

## Labor Force: May a Person Be Compelled to Work?

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*Adapted from the writings of Dayan Yitzhak Grossman*

The Associated Press reports:

More than 150 years after slaves were freed in the U.S., voters in five states will soon decide whether to close loopholes that led to the proliferation of a different form of slavery—forced labor by people convicted of certain crimes.

None of the proposals would force immediate changes inside the states' prisons, though they could lead to legal challenges related to how they use prison labor, a lasting imprint of slavery's legacy on the entire United States.

The effort is part of a national push to amend the 13th Amendment to the U.S. Constitution that banned enslavement or involuntary servitude except as a form of criminal punishment. That exception has long permitted the exploitation of labor by convicted felons...

Nearly 20 states have constitutions that include language permitting slavery and involuntary servitude as criminal punishments. In 2018, Colorado was the first to remove the language from its founding frameworks by ballot measure, followed by Nebraska and Utah two years later.

This November, versions of the question go before voters in Alabama, Louisiana, Oregon, Tennessee, and Vermont.

[Memphis state senator Raumesh] Akbari also had to work with the state Department of Correction to ensure that inmate labor wouldn't be prohibited under her proposal.

The proposed language going before Tennessean voters more clearly distinguishes between the two: "Slavery and involuntary servitude are forever prohibited. Nothing in this section shall prohibit an inmate from working when the inmate has been duly convicted of a crime."

"We understand that those who are incarcerated cannot be forced to work without pay, but we should not create a situation where they won't be able to work at all," Akbari said.[1]

The proposed Tennessee language is rather confusing: Does it allow an inmate to be compelled to work (for pay) against his will or not? To compel work, even for pay, clearly constitutes involuntary servitude, which according to the first sentence is forever prohibited. But the second sentence insists that the law does not prohibit an inmate from working, which seems to mean that the state may indeed compel him to work against his will. (If the provision is limited to voluntary work, it would be quite superfluous: Why would anyone think it would be illegal for an inmate to work voluntarily?)

In this article and a follow-up, we consider various Torah perspectives on involuntary servitude of Jews in various circumstances.

### *Eved ivri*

The classic scenario where the Torah unequivocally allows the imposition of involuntary servitude is that of a thief who cannot repay what he has stolen:

He shall make restitution; if he has nothing, he shall be sold for his theft.[2]

This does not apply today, because it only does when the law of *yoveil* is in effect.[3]

### An insolvent debtor

There is a much-discussed position of Rabeinu Tam that an insolvent debtor cannot be compelled by a court to work in order to earn money to satisfy his debt;[4] this view is codified by the Shulchan Aruch[5] and is generally considered normative. Unfortunately, however, Rabeinu Tam's actual discussion of the question is not extant and his position is recorded only in secondhand sources, so there is considerable uncertainty regarding its precise rationale and scope.

Tosafos cites a dispute about whether a husband is obligated to accept employment in order to maintain his wife, with Rabeinu Eliyahu asserting that he is and Rabeinu Tam maintaining that he is not.[6] Addressing the husband's commitment in the *ksubah* to work (*va'ana eflach*) for his wife, Rabeinu Tam explains that this means that he will engage in agricultural labor on (his) field in order to provide for her, but he is not obligated to hire himself out. The Rosh's formulation of Rabeinu Tam's position is that *va'ana eflach* is limited to "work that it is *customary* for a man to do *in his home*, such as plowing and planting";[7] it is not entirely clear whether the key words here are "customary" or "in his home"—the Taz omits "customary" and cites Rabeinu Tam as understanding *va'ana eflach* as referring to "work that is customary to do, such as work (?) and plowing,"[8] implying that the location of the work is not relevant, but only whether the type of work in question is customary or not.

Based on the above, a number of contemporary authorities understand that Rabeinu Tam would agree that today, when employment is customary and normal, a husband is indeed obligated to accept employment in order to maintain his wife.[9]

The problem with this approach to Rabeinu Tam's position is that other cited versions of Rabeinu Tam omit any mention of the distinction between customary and non-customary work (or work done in one's home as opposed to outside it), and instead attribute to him a fundamental rejection of the basic notion of compelling a Jew to work for someone else. The Rosh records that Rabeinu Tam's position is based on restrictions set forth by Chazal regarding the sale of an *eved ivri*:

Was it not taught in a *breisa*: The *pasuk* "and he is sold for his theft" (Shmos 22:2) means that he can be sold to pay for the items that he stole, but not to pay for his double payment. (Although a thief can be sold into slavery to reimburse the owner for the principal, he cannot be sold to pay the fine.) Further, "for his theft" indicates that he is not sold to pay for his scheming testimony. (If he is a scheming witness

who falsely testified that another had stolen, and his penalty is to be subjected to whatever he sought to impose on his victim, but he does not have the money to pay, he is not sold as a slave.[10])

Rabeinu Tam accordingly argues:

Just as we hermeneutically derive “for his theft’—but not for his scheming testimony or for his double payment,” so, too, do we hermeneutically derive “but not for the payment of his debt or for provisions for his wife.” And one’s hiring himself out is called a sale, as it is said in *Perek Hazahav* (56b), “Rental, for its day, is like a sale,” and an *eved ivri* sold for six years is called an employee (*sachir*).[11]

Similarly, the Radvaz, in the course of endorsing Rabeinu Tam’s position, explains it as follows:

And I say that there is a strong rationale (for Rabeinu Tam’s position), and he who disagrees with him has the burden of proof, for it is written in the (Torah) text: “For Bnei Yisrael are servants to Me”[12]—and not servants to servants.[13]<sup>[14]</sup>

It has long seemed to this author that according to this version of Rabeinu Tam, the right to be free should be absolute, and one can never be compelled to work against his will, regardless of the location of any particular form of work or whether it is customary or not. (As to the proof from the language of *va’ana eflach*, various *Rishonim* offer other explanations of that language that do not necessarily imply any obligation to work.[15])

[1] Kimberlee Kruesi. Slavery is on the ballot for voters in 5 US states. AP News.

<https://apnews.com/article/2022-midterms-13th-amendment-slavery-4a0341cf82fa33942bda6a5d17ac4348>.

[2] Shmos 22:2

[3] Arachin 29a; Rambam Hilchos Avadim 1:10, Hilchos Shmitah VeYoveil 10:9.

[4] The *Acharonim* debate whether despite the court’s inability to compel him to work, the debtor himself has a moral/halachic obligation to do so: see Bach *ibid. siman* 99; Sha’ar Mishpat *siman* 97 s.k. 3; Chazon Ish E.H. *siman* 108 s.k. 10 s.v. *Ule’inyan lachofu*; Imrei Binah, *Dinei Gviyas Chov siman* 2 from s.v. *Veha dekasav* beShulchan Aruch; Shu”t Sho’eil Umeishiv *mahadura tinyana cheilek 4 siman* 54; Otzar Haposkim *siman* 70 n. 65 p. 28.

[5] Shulchan Aruch C.M. 97:15.

[6] Ksubos 63a s.v. *Be’omer eini zan ve’eini mefarneis*. This question is the subject of considerable debate among other *Rishonim* and *Acharonim*; see our article *Chiyuv Haba’al Lehaskir Atzmo Bishvil Mezonos Ishto, Bizmanim Kadmonim Uvizman Hazeh*.

[7] Piskei HaRosh *ibid. perek 5 siman* 32. Similar language appears in Tur E.H. *siman* 70.

[8] *Ibid. s.k. 4*.

[9] Hagan Shaul-Shanah Shaul, *os 40 siman* 3, cited in Otzar Haposkim *ibid. s.k. 18 os 11 p. 30*, and cf. there *os 5 p. 15*; Mishnas Yaakov Hilchos

*Ishus perek 12 halacha 1 and halacha 2 osios 6-7*, cited in Otzar Haposkim ibid. p. 28; Piskei Halachos/Yad Dovid Hilchos *Ishus cheilek 3 perek 14 os 15 p. 3*, cited in Otzar Haposkim ibid. os 11; R' Shmuel Baruch Werner, R' Shlomo Tene, and R' Y. Halevi Epstein in Piskei Din Shel Batei Hadin HaRabani'im BeYisrael, Vol. 10 p. 166 s.v. *Leda'as* Rabeinu Tam, cited in Otzar Haposkim ibid.; R' Eliyahu Bar-Shalom, Mishpat Haksubah Vol. 3 *perek 19 os 6 p. 12* and Vol. 4 *perek 30 p. 67*.

[10]Kidushin 18a.

[11]Shu"t HaRosh *klal 78 siman 2*, cited in Tur ibid. *siman 99*.

[12]Vayikra 25:55.

[13]Bava Kama 116b, Bava Metzia 10a.

[14]Shu"t Radvaz *cheilek 3 siman 996 (566)*, mentioned in Pis'chei Teshuvah ibid. s.k. 4 and cited in Otzar Haposkim ibid. s.k. 18 p. 28 s.v. UveShu"t HaRadvaz. Cf. Hagahos Maimoniyos Hilchos *Ishus perek 12 os 8*; Mordechai Ksubos *remez 205*.

[15]Chidushei HaRitva Ksubos ibid. (Mosad Harav Kook edition); Sefer Ra'aviah *cheilek 4 Mishpetei Haksubah siman 919 pp. 294-95*; Hagahos Maimoniyos ibid. For further discussion of many of the ideas discussed in this article, as well as additional sources on the topic, see our aforementioned article *Chiyuv Haba'al Lehaskir Atzmo Bishvil Mezonos Ishto, Bizmanim Kadmonim Uvizman Hazeh*.