the ‘only’ connection that bound the two is a point of enquiry. Loan or advance became the fundamental basis on which the attachment of labour to his employer rested. Legitimacy that was earlier granted to such relations of supremacy and subordination by defining them in terms of caste, religion and custom, were set aside as the

⁴⁴ Minutes by Justice Spankie in *Empress of India v Ram Kuar* on 8 March, 1880. Citation: (1880) ILR 2 All 723

⁴⁵ Minutes by Justice Ayling in *Koroth Mammad v. Unknown* on 27 August, 1917. Citation: 42 Indian Cases 977, (1917) 33 *Madras Law Journal* 430.

⁴⁶ *Ibid.*

same relations came to be remoulded as contractual credit relationships.⁴⁷ Slaves no longer belonged to some specific castes of lower order as persons from all castes from Brahmin to Shudras could be enslaved.⁴⁸ More so, it also ceased to be a system limited to a particular religion as both Hindu and Muslim laws sanctioned it.⁴⁹ It also permeated all sections of society. As the system came to be disassociated with caste or religion, it was natural that its basis had to be located somewhere else. Thus, it was the gradual monetization of the relations of servitude that took place and this process became even more intensified with the legal abolition of slavery. Jacques Pouchepadass notes, "the same dependents continued to work under the same masters, and their conditions of existence, work and remuneration remained identical...in a sense, the colonial situation not only perpetuated the existence of personal servitude under a new garb, but it gave it the inflexible rigidity of the modern law and a new kind of legitimacy, independent from the personal relation of reciprocal exchange which bound master and dependent within the caste system."⁵⁰

Abolition created the much-hyped difference between a chattel slave (considered to be unjust) and an ameliorated slave⁵¹ (considered to be morally legitimate). The fact that one could buy and sell a man's work without appropriating the body, gave way to morally justifiable and acceptable versions of slavery cast in debt based forms of servitude. In the debates that preceded abolition, slavery was a labour system but soon after abolition, it became 'the other of an unrealised and general condition called Freedom'.⁵² With this shift in the understanding of the concept of slavery itself, from a socio-economic condition to a conceptual one, was underlined by the shifts in the law and the legal apparatus that enforced these laws. When persons ceased to be the property of their owners, there were other means and regulatory frameworks devised to restrict the mobility of labour. The nodal point of power shifted from the master of the slave to the State and its instruments of control. For example, Ravi Ahuja's work on Madras presidency has shown how police regulations disciplined and controlled labour at the turn of century. Similarly, another major instrument available with the State i.e. 'law' was resorted to for appropriating and retaining workers. Legal mechanisms as well as extra-economic means were employed to enforce contracts, restrict mobility, fix working hours, and even apprehend runaway workers.

⁴⁷ See the testimony of Parsinath Doobe, Mooktear (An executive and legal head) to the Maharaja of Kurruckpore in *Reports of the Indian Law Commissioners*, House of Commons Parliamentary Papers, 1841(262), p. 247.

⁴⁸ *Ibid*, 246.

⁴⁹ PP, 1841, p. iv.

⁵⁰ Jacques Pouchepadass, 'After Slavery: Unfree Rural Labour in Post-1843 Eastern India', in Jan Breman, Isabelle Guerin, Aseem Prakash (eds), *India's Unfree Workforce: Of Bondage Old and New*, (2009), 30.

⁵¹ Term borrowed from Roger Sawyer in *Slavery in the Twentieth Century* (1986).

⁵² Harold D. Woodman, "Sequel to Slavery: The New History Views the Postbellum South", *The Journal of Southern History*, Vol. 43, No. 4, (1977): 523-24.

The most visible transformation was in the countryside. The class of agricultural slaves was attached to their masters through varied linkages. In majority of cases these relationships resembled that of 'patron and client'. The ideology of caste was central to the formulation of these relationships.⁵³ The lower caste labourers were found to be in dependent relationships with their landlords and the patronage of the master was expressed through the maintenance of his servants through life and death. In the return for the favours, the servants were obliged to render certain services, made sacrosanct by the local customs and traditions. With the gradual penetration of nascent capitalism in the rural countryside, these traditional forms of relationships were recast as debt bondage. Many servile relationships existed by the virtue of being so from time immemorial. For example, the subjection of the low caste *Chamars* (low caste labourers) at the hand of upper castes especially the *Thakurs* (high caste landlords) had continued unabated in the medieval period.⁵⁴ Similarly, the relationship between the *Kamia* and his *Malik* also derived from age-old tradition, customs and culture of mutual obligations.⁵⁵ During and after the abolition of slavery, many existing master-slave relationships were carried out on a sly and were gradually converted into legal forms such as debt bondage.⁵⁶ It was only after the abolition of slavery that customary relationships of mutuality were recast as relationships based on the objective power of money. The reformulation of such labour relations as debt bondage was crucial and pertinent for the colonial state to present a picture of 'free' society, where there were no ties binding people either to land or to persons except that of money. "Legal emancipation notwithstanding" wrote Baak, 'relations between ex-slaves and ex-owners often did not change. Agricultural labourers usually remained attached to a particular plot of land and its owner, particularly as a result of indebtedness.'⁵⁷ Thus, a contract based on credit became the sole device through which people could become bonded. In this context, the earlier ties that bound people like caste, custom, or even mutuality became redundant.

These contracts based on debt made way for other types of contracts too. Although the basis of contract remained the same i.e. money; the nature of credit underwent a change. Instead of 'loans' which bound agricultural labourers to their masters or the landlords or even to the moneylender, it was the perennial 'advance' that underpinned the contracts between the employers and the labourers. So while 'slavery' existed due to social sanctioning of

⁵³ See Dharma Kumar's *Land and Caste in South India*, Tanika Sarkar's "Bondage in the Colonial Context", Gyan Prakash's *Bonded Histories*.

⁵⁴ Irfan Habib, Presidential Address at Indian History Congress, Kurekshetra, 1982.

⁵⁵ See Gyan Prakash, *Bonded Histories*.

⁵⁶ Wendy K. Olsen, "Marxist and Neo-Classical approaches to Unfree Labour in India", in Tom Brass and Marcel van der Linden (eds.) *Free and Unfree Labour, The Debate Continues* (1997), 380.

⁵⁷ Paul E. Baak, 'Enslaved Ex-Slaves', in in Tom Brass and Marcel van der Linden (eds.) *Free and Unfree Labour, The Debate Continues* (1997), 436.

involuntary servitude, 'contract' was the legally sanctioned means of controlling and retaining labour. Manjari Dingwaney writes, "the prohibition of slavery was often accompanied by an increasing resort to practices and institutions that attempted to circumvent that prohibition. Hence, substitutes like indentured or contract labour emerged (where there is no ownership of persons, but the rights to ownership of labour under exploitative conditions exists.)"⁵⁸ Extra-economic coercive measures in both the cases derived their sanction from the power of debt, either in the form of loan or advance. So while, the colonial state to its own advantage portrayed advances as a means to come out of bondage, in reality they implicated an entry into a new one. Jan Breman was right in stating it was 'nothing other than a colonial fantasy to maintain that a contract was entered into voluntarily.'⁵⁹

Contracts, debts and bondedness

The common understanding is that the contract is an outcome of two willing parties to enter into it while agreeing to the terms and conditions therein. However, it problematically and significantly pre-supposes freedom which in reality is nothing more than 'choicelessness'. In theory, the prodigious contract hails the freedom of worker or the freed slave to enter into the contract as an indication of his free will to give his labour power. But since the worker himself always embodies labour power, what is contracted is not only the intangible labour power but the bodied labourer himself. Furthermore, the so-called freedom is not ever independent or free from choicelessness arising out the absence of any alternative in which the labourers may offer his services. As a consequence while buying labour power, employees buy a command over the use of workers' bodies and their persons also. Jairus Banaji reaffirmed that "voluntary role of labour power was not the anti-thesis of servitude but its precondition".⁶⁰ In other words disembodied labour power was only to create an illusion wherein the workers themselves were not commodities but entities exercising their free will to sell their labour power. Banaji further wrote, "the will theory of contract was a construct of the legal formation of the 19th century and was accepted for precisely what it was."⁶¹ In context of India especially, the right to control labour power was sold in exchange for the necessary means of subsistence, which in practice was actually control over labourers themselves. Therefore,

⁵⁸ Manjari Dingwaney, "Unredeemed Promises: The Law and Servitude", in Utsa Patnaik and Manjari Dingwaney (eds.), *Chains of Servitude, bondage and slavery in India* (1985), 314.

⁵⁹ Quoted in Paul E. Baak, "Enslaved Ex-slaves, Uncaptured Contract Coolies and Unfree Freedom: "Free" and "Unfree" Labour in the Context of Plantation Development in Southwest India", in Brass, Tom and Marcel van der Linden (eds.), *Free and Unfree Labour, The Debate Continues* (1997), 428.

⁶⁰ Jairus Banaji, "The Fictions of Free Labour: Contract, Coercion and so called Unfree Labour", *Historical Materialism*, Vol.11, No.3 (2003): 70.

⁶¹ *Ibid*, p.71.

the concept of free labour post abolition remained an incoherent concept which nevertheless helped to accommodate newly emerging forms of labour; labourers bound by debt and power of money being the most prominent category. Debt, incurred either through a loan or an advance, was an attempt by the landowners to hold the labourers tied to their field at a time when large numbers of landless workers were migrating to towns, plantations and newly emerging industrial sectors and factories. It was indeed ironic that the vocabulary of implied freedom was used to bind people in servitude. Nevertheless, it was intelligible for the colonial Government as it helped them to comprehend and have different slave like forms of labour within the rubric of legislation and regulation by asserting that bondage in India was derived from indebtedness to their masters, of otherwise free labourers. The usual way in which a man sold himself earlier was through a sale-deed ('*Kharidagi-pottah*', '*param bhatarak*'), but later it was done by affirming to lease or mortgaging his services for a very long period ranging from sixty to hundred years, which was 'understood to include children born after the lease.'⁶² It was the most common way by which the law containing commerce in slaves was circumvented.⁶³ Hence the dichotomy arising from subsumption of unfreedom within the category of so-called free workers was resolved by creating a category of debt-bondage. Theoretically it was possible to come out of bondage if the bonded labourer repaid the loan he had taken. However, it was only virtually possible and loans were usually requited in the form of labour service. The transaction from slavery to debt bondage to contract was not simply a shift from unfreedom to freedom but a change in the taxonomy of existing power relations between the dominant and the subordinated; sustained by legal formalism which distinctively legitimated and regulated labour in different periods.

Advances played a significant role in appropriating labour and were the key element in retaining and mobilizing labour. For labourers who had no rights in land and lived hand to mouth, advances were crucial for survival. The most definitive examples of the relations formulated on the basis of advances were the one constituted between the *Thakurs* and *Chamars* in UP, and between *Maliks* and *Kamias* in Bihar. The give and take of advances was the event for the masters to reassert their domination but also it was an occasion for construction of bondage. Instead of resurrecting the dependent ties, it was an economic bond founded on things. The juridical notion of debt-bondage allowed the labourers to be bound to their masters for life as the repayment of loans was permanently deferred.⁶⁴ Advances were also the

⁶² Testimony of Dhurb Singh Das, in *Sudder Dewanny Adawlut (Civil Court) of Calcutta; Appendix 1 to Reports of the Indian Law Commissioners*, House of Commons Parliamentary Papers, 1841(262), p. 230.

⁶³ See Testimonies of Vaydia Nath Missar and R.H.Mytton in Appendix 1 to Reports of the Indian Law Commissioners, House of Commons Parliamentary Papers, 1841(262), p. 225 - 228.

⁶⁴ Gyan Prakash, *Bonded Histories*, p. 180.

means by which the labourers manipulated the labour market especially where long distance migration was involved. Michael Anderson noted that creditors exchanged small advances for large quantities of work, while workers shied away from low-waged employment without a nominal sum in advance.⁶⁵ The advances given by the jobbers were often used immediately by the workers. Advances enabled the workers to pay off their debt to the landlord to whom they were bound. Whatever remained was exhausted during the course of the journey to pay for food etc. Consequently, the workers were already indebted to the jobbers, even before they had reached the site of work.⁶⁶ This system of advances under the penal contract brought the employer-employee relationship very close to perpetual servitude.⁶⁷ In reality these arrangements amounted to being identified as forced labour but these were also the most convenient and popular mechanism with the industrial entrepreneurs for assembling their work forces.⁶⁸ These advances were manipulated to take form of loans and thus was established an inextricable and institutionalized link between credit and labour. For landless labourers living barely at subsistence level in dire need of money for life cycle rituals, these advances were great temptation.

The system of advances as an attempt to lure, control and discipline the labour, has been brilliantly depicted by Ian J. Kerr in his study of Railway construction in the nineteenth century. He argues that advances 'subordinated the worker to the *muccadam* (jobber) and, in the complex hierarchy of supervision and direction that characterized Indian railway construction, subordinated *muccadam* to sub-contractor, sub-contractor to the contractor (or to the engineer) and the whole hierarchy to the railway company or to the Government that provided the capital'.⁶⁹ This implied that the advances helped to mobilize labour and also tied labour to the capital. Also through the advances, the employer gained considerable control over the worker's labour power, which consequently meant the loss of worker's control over his own labour power. These advances were also instruments by which labour was retained and brought within the purview of law. For example, in *Queen Empress v. Indrajit*, a three Rupee advance was given to secure a three-year contract.⁷⁰ Similarly, in *Tangi Joghi v. Hall*, both- two and four years contracts were secured with one Rupee advance.⁷¹ It was remarked in *Emperor v. Namdev Sakharam* that the consideration in such contracts was

⁶⁵ Michael Anderson, 'India 1858-1930: The Illusion of Free Labor', in Douglas Hay and Paul Craven (eds.), *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (2004), 426.

⁶⁶ Paul E. Baak, 'Enslaved Ex-Slaves', 440.

⁶⁷ Michael Anderson, 'India 1858-1930', 436.

⁶⁸ *Ibid.*, 426.

⁶⁹ Ian J. Kerr, "Free or Unfree", in Tom Brass and Marcel van der Linden (eds.) *Free and Unfree Labour, The Debate Continues* (1997), 418.

⁷⁰ Michael Anderson, "India 1858-1930", 433.

⁷¹ *Ibid.*

“often so grossly inadequate as to suggest that the so-called advance was merely a device for bringing the contract within the Act”.⁷²

It is also important to mention that it was not only private individuals who used advances to bind labourers but also the colonial State. Through various mechanisms such as the Statutory Labour Act, the Compulsory Labour Act (1856) etc., the government too procured labour for various public works. The system of *Begar* i.e. Unpaid Forced Labour was no doubt, inextricably woven into the ruler’s rights and privileges; and when the British Government took over the governance and administration in India, it appropriated all such rights and privileges which had hitherto been enjoyed by the native *rajahs* (rulers). Regarding the institution of *Begar* in the Hill states of Northern India, (where it was most extensively employed in contrast to other parts of the country), V.Verma notes that while re-instating the ancient chiefs, the Company Government bound each one to furnish a fixed quota of *Begaris* and in event of failure to do so, they were penalized by the imposition of adequate fines.⁷³

Within Northern India, State appropriated forced labour or *Begar* was most widely prevalent in the Kumaon and Garhwal region. These hilly regions had become quite popular amongst the British officialdom as area of retreat during oppressive summers. There were an increasing number of complaints made by the *Zamindars* (Landlords) against the evil of *Begar* system. The Public Servants, both Civil and Military who travelled through the interior parts of these areas seized the coolies by means of extortion of rations and made them carry their baggage. It then became pertinent to prohibit any such arrangements regarding the supply and provisions of carriage.⁷⁴ The system had become entrenched and very abusive is established by the fact that several villages in the district had become deserted as the compulsory system of acquiring the services of *Khussees* (Hill Porters) had caused villagers to migrate to Dotee solely to escape the Coolie System.⁷⁵ The Tehsildars of Halee Kumaon region were frequently directed by the Commanding Officer to furnish *Khussees* for private works at cantonment, for parties of sepoy going on command and for transport of public stores or private baggage of Officers especially between Lohooghat and Petoragurh.⁷⁶

On 29th January, 1858 the Governor General informed the Legislative Council that he has given assent to the Bill entitled “a Bill to authorize the impressment of artisans and labourers for the erection of Buildings for the European Troops in India, and for works urgently required for Military purposes”, turning it into an Act.⁷⁷ The Act created hue and cry amongst the villages surrounding Military cantonments. The contractors who had taken up

⁷² Ibid.

⁷³ V. Verma, *Shimla Hill States in 19th Century*, (2008), 231.

⁷⁴ Letter from G.W. Traill to Lt. Col. Alldin, Kumaun Division, Judicial Letters Issued, Vol. 26, 1822-25, UPSC.

⁷⁵ Letter from G.W. Traill to Captain Speck in *ibid*.

⁷⁶ Letter from G.W. Traill to Military Auditor General in *ibid*.

⁷⁷ Cons. 29th January, 1858, Home Department, NAI.

Public or Military works suddenly came under duress. For example, in Allahabad, the construction work for the doors of the barracks was going on smoothly till the passing of the above Act. The declaration of Act created so much panic among the native work force that they did not even leave their houses and the work in general almost stopped. The contractors of Messrs.' Burn and Co., Architects and Builders, complained of not being able to procure workers and demanded that some provision be devised to protect the people employed in Government contracts or otherwise it would be very difficult to carry on and fulfill the engagements, which would further prevent the contractors from taking up any more work.⁷⁸

A variant of forced labour employed by the officials belonging to military and State came to fore in the mid-nineteenth century, when the exodus to hill stations became vogue amongst the British officials especially with the construction of Dak-Bungalows and PWD rest houses. These travels required large number of labourers for portage of establishment of camp. In 1827, the Governor General, Lord Amherst visited Shimla and for carrying the baggage of his entourage from Kalka; 1700 coolies were found just not enough.⁷⁹ About a century later, on 31st January, 1928, The Indian National Herald reported the barbarity of the system of *Begar*. The correspondent stated that the Viceregal advent was attended with the separation of the cruelest phase of this system.⁸⁰ Wherever the viceroy visited or passed through Indian state territory, a large number of people (women not excluded), chiefly from the villages were caught hold of at the suspect and made to stand, each by a telegraph post all along the railway line, with burning torches in hand. As these trips were usually carried out in winters, the ill-fed and ill-clad villagers were forced to remain outdoors on the coldest of nights. To top it all, the privations of these people always remained unrequited. The newspaper also reported that when the viceroy was travelling from Jodhpur to Udaipur on the 25th Jan 1928, hundreds of villagers were driven by the police and subjected to keep the nocturnal watch for no return. Examples such as these coupled with many petitions and complaints that reached the government regularly demanding the abolition of the iniquitous system of *begar*, further flagged by several reports that appeared in the nineteenth century in the hill states (In Bushahe (1858), in Jubbal (1864), in Kuthar (1895), in Keonthal (1900), in Theog (1920)) compelled the government to reconsider its stand on the issue of *begar*. It also realized that for several valid reasons, the Chiefs could not be expected to supply the required number of *begaris* at all times. Here it was initially decided that the British officials would pay for the services that they availed. The coolies who carried loads of troops were paid four pice per man per march. In 1832, the wages of the

⁷⁸ Cons. 5th March, 1858, No. 43, Hme Department, NAI.

⁷⁹ V. Verma, Shimla Hill States in 19th Century, 234.

⁸⁰ The Indian National Herald, 31st January, 1928.

porters were increased to two annas a day.⁸¹ Gradually, all *begaris* requisitioned by the British officials and military were commuted into service by cash payment. At many other places, the system of *begar* was unilaterally abolished and compensated by the State. For example, in the Jullender Division in 1917, after the abolition of *begar*, the *begar* services to the ladies of *haremsarai* were replaced by the services of regular employees paid by the State. Also, instead of employing *begaris* to procure wood and charcoal, the ladies started receiving wood and charcoal from the state. The compensation for *begari* was paid at the rate of Five Rupees per month per *begari*.⁸²

Another milestone in the history of Master and Servant laws in India was the Act XIII of 1859 (Workmen's Breach of Contract Act), which applied to artificers, workmen, or labourers at the presidency, who had received money in advance for the performance of any work. The magistrate could compel refund of money or performance of the work or imprisonment for a term of three months. It primarily aimed at arming employers to control 'artificers, workmen and labourers.' While the initial enactment covered only the three Presidency towns of Calcutta, Madras and Bombay, by 1865 it was extended to cover almost all British territories by different versions of Criminal Breach of Contract Act. As the reading of the sections under the law would suggest, it was (very ironically to its title) biased in favour of the master vis-à-vis the servants. It was rather next to impossible for the servants or workers, mostly illiterate and poor, to file a civil suit against the misdoings of the master, in contrast to the relative ease of the master to submit a complaint to the magistrate and seek police assistance in apprehending a runaway servant. Anderson has argued that this Act also provided the master with a unique legal instrument, otherwise not available to them under the common law which exempted specific performances from applying to contracts of employment 'on the grounds that forcing a person to work against his or her consent was tantamount to forced labour.'⁸³ Nonetheless, as the terms of the Act suggest, it could be invoked only where money had been advanced for the services offered by the worker. Though apparently it seemed to constrict its scope, in reality it could be applied to all bonded servants and wage labourers. The need for credit initiated a cycle of advances in which the money earned by the worker was always less than the money lent to him by the employer and thus the worker forever remained in debt.

Another Act of the same genre was the Employers and Workmen (Disputes) Act (X) of 1860. This also provided for criminal punishment of breach of contract by giving in magistrates summary powers to settle wage disputes. This act was a result of an uprising amongst railway workers in Bombay in 1859. Ian J. Kerr in his work has stated that this Act was a result of maltreatment meted out to the workers, which paradoxically in the course

⁸¹ Ibid.

⁸² Cons. No. G 34-18, 1917, Home Department (Public), NAI.

⁸³ M. Anderson, "India 1858-1930", 431.

of its formulation came to include provisions for fining and imprisoning workers who, having admitted to work for a particular period or to carry out a specific work, failed to fulfill their commitment. Moreover, there was no provision by which an appeal could be made against the decision passed under this Act.⁸⁴ Both the Acts, Workmen's Breach of Contract Act and Employers and Workmen (Disputes) Act, were modeled on English statutory law. In nineteenth century England, these laws were used to mobilize labour for small-scale enterprises. However, they were considerably modified to suit the requirements of a colonized society. The Indian version of the Acts put in place the criminal provisions but at the same time omitted the integral part of the English law i.e. legal protection of workers. In England, ill-treatment, cruelty or refusal to provide basic necessities of life on the part of the employers could become the basis for servant's discharge from services by the orders of the Magistrate, whereas in India neither legislation nor judicial doctrine provided any relief or protection against wrongdoings of the employer.⁸⁵

Conclusion

The above article has outlined the metamorphosis of slavery in North India in a century that was marked by many legislative outpourings. Contrary to the popular belief, these legal interventions did not create a smooth, unidirectional passage from slavery to freedom. In fact it created contrivances through which slavery in India could continue for a very long time donning different garbs. It wouldn't be wrong to argue that in essence there was not much difference between slavery and its variants. An analysis of these suggests that in most cases they were interchangeable and overlapped. After slavery was delegalsed in British dominions, the usual master-slave relationship became obfuscated and covert. Post 1843, the slave trading became surreptitious and the extant master-slave relationships were remoulded into other legally sanctioned forms such as Debt-bondage, Forced Labour (*Begar*), Statutory or Compulsory Labour and Contract Labour. The boundaries amongst them remained fluid and permeable and only in 1920s did any real change occur when penal sanctions and exactions were completely removed from the domain of labour employment. Although, many angles and connections remain yet to be explored in order to provide a vivid and articulate picture of enslavement in the Indian sub-continent but the above article presents interesting insights into the system of slavery which deftly functioned and sustained itself through an intricate web of laws, customs and normative discourses of the colonial state.

⁸⁴ Ian J. Kerr, "Free or Unfree", 424.

⁸⁵ M. Anderson, "India 1858-1930", 432.

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