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**LEGISLATIVE REDRESS  
RATHER THAN PROGRESS ?  
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in Colonial India  
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# **Legislative Redress Rather Than Progress ?**

## **From Slavery to Bondage in Colonial India**

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# Legislative Redress Rather Than Progress? From Slavery to Bondage in Colonial India\*

by Stefan Tetzlaff

## Abstract in English

Contemporary historiography on colonial rule in India is partly inclined to discuss changes and intensifications of numerous social phenomena as consequence of direct or indirect British intervention. According to their intellectual frameworks, authors emphasize different forms of intervention ranging from colonial policy making (for economical reasons) to conscious “social engineering” and action as a result of cultural misunderstanding.

For the case of slavery in colonial India, Gyan Prakash argues in his book *Bonded Histories* that the British – by abolishing slavery in 1843 – presented themselves as a force of reason and progress, when in reality they refashioned slavery as debt-bondage. Focusing on bonded labourers in south Bihar, Prakash explains the changing relationship between them and their landlords in the context of the colonial administration's recognition, regulation and de-recognition of slavery. Orientalist scholars and colonial officials in this sense made efforts to discover and construct slavery as embedded in indigenous laws, practices and texts, which could hence constitute unfreedom as the ‘Other’ of freedom. This eventually led to the creation of an indigenous ‘tradition’ of slavery, while abolition came as a means to make it formally non existent. Yet far from being removed, slavery was reconstituted as voluntarily entered bondage, with the agrarian relations severely altered and the definitions and terms of slavery made suitable to market needs and court proceedings.

This essay gives an account of Prakash’s most important arguments. Through an assessment of the questions at stake and by juxtaposing differing views of other scholars, it argues that a historiography ‘from slavery to bondage’ in India needs a more outweighed view. We might emphasize less theories of ideology and construction, instead have a wider spatial approach and consider to a greater extent the role of the labour market.

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## **Abstract auf Deutsch**

Zeitgenössische Geschichtsschreibung zur Kolonialherrschaft in Indien tendiert teilweise dazu, Wandlungen und Intensivierungen zahlreicher Sozialphänomene als Konsequenz direkter oder indirekter britischer Intervention zu behandeln. Je nach intellektueller Auffassung heben Autoren unterschiedliche Interventionsformen hervor, die von kolonialer Gesetzgebung über bewusste Sozialmanipulation bis hin zu Handlungen aufgrund kultureller Missverständnisse reichen.

Für den Fall von Sklaverei im kolonialen Indien argumentiert Gyan Prakash in seinem Buch *Bonded Histories*, dass sich die Briten durch Abschaffung der Sklaverei im Jahre 1843 als eine Kraft der Vernunft und des Fortschritts darstellten, während sie in realitas Sklaverei in Schuldknechtschaft umformulierten. Mit Fokus auf den Süden Bihars erklärt Prakash die sich wandelnden Beziehungen von Schuldknechten und Grundbesitzern im Zusammenhang von Erkennung, Regulierung und Aberkennung durch die Kolonialverwaltung. Gelehrte wie auch Kolonialbeamte bemühten sich in diesem Sinne, Sklaverei als inhärent in einheimischen Gesetzen, Praktiken und Texten zu ‚entdecken‘, was dann wiederum ‚Unfreiheit‘ als das ‚Andere‘ von Freiheit konstituieren konnte.

Dies führte schlussendlich zur Schaffung einer indigenen ‚Tradition‘ während die Abschaffung der Sklaverei als Mittel benutzt wurde, diese als formell nicht existent zu deklarieren. Jedoch war Sklaverei längst nicht abgeschafft, sondern durch ‚freiwillige‘ Knechtschaft quasi wiederhergestellt.

Dieser Artikel beschreibt die wichtigsten Argumente von Prakash. Durch eine Untersuchung der Fragestellungen und eine Gegenüberstellung von abweichenden Meinungen anderer Historiker argumentiere ich, dass eine Geschichtsschreibung von ‚Sklaverei zu Schuldknechtschaft‘ in Indien einer ausgewogenen Analyse bedarf. Diese sollte weniger auf Theorien zu Ideologie und Konstruktion basieren, sondern stattdessen einen größeren räumlichen Ansatz wählen sowie die Rolle des Arbeitsmarktes in höherem Maße berücksichtigen.

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## Discursive Formations: Slavery in the Indian Context

“There are at the present moment many persons to be met with who, actuated no doubt by an honest zeal in what they believe to be the cause of humanity, are exerting themselves throughout the sphere of their influence to discourage the use of West India sugar, because it is made by Slaves – and recommending as a substitute the sugar of the East Indies, ‘Because that,’ as they allege, ‘is the produce of free labour.’”<sup>1</sup>

The above lines signify the position of a group of British abolitionists in the 1830s, possibly the British India Society.<sup>2</sup> Under the impression that free men rather than slaves produced sugar, they pleaded for a change to the import of sugar from British India at the time.<sup>3</sup> Saintsbury, in his following assessment, strongly opposed the view of a free-grown sugar. He cited several ‘authoritative’ works of contemporary Orientalist scholars and colonial officials in order to describe slavery, among other things, as an integral part of the Hindu caste system, as an institutionalized form of treating lower castes as ‘sub-human’. Slavery was furthermore depicted as hereditary, received from one generation to another, as existent in India from time immemorial and as being “beyond imagination deplorable.”<sup>4</sup> Saintsbury finally asserted that “throughout India, Slavery prevails: India is therefore a slave territory, as Jamaica is a slave colony.”<sup>5</sup>

This is how the discourse on a particular type of “Indian Slavery” unfolded. The coordinates, variables and actors surrounding the debates included many. There were abolitionists, whose position on it gradually evolved; secondly, there were Orientalist scholars and Judicials, who claimed authority on the matter as they found slavery in the traditions as well as in religious books of Hindus and Muslims and were often supported by Pundits and Muftis at courts. Finally, we have the indigenous society and its stakeholders – in this case slaves and their masters. Under the influence of the French and the American Revolution, abolitionists pushed forward the universal right of all mankind to live freely and not in bondage. Orientalist scholars and officials of the British East India Company (BEIC) constantly reviewed colonial policy and attempted to reconcile it with the promise

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1 Cf. George Saintsbury, *East India Slavery*. London 1829, p. 3.

2 Temperley describes the British India Society: it was “a body, largely by abolitionists, in 1839 with a view to encouraging the development of free-grown East Indian cotton and sugar as substitutes for the slave-grown New World varieties (...)”. Cf. Howard Temperley, ‘The Delegalization of Slavery in British India’. In: Ibid. (Ed.), *After Slavery. Emancipation and its Discontents*. (London; Portland, OR: Frank Cass, 2000), p. 173.

3 It is interesting to note, that abolitionists only at a later stage turned against their former views and demanded the abolition of slavery in India.

4 Cf. Saintsbury, op. cit. Among the cited works are for example Grant’s “State of Society among the Asiatic Subjects of Great Britain”, the “Gentoo Code” translated by Halhed, “Slavery in India: Return to an Address of the honourable House of Commons, dated 13<sup>th</sup> April 1826” and further official works of the British Government in India.

5 Saintsbury, op. cit., p. 32.

to not interfere with indigenous society as long as Company interests were not entangled. And finally, members of indigenous society with most at stake: the landlords, who depended on slavery and forced labour.

If there was slavery or bonded labour in India, and if yes, whether one should give in to the abolitionists' demands or continue the institution – these were the central questions of the debate. At the very heart of it were quarrels between those who defended a “culturally sensitive” approach to legislation in India and those who advocated a universal abolition of slavery. Today's historiography of the subject encompasses these concerns of assessing slavery and bondage in India and the processes that were at stake for those involved. Most historians take this quarrel between defenders and adversaries of slavery as their departing point. But they differ greatly in their conclusions and final reassessments of slavery and related processes.

### **Reformist Propaganda and the Perpetuation of Slavery: Prakash's argument**

Among the historiography of slavery and bondage in India lies the work of Gyan Prakash, who writes on the cultural and ideological frameworks which defined slavery.<sup>6</sup> First in his book *Bonded Histories* and then in succeeding articles, he firmly holds the “emergence of slavery and bondage in colonial India [...] [as] inseparable from the discourse of modernity.”<sup>7</sup> Thus, central to his study is the interconnectedness of two domains: firstly, the “discourse of freedom” (and the “discourse of slavery”) that came into existence due to post-Enlightenment reasoning in the West and subsequently informed the psyche of colonialism; secondly, the gradual change of slavery in India itself. Synthesizing both domains, he asserts that the abolition of slavery in India in 1843 applauded the British government's portrait as a force of reason and progress, while it actually refashioned slavery and turned it into debt-bondage.

In form of a detailed case study, Prakash uses local oral traditions and written texts to give a lucid account of the changing fate of the *kamias*, a group of agricultural labourers, who were largely members of a larger outcaste *Bhuniya* community in the Gaya district of south Bihar. These *kamias* had long-term relations to landlords (*maliks*), who mostly belonged to upper castes. In fact, this *kamia-malik* tie was shaped like a patron-client relationship as is evident for example through the institution of *kamiauti*, a transaction of grain, money and a plot of land given to the *kamia* by the landlord if the former's son married. Prakash

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6 These works are: *Bonded Histories: Genealogies of labour servitude in colonial India*. (Cambridge, Cambridge University Press 1990); ‘Terms of Servitude: The Colonial Discourse on Slavery and Bondage in India’. In: Martin A. Klein (Ed.), *Breaking the Chains: Slavery, Bondage, and Emancipation in Modern Africa and Asia*. (University of Wisconsin Press, 1993); ‘Colonialism, Capitalism and the discourse of freedom’. *International Review of Social History*, 41 (Supplement), 1996, pp. 9-25.

7 Cf. Prakash, op. cit. (1996), p. 13.

therefore notes, “these relations were structured as dependent ties that represented the landlord as a munificent patron and the labourer as his dependent subject.”<sup>8</sup>

How exactly then did this process of ‘refashioning’ take place according to Prakash? The transformation of the *kamias* was due to a number of steps that the British undertook and evolved around the recognition, regulation and de-recognition, and substitution of other words for slavery. Mainly two processes were at work. With the peculiar “Self-Other Opposition”<sup>9</sup> playing into colonial rule, British also described and constituted unfreedom, i.e. slavery, as the “Other” of freedom. Prakash puts it this way:

“After all, it was the colonial discourse that had both constituted India as an other and had found in the opposition to that otherness the affirmation of its self – a self that professed its identity in freedom and was constituted in antagonism to the unfreedom that India was seen to cradle.”<sup>10</sup>

At the same time, colonial rule by way of introducing laws or doing nothing altered the economical relationships of its subject people so that “what the British actually did [...] was abolish their own creations.”<sup>11</sup> In the very first place, Prakash dwells on the general process of the recognition and regulation of slavery. This transformation of the *kamias* begins in the late 18<sup>th</sup> century. In their pledge to uphold Indian traditions, the British – according to Prakash – first had to discover and invent these traditions. As Orientalist scholars and company officials set out on this discovery they alleged that slavery had a base in indigenous laws. One of the first steps in the recognition of slavery was a declaration in 1774 of the Provincial Council at Patna, stating that slavery should not be hereditary but life-long. It also included one statement about a particular form of slavery according to which it was “almost as if no bondage existed.”<sup>12</sup> With this, slavery was put under the category of ‘unfreedom’ and more to this; the only antonym of it was bondage. Another major landmark in the recognition of slavery was the Orientalist’s interpretation of classical texts, who found the indigenous basis of slavery. One example of it is H.T. Colebrooke’s *Digest of Hindu Law on Contracts and Successions* (1801), which essentially led the British to assume inherent classifications of polluted and non-polluted labour to certain groups, with corresponding categories for unfree and free. A number of further inquiries aggravated the discovery and construction of slavery. In 1808, a Magistrate from Bundelkhand sent a letter to the court in Calcutta in which he denounced the existence of slavery in India. Following this, judges addressed a series of questions to pundits and muftis attached to the court whose replies again pointed to indigenous existence of slavery. It essentially reaffirmed and furthered the process of constructing indigenous laws on slavery. Additionally, Prakash

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8 Ibid., p. 12.

9 Cf. Prakash, op. cit. (1990), p. 143.

10 Cf. Prakash, op. cit. (1993), p. 131

11 Ibid.

12 Ibid., p. 13.



points to another important facet of the intervention of the colonial state. Until the abolition of slavery in India in 1843, the British tolerated the alleged indigenous form of slavery while they applied their own ‘humane’ and ‘just’ laws where Hindu and Muslim law did not exist. While aforesaid processes eventually led to the creation of an indigenous ‘tradition’ of slavery, the abolition of slavery came as a means to make it formally non-existent in India.

However, slavery did not vanish but was reconstituted – in the case of *kamias* – as “voluntarily entered” bondage. As Prakash shows in a second move, the meaning of *kamiauti* changed under the onslaught of a changing notion of agrarian relations. *Kamiauti* was now seen as a “loan” given by the *malik* to the *kamia*, it was not any longer seen as an advance. As Prakash asserts, the most important device for the changing notion of *kamiauti* was the Abolition Act. Thus, he concludes:

“For it was only when, notwithstanding indigenous laws, slavery was outlawed in 1843 that, emerging from the shadow of slavery, the money and other things given to the *kamias* could become a loan, and *kamia-malik* relations could become debt-bondage.”<sup>13</sup>

After the abolition of slavery in 1843, the *kamias* had to sign contracts for the raising of loans in which they pleaded to pay back a given sum or remain in bondage until they had done so. With these contracts essentially establishing a debtor-creditor relation, landlords could proceed to the court in case the labourer did not fulfill his plea and demand their right. It thus holds true that “once the juridical gaze had fixed on things given by the landlords to labourers, the power of things could be represented in terms of debt-bondage.”<sup>14</sup>

This second process was that of severely altering the economical relations between *kamia* and *malik*, thus changing the transaction of *kamiauti* and the very fundamentals on which it was based and recasting it as “voluntary” contracts of otherwise free persons. Different from the recognition and discovery of *kamiauti*, Prakash suggests another very important step inherent in the documentation of *kamia-malik* relations. He states that

“the beginning of *kamiauti*’s documentation in the early nineteenth century initiated its objectification in a body of records that (...) revealed the history of *kamia-malik* relations in terms of transactions of things.”<sup>15</sup>

In this case, he points to the Surveys undertaken by Francis Buchanan in south Bihar from 1809-12 in which Buchanan stated regional and also structural variations in the actual process of *kamiauti*. It furthermore suggested that the money given to *kamias* had varied effects. However, these variations of *kamiauti* were not included into *The Report from the India Law Commissioners* in 1841. Rather than acknowledging these variations, the

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13 Cf. Prakash, op. cit. (1990), p. 150.

14 Ibid.

15 Ibid., p. 151.

Commissioners' conception "predisposed the colonial discourse to search for diversity in terms of the degree of unfreedom."<sup>16</sup> Thus, all inconsistencies in the debt-bondage view were suppressed and arranged in variations in terms of the length of servitude-variation that it explained by referring to the terms of formal contracts. Sweeping away these differences meant that the Report sought "the explanation for the kamias' servitude in transactions of money, and saw variation only in terms of the length of servitude."<sup>17</sup> With the important change that after slavery had been abolished in 1843, "all kamia-malik disputes were brought to district courts as violations of creditor-debtor contracts"<sup>18</sup> the positions of *kamias* had been significantly altered, and probably worsened compared to pre-colonial times.

Only recognizing in the beginning of the 20<sup>th</sup> century that *kamias* were actually treated as debt-serfs and their condition similar to slavery, the government tried to attack their own 'creature', again with laws. The *Bihar and Orissa Kamianti Agreement Act* issued in 1920 ruled for example that the labour of one year was sufficient to repay the advance plus interest on it, thus making bondage exceeding this duration illegal. However, the fact that the law did not achieve the suspension of *kamia's* bondage further aggravated to the view of bondage being "so deeply rooted in Indian otherness that no law could change it."<sup>19</sup> Finally, Prakash asserts "that the colonial complicity in the constitution of the *kamias* had come full circle to its early nineteenth-century beginnings when [...] [colonial officials] had spoken of the Indian otherness."<sup>20</sup> With the failing of these laws, it was concluded that *kamias* "lacked the desire for freedom."<sup>21</sup>

In yet another part of his book, Prakash describes the way in which the bondage system unleashed over larger parts of society as well as territory. It was for example possible even for low-caste rich peasants to hire *kamias* thus signifying a separation of labour relations from traditional ritual hierarchy. Even more groups were subjugated into debt-bondage and the system expanded into other areas of south Bihar and Chota Nagpur. Additionally, Prakash shows how the unleashing of the bondage system led to the fact that agricultural production increasingly relied on growing labour exploitation, a fact we can observe still today with the grand-scale supply of cheap labour in both rural and urban areas.

Finally, assessing Prakash's work we find that he disputes the idea that the British "found" slavery in India, while he is confident that in seeking to abolish it, they projected themselves as liberators. In this sense, the moves towards abolition were just rhetoric, part

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16 Ibid., p. 154.

17 Ibid., p. 155.

18 Ibid., p. 156.

19 Ibid., p. 160.

20 Ibid., p. 161.

21 Ibid., p. 182.

and parcel of the broader colonial ideological and cultural project. Slavery was therefore reconstructed and recast as debt-bondage, in language that was agreeable to court proceedings.

### Other Approaches to Conceptualizing Indian Slavery

Yet, other scholars view the existence of slavery in India under colonial rule in a different manner. In her article on the evolution of the Abolition Act, Cassels sees over the whole span from the end of 18<sup>th</sup> century to the legislation of 1843 – for more than 70 years – evangelicals and traditionalists quarreling about the right steps to be taken. Thus, she points to the fact that the first attempt of addressing slavery was already done by the Law Commission through criminal law with the Draft Penal Code of 1837.<sup>22</sup> This draft included for example the paragraph that “no act falling under the definition of an offence should be exempted from punishment because it is committed by a master.”<sup>23</sup> Be it this draft or any other attempt to regulate slavery, for her the adversarial relationship between evangelicals and traditionalists was important to shape legislation and was finally responsible for the delay of laws. Thus, Cassels dismisses the view of the company’s law making as a “colonial exercise”.<sup>24</sup> While she acknowledges the fact that the debate had been grounded on superficial assumptions of the law-makers, she says on the contrary that “it is impossible to argue that the final legislation was in essence colonial, cynical or exploitative.”<sup>25</sup> Instead she sees Orientalist scholars and colonial officials in this process acting on behalf of their experience.<sup>26</sup>

In a way, Tanika Sarkar’s assessment of slavery and bondage in India has a different, yet supporting view of Prakash’s.<sup>27</sup> Sarkar acknowledges the fact that “a significant use of forced labour has marked the entire spectrum of production in India at all historical periods, though its forms, incidence and importance varied over time and space”<sup>28</sup>, therewith rejecting in a way Prakash’s assertion that slavery wholly was a colonial invention. She disagrees with his view in a number of further instances, for example by pointing to South India where already in pre-colonial times a “caste-based sizeable servile labour”<sup>29</sup>

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22 Cf. Nancy Cassels, ‘Social Legislation under the Company Raj: The Abolition of Slavery Act V 1843’. *South Asia*, New Series, Vol. XI, 1, 1988.

23 Cf. Radhika Singha, *A Despotism of Law. Crime and Justice in Early Colonial India*. (Oxford University Press, 2000), p. 162.

24 Cf. Cassels, op. cit., p. 62.

25 Ibid., p. 62.

26 Ibid., p. 63.

27 Cf. Tanika Sarkar, ‘Bondage in the colonial context’. In: U. Patnaik and M. Dingwaney (Eds.), *Chains of servitude: Bondage and Slavery in India*. (Delhi, Sangam Books 1985.)

28 Ibid., p. 97.

29 Ibid., p. 117.

existed. Additionally, she asserts that a notion of a dying out of praedial slavery by the early 19<sup>th</sup> century “is based on contemporary British reports arguing against the abolition of slavery, and rather unduly minimising its incidence to strengthen their argument.”<sup>30</sup> Furthermore, she sees that the Abolition Act of 1843 did not signify “a remarkable departure in labour relations” and points on the contrary to the fact that the economic changes within colonialism “led to the development of a huge sector of agricultural proletariat, very often in bondage.”<sup>31</sup>

While acknowledging the fact of slavery being existent in India in pre-colonial times, Sarkar does not diminish the role, which British rule played in reinforcing forced labour. Here it is important to note the fact that other laws like the Workmen’s Breach of Contract Act were already installed in 1837, while slavery was abolished only in 1843. What can be made of this fact? Speaking in Prakash’s terms this would have meant to first establish other means and devices than slavery in order to further ensure the existence and the supply of forced labour. And similarly then Sarkar argues that under the impression of possible negative effects on the group of slave-owners and “their political loyalty and revenue paying capacity”<sup>32</sup> the British policy was to support a particular form of slavery. It was thus a highly selective continuity in favour of particular trends.

## Conclusion

Evaluating Prakash’s work, one has to admit that it is argued well and rich and dense in information about *kamias* in south Bihar. Nevertheless, because of the regional and *Bhuniya*-centered scope of this study it can rightly be questioned and has to be shown only in future writing on the topic whether the conclusions hold true for the whole of India. Furthermore, it is certain that some of the evidence on testimonies of those, who informed British views on slavery, such as *kazis* and *muftis*, does not necessarily speak for or confirm Prakash’s conclusion that the construction of slavery and its abolition was all rhetoric, lacking any material substance. As Cassels has shown in her article, it has to be emphasized that not all abolitionist debate can be dismissed as ideology. And as Sarkar shows in a way, it was necessary for British rule to rework and fit imperial interests into ideologically acceptable forms of labour. This means, that the British felt compelled to adhere to ideals of egalitarianism, while it was the market, which provided the space and the need for a constant supply of cheap labour.

What remains of the history of slavery and bondage in today’s India? If we look at the current state of affairs one has to acknowledge the fact that despite the 1976 legislation against bonded labour it continues to exist to a great extent in rural areas. The majority of

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30 Ibid., p. 117.

31 Ibid., p. 116 f.

32 Ibid., p. 117.

bonded labourers today are Dalits. Although the state has formally abolished debt-bondage (through legislations and laws similar to those of the colonial government), it continues to be widely practiced in small-scale industries, used in domestic help and in agricultural work. A vast distance once again exists in the state's professed abolition of slavery and its pervasive practice in our present.

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