



## Overcoming Bonded Labour and Slavery in South Asia The Implementation of Anti-Slavery Laws in India since its Abolition until Today

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The historiography of slavery in South Asia is a rather new field of study (Mann 2012: 21; Major 2012: 19). The research focus on slavery and the slave trade has till recently primarily been on the American plantations and the transatlantic slave trade, while the Indian Ocean and Indian Subcontinent is a relatively new area. Since 1985 (Mann 2012: 20-1) historians have paid more attention to slavery in this region, but still "South Asian forms of bondage remain underrepresented in this new historiography" (Major 2012: 19). Similarly, the issue of contemporary systems of slavery in South Asia remain under-researched and under-theorised. Today, slavery is globally banned; it, therefore, occurs primarily in the shadow economy. Due to its secrecy, it is difficult to study – a challenge which Kara (2012) and Mishra (2011) took on by going into the field, interviewing bonded labourers and documenting their working conditions. Economic approaches have tended to dominate the theorisation of contemporary forms of slavery, stressing on factors, such as poverty and no access to credit markets, that force people into bonded labour as the only solution to their economic plight (cf. Künnemann 1995; Basu & Chau 2004).

In contrast, the six volumes discussed here address the issue of slavery and bonded labour in India from a different angle. They highlight among other issues the role of social hierarchy and the unwillingness of the political and administrative authorities to implement the laws which ban slavery and its trade. These volumes contribute substantially to our understanding of the slave trade, slavery and its abolition in India and the Indian Subcontinent in the past and present. All authors<sup>1</sup> deal with forms of slavery in South Asia or India and address the question of how the abolition of slavery and slave trade was implemented. Three of the six are scholarly books, including two historical studies, Mann (2012)

*Sahibs, Sklaven und Soldaten* and Major (2012) *Slavery, Abolitionism and Empire in India, 1772-1843*, and one edited volume by Kak and Pati (2012) called *Enslaved Innocence. Child Labour in South Asia*, with essays on contemporary and historical topics on child labour and bonded child labour; the other three books are works of popular science on bonded labour: Kara (2012) *Bonded Labour. Tackling the System of Slavery in South Asia*, Tiwari (2011) *Human Rights and Law - Bonded Labour in India*, and Mishra (2011) *Human Bondage. Tracing its Roots in India*.

## 1. The Legal Abolition of Slavery and Slave Trade

Several rulers on the Indian Subcontinent attempted to regulate or partially ban some forms of slavery or slave trade before the British colonised India. Mughal emperor Akbar, for instance, banned the trade with eunuchs; his successor Jahanghir passed a law in 1608 to prohibit the use of eunuchs (Hambly 1974: 129). The British triggered the fight against slave trade in the 19th century (Keene 2007: 313; Miers 2003: 14-5) by introducing a ban of it for British merchants in 1807 (Fischer 1950: 43-5). This ban was followed by bilateral and multilateral treaties of Great Britain with other slave trading nations (Keene 2007: 333; Allain 2008: 2-3, 19; Fischer 1950: 43-5; Kaufmann & Pape 1999: 634). The British Emancipation Act of 1833 abolished slavery and slave trade for the British Empire, except for the possessions of the EIC (East India Company). Thus, India was explicitly exempted from the application of this act (Major 2012: 43).

In 1843, the Act V was adopted which did not emancipate slaves either, but rather regulated slavery and banned the right to purchase or sell persons into slavery (Dingwaney 1985: 312). The civil status of slavery was withdrawn by this act; the trade of slaves became a criminal offence in 1862 in the Indian Penal Code (Vatuk 2006: 231). However, the Workman's Breach of Contract Act of 1859 bound individuals to their contractual promises, including arrangements of bonded labour and other forms of enslavement. Only in the case of total repayment would bonded labourers be freed (Sarkar 1985: 110). Since independence, India has protected workers from slavery and bonded labour through the Constitution of India (Article 23) and the Bonded Labour System (Abolition) Act of 1976.



The books discussed here show that even though there is a large body of legislation at the national and international<sup>2</sup> levels, the slave trade, slavery and bonded labour have continued to exist in India throughout history; law enforcement institutions have continuously failed to give effect to these laws and bonded labour remains an issue in India until today: The ILO estimated in 2005 that there were 9.5 million slaves in Asia<sup>3</sup>, updated to 11.7 in 2012 (ILO 2012:1-2)<sup>4</sup>; Bales approximates that there are 15 to 20 million bonded labourers in Bangladesh, India, Nepal and Pakistan (Bales 2004). Kara estimates for the year 2011 that there are 15 to 18 million bonded labourers in India, Pakistan, Bangladesh, Nepal, Sri Lanka and Afghanistan together. But he remains nebulous about his sources and is rather speculative (Kara 2012: 236-37) with his estimates, which are claimed to be based on his own research results and undefined sources.

The authors Kara and Mann also discuss whether there were more people enslaved in the past or in the present. Without putting forward concrete evidence, Kara insists that in historical comparison there must be less slaves today than in the past – in contrast to what “sensationalistic antislavery circles” (Kara 2012: 32) tend to indicate. Bales, on the other hand, argues that there are more slaves today in absolute numbers than have been shipped across the Atlantic Ocean throughout history (Bales 2004: 10). Both assertions gloss over the fact that slaves in South Asia were often integrated into their social setting and the levels of unfreedom, enslavement and freedom were neither fixed nor necessarily life-long and could change during a life time, as Mann (2012) and Major (2012) demonstrate in their discussions on the history of slavery in South Asia and India respectively. Such an understanding makes historical quantifications difficult (Major 2012: 21).

The issue of quantifying slavery is also related to the question of how slavery is defined. For researchers of slavery and bonded labour, as well as for practitioners in the field and law enforcement institutions, the definition of slavery is crucial in order to target the right group of people in policy implementations or for defining research topics. The definition of slavery has commonly been tied to the (Marxian) definition of labour, related to industry and production. This means that only surplus generating work is considered work, which excludes domestic work and is therefore also a highly gendered understanding. Most slaves in South Asia are primarily employed in the domestic realm and therefore do

not fit the Marxian definition of labour (Mann 2012: 17, 20, 166; Major 2012: 12-3).

Major does not offer a definition of slavery in her analysis, but rather chooses to focus on its configuration in the discourse of the British colonisers (Major 2012: 25-6). Nevertheless, a clear contrast to what may be considered as slavery would have helped the reader to understand the differences between the perceptions and images of slavery reflected in the discourse on slavery in India and the discourse on slavery in the Americas. Mann, in contrast, reiterates the definition of slavery and claims to observe an inflation of the use of the word slavery, however, without supporting this claim with examples. Nevertheless, in support of his observation, there is a tendency in public debate to denounce different exploitative employment practices as slavery – such as describing prostitution as ‘sexual slavery’.

The debate on what constitutes slavery is crucial for an informed discussion about slavery, bonded labour and their political consequences. While not aiming at providing a definition of slavery, but to “explore colonial constructions of slavery” (Major 2012: 26), Major addresses this issue. She explains that the British Empire focused on chattel slavery<sup>5</sup> and identified the following features as defining elements of slavery: the plantations as a required location, the brutal working conditions and the production of certain goods, such as cotton and sugar cane. Compared to chattel slavery on the plantations in the Americas, South Asian slavery did not fit the American model and was therefore deemed a soft version (Powell 2006: 264; Major 2012: 4-5). To speak of slavery in South Asia was seen as “an abuse of language” (A. Amos, Law Commissioner, cit. in Chatterjee 1999: 225). This perception served the British colonial abolitionists to close their eyes to slavery and its abolition in South Asia (Vatuk 2006: 221; Mann 2012: 21). According to Mann (2012: 21) and Major (2012: 13), historians adopted this notion, which led to the common assumption that the slave trade was primarily happening on the American plantations, where black Africans were the major victims of slavery, and that the slave trade actually ended with its abolition (Major 2012: 18-9, 49).

Slavery beyond the American South was and is not a “monolithic” (Eaton 2006: 1) phenomenon which can be reduced to “persons-as-property, coercion or ‘social death’” (ibid.: 1). The manifold manifestations of slavery in South Asia make it difficult to define slavery. Eaton discusses a non-generalisable definition of slavery and observes



for the contributions to his edition that slavery appears as a "*condition of uprooted outsiders, impoverished insiders – or the descendants of either – serving persons or institutions on which they are wholly dependent*", (ibid.: 2, emphasis in original). The only commonality was "the slaves' condition of total dependency on some powerful person or institution" (ibid.: 3). In societies that are hierarchically structured, class, caste, or gender mark different levels of dependency. Where those dependencies exist, slavery is not the antidote to freedom "in the European Enlightenment sense of autonomous, self-directed, individual agency, but rather a state of complete detachment from such culturally specific webs" (ibid.: 3; cf. Major 2012). Nevertheless, slaves in the case of South Asia "were in every instance relatively more dependent on the will and the power of someone else than were non-slaves" (Eaton 2006: 3; cf. Chatterjee 2006: 19; cf. Major 2012: 20-1).

However, the definition of slavery in terms of freedom in the Enlightenment sense, too, is not as straight-forward as it might seem if we take a careful look at the structure of societies of the Enlightenment and the societies of America and Europe during the revolutions of the 19th century: The claim that 'all men are equal', for instance, did not encompass all human beings: It was clear to the authors of the Declaration of Independence that 'all men' did not include women or black people (Hunt 2007: 3-6; cf. Finlayson and Martin 2006: 156). Like in the East, also in the West, there existed levels of dependencies that did not only go along lines of caste or enslavement, but social status, sex, race, etc. – consequently the "discussion of 'freedom' and 'unfreedom' in the western sense" (Major 2012: 21) also needs to be re-evaluated and brought together with the discourse on slavery in South Asia.

Going beyond dependency relations, Mann provides a definition along his historical observations and concludes that three components add up to slavery: the experience of an un-occurred death – for example, as a soldier or through starvation; the objectification of a slave as property that can be sold, or borrowed; and the owner's unrestricted access to the labour of the slave, if necessary, through the application of violence. Interestingly, the component of exploitation is missing in his defining elements. In his final remarks, Mann explains that the dichotomy between free and unfree labour is historically flawed and does not reflect the reality or alternatives that were available to workers and slaves in the past, which were all organised in more or less dependent structures

and work relations. Mann argues that this calls for a shift of our understanding of modernity or of the road of development. According to him, it is quite obvious that the notion of a capitalist economic system in which free wage labour replaced slavery does not hold. A more diverse notion of labour beyond the dichotomous separation would open a new perspective to different labour arrangements and their parallel existence (Mann 2012: 211-13).

Mishra (2011), too, engages with the question of defining slavery in his monograph *Human Bondage. Tracing its Roots in India*. He derives his definition from commonalities between forms of slavery that he observes globally (Mishra 2011: 19):

A slave may be deemed to be a species of property [...]. He/she is an object of law [...] not ordinarily held responsible for what he/she did [...] [A slave] is personally not liable for torts/contract. He/she may have a few rights but those rights would always be fewer than those of the owner. (ibid.: 20)

This definition is more focused on the status of the slave being an object of the law and not a subject – which touches on the question of citizenship. Unfortunately, Mishra does not discuss this point. The existence of slavery is a denial of citizenship of the affected person, which is particularly interesting when it comes to democratically organised states that claim to grant equal participation in the political decision making process, as well as the protection of the people living within its borders. I will come back to this issue later.

Like Mann, Mishra does not mention the element of economic exploitation as a constitutive part of a definition of slavery (Mishra 2011: 20). The aspect of exploitation highlights particularly the role of the slave holders that profit from bonded and child labour. The interesting discrepancy between forms of slavery in past and present day India and South Asia is that economic exploitation appears to be the main feature of slavery today. Kara highlights the issue of economic exploitation in his work and even offers some calculations of what employers make as average net profit: about 2,000 Dollars per person per year (Kara 2012: 12-5). These calculations are interesting to think about but other than that do not seem reliable. Also Chopra (2012: 37) and Zutshi (2012) in Kak and Pati's edited volume for the case of child labour stress on the economic exploitation of children in child labour relations.



Similar to Mann, Kara is concerned about the use and loaded meaning of the term slavery, but nonetheless adheres to it and offers his definition:

Slavery [and bonded labour] is the condition of any person whose liberty is unlawfully restricted while the person is coerced through any means to render labor or services, regardless of compensation, including those who enter the condition because of the absence of a reasonable alternative. (Kara 2012: 31)

For bonded labour he adds the following condition: "[...] where that person or a relation initially agreed to pledge his labor or service as repayment for an advance of any kind" (Kara 2012: 30). The voluntary moment of turning oneself through debt into bonded labour has according to Kara made economists (who remain unnamed) conclude that bonded labour is not slavery. Kara argues, to the contrary, that these situations are not voluntary decisions, the decision being between freedom and survival. Due to the unavailability of an alternative option except death (ibid.: 34-5), these workers have no choice and therefore the decision to become bonded is not voluntary.

An interesting point which he implicitly makes can be looked at from the perpetrators perspective: Bonding a labourer through debt or advanced payment does not necessarily translate into economic exploitation and the violation of liberty and the physical integrity of the bonded labourer, but it creates the opportunity to do so. That a worker has pledged herself into working against an advanced payment does not mean that she has agreed to the forms of coercion and exploitation that usually accompany such arrangements. Nevertheless, Kara's definition cited above is particularly problematic with its requirement that a form of labour exploitation constitutes slavery when it entails the "unlawful restriction of movement". Unlawful restriction of movement implies that through a legislative change this 'unlawful restriction' might be turned into a lawful restriction or depending on the national context might already be legally in place. But a legal or illegal restriction of the movement of one citizen by her co-citizen does not change the fact that the restriction of movement is a constitutive qualifier for slavery, no matter if legal or illegal.

From the above discussion it becomes clear that there is no agreed upon definition of slavery among the writers discussed here, but also

among other scholars (cf. Miers 2000: 714f; cf. Bales & Robbins 2001). As mentioned, the volumes of Major and Mann demonstrate that forms of slavery of South Asia were often different from chattel slavery of the Americas. Their and the discussions of Mishra and Kara make clear that there are certain constitutive elements that define slavery that South Asian forms of slavery are also comprised of: the element of economic exploitation, the lack of alternative options of the enslaved person, their existential dependency on the employer or slave holder, as well as the restriction of the liberty of movement of the enslaved.

The question I raise now is, how was the abolition of slavery legally implemented since the abolition of the slave trade and why did the British, and now the independent state of India, fail to implement its laws?

## **2. The Role of the State or Government Law Enforcement**

The abolition of slavery in India, Major (2012) explains, has been particularly hindered by the perception of slavery in this region as not being as harsh as the experience of Africans in the Americas. This perception, coupled with political and economic interests, as well as ignorance, meant that the British were not really interested in emancipating slaves in India. She explains that the slave trade was addressed by British officials not as an issue of humanity but more as an issue of law and order through which the British reinforced the authority of the EIC in British India. This pragmatic approach had its first legal manifestation in the regulation of 1774 by the government of Bengal. It regulated the trade of slaves, allowing their purchase only with documentation and banned the acquisition and introduction of newly enslaved people. The motivation to adopt this regulation was an increase of court cases – that almost caused the breakdown of the regional judicial system – occupied with solving ownership disputes over slaves between the slaves and their masters (Major 2012: 8-9, 11, 45, 52, 73).

Major explains that “Indian slavery proves an anomalous chapter in the history of British abolitionism” (Major 2012: 8). The British differentiated between slavery exercised by the imperial and the local population. While the first was abolished gradually by laws banning first the slave trade and then the ownership of slaves, the latter was not interfered with even after ‘delegalisation’ (Major 2012: 8-9). Slavery





continued to be exercised by the local population in India beyond its abolition. The issue of non-interference by state agencies into the illegal employment of bonded labourers in India is a reoccurring issue, as the following paragraphs will show.

By analysing the regime of control implemented by the British, Mann addresses the issue of law enforcement and how the British reinforced their authority. He shows that the few vessels of the Royal Navy that were charged with controlling ships were by far not enough to cover the trade routes along the Indian Ocean. (The perception of this discrepancy between the vast area and little number of vessels by contemporaries is not discussed in Mann's analysis). Consequently, several sea trading nations did not adhere to the agreements on the abolition of the slave trade, without punishment: Ships of countries that had made agreements with the British to abolish the slave trade disguised their identity by travelling under the flags of countries that had not concluded these treaties with the British. Contrary to the expectation of a decline of the slave trade after its abolition, the Portuguese trade in slaves flourished in the 19th century (Mann 2012: 184). Apparently the British parliamentarians were highly disappointed by the disregard of the legal abolition of the slave trade and passed another law that sanctioned the violation of this law under the Slave Trade Felony Act of 1811 with much more severe punishments (*ibid.*: 163) – an Act which apparently also barely impacted the slave trade in the Indian Ocean.

Between the end of the 18th century and the early 19th century, the ban on slave trade and slavery by and for British merchants was similarly ineffective. Barely any of the relevant actors showed interest in giving effect to the regulations passed by the parliament in Britain. Mann argues that about 90 percent of the tax revenue of the colony was from land on which slaves worked – therefore the ban on the slave trade and slavery were not implemented to ensure that landowners were willing to pay their taxes. Similarly, the Act V of 1843, which delegalsed slavery in India without abolishing it, was constantly undermined by slave owners as well as magistrates of the British colonial administration, who did not intervene in the slave ownership of the princely states and noble households. This even continued after World War I and the adoption of the Convention of Saint-Germain-en-Laye, which clearly abolished the slave trade and slavery. The British colonial state distanced itself from this convention claiming it would not apply to the case of India, evidently trying to avoid conflict with the landowners in British India. He



mentions that slavery exists in some regions until today (Mann 2012: 193-94, 199-200, 203-5), but unfortunately he does not probe deeper into this issue.

Major and Mann show that, during colonial rule, the British parliament was quite eager to adopt anti-slavery and anti-slave trade laws, but that the institutions charged with implementation were neither interested, due to regional political interests, nor equipped well enough to fulfil their task. Obviously, the legislative end of the anti-slavery movement was diametrically disconnected from the implementation side. Additionally, the wide violation of the respective laws demonstrates that these laws were not accepted and probably were not in line with the values of the perpetrators who were more concerned about their economic interest than with the well-being of other humans or the adherence to the law. This situation could be analysed as reflecting the role of the state and its relation to its citizens and subjects, since the adherence to the law can be interpreted as a general non-acceptance of the central political authority and its legitimacy.

Like Major, who looked at the debates in the British Parliament, Mishra (2011) starts by looking at the development of a law banning bonded labour in independent India by looking into the discussions of the Constitutional Assembly debates. A bill and an enquiry commission with the aim to identify and ban bonded labour in India after independence had been proposed. This bill was withdrawn at the time and the committee was never engaged. Mishra fails to ask the interesting question as to why this was the case (Mishra 2011: 330). He goes on to mention that it was during the time of Emergency Rule, when democratic government was suspended, that the Bonded Labour System (Abolition) Bill was adopted. Again, he does not specify the reasons why this law, the first of its kind since independence was passed during an emergency and not by a democratic government. After all, international legislation had already been in place, starting with the Slavery Convention of the LN of 1926.

Kara also discusses the period from 1920 until 1975 during which several laws banning debt bondage in different regions in India were passed. He argues that those laws failed due to "a lack of adequate enforcement [and] the absence of severe penalties meant that the laws had a negligible effect" (Kara 2012: 191). Tiwari covers the policy development after independence (Ch. 3) and discusses the making of the Indian constitution and its provisions on bonded labour. He also follows



the policy making process of the Bonded Labour System (Abolition) Act in the 1970s and the provision for the Vigilance Committees. Looking into the draft and the discussions in the Lok Sabha, Tiwari shows that there was a political will at the Union level to adopt such legislation. He argues:

the Union Government can do very little, even if there are reports that the state governments are not enforcing the provisions of an Act [...]. This is exactly what happened in the case of the Bonded Labour System (Abolition) Act. (Tiwari 2011: 54)

Mishra argues that any law is a product of its time and is therefore influenced by the interests of the draftees – but the question remains: what were the interests that were, for instance, represented in the drafting of the constitution or the Bonded Labour System Abolition Act? None of the authors discussed here addresses these questions. Furthermore, Mishra observes that no legislations was passed and no action taken related to the implementation of international labour rights particularly by the State Governments and Union Territories. Mishra identifies several reasons: a lack of clarity and understanding of the law and a lack of political and administrative will to implement the law. Labour inspectors were untrained and failed to do their job appropriately; in several Vigilance Committees employers of bonded labourers were representatives of these committees (Mishra 2011: Ch. 16). It would be interesting to learn more about the particularistic interests and venues of influence that compromise the legislative and political process.

Mishra clearly recognises that the Indian state fails to fulfil its obligation to protect its citizens from bonded labour and enslavement. Thinking of alternatives, Mishra encourages voluntary organisations, trade unions and employer's organisations to take on the role to fight against bonded labour. He highlights only positive properties in voluntary organisations (Ch. 20-21) making the chapter lopsided in its focus. He forgets that there are several particularistic voluntary organisations, such as those of the Hindu nationalist kind. These do not necessarily promote the values of equality and the goal of equity for all Indian citizens.

Kara argues that the absence of the rule of law is “most foundational” (Kara 2012: 183) for the persistence of bonded labour and slavery in South Asia. But while many of the South Asian states fail to implement

these laws, some of them do not even have sufficient legal provisions for the ban of slavery and bonded labour. The most comprehensive foundation of laws regarding bonded labour is provided by India, followed by Pakistan and Nepal, while Bangladesh, Afghanistan and Sri Lanka still have not adopted sufficient laws that could serve as a basis for change (Kara 2012: 183-84).

Kara furthermore explains that it is not enough to have legal provisions because “apathy, corruption, and bureaucratic callousness”, disproportionately mild penalties provided by criminal laws and “a general social acceptance that it is reasonable to exploit the labour of a certain outcast segment of society” undermine the most comprehensive laws (Kara 2012: 186) – an issue which will be discussed in more detail below. This is a crucial observation that connects also to the failure of law enforcement of the ban of slavery and the slave trade under the British: As long as there is no interest in law enforcement institutions, respective laws will not be implemented, no matter how well these laws are formulated.

This becomes more clear with Kara’s further specifics: He observes for the case of India, as well as other South Asian states that the laws and orders of the Supreme Court are not implemented because of “corruption; an apathetic bureaucracy that refuses to implement and uphold the law; a befuddling inability of district magistrates and vigilance committees to identify, free, and rehabilitate bonded labourers, and an insufficient level of prosecutions of the crime” (Kara 2012: 201). He explains along the story of one bonded labourer that labourers often do not apply for funds for rehabilitation as provided by the Bonded Labour System (Abolition) Act because the employers collaborate with the bureaucrats and take the money themselves or even present their own bonded labourers to apply for those funds. Also the courts take years to decide on bonded labourer cases and the number of punitive sentences compared to the number of prosecutions under the law are marginal (Kara 2012: 202, 205).

Tiwari touches the issue of corruption peripherally: He mentions that employers of bonded labourers have been members of the Vigilance Committees but does not discuss how this substantially affected these committees’ performances (Tiwari 2011: 57-6). Similarly, he goes into much detail to explain the policy process of the Indian political system (ibid.: 43-5) without critically analysing it in regard to his research topic. A closer look at the political system and the set-up of



institutions would reveal opportunities and channels used by actors in the administration, political institutions, the police, the judiciary and amongst the employers to maintain the system of bonded labour. While corruption is mentioned by Tiwari and also Kara as a factor that prevents the fight against bonded labour, particularly policy makers would profit from a more thorough analysis of the connection of bonded labour and corruption and serve as useful guide for reforms. This conflict of interests within law enforcement institutions discussed by Tiwari and Kara, is also mentioned by Burra in Kak and Pati's edited volume. Writing about the case of child labour, Burra suggests, as a solution to the larger issue of corruption, to invite the public through the media to exercise pressure by naming and shaming respective employers (Burra 2012).

Tiwari also identifies in corruption one of the problems that is hindering the implementation of the Bonded Labour (Abolition) Act. But he enumerates some more points that are obstacles to the implementation of this act: First, there is the issue of identifying bonded labourers. For instance, several states that are responsible for the implementation of the law, denied the existence of bonded labour in their territory – the questions why Indian states choose to do so and why they get away with it are still to be analysed; second, in many cases Vigilance Committees had not been set up at all, or members of these committees were often slave holders themselves; and third, the law has been misinterpreted or misunderstood by law enforcement agents and the public (Tiwari 2011: Ch. 4).

There seems to be a discrepancy of law enforcement not only between the different Indian states, but also between rural and urban areas: For the case of child labour, Kumar argues in his chapter on "Distribution and Changes in Children's Economic Activities" in Kak and Pati (2012), that especially urban areas experience a decline of child labour due to better law enforcement, while the increase of child labour in different sectors in certain regions demonstrates that law enforcement agencies have failed there (Kumar 2012).

Tiwari also concludes that even though there have been incentives to adopt relevant legislation, implementation has been weak. He also identifies international legislation and supervisory mechanisms of the ILO and the UN. However, the enumerated list is incomplete: While he focuses on the ILO and mentions the UN, he does not address the institution of the Special Rapporteur on Contemporary Forms of Slavery (currently Gulnara Shahinian)<sup>6</sup>, leave alone the UN mechanism of the

Universal Periodic Review (UPR) which has been operational since 2008 and completed its first round in 2011.<sup>7</sup> Furthermore, the fact that India ratified the ILO Forced Labour Convention (C29) of 1930 in 1954 and the Abolition of Forced Labour Convention (C105) of 1957 in 2000, and the related question why India ratified these conventions with such a delay, do not attract his attention (Tiwari 2011: 3). According to the Indian Ministry of Labour and Employment, India ratifies conventions of the ILO after respective national laws have been brought into line with the international requirements.<sup>8</sup> An academic analysis for these particular conventions and why the process of legal adjustment took so long in India is still missing.

Under the British the different forces and interests in slavery, as well as the lack of effective control systems hindered the implementation of the anti-slavery laws. The situation in India since independence appears to be similar: Laws, such as the Indian Constitution and later the Bonded Labour System (Abolition) Act, banned effectively the employment of bonded labourers but diachronic interests at hand hinder their effective implementation. Tiwari identifies different interests at the Union and the state level that are manifested in some cases in the denial of the existence of bonded labour in some states of India (Tiwari 2011: Ch. 4). Corruption and overlapping interests – mentioned as indicators by Mishra – lead some Indian states failing to enforce laws and even deny their bonded labour issues in order to protect the interests of landowners who employ bonded labourers and who also occupy key political positions. The question as to why such strong regional discrepancies exist, however, remains open.

### **3. The Economic System and Slavery**

Mann emphasises that the slave trade and forms of slavery changed over time and continually adapted to the economic conditions or even influenced them. For him, slavery constitutes an integral feature of the developing capitalistic economic system (Mann 2012: 123). Kak and Pati concur by explaining that commonly historical factors as well as capitalism are not taken into account in explanations of the persistence of child labour. Capitalism, their argument, requires the accumulation of capital which perpetuates the need for cheap labour which in turn can be provided by children. The presence of unemployment among



the adult population and high rates of child labour at the same time indicate exploitative labour relations that are perpetuated by the capitalist market system and the integration of national markets into the international market. The competition on this market results in a race to the bottom (Kak & Pati 2012: 1).

Chopra (Ch. 2) in the edited volume of Kak and Pati (2012) interrogates the beginnings of capitalism during the industrial revolution in Britain. He explains that in India the total number of child workers is rising and argues that child labour is a "stable feature" (Chopra 2012: 23) of the Indian economy and will not change as long as the economic system remains unchanged. Under the current capitalist system, to undercut competition, workers are forced to produce more for less income, which contradicts labour rights. He argues that "the profit motive ensures the survival of the most horrible forms of exploitation" (Chopra 2012: 37). He theoretically proves the point of Kara, who also explains that bonded labour serves the purpose of increasing profits. To successfully abolish bonded labour and child labour, Chopra suggests legislative reforms and the actual implementation of legal sanctions, as well as social, political and economic change since "child labour is part of a package of social relations" (Chopra 2012: 39).

Looking at contemporary India, Kak explains how the growth of the Indian economy has been accompanied by a retreat of the state in providing welfare, a decline of jobs in the organised labour sector and a decline of wages in the unorganised labour sector. This development has led to a growth in child labour in India and an increase in poverty and insecurity for a vast part of the population. There were 733 million people living below 2 Dollars per day in the time period between 1993-94. This number grew to 836 million in 2004-05. Kak argues that the low impact of the growth of the GDP on child labour and poverty is due to the policies that the state of India implemented, slowing down public investment in rural infrastructure and capital expenditure (Kak 2012).

Related to the current economic system is globalisation which Mishra also problematises in his chapter "Globalization, State, and Market." He evaluates the impact of globalisation on employment, wages, income and prices, poverty, unionisation, occupational health and safety as being primarily negative. He argues that "[e]conomic outcomes are influenced more by market forces than by mediation through social actors, legal norms, and state intervention" (Mishra 2011: 308). While very detailed, this chapter lacks causative explanations and does not

really convince that globalisation has a worsening impact on the Indian economy and labour rights.<sup>9</sup>

The economic interest of the perpetrators leads to the logical conclusion that the costs for exploiting bonded and child labour must be raised by actually punishing its exercise not only on paper but by giving the laws effect. But solutions such as increasing penalties in terms of prison years or fines would not be effective. Reiner found in his study on police effectiveness that policing systems are technically not functional since law enforcing units such as the police, for instance, would never be able to be present at all places at all times to prevent a crime. The catch of law enforcement is that it is a self-enforcing system with people generally adhering to the law (Reiner 2010: xiii, 19, 24-5). Therefore, if effective implementation and enforcement were not to go along with social change in the respective societies, these measures are not likely to be effective. As already mentioned in the discussion, social status and hierarchy of the affected workers seems to be an important element that needs to be looked at more closely.

Market conditions do explain to a certain extent the economic imperatives that might result in the enslavement of people or facilitate their enslavement. But as the historical volumes of Mann and Major, as well as the historical introductions of Kara and Mishra, show that slavery is older than our economic system or the globalisation of the 20th and 21st century. Therefore, while it is interesting to look at the economic system level, a change of this system will not necessarily entail an end of slavery. For a more thorough reading on the economic system and the persistence of slavery I recommend Tom Brass' article "Capitalist Unfree Labour: A Contradiction?" (2009) and his book *Towards a Comparative Political Economy of Unfree Labour* (1999). Economic gains are not the only facilitating factors that contribute to the persistence of bonded labour and slavery; social relations need to be taken into account as well.

#### 4. The Role of Social Relations

Mann argues that there was a global consensus on the legitimacy of slavery, as reflected, for example, in the work of Grotius between the late 16th and mid-17th century. That the idea of the enlightened principle of equality did not comprise women and black people, has also to be kept in mind, as discussed earlier (Mann 2012: 112). But the ignorance of the





well-being of other people by those who employed and exploited slaves goes even further and is and was often coupled with serious violations of the physical integrity of the enslaved people: Major highlights the cases of brutality and homicide in the chastising of slaves by their owners, even though these might not have been common incidences. This section of her book makes clear that severe punishments were very much a part of slavery in South Asia, which therefore in this sense was not different from the brutal regimes that existed on the plantations in the Americas (Major 2012: 101-2). Similarly, Mishra and Kara give examples of the abuse of bonded labourers throughout their volumes.

Mishra is also one of the authors who brings up the question of human agency in slavery: the understanding that human individuals are actively shaping the world in which they live and make conscious choices to act in one or the other way. Therefore, he recognises that individual choices may lead to the suffering of other individuals as slaves or forced labourers. Mishra opens the perspective to the role of the perpetrators and is staggered by the cruelty humans are able to exercise upon each other. But he, nevertheless, fails to provide a discussion on the question of what interests the perpetrators have – beyond economic interests – that lead them to make choices that are against the physical integrity and well-being of other individuals whose pain they often cause and witness directly (Mishra 2011: 5-6). These acts of brutality against slaves and bonded labourers, as well as child labourers, exemplify that there was and is in many cases no respect towards the workers, who are in the case of present-day India primarily members of Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Castes (OBC). Kara concludes that these violations amount to the denial of the humanity of Dalits by a large part of society. Similarly, as Rao (2012) explains in her essay on child labour and tourism in the edition of Kak and Pati (2012), social acceptance perpetuates the existence of child labour. Consequently, as long as it is socially acceptable to enslave human beings, violate their rights and harm their bodies, law enforcement solely through policing systems or a change of the economic system, will remain unsuccessful.

Mishra focuses on and links slavery systems in India to hierarchical social relationships in Indian society. As mentioned, most bonded labourers in India belong to the SCs, STs and OBCs and have in general limited employment opportunities and earnings (Mishra 2011: 29, 36, 38-9). He identifies caste as the root cause for several unjust



consequences: It hinders people from developing according to their needs, wishes and skills, and reduces their choice of occupations drastically. Caste excludes permanently members of lower castes or untouchables from society and they are forced to practice occupations and accept conditions without a choice. This is still the case even though there are reservations for OBCs and SCs to access seats in the House of the People, as well as Legislative Assemblies of the Indian states, local government institutions (Mishra 2011: 132-3). On the individual level of citizens, Mishra also addresses the sheer disinterest of the employers in the crime or cruelty they are committing. He observes that human bondage is based on inequality among people in society, and that these structures in the long run "make the development process unsustainable" (Mishra 2011: 6).

Not only in the past, but also in the present, forms of slavery reflect upon and serve a social function in the society in which they occur. In her chapter "Imagined Slaveries" Major (2012: 233-320) provides an interpretation of the function slavery fulfilled for the colonial power: On the one side, forms of slavery in India were not acknowledged as such. Consequently, goods produced by Indian slave labour were offered as a morally superior choice against the products from plantations of the Americas. On the other side, hierarchical structures of the colonised society that facilitated the exploitation of labourers served to legitimise colonial and missionary efforts. Sen (2012) in Kak and Pati's volume also argues in favour of a social function of child labour: On the Andaman Islands the British implemented child labour as a tool to civilise the indigenous population. Such an analysis of the case of slavery and bonded labour in India today would be useful to deepen our understanding of its persistence and offer a new perspective on that matter.

Slavery, bonded and child labour in South Asia remain pressing issues and they are serious indicators for the realisation of human rights and the claim of a democratic state governed by the rule of law. Social relations in India, including caste, social hierarchy and how child workers and bonded labourers are seen and treated need to be taken into account. This will highlight the deeper implications of slavery and bonded labour not only for the society of India, but also its political system and democratic and liberal claim to grant protection to all its citizens equally. The presence of slavery raises serious concerns about



the continuing success of India's democratic state (Mitra 2011: 214) and its devotion to human rights.

## 5. Future Areas of Research

The six books reviewed highlight the role of the law enforcement institutions and demonstrate how they have failed to implement effectively to date the right to be free from enslavement and also the protection of children from child labour. The different volumes suggest different ideas as to how to define slavery and underline the importance of a definition of slavery for the implementation of respective laws. Of particular interest is also the role of the economic system in perpetuating slavery and bonded labour as well as social relations.

Even though these books cover the time from 1843 until 2010, there is rather little information on the discourses and implementation of anti-slavery laws in India in public and political debate. For instance, Mishra discusses briefly the attempt to implement an enquiry commission and a drafted bill soon after the independence of India to ban slavery, but he neither reflects the arguments given by the members of the competent authorities on that matter, nor does he discuss the public debate. He also does not explain why the enquiry commission, as well as the bill, have not been adopted. Similarly, why the Bonded Labour (Abolition) Act of 1976 has been promoted and adopted during Emergency Rule under Indira Gandhi, but not under democratic rule, is a question that remains to be answered.

Tiwari fills parts of this gap by reiterating the debates on the drafting of the Bonded Labour System (Abolition) Act. He demonstrates that there was political will but the different forces influencing the draft remain uncovered. In the discussion he seems almost surprised by the fact that there is so much visible effort in the central political process, but so little in the states that have to actually implement the measures. The question of political interests and pressures from different parts of the state, be it the legislative, the judiciary or the executive, need to be analysed in more detail in future studies.

Little work has been done on India's post-independence integration into international institutions such as the Economic and Social Council (ECOSOC) that monitors slavery and forced labour. Nor have the ILO, the Human Rights Council and its successor organisation, the Human

Rights Committee and its mechanism the Universal Periodic Review, or, at the regional level, the ASEAN Intergovernmental Commission on Human Rights, been sufficiently examined. The same goes for the interaction and impact of such international collaboration. Therefore, an evaluation of the effect of international involvement on the protection of human rights, namely the right to be free from slavery and child labour in the case of India has not been undertaken – yet.

### Reviewed Works

Kak, Shakti; Pati, Biswamoy (eds.). 2012. *Enslaved Innocence. Child Labour in South Asia*. Delhi: Primus Books, 338 pp., ISBN: 938060730X, \$69.95.

Kara, Siddharth. 2012. *Bonded Labour. Tackling the System of Slavery in South Asia*. New York: Columbia University Press, 314 pp., ISBN: 0231158483, €23.99.

Major, Andrea. 2012. *Slavery, Abolitionism and Empire in India, 1772-1843*. Liverpool: Liverpool University Press, 361 pp., ISBN: 1846317584, €94.99.

Mann, Michael. 2012. *Sahibs, Sklaven und Soldaten. Geschichte des Menschenhandels rund um den Indischen Ozean*. Darmstadt: Wissenschaftliche Buchgesellschaft, 254 pp., ISBN: 3805343639, €29.90.

Mishra, Lakshmidhar. 2011. *Human Bondage. Tracing its Roots in India*. New Delhi, India: Thousand Oaks, California: Sage Publications, 487 pp., ISBN: 8132105605, €47.99.

Tiwari, Ramesh Kumar. 2011. *Human Rights and Law – Bonded Labour in India*. New Delhi: Cambridge University Press, 174 pp., ISBN: 9788175967465, €30.99.



## Endnotes

- 1 Kara is an investigative researcher, fellow on Human Trafficking at the Kennedy School of Government, University of Harvard. Mishra worked in the field with the ILO in its Regional Office for Asia and the Pacific (ROAP), the Human Rights Commission of India and the Ministry of Labour, investigating Commissioner to the Supreme Court and was Ombudsman, all between the 1980s and the 2000s. He was furthermore Ombudsman and Union Labour Secretary. Tiwari is former Professor and member of the editorial board of the Indian Institute of Public Administration, New Delhi. The 18 authors in the edition of Kak and Pati are scholars, as well as practitioners. Major is Associate Professor in Wider World History at the University of Leeds, while Mann is Professor at the Department of South Asia Studies at Humboldt University of Berlin.
- 2 Several international agreements are in place, including the League of Nations Slavery Convention of 1926, the Forced Labour Convention of 1930, the ILO Abolition of Forced Labour Convention, 1957, and the ILO Worst Forms of Child Labor Convention of 1999. The United Nations (UN) adopted the Universal Declaration of Human Rights (UDHR) of 1948, which bans slavery in its fourth Article. Additionally the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) implicitly and explicitly provide for the protection from enslavement and slave trade. The League of Nations Slavery Convention was complemented by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1957.
- 3 Plant, Roger. 2008. Forced Labor: Critical Issues For US Business Leaders: Background paper prepared for conference on 'Engaging Business: Addressing Forced Labor', Atlanta, Georgia. 20. Feb, 2008, [http://www.ilo.org/empent/areas/business-helpdesk/WCMS\\_092176/lang--en/index.htm](http://www.ilo.org/empent/areas/business-helpdesk/WCMS_092176/lang--en/index.htm) [retrieved 18.11.13].
- 4 This does not necessarily reflect an increase of cases of slavery but refined statistical methods, available data and definition of the matter.
- 5 Chattel slavery can be described as follows: "They [chattel

slaves] can be bought and sold, given away, inherited, paid as tax or tribute, and used for any purpose their owners wish. They have no separate social identity and no political rights. They cannot control or profit from their own labor. They have no right to marry, but if they are able to do so, they cannot choose their spouses or control their children. They are totally dependent upon their owners, who are usually private individuals. Moreover, their bondage is life-long and hereditary.” (Miers 2000: 714-5).

- 6 Office of the High Commissioner on Human Rights (OHCHR). Special Rapporteur on Contemporary Forms of Slavery, <http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx> [retrieved 26.07.13].
- 7 OHCHR: Universal Periodic Review, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> [retrieved 21.01.13].
- 8 Ministry of Labour and Employment, India: Notes on the List of Subjects selected by Parliamentary Standing Committee on Labour, p. 1, <http://labour.nic.in/upload/uploadfiles/files/Divisions/coordination/Final%20Notes.pdf> [retrieved 27.02.14].
- 9 See Mazumdar, Dipak & Sarkar, Sandip. 2008. *Globalization, Labor Markets and Inequality in India*. Routledge. for an in depth analysis of the issue of globalisation, poverty and labour. Also see Marsh et al. (2006) who offer a theoretical introductory reading in the chapter on “Globalization and the State”.

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