

STANDARD OPERATING PROCEDURES TO FIGHT  
BONDED LABOR AND SEX TRAFFICKING



# HUMAN TRAFFICKING

LEGAL REFERENCE TOOLKIT

.....  
A HANDBOOK FOR NGOS AND THEIR LAWYERS

**IVI** JUSTICE  
VENTURES  
INTERNATIONAL



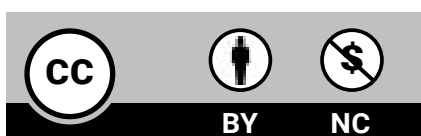
Human Trafficking Legal Reference Toolkit  
Standard Operating Procedures for Fighting Bonded Labour and Sex Trafficking

A Handbook for NGOs and their Lawyers

7th Edition, October 2025

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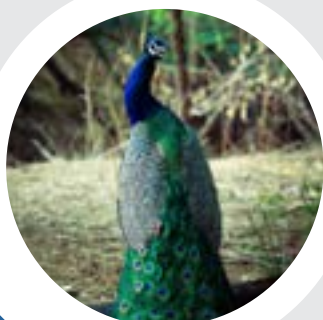
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|                 |                                                                |
|-----------------|----------------------------------------------------------------|
| <b>ACP</b>      | Assistant Commissioner of Police                               |
| <b>Addl. CP</b> | Additional Commissioner of Police                              |
| <b>AHTU</b>     | Anti Human Trafficking Units                                   |
| <b>BLA</b>      | Bonded Labor System (Abolition) Act, 1976                      |
| <b>CBI</b>      | Central Bureau of Investigations                               |
| <b>BNSS</b>     | Bharatiya Nagarik Suraksha Sanhita                             |
| <b>CSE</b>      | Commercial Sexual Exploitation                                 |
| <b>CSS</b>      | Central Sector Scheme, 2016<br>(as amended upto 23.06.2017)    |
| <b>CLTS</b>     | Child Labour Tracking System                                   |
| <b>CWC</b>      | Child Welfare Committees                                       |
| <b>CM</b>       | Chief Minister                                                 |
| <b>DA</b>       | District Administration                                        |
| <b>DM</b>       | District Magistrate                                            |
| <b>DSP</b>      | Deputy Superintendent of Police                                |
| <b>ICCPR</b>    | International Covenant on Civil and Political Rights           |
| <b>ICESCR</b>   | International Covenant on Economic, Social and Cultural Rights |



|                |                                                                         |
|----------------|-------------------------------------------------------------------------|
| <b>ICESCR</b>  | International Covenant on Economic, Social and Cultural Rights          |
| <b>IPC</b>     | Bharatiya Nyaya Sanhita, 2024                                           |
| <b>IO</b>      | Investigating Officer                                                   |
| <b>ITPA</b>    | The Immoral Traffic (Prevention) Act, 1956                              |
| <b>JJA</b>     | Juvenile Justice (Care and Protection of Children) Act, 2015            |
| <b>JJB</b>     | Juvenile Justice Board                                                  |
| <b>MNREGA</b>  | Mahatma Gandhi National Rural Employment Guarantee Act                  |
| <b>MoLE</b>    | Ministry of Labour & Employment                                         |
| <b>NGO</b>     | Non-Government Organization                                             |
| <b>NHRC</b>    | National Human Rights Commission                                        |
| <b>POCSO</b>   | Protection of Children from Sexual Offences                             |
| <b>PDS</b>     | Public Distribution System                                              |
| <b>PP</b>      | Public Prosecutor                                                       |
| <b>RDO</b>     | Revenue Divisional Officials                                            |
| <b>SC</b>      | Scheduled Caste                                                         |
| <b>SCSTPOA</b> | Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 |
| <b>SDM</b>     | Sub-Divisional Magistrate                                               |
| <b>SPO</b>     | Special Police Official                                                 |
| <b>SHRC</b>    | State Human Rights Commission                                           |
| <b>ST</b>      | Scheduled Tribe                                                         |
| <b>SOP</b>     | Standard Operating Procedures                                           |
| <b>WPC</b>     | Woman Police Constable                                                  |



# ABBREVIATIONS



# INTRODUCTION

# ABOUT THE TOOLKIT

Human trafficking affects over 49.6 million lives across the globe, including an estimated eleven million people living in India under conditions of modern-day slavery.<sup>1</sup> This toolkit has been developed by Justice Ventures International (JVI) as a comprehensive guide for NGO partners and their lawyers who are engaged in the fight against human trafficking. These practical tools may also be useful to other frontline organisations, including local Anti-Human Trafficking Units, Childline Program implementers, and NGOs working with legal counsel for justice and restoration of survivors in India.

Chapter II provides an overview of human trafficking, highlighting the dynamics of modern-day slavery, key concepts related to the issue, and selected statistics. In addition, an overview of the context of trafficking in India is provided.

Chapter III sets forth “standard operating procedures (“SOPs”) for fighting human trafficking. The SOPs provide a list of steps to be taken by the NGO and the Advocate in fighting the two most common forms of human trafficking in India, bonded labour and trafficking for commercial sexual exploitation (“sex trafficking”).<sup>3</sup> Under each step there is a commentary section that further explains the specific step. In addition, there is a “Points to Note” section following the commentary on many of the steps, highlighting key issues to be considered in executing the step.

Finally, many of the steps also include a “Learn More & Take Action” section pointing the reader to related sections in Chapter IV (Legal Framework), Chapter V (Selected Landmark Judgments), Chapter VI (Human Trafficking

Success Stories), and the Appendices where NGO and Advocates can find further practical and legal information.

Since the SOP’s are central to this handbook, Chapter I includes a ready reference of the SOP’s set forth below without commentary and additional information. Please note that while the SOPs are listed as steps in the order that is most likely to occur, such steps may not necessarily occur sequentially. Some steps may occur simultaneously or in a different sequence.



<sup>1</sup> See ‘Highlights: Global Slavery Index’, Global Slavery Index, 2023 Available at: <https://www.walkfree.org/global-slavery-index//>>.

<sup>2</sup> For more information about the Freedom Fund, visit [www.freedomfund.org](http://www.freedomfund.org).

<sup>3</sup> In this manual we use the term sex trafficking in reference to the technical term ‘trafficking for commercial sexual exploitation,’ as in our experience, this term is commonly used among NGOs and Advocates for brevity.

# SOPs FOR BONDED LABOUR

## (WITHOUT COMMENTARY)

Set forth below are the SOPs for Bonded Labour Interventions. The SOPs are divided into three parts:

1. Procedures for rescuing of victims
2. Procedures for prosecuting perpetrators
3. Procedures for restoring survivors

For detailed commentary and other resources related to these SOPs please see Chapter III.

## 1.0 SUMMARY OF PROCEDURES FOR RESCUING BONDED LABOUR VICTIMS



### IDENTIFYING BONDED LABORERS

District Administration (DA) inquires into existence of bonded labour based on evidence provided by NGO



### PREPARING THE BONDED LABOUR RESCUE PLAN

Rescue team (DA, Police, Labour and Revenue Dept.) attend pre-rescue meetings with NGO to schedule rescue date and review checklist of responsibilities.



### SECURING THE BONDED LABOUR RESCUE SITE

Police secures perimeter of the rescue site and prevents hiding or removing of evidence; Labour Dept. shuts down facility if child labour practiced.



### GATHERING BONDED LABOUR EVIDENCE

The NGO should ensure that the Police collect all available evidence pertaining to the existence of bonded labour.



### MOVING BONDED LABOURERS TO A SECURE LOCATION

Move victims to secure location; police ensure protection of victims from intimidation or harassment.



### SUBMITTING THE BONDED LABOUR COMPLAINT

DA (or appointee) receives complaint; Police, AHTU and Labour Dept can also receive complaint but must coordinate with DA prior to investigation.



### INITIATING THE BONDED LABOUR RESCUE

IDA oversees and conducts inquiry/identification/release at rescue site; Labour Dept. records victim statements; Police arrests accused. If child labour involved, involve Task Force on Child Labour.



### SEPARATING BONDED LABOURERS FROM THE ACCUSED

Police separates victims from accused and takes victims to secure open area; informs victims of reason for rescue.



### RECORDING BONDED LABOURER STATEMENTS

DA and Labour Dept. record victim statements (away from presence of perpetrators), grant release certificates and release orders if warranted.



### SECURING BONDED LABOUR RELEASE CERTIFICATES

If release certificates were not granted in Step 1.8, then DA grants them off-site after inquiry is complete, with a release order for protection, payment of minimum wages and subsistence relief.

# 1.0

# RESCUING BONDED LABOUR VICTIMS

## STEP 1.1

### IDENTIFYING BONDED LABOURERS

|          |                                                                                                                                                            |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should gather and verify facts supporting the existence of bonded labour.                                                                          |
| ADVOCATE | The Advocate should confirm whether the facts gathered support the legal elements of bonded labour and related offences under the Bonded Labour Act, 1976. |

## STEP 1.2

### SUBMITTING THE BONDED LABOUR COMPLAINT

|          |                                                                                                                                                                                                                                                             |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should use the facts gathered to draft a bonded labour complaint to be submitted to the applicable District Magistrate and the Magistrate's subordinates.                                                                                           |
| ADVOCATE | The Advocate should review the bonded labour complaint to ensure it presents a persuasive legal argument for initiating a bonded labour rescue and assist the NGO in submitting the complaint to the District Magistrate and the Magistrate's subordinates. |

## STEP 1.3

### PREPARING THE BONDED LABOUR RESCUE PLAN

|          |                                                                                                                                                                |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should prepare a bonded labour rescue plan.                                                                                                            |
| ADVOCATE | The Advocate should assist in the preparation of the bonded labour rescue plan by advising the NGO on legal provisions and concepts relating to bonded labour. |

## STEP 1.4

### INITIATING THE BONDED LABOUR RESCUE

|          |                                                                                                                    |
|----------|--------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should initiate the bonded labour rescue with other stakeholders according to the rescue plan.             |
| ADVOCATE | The Advocate should participate in the bonded labour rescue to ensure that it is carried out according to the law. |

## STEP 1.5

### SECURING THE BONDED LABOUR RESCUE SITE

|          |                                                                                                                          |
|----------|--------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should assist the Police in securing the rescue site to ensure no incriminating evidence is lost.                |
| ADVOCATE | The Advocate should advise the NGO and Police (if required) regarding the legal procedures for securing the rescue site. |

**STEP  
1.6****SEPARATING BONDED LABOURERS FROM THE ACCUSED***(SAME DAY OF RESCUE)*

|                 |                                                                                                                                                                                      |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Police in separating the victims of bonded labour from the perpetrators and moving them to an open area on the site of incidence.                          |
| <b>ADVOCATE</b> | The Advocate should ensure a fair inquiry and safety of the victims by making sure they are separated from the perpetrators and the police are advised in this process if necessary. |

**STEP  
1.7****GATHERING BONDED LABOUR EVIDENCE***(SAME DAY OF RESCUE)*

|                 |                                                                                                                                                                                     |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should ensure that the Police collect all available evidence pertaining to the existence of bonded labour.                                                                  |
| <b>ADVOCATE</b> | The Advocate should advise the NGO on the legal collection of evidence about bonded labour and ensure that the Police include all available evidence in the Panchnama/seizure memo. |

**STEP  
1.8****RECORDING BONDED LABOURER STATEMENTS***(SAME DAY OF RESCUE)*

|                 |                                                                                                                                                                                                                                                     |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the government officials with recording the statements of the bonded labour victims.                                                                                                                                          |
| <b>ADVOCATE</b> | The Advocate should advise the government officials on preliminary questions to ask the victims to determine the existence of bonded labour and should brief the victims about their rights before the process of recording their statement begins. |

**STEP  
1.9****MOVING BONDED LABOURERS TO A SECURE LOCATION***(SAME DAY OF RESCUE)*

|                 |                                                                                                                                      |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should ensure that bonded labourers gather their belongings and are moved to a secure location.                              |
| <b>ADVOCATE</b> | The Advocate should file a protection application to protect the bonded labourers from threats and harassment from the perpetrators. |

**STEP  
1.10****SECURING BONDED LABOUR RELEASE ORDER***(1 TO 3 DAYS)*

|                 |                                                                                                                                                                                  |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should make an application to the SDM or the designated officer under him/her requesting the prompt issuance of a Release Order and Release Certificates.                |
| <b>ADVOCATE</b> | The Advocate should accompany the NGO to the SDM's office to ensure the prompt issuance of a Release Order and Release Certificates for all bonded labourers as required by law. |

# 2.0 SUMMARY OF PROCEDURES FOR PROSECUTING PERPETRATORS OF BONDED LABOUR



2.1

## FILING THE BONDED LABOUR FIR

Officer in charge of police station records information of bonded labour offences as an FIR and proceeds with investigation and arrest; ensure all sections are included in FIR and give copy to complainant.



2.2

## ARRESTING ACCUSED PERPETRATORS

Police arrests accused as directed by DA and moves forward swiftly with investigation.



2.3

## FILING VAKALATNAMA AND APPLICATION TO ASSIST THE PROSECUTION

Victim's Advocate files applications in Court to represent the victim and assist the Prosecution.



2.4

## OPPOSING THE BAIL APPLICATION OF THE PERPETRATOR

Advocate works with the Police and Public Prosecutor to oppose any bail petitions filed by the accused.



2.5

## RECORDING STATEMENTS DURING INVESTIGATION

Police interviews victims and records statements; statements should not be recorded in police station but somewhere convenient for victim. Supplement prior statements if necessary.



2.6

## CLOSING/SEALING OF BONDED LABOUR FACILITY

DA and Labour Dept. order closure and cancellation of registration of facility employing bonded labour.



2.7

## RECOVERING MINIMUM WAGES

Labour Dept. (Labour Officer of the District) orders payment of minimum wages pursuant to release order issued by DA.



2.8

## FILING OF BONDED LABOUR CHARGE SHEET

The Investigating Officer (Police) files the charge sheet without delay and within 90 days.



2.9

## ENSURING APPROPRIATE FORUM FOR TRIAL

After chargesheet is filed, judge takes cognizance of case and commits it to proper court.



2.10

## FRAMING OF BONDED LABOUR CHARGES

Court frames the charges on a timely basis (including all applicable offences supported by the facts) and asks accused for his plea (if pleads guilty, trial ends).



2.11

## ASSISTING THE PROSECUTION AT BONDED LABOUR HEARINGS

Advocate should assist the Public Prosecutor at all hearings and secure Victim's Court attendance when required.



2.12

## PREPARING BONDED LABOUR WITNESSES TO TESTIFY

Advocate should assist Public Prosecutor with preparing all bonded labour and prosecution witnesses to testify. Court should take victim-sensitive measures, especially for child victims; seek in-camera proceedings if necessary.



2.13

## SUBMITTING FINAL BONDED LABOR ARGUMENTS

Public Prosecutor makes final arguments persuading Court of the existence of bonded labour.



2.14

## OBTAINING THE FINAL BONDED LABOUR JUDGMENT

Court provides certified copies of judgment to parties.



2.15

## BONDED LABOUR APPEAL

Court fairly considers appeal by parties, if filed.

## 2.0

# PROSECUTING PERPETRATORS OF BONDED LABOUR

### STEP 2.1

#### FILING THE BONDED LABOUR FIR

|          |                                                                                                                                                                                                                                                                                 |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should file information of a bonded labour offence at the police station within whose jurisdiction the incidence of bonded labour took place.                                                                                                                           |
| ADVOCATE | The Advocate should ensure that the information filed is recorded by the officer-in-charge of the police station as a First Information Report (FIR) with all relevant offences listed under the BLA, BNS, SC/ST POAA (if applicable) and any other applicable sections of law. |

### STEP 2.2

#### ARRESTING PERSONS ACCUSED OF COMMITTING BONDED LABOUR

|          |                                                                                                                                                                                               |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should assist the police in immediately arresting all persons accused of committing bonded labour offences.                                                                           |
| ADVOCATE | The Advocate should assist the police with the immediate arrest of the accused under relevant provisions of the BNSS and encourage the police to move forward swiftly with the investigation. |

### STEP 2.3

#### FILING A VAKALATNAMA & APPLICATION TO ASSIST THE PROSECUTION

|          |                                                                                                                                                                       |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should formally introduce the bonded labour survivors to the Advocate to facilitate the establishment of a lawyer-client relationship.                        |
| ADVOCATE | The Advocate should obtain the consent of the bonded labour survivors to file a Vakalatnama as their legal counsel and file an application to assist the Prosecution. |

### STEP 2.4

#### OPPOSING THE BAIL APPLICATION OF ACCUSED PERPETRATORS

|          |                                                                                                                                                                   |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should advise and assist the Advocate in opposing bail by providing information about the perpetrator and the bonded labour case.                         |
| ADVOCATE | The Advocate should attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted. |

**STEP  
2.5****RECORDING STATEMENTS DURING INVESTIGATION**

|                 |                                                                                                                                                                                                                                                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should support and encourage the survivor to speak the truth when providing his or her statements under section 180 and 183 of the BNSS.                                                                                                       |
| <b>ADVOCATE</b> | The Advocate should oversee the recording of bonded labour survivor statements under BNSS Sections 180 and 183 to support and encourage the survivor to speak the truth and ensure that the statements are recorded in compliance with applicable law. |

**STEP  
2.6****CLOSING/SEALING OF BONDED LABOUR FACILITY**

|                 |                                                                                                                                                             |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should provide adequate information to the Advocate to petition for closure or sealing of facility.                                                 |
| <b>ADVOCATE</b> | The Advocate should petition the district magistrate and the labour department for closure/sealing of the facility in which bonded labour was taking place. |

**STEP  
2.7****RECOVERING MINIMUM WAGES**

|                 |                                                                                                                                                             |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the bonded labour survivors and the Advocate in moving for an application for recovery of minimum wages before the Labour Department. |
| <b>ADVOCATE</b> | The Advocate should file an application for recovery of minimum wages on behalf of the bonded labour survivors before the Labour Department.                |

**STEP  
2.8****FILING OF BONDED LABOUR CHARGE SHEET**

|                 |                                                                                                                                                          |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | NGO should follow up with the Advocate regarding the filing of the charge sheet.                                                                         |
| <b>ADVOCATE</b> | The Advocate should ensure that the charge sheet is filed by the police within the stipulated period without delay and includes all applicable offences. |

**STEP  
2.9****ENSURING THE APPROPRIATE FORUM FOR TRIAL**

|                 |                                                                                                                                                                                                |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>ADVOCATE</b> | The Advocate should ensure that the case is committed before the appropriate court and follow the guidelines under the Central Sector Scheme for the Rehabilitation of Bonded Labourers, 2021. |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**STEP  
2.10****FRAMING OF BONDED LABOUR CHARGES**

|                 |                                                                                                                                               |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should follow up with the Advocate to ensure that the charges have been framed by the court.                                          |
| <b>ADVOCATE</b> | The Advocate should ensure that charges are framed by the court on a timely basis and include all applicable offences supported by the facts. |

**STEP  
2.11****ASSISTING THE PROSECUTION AT ALL BONDED LABOUR HEARINGS**

|                 |                                                                                                                                                                       |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate and prosecutor in advising the bonded labour survivors of all hearing dates and be available to attend each hearing, as required.  |
| <b>ADVOCATE</b> | The Advocate should meet with the prosecutor to develop a case strategy prior to commencing trial and be present in court at every hearing to assist the prosecution. |

**STEP  
2.12****PREPARING BONDED LABOUR WITNESSES TO TESTIFY**

|                 |                                                                                                                                                                |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate in preparing the bonded labour witnesses to testify truthfully and boldly.                                                  |
| <b>ADVOCATE</b> | The Advocate should assist the prosecutor by preparing witnesses for the examination in chief by the prosecution and the cross examination by defense counsel. |

**STEP  
2.13****SUBMITTING FINAL BONDED LABOUR ARGUMENTS**

|                 |                                                                                                                                                                     |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate in preparing final arguments at the end of the trial.                                                                            |
| <b>ADVOCATE</b> | The Advocate should make final oral arguments (if allowed by the court) and submit written arguments in support of the conviction of the bonded labour perpetrator. |

**STEP  
2.14****OBTAINING THE JUDGMENT**

|                 |                                                                                                                                                                                                                                                                                                                  |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate in obtaining certified copies of the final judgement from the Court. It will also assist the Advocate to secure the Release Certificates from the court official who has conducted Summary Trial (most probably, it should be SDM or DM).                                     |
| <b>ADVOCATE</b> | The Advocate should make applications for certified copies of the final judgment. If release certificates have not been granted so far, the Advocate will assist the bonded labourers to secure the Release Certificates from the court who has conducted Summary Trial (most probably, it should be SDM or DM). |

**STEP  
2.15****BONDED LABOUR APPEAL**

|                 |                                                                                                 |
|-----------------|-------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate with preparing an appeal, if required.                       |
| <b>ADVOCATE</b> | The Advocate should file an appeal or revision application on an adverse judgment, if required. |

## 3.0 SUMMARY OF PROCEDURES FOR RESTORING BONDED LABOUR SURVIVORS



### ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

Rescue team arranges for immediate medical care, keeping victims' identity confidential; if children rescued, must be given medical care before referring to CWC.



### PROVIDING SHORT-TERM PROVISIONS

Rescue team assists in providing basic short-term essentials, such as food, clothing, temporary shelter, and transportation upon release.



### SECURING SUBSISTENCE ALLOWANCE FOR RESCUED BONDED LABOURERS.

Sub-Divisional Magistrate orders subsistence allowance pursuant to release order.



### SECURING BLA FUNDS AND REHABILITATION FUNDS

DA intervenes to assist NGO's request for BLA and rehabilitation funds and insures such funds reach labourers promptly; Labour Dept. collects fine of Rs. 20,000 from anyone employing children and deposits into Child Labour Rehabilitation Welfare Fund.



### SECURING BASIC GOVERNMENT ENTITLEMENTS AND IDENTIFICATION DOCUMENTS

DA insures that access to ID, housing, employment, etc. are provided to labourers.



### REPATRIATING BONDED LABOUR SURVIVORS

Assist in obtaining documents necessary for repatriation; for child labourers, CWC to complete home verification report.



### FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES

Assist in providing access to private sector resources related to food, clothing, shelter, land rights, education, employment, health care, counselling and other entitlements.



### ENGAGING LOCAL BLA VIGILANCE COMMITTEES

State Governments form Vigilance Committees for the purpose of overall rehabilitation of victims; chaired by DM/SDM.



### ENSURING SURVIVORS ENJOY PERMANENT FREEDOM

DA informs victims of rights and need to persevere in remaining free; vigilance committee works to facilitate continued rehabilitation and protection.

# 3.0

## RESTORING BONDED LABOUR SURVIVORS

### STEP 3.1

#### ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

##### NGO

The NGO should ensure that the bonded labour survivors receive a medical examination and any required medical care.

##### ADVOCATE

The Advocate should ensure that medical examinations are carried out and urgent care is provided, with respect accorded to the bonded labour survivor's right to privacy and other rights.

### STEP 3.2

#### PROVIDING SHORT-TERM PROVISIONS

##### NGO

The NGO shall facilitate the provision of basic short-term essentials such as food, clothing, temporary shelter, and transportation upon their release.

### STEP 3.3

#### SECURING SUBSISTENCE ALLOWANCE FOR RESCUED BONDED LABOURERS

##### NGO

The NGO should ensure that the bonded labour survivors receive subsistence financial relief (allowance) at the time of receiving Release Certificates and no later than 7 days after their rescue.

##### ADVOCATE

The Advocate should advise the SDM regarding legal provisions mandating the provision of subsistence financial relief at the time of issuance of bonded labour release certificates.

### STEP 3.4

#### SECURING BLA FUNDS AND REHABILITATION FUNDS

##### NGO

The NGO should submit a request for BLA funds and other rehabilitation funds for both cash and non-cash components available from the State and Central government on behalf of the bonded labour survivors.

##### ADVOCATE

The Advocate should advise and assist the NGO in securing BLA funds for both cash and non-cash components and other rehabilitation funds on behalf of the bonded labour survivors.

**STEP  
3.5****SECURING BASIC GOVERNMENT ENTITLEMENTS AND IDENTIFICATION DOCUMENTS**

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the bonded labour survivors in obtaining basic government identification documents such as ration cards, voter identification cards and other documentation. The NGO should assist the bonded labour survivors with accessing government entitlements related to food, clothing, shelter, land rights, education, employment, health care, counselling, and other entitlements.                                                      |
| <b>ADVOCATE</b> | The Advocate should advise the NGO and assist the bonded labour survivors (if required) in petitioning government authorities to issue basic government identification documents such as a ration card, voter identification card and other documentation. The Advocate should provide legal assistance to the NGO and bonded labour survivors to petition government agencies to provide government entitlements if such entitlements are wrongly denied. |

**STEP  
3.6****REPATRIATING BONDED LABOUR SURVIVORS**

|                 |                                                                                                                                                                                                                                                          |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist bonded labour survivors with safely repatriating to their family/ native place or an alternative safe location including ensuring completion of a home verification report as specified by the CWC in the case of minor survivors. |
| <b>ADVOCATE</b> | The Advocate should advise the NGO representatives to ensure that the restoration process is carried out in accordance with procedures established by law.                                                                                               |

**STEP  
3.7****FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES**

|            |                                                                                                                                                                                                                                                  |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b> | The NGO should assist the bonded labour survivors with accessing available private sector (NGO and business) resources related to food, clothing, shelter, land rights, education, employment, health care, counselling, and other entitlements. |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**STEP  
3.8****ENGAGING LOCAL BLA VIGILANCE COMMITTEES**

|                 |                                                                                                                                                                                                                                                                  |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should ensure that the district administration where the bonded labour survivor resides has an established vigilance committee and must then work with such vigilance committees to facilitate the continued rehabilitation and protection of survivors. |
| <b>ADVOCATE</b> | The Advocate should assist the NGO in petitioning the district administration for the formation of a bonded labour vigilance committee if not established or active.                                                                                             |

**STEP  
3.9****ENSURING SURVIVORS ENJOY PERMANENT FREEDOM**

|            |                                                                                                                                                                                           |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b> | The NGO should maintain an ongoing relationship with the bonded labour survivor for at least 24 months from rescue to ensure sustained rehabilitation and permanent freedom of survivors. |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# SOPs FOR SEX TRAFFICKING INTERVENTIONS

## (WITHOUT COMMENTARY)

Set forth below are the SOPs for Sex Trafficking Interventions. The SOPs are subdivided into three parts:

1. Procedures for rescuing of victims
2. Procedures for prosecuting perpetrators
3. Procedures for restoring survivors

## 1.0 SUMMARY OF PROCEDURES FOR RESCUING SEX TRAFFICKING VICTIMS



### IDENTIFYING SEX TRAFFICKING VICTIMS

District Administration (DA) inquires into existence of sex trafficking based on evidence provided by NGO.



### PREPARING THE SEX TRAFFICKING RESCUE PLAN

Police prepare a confidential rescue plan with details of location, physical layout of rescue site, entry and exit points, hideouts, sketch map of rescue site, etc.; SPO notes in case diary.



### INITIATING THE SEX TRAFFICKING RESCUE

Rescue Team (including women police constable enters site and locates victims. Police coordinates with surveillance team and takes photos/videos of crime scene.



### SEPARATING SEX TRAFFICKING VICTIMS FROM THE ACCUSED

Police separate victims from accused and takes victims to secure open area; women police constables interact with rescue victims; social worker engages with victims.



### RECORDING SEX TRAFFICKING VICTIM STATEMENT

Police and/or Probation Officer records statements, provide counselling and translation if necessary, refer children to CWC.



### SUBMITTING THE SEX TRAFFICKING COMPLAINT

Local Special Police Officer (SPO) receives complaint; District/State AHTU or C.B.I. can also receive complaint but must coordinate investigation with Police.



### CONDUCTING PRE-RESCUE MEETING WITH POLICE

SPO (preferably female officer) attends pre-rescue meetings with NGO to schedule rescue date and review checklist of responsibilities; rescue team should also include 2 panchas or reputable witnesses from locality, one of whom is female, and social worker.



### SECURING THE SEX TRAFFICKING RESCUE SITE

Police secures rescue site to ensure all victims are rescued and no material evidence is lost.



### GATHERING SEX TRAFFICKING EVIDENCE

In presence of two or more independent witnesses, Police collects evidence (diaries and registers, ledgers, books of accounts showing networking with other traffickers, cash, bills for electricity, telephone, and water, ration card, municipal tax receipts, travel documents, photographs, albums, condoms).



### ENSURING PROTECTIVE CUSTODY FOR SURVIVORS

Police escorts rescued victims to Magistrate or CWC, if available; if unavailable, Police escorts victims to Shelter Home or Children's Home.

# 1.0

# RESCUING SEX TRAFFICKING VICTIMS

## STEP 1.1

### IDENTIFYING SEX TRAFFICKING VICTIMS

|                 |                                                                                                                                                                                                             |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should gather and verify facts supporting the existence of sex trafficking.                                                                                                                         |
| <b>ADVOCATE</b> | The Advocate should confirm whether the facts gathered support the legal elements of sex trafficking under the Immoral Trafficking in Persons Act, Section 143, BNS, and other applicable legal provisions. |

## STEP 1.2

### SUBMITTING THE SEX TRAFFICKING COMPLAINT

|                 |                                                                                                                                                                                                                                                                                          |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should use the facts gathered to draft a sex trafficking complaint to be submitted to the police and other government officials.                                                                                                                                                 |
| <b>ADVOCATE</b> | The Advocate should review the sex trafficking complaint to ensure it presents a persuasive legal argument for initiating a sex trafficking rescue (or rescue under another responsibility) and assist the NGO in submitting the complaint to the police and other government officials. |

## STEP 1.3

### PREPARING THE SEX TRAFFICKING RESCUE PLAN

|                 |                                                                                                                                                                                                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should prepare a comprehensive sex trafficking rescue plan in consultation with the police and relevant authorities, which should include a detailed physical map of the site.                 |
| <b>ADVOCATE</b> | The Advocate should advise and assist the NGO in preparing the rescue plan, ensuring it includes the presence of an adequate number of decoy customers and panch witnesses as required under the ITPA. |

## STEP 1.4

### CONDUCTING A PRE-RESCUE MEETING WITH POLICE

|                 |                                                                                                                                                                                                                          |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should conduct a pre-rescue meeting in accordance with the rescue plan where roles and responsibilities are assigned to team members.                                                                            |
| <b>ADVOCATE</b> | The Advocate should advise and assist the NGO during the pre-rescue meeting by sensitizing the NGO and government representatives on legal provisions and important information relating to the rescue to be undertaken. |

**STEP  
1.5****INITIATING THE SEX TRAFFICKING RESCUE**

|                 |                                                                                                                         |
|-----------------|-------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should initiate the sex trafficking rescue with the police and other stakeholders according to the rescue plan. |
| <b>ADVOCATE</b> | The Advocate should participate in the sex trafficking rescue to ensure that it is carried out according to the law.    |

**STEP  
1.6****SECURING THE SEX TRAFFICKING RESCUE SITE**

|                 |                                                                                                                               |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Police with securing the rescue site to ensure all victims are rescued and safe during the process. |
| <b>ADVOCATE</b> | The Advocate should advise the NGO and Police (if required) regarding the legal procedures for securing the rescue site.      |

**STEP  
1.7****SEPARATING SEX TRAFFICKING VICTIMS FROM THE ACCUSED**

|                 |                                                                                                                                                           |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Police in separating the sex trafficking victims from the perpetrators and assuring survivors of their safety.                  |
| <b>ADVOCATE</b> | The Advocates should advise the Police that sex trafficking survivors should be separated from the perpetrators so as to ensure a safe and legal inquiry. |

**STEP  
1.8****GATHERING SEX TRAFFICKING EVIDENCE**

|                 |                                                                                                                                                                    |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should ensure that the Police collect all available evidence relevant to identifying and proving of sex trafficking.                                       |
| <b>ADVOCATE</b> | The Advocate should advise the NGO on the laws related to the collection of evidence about sex trafficking and ensure that the Police seize all available evidence |

**STEP  
1.9****RECORDING SEX TRAFFICKING VICTIM STATEMENTS**

|                 |                                                                                                                  |
|-----------------|------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the police with recording the statements of the sex trafficking victims.                   |
| <b>ADVOCATE</b> | The Advocate should brief the victims about their rights before the process of recording their statement begins. |

**STEP  
1.10****ENSURING PROTECTIVE CUSTODY FOR SURVIVORS**

|                 |                                                                                                                  |
|-----------------|------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should accompany the rescued persons while they are produced before the Magistrate or the CWC.           |
| <b>ADVOCATE</b> | The Advocate should advise and assist the NGO while the survivors are produced before the Magistrate or the CWC. |

# 2.0 SUMMARY OF PROCEDURES FOR PROSECUTING PERPETRATORS OF SEX TRAFFICKING



## FILING THE SEX TRAFFICKING FIR

Officer in charge of police station records information of sex trafficking offenses as an FIR and proceeds with investigation and arrest; insure all sections are included in FIR and give copy to complainant.



## APPEARANCE OF SURVIVORS BEFORE THE MAGISTRATE OR CWC

Magistrate orders medical exam and temporary stay at shelter home; CWC takes statement of minors and decides on safe custody based on Home Inquiry Report; woman police constable escorts to medical examination and shelter.



## ARRESTING PERSONS ACCUSED OF SEX TRAFFICKING OFFENSES

Police arrests accused and moves forward swiftly with investigation.



## FILING VAKALATNAMA & APPLICATION TO ASSIST THE PROSECUTION

Victim's Advocate files applications in Court to represent the victim and assist the Prosecution; A Legal Services Authority Advocate may provide legal representation.



## OPPOSING THE BAIL APPLICATION OF THE ACCUSED PERPETRATORS

Advocate works with the Police and Public Prosecutor to oppose any bail petitions filed by the accused.



## RECORDING STATEMENTS DURING INVESTIGATION

Police interviews victims and records statements; statements should not be recorded in police station but somewhere convenient for victim. Supplement prior statements if necessary.



## EVICTING OFFENDERS AND CLOSING OF BROTHELS

Magistrate orders eviction of offenders and suspension of licenses of businesses where sex trafficking occurred; Magistrate orders placement of victims in protection home or aftercare facility; Police closes and seals brothels.



## FILING FOR SEX TRAFFICKING VICTIM COMPENSATION

Court orders compensation to victims of sex trafficking.



## FILING OF SEX TRAFFICKING CHARGE SHEET

The Investigating Officer (Police) files the charge sheet without delay and within 90 days of FIR, if possible.



## ENSURING APPROPRIATE FORUM FOR TRIAL

After chargesheet is filed, judge takes cognizance of case and commits it to proper court.



## FRAMING OF SEX TRAFFICKING CHARGES

Court frames the charges on a timely basis (including all applicable offenses supported by the facts) and asks accused for his plea (if pleads guilty, trial ends.)



## ASSISTING THE PROSECUTION AT SEX TRAFFICKING HEARINGS

Advocate should assist the Public Prosecutor at all hearings and secure victim's Court attendance when required.



## PREPARING SEX TRAFFICKING WITNESSES TO TESTIFY

Court should take victim-sensitive measures, especially where child victims are involved; Advocates should prepare victims for chief and cross-examination testimony; seek in-camera proceedings if necessary.



## SUBMITTING FINAL ARGUMENTS TO PROVE SEX TRAFFICKING

Advocate drafts and files written submissions for final arguments to be submitted before the court through the Public Prosecutor; Advocate presents final oral arguments.



## OBTAINING THE JUDGMENT

Court provides certified copies of judgment to parties.



## FILING OF APPEAL

Court fairly considers appeal by parties, if filed.

# 2.0

## PROSECUTING PERPETRATORS OF SEX TRAFFICKING

### STEP 2.1

#### FILING OF THE SEX TRAFFICKING FIR

|          |                                                                                                                                        |
|----------|----------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should file the First Information Report (FIR) at the police station within whose jurisdiction the sex trafficking took place. |
| ADVOCATE | The Advocate should ensure that the FIR is registered with all applicable sex trafficking and other offences included.                 |

### STEP 2.2

#### APPEARANCE OF SURVIVORS BEFORE THE MAGISTRATE OR CWC

|          |                                                                                                                                                            |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should ensure that rescued adults are presented before the Magistrate, while rescued minors are produced before the Child Welfare Committee (CWC). |
| ADVOCATE | The Advocate should advise officials to treat victims as minors whenever in doubt.                                                                         |

### STEP 2.3

#### ARRESTING PERSONS ACCUSED OF SEX TRAFFICKING OFFENCES

|          |                                                                                                                                                                                               |
|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should assist the police in immediately arresting all of the accused concerned with the sex trafficking offences.                                                                     |
| ADVOCATE | The Advocate should assist the police with the immediate arrest of the accused under relevant provisions of the BNSS and encourage the police to move forward swiftly with the investigation. |

### STEP 2.4

#### FILING VAKALATNAMA AND APPLICATION TO ASSIST THE PROSECUTION

|          |                                                                                                                                                                                                                           |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should ensure that the sex trafficking survivors provide necessary information to the Advocate and that qualified female counsellors or female legal guardians are present when survivors meet with the Advocate. |
| ADVOCATE | The Advocate should obtain the consent of sex trafficking survivors to file a vakalatnama as their legal counsel and file an application to assist the prosecution under section Section 338 (2) of the BNSS.             |

### STEP 2.5

#### OPPOSING THE BAIL APPLICATION OF ACCUSED PERPETRATORS

|          |                                                                                                                                                                   |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO representatives should be proactive in immediately passing on any information received regarding bail applications filed by the accused to the Advocate.  |
| ADVOCATE | The Advocate should attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted. |

**STEP  
2.6****RECORDING STATEMENTS DURING INVESTIGATION**

|                 |                                                                                                                                                                                                                                          |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO representatives should assist the victims while their witness statements are being recorded and provide quality victim counselling support during the process.                                                                   |
| <b>ADVOCATE</b> | The Advocate should advise the Police in recording witness statements of relevant witnesses under Section 180 of the BNSS and must also ensure that victim statements are recorded before the Magistrate, under Section 183 of the BNSS. |

**STEP  
2.7****EVICTING OFFENDERS AND CLOSING BROTHEL**

|                 |                                                                                                                                                                                                                        |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should provide sufficient information to enable the Advocate to move petitions and representations for closure, sealing and/or eviction of a brothel or place of exploitation before the relevant authorities. |
| <b>ADVOCATE</b> | The Advocate should make a petition to the Magistrate for closure/sealing of the facility in which sex trafficking was taking place.                                                                                   |

**STEP  
2.8****FILING FOR SEX TRAFFICKING VICTIM COMPENSATION**

|                 |                                                                                                                                                          |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate in moving applications for compensation before the courts under Section 395 of the BNSS.                              |
| <b>ADVOCATE</b> | The Advocate should move an application for compensation on behalf of the survivors of sex trafficking before the courts, under Section 395 of the BNSS. |

**STEP  
2.9****FILING OF SEX TRAFFICKING CHARGE SHEET**

|                 |                                                                                                                                                    |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should follow up with the Advocate regarding the filing of a charge sheet.                                                                 |
| <b>ADVOCATE</b> | The Advocate should ensure that the charge sheet is filed within the stipulated time by working closely with the Police and the Public Prosecutor. |

**STEP  
2.10****ENSURING THE APPROPRIATE FORUM FOR TRIAL**

|                 |                                                                                                                                         |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <b>ADVOCATE</b> | Once the charge sheet is filed, the Advocate must ensure that based on the charges, the case is committed before the appropriate forum. |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------|

**STEP  
2.11****FRAMING OF SEX TRAFFICKING CHARGES**

|                 |                                                                                                                                              |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | Once the charge sheet is filed before the Court, the NGO should follow up with the Advocate to ensure that charges are framed expeditiously. |
| <b>ADVOCATE</b> | Once the charge sheet is filed, the Advocate should ensure that appropriate charges are framed before the court at the earliest.             |

**STEP  
2.12****ASSISTING THE PROSECUTION AT ALL SEX TRAFFICKING CASE HEARINGS**

|                 |                                                                                                                          |
|-----------------|--------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | Once the trial begins, a representative from the NGO should be present in court for all required hearings.               |
| <b>ADVOCATE</b> | The Advocate should attend every court hearing and be ready to assist the Public Prosecutor at every stage of the trial. |

**STEP  
2.13****PREPARING SEX TRAFFICKING WITNESSES TO TESTIFY**

|                 |                                                                                                                                                                                                          |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | During the trial, the NGO should help prepare survivors for their witness testimony by counselling them to testify boldly, accurately and with clarity.                                                  |
| <b>ADVOCATE</b> | The Advocate should assist the Public Prosecutor in preparing the prosecution witnesses for chief examination and cross-examination so as to enable them to testify boldly, accurately and with clarity. |

**STEP  
2.14****SUBMITTING FINAL ARGUMENTS TO PROVE SEX TRAFFICKING**

|                 |                                                                                                                                                                                                                                                                                   |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | At the later stage of the trial, the NGO should provide as much information as possible to help the Advocate file comprehensive written submissions.                                                                                                                              |
| <b>ADVOCATE</b> | The Advocate should draft and file written submissions for final arguments to be submitted before the court through the Public Prosecutor (or directly if the Prosecutor refuses to co-operate). The Advocate should also present final oral arguments when allowed by the Court. |

**STEP  
2.15****OBTAINING THE JUDGMENT**

|                 |                                                                                                         |
|-----------------|---------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate in obtaining certified copies of the final judgement from the Court. |
| <b>ADVOCATE</b> | The Advocate should make applications for certified copies of the final judgement.                      |

**STEP  
2.16****FILING OF APPEAL**

|                 |                                                                                                 |
|-----------------|-------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the Advocate with the preparation of an appeal, if required.              |
| <b>ADVOCATE</b> | The Advocate should file an appeal or revision application on an adverse judgment, if required. |

# 3.0 SUMMARY OF PROCEDURES FOR RESTORING SEX TRAFFICKING SURVIVORS



## ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

Magistrate orders medical examination, HIV test, and sexual abuse test with victim's consent and under supervision of female doctor; minor victims referred to CWC; Police escorts victims to medical examination and recovers victims' property from rescue site.



## PLACING SURVIVORS IN SAFE CUSTODY

Magistrate makes order regarding placement of victims in protective shelter home; social workers place victims in home and accompany victims if they leave home for visits to Magistrate or CWC.



## FACILITATING ACCESS TO COUNSELING SERVICES

Female counsellors visit victims within 48 hours of admission to shelter home (with permission from the home); Magistrate issues orders approving counselling plans.



## SUBMITTING A HOME VERIFICATION REPORT

Magistrate/CWC orders home verification report and opposes release of survivors into anyone's custody prior to the submission of report that guarantees safety.



## SECURING SEX TRAFFICKING SURVIVOR COMPENSATION

District Administration assists victims in recovering compensation under several schemes intended to rehabilitate sex trafficking survivors.



## REPATRIATING OR REHABILITATING SEX TRAFFICKING SURVIVORS

Assist in obtaining documents necessary for repatriation; Magistrate/CWC may extend stay at protective home for further rehabilitation if victim's family is unfit to provide care and protection, in a home verification report.



## FACILITATING ACCESS TO GOVERNMENT ENTITLEMENTS

Assist in providing access to public private sector resources related to food, clothing, shelter, land rights, education, employment, health care, counselling and other entitlements.



## FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES

Assist in providing access to private sector resources related to food, clothing, shelter, land rights, education, employment, health care, counselling and other entitlements.



## ENSURING SURVIVORS ENJOY PERMANENT FREEDOM

Work with NGO to prevent re-trafficking and insure reintegration of survivors; do follow up as necessary.

# 3.0

## RESTORING SEX TRAFFICKING SURVIVORS

### STEP 3.1

#### ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

|          |                                                                                                                                                                                              |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should ensure that the sex trafficking survivors receive a medical examination and any required medical care.                                                                        |
| ADVOCATE | The Advocate should ensure that medical examinations are carried out and urgent care is provided, with respect accorded to the sex trafficking survivor's right to privacy and other rights. |

### STEP 3.2

#### PLACING SURVIVORS IN SAFE CUSTODY

|          |                                                                                                                                                                          |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should ensure that the survivor is safely transferred to a protective shelter home.                                                                              |
| ADVOCATE | The Advocate should advise and assist the survivor and the NGO before government authorities to ensure that survivor is safely transferred to a protective shelter home. |

### STEP 3.3

#### FACILITATING ACCESS TO COUNSELLING SERVICES

|          |                                                                                                                                  |
|----------|----------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should provide the survivor with access to trained and qualified female counsellors to help promote the healing process. |
| ADVOCATE | The Advocate should advise the survivor and the NGO about the survivor's right to counselling and other aftercare services.      |

### STEP 3.4

#### SUBMITTING A HOME VERIFICATION REPORT

|          |                                                                                                                                                                                                               |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should prepare a well-documented Home Verification Report after verifying details concerning the family and social background of the survivor.                                                        |
| ADVOCATE | The Advocate should request that the CWC/magistrate order a home verification report and oppose the release of survivors in to the custody of anyone prior to the submission of the Home Verification Report. |

### STEP 3.5

#### SECURING SURVIVOR COMPENSATION

|          |                                                                                                                                                   |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| NGO      | The NGO should assist the Advocate with filing compensation applications and accompany survivors when called to appear before appropriate forums. |
| ADVOCATE | The Advocate should file compensation applications on behalf of the survivor before the appropriate forum.                                        |

**STEP  
3.6****REPATRIATING OR REHABILITATING SEX TRAFFICKING SURVIVORS**

|                 |                                                                                                                                            |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist with safe repatriation or rehabilitation of survivors.                                                               |
| <b>ADVOCATE</b> | The Advocate should advise and assist the survivor and the NGO on legal matters related to repatriation or rehabilitation of the survivor. |

**STEP  
3.7****FACILITATING ACCESS TO GOVERNMENT ENTITLEMENTS**

|                 |                                                                                                                                                                                                                                                                                                                                                     |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should assist the sex trafficking survivors with accessing government entitlements related to both cash (Rs. 3,00,000/= under the newly revamped CSS-2021 for rehabilitation of Bonded Labour and victims rescued from brothels etc.) and non-cash components like education, employment, health care, counselling, and other entitlements. |
| <b>ADVOCATE</b> | The Advocate should provide legal assistance to the NGO and bonded labour survivors to petition government agencies to provide government entitlements if such entitlements are wrongly denied.                                                                                                                                                     |

**STEP  
3.8****FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES**

|            |                                                                                                                                                                                                              |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b> | The NGO should assist the sex trafficking survivors with accessing available private sector (NGO and business) resources related to education, employment, health care, counselling, and other entitlements. |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**STEP  
3.9****ENSURING SURVIVORS ENJOY PERMANENT FREEDOM**

|                 |                                                                                                                                                                                             |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NGO</b>      | The NGO should maintain an ongoing relationship with the sex trafficking survivor for at least 24 months from rescue to ensure sustained rehabilitation and permanent freedom of survivors. |
| <b>ADVOCATE</b> | The Advocate should remain accessible to the survivor to provide advice and counsel regarding the survivor's rights in the community.                                                       |



# OVERVIEW AND **CONTEXT** OF TRAFFICKING IN **INDIA**



# Definition and Dynamics of MODERN-DAY SLAVERY

Historically, slavery was often given legal sanction. Though the slave trade has now been abolished and is universally recognized as illegal, it continues to exist in a modern form. At present, there are more than 49.6 million people trapped in modern slavery, in an industry generating \$150 billion per year.<sup>4</sup>

## FORMS OF MODERN-DAY SLAVERY

Prior to its abolition, slavery involved the owning of a person by another and the rendering of the slave as a marketable good. However modern forms of slavery can be found in the practices of domestic servitude,<sup>5</sup> bonded labour or debt bondage, serfdom (when a person must live and work for another person on his/her land), forced labour, child slavery, and marital and sexual slavery.<sup>6</sup>

Human trafficking is a term often used interchangeably with modern-day slavery. According to the United States State Department's Office to Monitor and Combat Trafficking in Persons defines the terms "trafficking in persons", "human trafficking" and "modern slavery" are umbrella terms encompassing recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion.<sup>7</sup> Human trafficking thus involves not merely the movement of persons but also the concept of enslavement.<sup>8</sup>



## INTERNATIONAL DEFINITION OF HUMAN TRAFFICKING

Human trafficking has become, in financial terms, the third largest organized crime internationally, after arms and drug trafficking.<sup>9</sup> In a widely adopted definition, the Palermo Protocol (The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children) defines "trafficking in persons" as:

*"the recruitment, transportation, transfer, harbouring or receipt of persons, using threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs ."<sup>10</sup>*

<sup>4</sup> 'Prevalence: Global Slavery Index', Global Slavery Index, 2018 . Available at: <<http://www.globalslaveryindex.org/findings/>>.

<sup>5</sup> 'Slavery Today', End Slavery Now. Available at: <http://www.endslaverynow.org/learn/slavery-today>

<sup>6</sup> 'Modern slavery', Ethics guide, BBC. Available at: <[http://www.bbc.co.uk/ethics/slavery/modern/modern\\_1.shtml](http://www.bbc.co.uk/ethics/slavery/modern/modern_1.shtml)>

<sup>7</sup> 'The Face of Modern Slavery' Trafficking in Persons Report , 2018, pp.32-33. Available at: <<https://www.state.gov/wpcontent/uploads/2019/01/282798.pdf>>.

<sup>8</sup> 'Modern Slavery?', Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, Diplomacy in Action. Available at: <<http://www.state.gov/what-is-modern-slavery>>.

<sup>9</sup> Malhotra D., Trafficking of Women and Children: A Culture of Silence , Eastern Book Company, PL Web Jour 1, 2005.

<sup>10</sup> Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children . Available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>>.

According to this definition, human trafficking consists of three elements:

- 1) The act (what is done): Recruitment, transportation, transfer, harbouring, or receipt of persons ;
- 2) The means (how it is done): Threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person ; and
- 3) The purpose (why it is done): For the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

*These three elements are depicted graphically below.<sup>11</sup>*

# Human Trafficking



Recruitment  
Transportation  
Transfer  
New Favorite  
Receipt of Persons



Threat or Use of Force  
Coercion  
Abduction  
Fraud  
Deception  
Abuse of Power or  
Vulnerability  
Giving Payment of  
Benefits



Exploitation  
Prostitution of Others  
Sexual Exploitation  
Forced Labour  
Slavery or Similar  
Practices  
Removal of Organs  
Other Types of  
Exploitation

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## FORMS OF HUMAN TRAFFICKING RECOGNIZED GLOBALLY

According to the United Nations Office on Drugs and Crime's Global Trafficking in Person's Report 2022, the two most common forms of trafficking are forced labour and sexual exploitation.<sup>12</sup> Interpol recognizes these two predominant forms

of trafficking, as well trafficking for forced human activity, "people smuggling," and trafficking for the removal of organs.<sup>13</sup> Human trafficking varies depending upon which form of exploitation undergirds the trafficking. Broadly, the following are the most common types of human trafficking globally:<sup>14</sup>

<sup>11</sup> 'Elements of Human Trafficking; What is Human Trafficking?', UNODC on trafficking in persons and smuggling of migrants, United Nations Office on Drugs and Crime (UNODC). Available at: <<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.htm-l?ref=menused>>.

<sup>12</sup> Global Trafficking in Persons Report, 2022, UNODC. Available at: [https://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](https://www.unodc.org/documents/Global_Report_on_TIP.pdf)

<sup>13</sup> 'Types of Human Trafficking', Crime Areas: Trafficking in Human Beings, Interpol. Available at: <<https://www.interpol.int/en/Crimes/Human-trafficking/Types-of-human-trafficking>>.

<sup>14</sup> For definitions of types of human trafficking, see generally "Forms of Slavery," End Slavery Now, available at <http://endslaverynow.org/levam>

## Sex Trafficking / Commercial Sexual Exploitation

When an adult is forced, threatened or fraudulently coerced into engaging in a commercial sex act, such as prostitution.<sup>15</sup>

## Child Sex Trafficking/Commercial Sexual Exploitation

When a child (a person under 18 years of age) is forced to engage in a commercial sexual act.<sup>16</sup>

## Forced Labour and Bonded Labour

When victims of forced or exploitative labour are trafficked for the purpose of working in the entertainment industry, domestic work, carpet industry, garment industry, camel jockeying, brick industry, agriculture, etc.

Bonded labour is an outcome of indebtedness that exploits economically weaker sections of society. It occurs when a person agrees to render services to a lender in lieu of a debt. In India, sometimes there are several generations working under bondage to repay a meagre amount borrowed at a high rate of interest.<sup>17</sup>



## Begging

When traffickers source women and children and place them in various areas to beg. Because disabled child beggars generate greater profits, traffickers sometimes maim children to enhance their value as beggars.

## Organ Transplantation

When traffickers often exploit persons to transplant organs for profit. In some cases, the victim is unaware his/her organs are being removed and in some cases persons agree to removal of their organs due to dire economic needs.

## **DYNAMICS OF HUMAN TRAFFICKING**

Trafficking is caused by several factors, varying from region to region. However, two factors are common to trafficking in general and can be found in various regions, patterns or cases.<sup>18</sup>



<sup>15</sup> TIP Report, US Department of State, 2018, p. 34. Available at: <<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>>.

<sup>16</sup> Ibid.

<sup>17</sup> See Handbook on Bonded Labour, National Human Rights Commission, India. Available at: [https://nhrc.nic.in/sites/default/files/Hand\\_Book\\_Bonded\\_Labour\\_08022019.pdf](https://nhrc.nic.in/sites/default/files/Hand_Book_Bonded_Labour_08022019.pdf).

<sup>18</sup> 'Tool 9.2: Addressing the root causes of trafficking', UNODC Toolkit to Combat Trafficking in Persons, p. 454. Available at: <[https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_9-2.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf)>.

Push factors that exert pressures on victims to enter forms of modern slavery: Potential victims may be pushed into situations of slavery or may desire to migrate to another state, region or country, searching for better conditions due to:

- ◇ Poverty
- ◇ Oppression
- ◇ Violation of human rights
- ◇ Lack of social or economic opportunity
- ◇ Dangers from conflict or instability
- ◇ Religious or ethnic persecution or discrimination
- ◇ Natural disasters

These factors cause potential victims to enter situations of slavery or migrate under risky circumstances, pushing them into the control of traffickers. Unstable conditions that could lead to the destabilization and displacement of populations also increase their vulnerability to exploitation and abuse. Orphans and children are especially targeted.

Pull factors that attract people to move: People groups are attracted to places that offer better conditions. While on the move they become more vulnerable to traffickers.

Intermediaries often serve as a crucial bridge between a prospective employer and migrants. A labourer's dependence on the intermediary or labour broker to make arrangements to get the migrant to his/her place of employment increases the migrant's vulnerability to trafficking, as these recruiters sometimes make false promises or directly facilitate trafficking.<sup>19</sup>

The TIP Report 2018 observes that each of the following increases a person's vulnerability to trafficking:<sup>20</sup>

**Debt manipulation:** A person incurs a huge debt that s/he believes s/he can repay upon employment, thus rendering the person vulnerable to trafficking. However, once employment starts, hiked rates of interest, minimal payment conditions, and the terms of employment render repayment of the debt impossible or infeasible.

**Contract fraud or switching:** When the conditions of work arbitrarily change or when the contract of employment is not adhered to, rendering the worker vulnerable to forced labour.

**Confiscation of documents and abuse of the legal process:** Traffickers often use the identity documents of the victims to exploit and abuse them into staying at a particular place of employment.

.....  
<sup>19</sup> 'Introduction: Labour Recruitment in Global Markets', TIP Report, 2015, p. 15.  
Available at: <<https://2009-2017.state.gov/documents/organization/245365.pdf>>.  
<sup>20</sup> Ibid, at pp. 15 – 16.



## 4PS AND THE STRATEGY TO COMBAT MODERN-DAY SLAVERY

The United Nations, in the Palermo Protocol, has laid down a four-fold response (known as the “4P’s”) to trafficking in persons:

### PREVENTION

### PROTECTION

### PROSECUTION

### PARTNERSHIPS<sup>21</sup>

The 4Ps constitute a strategic framework to tackle trafficking of persons. Each of the four strategies addresses issues of supply and demand.<sup>22</sup> The following are examples of relevant actions:

### PREVENTION

- ◇ Adopt or improve legislation to prevent trafficking of persons.
- ◇ Develop national child protection systems and active participation of children in development of preventive measures.
- ◇ Promote coherence among public policies related to trafficking in persons (migration, crime prevention, education, employment, health, security, non- discrimination, economic development, protection of human rights, child protection, gender equality, among others).
- ◇ Develop and/or strengthen measures to reduce vulnerability to trafficking by addressing its root causes.
- ◇ Conduct a needs assessment for an impact evaluation for prevention strategies and programmes.

### PROTECTION

- ◇ Establish or improve victim identification process.
- ◇ Adopt or amend legislative measures to protect and assist victims.

- ◇ Develop victim protection and assistance measures in compliance with international standards.
- ◇ Adopt measures ensuring return, if desired by trafficking victims, with appropriate risk assessment.



### PROSECUTE

- ◇ Develop, strengthen, and implement comprehensive national frameworks
  - aligned with the Palermo protocol, including:
  - Recognize trafficking in persons as a criminal offence.
  - Criminalize other crimes related to trafficking in persons, such as corruption, money laundering, obstruction of justice and participation in an organized criminal group
  - Make penalties and sanctions appropriate and proportionate to the gravity of the crime and confiscate proceeds of trafficking.
  - Ensure the rights of victims, including the rights of victims and witnesses to protection before, during and after Public Prosecution, and foster effective collaboration between law enforcement, social welfare, and civil society.

<sup>21</sup> Revised Policy, USAID Counter-Trafficking in Persons Field Guide, US Agency International Development, December 2021 Available at: [https://www.usaid.gov/sites/default/files/2022-05/December-2021\\_Revised-C-TIP-Policy.pdf](https://www.usaid.gov/sites/default/files/2022-05/December-2021_Revised-C-TIP-Policy.pdf).

<sup>22</sup> International Framework for Action to Implement the Trafficking In Persons Protocol, UNODC, United Nations, New York 2009, pp. 10-13. Available at: [https://www.unodc.org/documents/human-trafficking/Framework\\_for\\_Action\\_TIP.pdf](https://www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf).

- Develop proactive investigative techniques without relying on victim testimony, and implement judicial procedures to avoid re-victimization of trafficked persons, particularly children, during the judicial process.
- ◊ Enforce national anti-human trafficking legislation.
  - ◊ Establish specialized institutions such as specialized police units and judicial structures.

## PARTNERSHIP

- ◊ National Coordination and Cooperation
  - Develop and implement evidence-based policies on trafficking in persons, which are coherent with other policies.
  - Establish a system of multi-disciplinary cooperation and coordination among various stakeholders, such as government institutions, NGOs, victim service providers, health institutions, child protection institutions, trade unions, workers' and employers' organizations, and the private sector.
  - Monitor and evaluate national strategies and/or plans of action to assess progress and impact.

## INTERNATIONAL COORDINATION AND COOPERATION

- ◊ Create legal basis for international cooperation including promotion of cooperation agreements.
- ◊ Develop or strengthen national capacity in extradition, mutual legal assistance, transfer of sentenced persons, joint investigations, and international cooperation to confiscate trafficking proceeds.
- ◊ Develop or strengthen national capacities for the identification, return, risk assessment and reintegration of victims of trafficking, with special consideration to the best interest of the child, and establish cooperation between countries of destination, transit and origin.
- ◊ Establish communication procedures, information and data exchange.
- ◊ Establish coherence in policy recommendations and technical assistance provided by international and regional organizations.
- ◊ Ensure cost-effective division of labour.
- ◊ Promote cooperation and joint programming among international and regional organizations in developing and implementing common strategies and programmes.

The 4P strategy is now a globally recognized response to trafficking in persons.



# CLARIFICATION OF CONCEPTS

Due to the number of technical terms being used, it is important to clarify/ distinguish certain concepts to understand human trafficking.

## SEX TRAFFICKING VS. SEX WORK

Women who have been trafficked for sexual exploitation should be distinguished from women who voluntarily enter the sex trade.

### SEX TRAFFICKING

According to the 2018 TIP Report,<sup>23</sup> a victim of sex trafficking:

Is an adult who engages in a commercial sex act, such as prostitution, which may occur within debt bondage (where individuals are forced to continue in prostitution to repay a debt, which the trafficker claims has been incurred during their transportation, recruitment, or their crude “sale”—and must be paid before they can be free);

Is acting as a result of circumstances involving force, threats of force, fraud, coercion or any combination of such means; and

Has been recruited, harboured, enticed, transported, provided by, obtained by or maintained by a person, known as the trafficker, for the purpose of exploiting the victim to engage in a commercial sex act.

In the above situations the adult’s “consent” to participate in prostitution is not valid.

When a child is engaged similarly to perform acts of commercial sex, it is referred to as child sex trafficking.



### SEX WORK

Sex work is the provision of sexual services for money or goods.<sup>24</sup>

While sex trafficking results in sex work, sex work need not be the result of trafficking. There are instances where women voluntarily join the sex trade. It is the perpetrators of commercial sexual exploitation who are punishable under the Palermo Protocol and national law. Hence it is trafficking for sex work that is punishable, and not sex work per se.

<sup>23</sup>The Face of Modern Slavery: What is Trafficking in Persons?, TIP Report 2018, p. 32. Available at <<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>>.

<sup>24</sup>Overs C., 2002, Sex Workers: Part of the solution – An analysis of HIV prevention programming to prevent HIV transmission during commercial sex in developing countries. Available at: <[https://www.who.int/hiv/topics/vct/sw\\_toolkit/115solution.pdf](https://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf)>.

## **TRAFFICKING vs. MIGRATION<sup>25</sup>**

Migration means the movement of people from one place of residence to another, which could be between districts, states, or different countries. It may be seasonal and temporary, or permanent. Migrants may move of their own accord to seek better prospects. When traffickers move victims, by contrast, they employ fraud, threats, coercion, intimidation and violence. The intent and consequence of these movements of people cannot always be understood during the period of movement, even for the individual worker who is in the process of migration or trafficking. It is often the outcome of the movement which determines whether it was safe migration or trafficking. Voluntary migration should not be confused with trafficking.

## **BONDED LABOUR vs. CHILD LABOUR**

Under the BLA, bonded labour is a type of forced labour that involves the victim providing labour in exchange for an advance or other economic consideration or in pursuance of a "custom" or "social obligation". In India, a child below the age of 14 is not allowed to work in the occupations specified in the Child Labour (Prohibition and Regulation) Act, 1986. Child labour takes on different forms and while all forms of bonded child labour are child labour not

all forms of child labour are bonded labour. While bonded labour can occur among children, it is not the only form of child labour.

## **THE IDEA OF CONSENT**

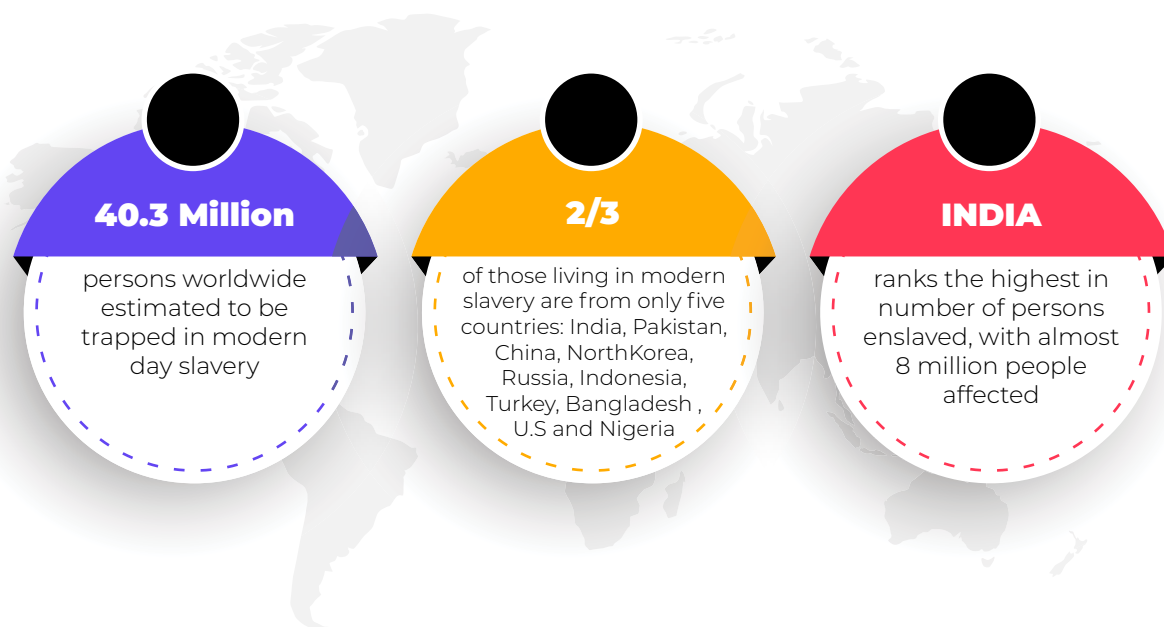
As long as a trafficker intends to procure, transport, buy or sell people for the purpose of exploitation, "consent" is not a valid defence to the crime of trafficking. Trafficking may involve types of coercion other than overt force. Traffickers maintain the submission of their victims through a variety of means –including fraudulent promises, debt bondage, physical and psychological abuse, rape, torture and threats of arrest or threats to the victim's family. The concept of "honour", especially to a victim of sex trafficking, often prevents victims from seeking help or leaving their conditions even when escape may be possible. Trafficked persons are often afraid to leave their situation for fear of public humiliation, as well as possible further victimization by society and their families. As they are almost always economically vulnerable and may have no other immediate means of survival, leaving is not a viable option for them.<sup>26</sup>

<sup>25</sup>*The Difference between Trafficking and Migration, Trafficking and the Law*, 2nd Ed., Socio Legal Information Centre, Human Rights Law Network, p 7.

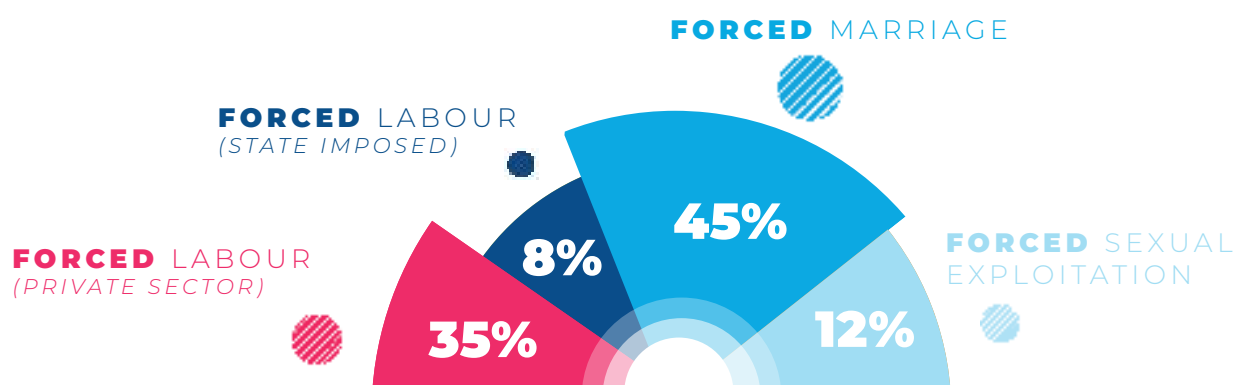
<sup>26</sup>*Supra* note 6.

# STATISTICS

## GLOBAL SLAVERY INDEX FINDINGS<sup>27</sup>



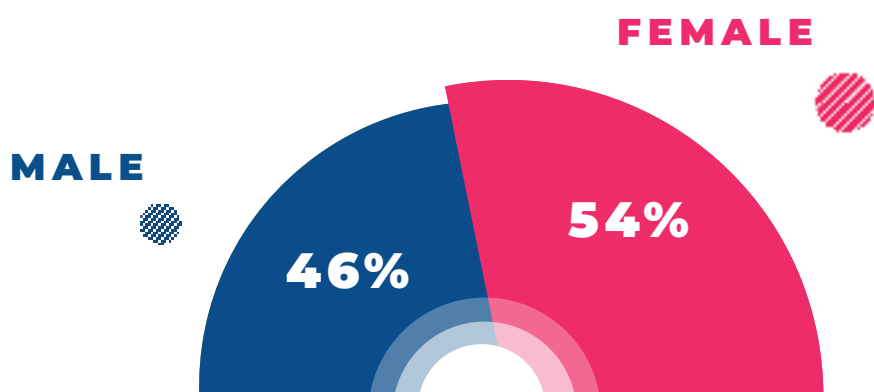
Given below are a few facts and figures according to I.L.O.:<sup>28</sup>



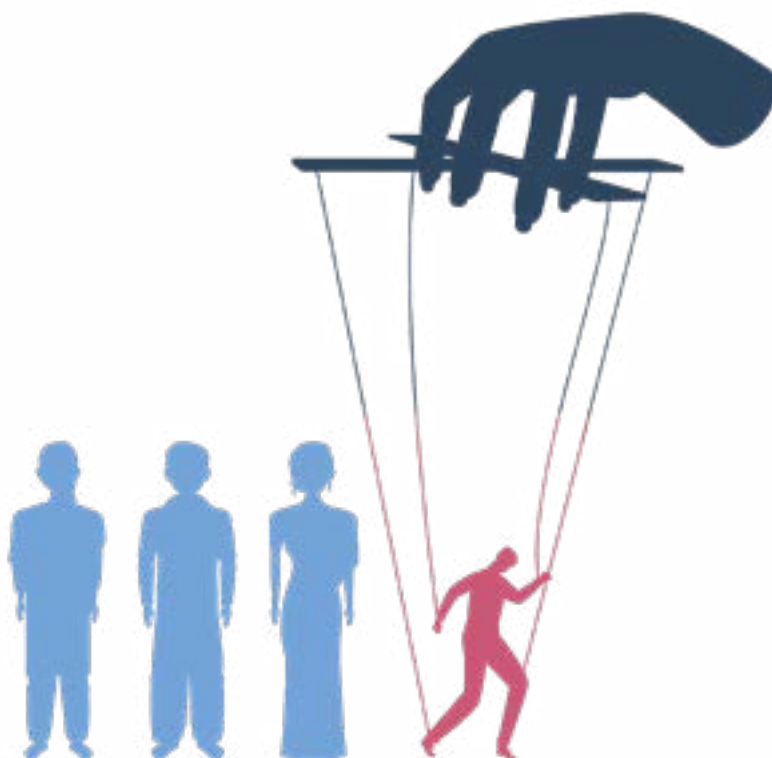
<sup>27</sup> "Global Slavery Index 2018," available at <https://www.globalslaveryindex.org/2018/findings/highlights/>

<sup>28</sup> "Global Estimates of Modern Slavery, Forced Labour and Forced Marriage, International Labour Organization and Walk Free Foundation, 2017," p. 5. Available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf).

- ◇ For every 1,000 people in the world there are **5.4 victims of modern slavery**.
- ◇ Women and girls are disproportionately affected by forced labour, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.<sup>29</sup>
- ◇ In the private economy forced labour is estimated to generate about \$150 billion in illegal profits per year. While sexual exploitation generates profits, forced labor saves costs.
  - \$99 billion from commercial sexual exploitation
  - \$34 billion in construction, manufacturing, mining and utilities
  - \$9 billion in agriculture, including forestry and fishing
  - \$8 billion dollars is saved annually by private households that employ domestic workers under conditions of forced labor

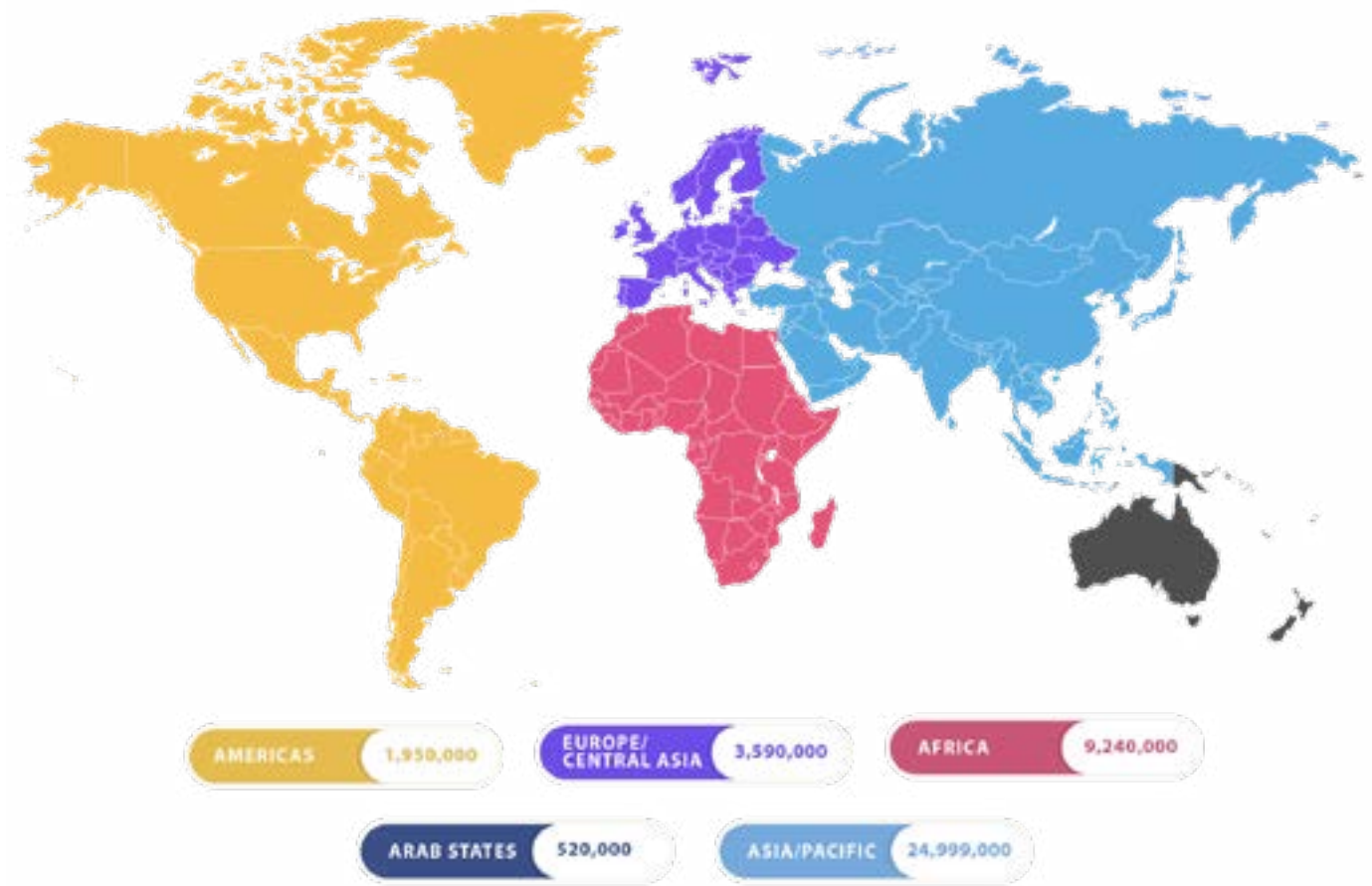


One in four victims of modern slavery are children.



<sup>29</sup> The ILO refers to forced labour as "situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities." This can be read at: [http://www.ilo.org/global/topics/forced-labour/news/WCMS\\_237569/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm).

The image below indicates the dispersion of victims trapped in modern slavery regionally:<sup>30</sup>



India is responsible for an overwhelming number (and percentage) of forced labour victims worldwide. Given the magnitude of the trafficking problem in India in particular, the statistics below show that there is vast room for increased enforcement of applicable laws in India. The figures below (compiled by the Indian government in 2013) demonstrate the low Public Prosecution and conviction rates in India compared to the extent of human trafficking.<sup>31</sup>

| Persons arrested during the year | Total no. of persons under trial | Persons whose cases were completed | Persons convicted | Persons acquitted |
|----------------------------------|----------------------------------|------------------------------------|-------------------|-------------------|
| 8,869                            | 53,947                           | 5,030                              | 1,688             | 3,342             |

<sup>30</sup> Prevalence across the regions, GSI. Available at: <https://www.globalslaveryindex.org/2018/findings/regional-analysis/regional-findings/>.

<sup>31</sup> 'Catalogue of persons arrested and their disposal by police and court under human trafficking', National Informatics Centre (NIC), Government of India. Available at: <https://data.gov.in/catalog/persons-arrested-and-their-disposal-police-and-court-under-human-trafficking>.

# TRAFFICKING IN INDIA



Modern forms of slavery in India include being trafficked for bonded labour, domestic service, forced begging, commercial sexual exploitation, forced marriage and forced recruitment for armed services.<sup>32</sup>

The TIP Report 2018 profiles India as a source, transit and destination country for trafficking, primarily for forced labour (the most frequent form of exploitation) and commercial sexual exploitation..

## 1. Bonded Labour

Forced labour – Includes debt bondage, where men, women and children are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery. The demand for forced labour has risen with growth in industries such as construction, steel, textiles, wire manufacturing for underground cables, biscuit factories, pickling, floriculture, fish farms, and boat making. Children are often forced to work as agricultural labourers, factory workers, beggars, and domestic servants

Bonded labour occurs rampantly across many parts of India. It results in families being separated from their communities, inhumane working conditions for 15 to 18 hours a day, physical abuse, and sexual exploitation. Poverty, deprivation, illiteracy, unemployment, and social inequalities are the primary drivers of this continuing practice. Over 90 percent of bonded labourers belong to the Schedule

Caste and Schedule Tribe communities.<sup>34</sup>

Bonded labour is most frequently encountered in brick kilns, stone quarries, mining, agriculture, construction industries, pulp extracting, carpet industries, textile industries, agarbathi making, domestic work, charcoal making, and woodcutting.

## 2. Sex Trafficking

It is estimated that 18 million women and children are exploited for commercial sex work. Children are sexually exploited in religious pilgrimage destinations, tourist areas and many other sites.

Due to the growth of labour-intensive industries, several members of India's disadvantaged social strata predominate in this trade. Dalit persons, members of tribal communities, religious minorities, and women and girls from excluded groups are the most vulnerable to exploitation.<sup>33</sup> Most of India's trafficking is internal, with just 10% crossing international borders.

The methods used to recruit trafficking victims include deceit and false promises (of marriage, a better job, or a better future), material inducement (wherein the trafficker promotes himself/herself as affluent and provides some form of monetary support to the victim or his/her family), force and coercion, threats, abuse, bleak hope (by convincing the targeted victim that he/she has no hope for the future and the only alternative is to perform the

<sup>32</sup> 'Country Brief- India', Global Slavery Index, 2018, Available at: <<http://www.globalslaveryindex.org/country/india/>>.

<sup>33</sup> 'Country Narrative – India', 2018 TIP Report, p. 221. Available at: <<https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>>.

<sup>34</sup> The incidence of bonded labour has been and remains particularly severe among the Scheduled Castes and Scheduled Tribes in India See Report on Global Alliance against Forced Labour, Ch. 4, ILO. Available at: <[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf)>.



work,  
service  
or activity  
the trafficker  
insists on being  
performed), and debt  
bondage (by offering the  
victim an advance that traps the  
indebted person and his/her family  
into bonded servitude to repay the debt).

A common way to recruit potential victims, especially females, is by feigning a romantic relationship to gain the trust of a female victim and exploiting the relationship to manipulate and/or coerce the victim into sexual exploitation for the trafficker's profit.

Sex trafficking remains a significant problem in India. The Constitution of India prohibits trafficking in human beings. India has passed the Immoral Traffic Prevention Act, 1956 (ITPA), that criminalizes sex trafficking. The Government of India has granted each state legislative power and policies to fight against human trafficking with a special focus on commercial sexual exploitation of women and children. The Government of India newly enacted the Criminal Code that replaced the IPC, CrPC, and CPC with the BNS, BNSS, and BSA, respectively. Section 143 of the BNS, mirroring the old IPC provision, now includes 'begging' within its definition of exploitation for the purpose of trafficking.

The pressing factors for trafficking for sexual exploitation are poverty, vulnerability of women and children due to conflict and natural disasters, gender discrimination, and demand for prostitution, both

internally and from other countries.

The 2018 TIP Report estimates that millions of children and women are victims of sex trafficking in India. Victims of trafficking for sexual exploitation include a large number of women and children from Nepal, Afghanistan, Bangladesh, and also men and women from Asia and Eurasia. West Bengal is a major source area for trafficked women and children. The major destinations for female trafficking victims include Kolkata, Mumbai, Delhi, Gujarat, and the India–Nepal border. Traffickers pose as match-makers, arrange sham marriages, and use other coercive and fraudulent means to subject women and girls to trafficking. Corrupt law enforcement officers impede the rescue efforts by protecting suspected traffickers and brothel owners.<sup>35</sup>

A typical brothel structure consists of (1) a malik (the brothel owner), who is responsible for supervising the finance of the brothel; (2) a Gharwali who manages the day-to-day operations of the brothel; (3) Lodgers -voluntary prostitutes who rent a room in the brothel to accept clients; (4) Adhivas, who have the choice to accept or reject clients and split half their earnings with the malik; and (5) newly trafficked victims, who are at the bottom rung and coerced into serving clients.<sup>36</sup>

<sup>35</sup> *Infra*, See Note 51.

<sup>36</sup> *Trafficking in Women and Children in India*; Sen S., Nair, P.M; 2005 New Delhi.



# **STANDARD OPERATING PROCEDURES**

## PURPOSE & OBJECTIVE

The Standard Operating Procedures (SOPs) are designed to help NGO staff, their lawyers, and other identified stakeholders withdraw persons from bonded labour or sex trafficking situations through planned operations. It is recognised that many people leave situations of modern slavery through other types of initiatives. As a comprehensive resource guide, the SOPs clarifies and lists appropriate procedures and practices to strengthen responses against bonded labour and sex trafficking and ensure appropriate and prompt action.

The objectives of the SOPs are:

- ◇ Adopting victim-centered and trauma-informed procedures during all stages of interventions.
- ◇ Ensuring perpetrator accountability.
- ◇ Encouraging participation of various stakeholders (Police, NGO, and Government) to develop a synergy to respond to bonded labour and sex trafficking.
- ◇ Ensuring expeditious and effective law enforcement.
- ◇ Taking steps for prevention as well as resettlement, reintegration and help for recovery.



## STRUCTURE

The SOPs provide a list of steps to be taken by the NGO and the Advocate in fighting the two most common forms of human trafficking in India—bonded labour and sex trafficking. Under each step there is a timeline<sup>37</sup> that has been provided along with a commentary section that further explains the specific step. In addition, there is a “Points to Note” section following the commentary that highlights key issues to be considered in executing the step. Finally, many of the steps also include a “Learn More & Take Action” section pointing the reader to related sections in Chapter IV (Legal Framework), Chapter V (Selected Landmark Judgments), Chapter VI (Modern-Day Slavery Interventions), and the Appendices where NGO and Advocates can find further practical and legal information.

<sup>37</sup> The timeline has been provided based on JVI's experience during the said intervention. It is not a standard nor is it laid down in policy or any law, unless otherwise specified.

# SOPs FOR BONDED LABOUR INTERVENTIONS

Set forth below are the SOPs for Bonded Labour Interventions. The SOPs are divided into three parts:

1. Procedures for rescuing of victims
2. Procedures for prosecuting perpetrators
3. Procedures for restoring survivors

For detailed commentary and other resources related to these SOPs please see Chapter III.

## 1.0 SUMMARY OF PROCEDURES FOR RESCUING BONDED LABOUR VICTIMS



### IDENTIFYING BONDED LABORERS

District Administration (DA) inquires into existence of bonded labour based on evidence provided by NGO



### PREPARING THE BONDED LABOUR RESCUE PLAN

Rescue team (DA, Police, Labour and Revenue Dept.) attend pre-rescue meetings with NGO to schedule rescue date and review checklist of responsibilities.



### SECURING THE BONDED LABOUR RESCUE SITE

Police secures perimeter of the rescue site and prevents hiding or removing of evidence; Labour Dept. shuts down facility if child labour practiced.



### GATHERING BONDED LABOUR EVIDENCE

Police collects evidence (log books, account books, contracts, etc.) and prepares Panchnama/seizure memo and site map with signatures of witnesses.



### MOVING BONDED LABOURERS TO A SECURE LOCATION

Move victims to secure location; police ensure protection of victims from intimidation or harassment.



### SUBMITTING THE BONDED LABOUR COMPLAINT

DA (or appointee) receives complaint; Police, AHTU and Labour Dept can also receive complaint but must coordinate with DA prior to investigation.



### INITIATING THE BONDED LABOUR RESCUE

IDA oversees and conducts inquiry/identification/release at rescue site; Labour Dept. records victim statements; Police arrests accused. If child labour involved, involve Task Force on Child Labour.



### SEPARATING BONDED LABOURERS FROM THE ACCUSED

Police separates victims from accused and takes victims to secure open area; informs victims of reason for rescue.



### RECORDING BONDED LABOURER STATEMENTS

DA and Labour Dept. record victim statements (away from presence of perpetrators), grant release certificates and release orders if warranted.



### SECURING BONDED LABOUR RELEASE CERTIFICATES

If release certificates were not granted in Step 1.8, then DA grants them off-site after inquiry is complete, with a release order for protection, payment of minimum wages and subsistence relief.

# Step 1.1 Identifying Bonded Labourers

Timeline: The process of identifying bonded labourers could take two to eight months

## NGO

The NGO should gather and verify facts supporting the existence of bonded labour.

## ADVOCATE

The Advocate should confirm whether the facts gathered support the legal elements of bonded labour under the Bonded Labour Act, 1976 and other related offences.

## COMMENTARY

The NGO and/or the Advocate may receive information about the incidence of bonded labour from one of the following sources:

- ◇ Victim or Victim's Family, Community or a Survivor;
- ◇ NGO/ Community Leaders;
- ◇ District Administration, Village Panchayat or other departments (e.g. Labour Department);
- ◇ Anti-Human Trafficking Units (State and District level);
- ◇ Any person having knowledge of the crime;
- ◇ Informants.

The Advocate should ascertain whether the information gathered shows existence of agreements of the nature described under Section 2(g) of the Bonded Labour Act.

The Advocate should also ascertain if information gathered shows elements of forced circumstances as per Section 2(g) of the Bonded Labour Act.

The Advocate should advise the NGO representatives to promptly report the information to the appropriate authorities.

## POINTS TO NOTE

### Responsibility of District Administration

It is the responsibility of the District Administration, through the Revenue Divisional Officer (RDO) or Sub-Divisional Magistrate (SDM)<sup>38</sup> to inquire into the existence of Bonded Labour.<sup>39</sup> The main role of the NGO and Advocate therefore is to bring to the District Administration's attention the existence of bonded labour.

### Identification of area

It is important to identify the area where children or women are entrapped.

<sup>38</sup> Also called SDO (sub-divisional officer) or AC (Assistant Commissioner) in some jurisdictions such as Karnataka.

<sup>39</sup> Please see sections 10 to 12 of the BLA through which the State Government may authorize the DM to empower subordinate officers such as RDO or SDM's to be implementing authorities of the BLA.

## Sources of information

NGO representatives may find information about the incidence of bonded labour through these means:

- ◇ Source Area : Collect intelligence on victims and potential victims in source areas. Victims include vulnerable persons, vulnerable communities, people in difficult situations etc. The NGO should sensitize and motivate the community members to keep a watch in the community for irregular movements of potential victims. Intelligence in source areas can also be gathered from interviews with survivors.
- ◇ Transit Points: Depute team at transit points to collect intelligence on victims and perpetrators in transit. Transit points include bus stops, railway stations, airports, immigration/ custom offices at borders and tourist destinations.
- ◇ Demand Areas: Collect intelligence at areas/activities where demand for bonded labour is high (e.g. brick kilns, stone quarries, carpet industries, agricultural lands, mines, power plants, construction sites, sugar mills, rice mills, factories, domestic servitude).
- ◇ Enmity: Personal enmity or rivalry between the owner of a facility and the informant can lead to identification of bonded labourers.
- ◇ Media Reports: Collect intelligence from media reports, advertisements in newspapers about placement agencies, parlours, etc.

## Decoy Operations

Information may be obtained by conducting decoy operations. A decoy operation occurs when a person goes undercover (such person is called a “decoy”) and uses his/her guise to obtain information about the incidence of bonded labour and where it is being committed. The decoy also helps gather any other information that could be useful in conducting a rescue operation but cannot be procured otherwise.

- ◇ Who can be employed as a decoy: A decoy can be a police official, a representative of the NGO, or any other person willing to be sent as a decoy.
- ◇ Who can a decoy be disguised as: A decoy can pose as a middleman, a contractor, an employer, etc.
- ◇ Brief the decoy: The decoy must be sensitized to the plight of the victims and the risks involved in carrying out such operations. The decoy must be made aware of the vulnerability of the trafficked person and should neither traumatize the victim further by his or her presence nor take advantage of the situation. The decoy should be carefully trained about how to respond in the different circumstances that might arise.

## Victim documentation

Statements of the victims should be taken so as to understand the nature of the abuse or forced circumstances. Get statements from as many victims as possible in order to make your case strong. If possible, get signed affidavits of the victims regarding their situation and a video or audio recording of the victim statement.

## Fact-finding about owner

Include a fact-finding about the owner to understand his nature, his antecedents, and his connections within the local administration.

Maintain confidentiality: Information relating to the victims, the rescue site to be searched, and the owners must remain confidential. The NGO representatives/Advocates should not disclose information to persons not relevant to the operation.

## Gathering of information in a lawful manner

NGO representatives involved in this process must ensure that the information is gathered in a lawful manner and without endangering the safety of the victims. NGO representatives must remember that they are not law enforcement officials and therefore are not

empowered to search a premise, seize items or evidence, carry out arrest or unlawfully detain any person. The Advocate should guide NGO representatives in ensuring compliance with the law during this process.

### Preparing the victims for rescue

During the pre-rescue stage of investigation, the victims should be briefed about the rescue and how they would be required to respond to the questions of the Magistrate. Information regarding the time and date of rescue should not be divulged as this may lead to leakage of information. Preparation of victims prior to rescue is important to ensure a successful witness testimony and maintain a good relationship with the victims who should not be caught off guard with the questions posed to them.

If the NGO representative/Advocate or informant receives information from any source regarding persons trapped in bonded labour, promptly alert any one of the relevant authorities (DM, SDM, AHTU, NHRC or the Police).

### **Do not attempt to rescue a bonded labourer on your own.**

**A rescue requires the permission and the presence of the DM/SDM/Police along with the NGO and their representatives.**

## LEARN MORE & TAKE ACTION

### Definition and concept of bonded labour – A labourer is bonded if:

- a. He or she is working because of an advance received, a custom/social obligation, a family obligation passed on through succession or other economic condition, or scheduled caste or community obligation (the agreement element);<sup>40</sup>

### AND

- b. He or she is receiving no wages/less than minimum wages or has no freedom of employment, freedom to travel, or freedom to sell their own goods and services at market value (forced circumstances element).<sup>41</sup>

**Presumption of bonded labour:** The Supreme Court has held that bonded labour can be implied if any of the forced circumstances exist as there is then a presumption of the agreement element, unless rebutted with evidence.<sup>42</sup>

Existence of physical abuse not mandatory: In *People's Union for Democratic Rights v. Union of India*,<sup>43</sup> the Supreme Court held that forced labour (bonded labour) does not necessarily involve physical force.

**Role of Vigilance Committees:** Read Section 14 of the Bonded Labour System (Abolition) Act, 1976 to understand the function of Viwgilance Committees and how the Vigilance Committee of a particular District/Sub – Division can advise the District Magistrate to take measures to implement the provisions of the Act.

<sup>40</sup> Sections 2(g) (i)-(v) of the BLA.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Bandhua Mukti Morcha AIR 1984 SC 802 Para 34. 74 AIR 1982 SC 1473, Para 20.*

<sup>43</sup> *AIR 1982 SC 1473, Para 20*

**The role of NGOs:** In *Neeraja Chaudhary v. State of Madhya Pradesh* the Supreme Court stated that when a complaint regarding the existence of a bonded labour system is provided to the DM by the NGO, it is the duty of the DM to involve the representative of such NGO when conducting an inquiry and the report of the inquiry should be provided to such representative.<sup>44</sup>

**To learn more about bonded labour in India:** Refer to Chapter II D. To learn more about legislation on bonded labour in India, refer to Chapter IV C.

**Victim preparation:** Refer to Annexure 3, of the *UNODC Standard Operating Procedures (SOP) on Investigation of Crimes of Trafficking for Forced Labour*<sup>45</sup> to learn about questions that the victim should be prepared to answer at the time of rescue. It is important to note that it is on the basis of the statement made by the victims that the Release Certificate is granted. Victims must be briefed on what bonded labour is so that when their statement is recorded there is clear evidence of bonded labour. Preparing the victim is a crucial part of the pre-rescue.

**Sample Documents and Practice Aids:** The NGO representatives should carefully document the names of the victims and the enforcers/perpetrators along with other details. The documentation will serve as a useful tool in identifying the bonded labourer during spot inquiry. A copy of a pre-rescue documentation form is provided in Appendix 1.

**Child Labour:** If child labourers are identified, then the NGO and Advocate must encourage the DM/SDM/DA to have officials from the Labour Department be present at the time of rescue to implement provisions under the Child Labour (Prohibition and Regulation) Act, 1986.

## Step 1.2 Submitting the Bonded Labour Complaint

Timeline: The process of gathering information could take between two to eighth months, while drafting and submitting a complaint could take two to eight days.

| NGO                                                                                                                                              | ADVOCATE                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should use the facts gathered to draft a bonded labour complaint to be submitted to the applicable DM and the magistrate's subordinates. | The Advocate should review the bonded labour complaint to ensure it presents a persuasive legal argument for initiating a bonded labour rescue and assist the NGO in submitting the complaint to the District Magistrate and the magistrate's subordinates. |

<sup>44</sup> AIR 1984 SC 1099, paras 4 and 6 of the said judgment.

<sup>45</sup> Refer to 'Screening Tool to Help Identify A Potential Victim Of Human Trafficking' under Annexure 3, *UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour*, 2008, Government of India and BBA, p. 43. Available at: <[https://www.unodc.org/documents/human-trafficking/India\\_Training\\_material/SOP\\_-\\_Investigation\\_-\\_Forced\\_Labour.pdf](https://www.unodc.org/documents/human-trafficking/India_Training_material/SOP_-_Investigation_-_Forced_Labour.pdf)>.

Once the NGO representatives compile the information gathered from the facility in which bonded labour systems are practiced, they must, with Advocate assistance, draft and submit a complaint or a detailed Legal Intervention Report before the DM or subordinate officers.

In the event of the DM or subordinate official's unavailability a complaint may be made to the local Police or the Anti-Human Trafficking Unit if constituted.

However, the police or the AHTU **do not have the jurisdiction to conduct an inquiry** into the incidence of bonded labour. Hence, if the complaint or the LIR is to be submitted before the Police/AHTU, the Advocate and NGO must guide them to coordinate with the DM or an authority designated by him to conduct the inquiry and be present at the time of rescue.

Once the complaint or LIR is filed before the DM, he will depute a subordinate officer from the Revenue side if he is unable to inquire on his/her own. The subordinate officer could be the Additional District Magistrate, Sub-Divisional Magistrate or Tahsildar/ Sub-Registrar from the Revenue Department.

It is important to note that a complaint regarding bonded labour may also be submitted directly before the NHRC.

The Advocate should draft the written complaint or detailed Legal Intervention Report to assist the NGO. The written complaint must document violation of bonded labour and related criminal laws that took place.

The Advocate must ensure that an effort is made to present the complaint of bonded labour before the District Administration first. If for some reason the complaint cannot be made before District Administration, the Advocate should ensure that the complaint is made before the Police, who must be encouraged to contact the district administration immediately. Simultaneously, the Advocate may also assist the NGO in making a complaint before the National Human Rights Commission.

If the District Administration is unable to receive the complaint, the Advocate must ensure that it is presented before the Police/AHTU. However, since they do not have the jurisdiction to inquire into the incidence, the Advocate must ensure that the Police immediately inform the District Administration. The complaint may also be filed before the NHRC, which has wide powers to ensure implementation of bonded labour laws and can serve as a crucial partner when hurdles are caused by bureaucracy or corruption at the State or District Level.

## POINTS TO NOTE

### Legal Intervention Report

Some organizations prefer to submit the Legal Intervention Report (LIR) as a complaint to the DM. A list containing the name of victims with other details such as address, name of family members, age and caste that the labourer belongs to should also be submitted with the LIR. When submitting the LIR, the NGO representatives must advise the government official to keep the list confidential and obtain an acknowledgment copy to prove that the government received the LIR. The LIR must be kept confidential to ensure that there is no tip off to the labour site owners prior to the rescue intervention. This will ensure that the bonded labourers are freed and the perpetrators apprehended on site during the rescue intervention. The Complaint/LIR may be submitted in the name of the victim/victim's family.

**To whom can a bonded labour complaint be submitted?** A complaint or LIR can be made to the DM/SDM, the police, the AHTU, the State Human Rights Commission (SHRC) or NHRC. However, any rescue carried out without the presence of the DM/SDM will be futile since only the DM/SDM have the power to conduct inquiries or oversee implementation under the BLA. It is therefore imperative that law enforcement agencies like the Police coordinate with the DM/SDM when conducting rescues.

**Anti-Human Trafficking Unit:** The AHTU's are responsible for conducting rescues in trafficking cases. The AHTU may lead the operation with the assistance of local police. AHTU's may be approached only if constituted at the State or District Level.

**Local Police:** The requirement for an officer-in-charge of the police station, upon receiving complaint about bonded labour is the same as for any cognizable offence. Once information on bonded labour, is received, the officer-in-charge of the police station has the power to investigate the case. The police officer must also forward the complaint without delay to the concerned official in the District Administration.

**State/District Task Force on Child Labour:** In case of bonded child labour, the NGO representatives must inform the State Level/District Level Task Force on Child Labour. In the event the Task Force has not been constituted, the NGO may approach the District Magistrate or the local police.

**SHRC/NHRC:** The Supreme Court has appointed the National Human Rights Commission (NHRC) to monitor the progress of implementation of the BLA at the national level and the State Human Rights Commission (SHRC) to do the same at the state level. An NGO may also approach the SHRC or NHRC at all times and in the event other authorities mentioned above are not willing to act. The NHRC has wide powers to ensure implementation of bonded labour laws and can serve as a crucial partner, especially when hurdles are caused by bureaucracy or corruption.

**High Court/Supreme Court:** If all authorities mentioned above fail to act, the NGO should contact an Advocate and request that he/she file a Writ Petition in the High Court in the victim's name.

#### **Checklist before approaching authorities:**

Before approaching the authorities, the NGO representatives must:

- i. Determine which authorities to approach (depending on the urgency of the case, expected response from the authorities, severity of the case, etc.)
- ii. Contact the authorities to receive an appointment. NGO representatives meeting the authorities must be familiar with laws and procedures relating to bonded labour. It is useful to carry a legal manual and judgments on Supreme Courts on bonded labour, in the event the authorities are not aware of the same.

**Acknowledgment:** NGO representatives, as far as possible, must submit the information/complaint in writing and obtain a written acknowledgement of the same. In the event the information cannot be made in writing, it may also be given orally to the police officer. The police officer must, if the information is given orally, reduce it to writing and have it signed by the informant. The Advocate must further ensure that the officials give due consideration to the complaint made by the NGO representatives and that the NGO representative is involved in all stages of the rescue.

Further note that if the written complaint/LIR is filed by a representative (complainant) of the NGO, then the representative (complainant) of the NGO must have visited the spot and interacted with the victims before filing complaint to the authority.

## Role of NGO in identification of bonded labourers

The Advocate should draw attention to Supreme Court judgements that emphasize the role of NGOs in identification, release and rehabilitation of bonded labourers.

## Production of victim before authorities

Whenever possible, the Advocate should produce the victim before the relevant authorities. The safety of the victim must be given primary importance.

## LEARN MORE & TAKE ACTION

**Who can make a complaint?** A bonded labour complaint can be made by an NGO, bonded labourer, government official or third party since any of these persons can be sources of information.<sup>46</sup> The victim or the victim's family can also be the main complainant (note that this complaint refers to information given regarding the existence of bonded labour and is different from a formal complaint made under Section 2(h) BNSS. A formal complaint for the institution of the FIR can be made by the District Authority or the police officials. The victims can also be complainants. If the complaint is being written by someone other than the complainant, the complaint must be clearly explained to the complainant.

**Implementing Authority for action against bonded labour:** As per the BLA, the implementing authority is the DM or any subordinate officer designated by the DM.<sup>47</sup>

**Violation of Fundamental Rights:** Remember, bonded labour violates fundamental rights guaranteed under Article 21 and 23 of the Indian Constitution.<sup>48</sup>

**Laws relevant to Bonded Labour:** The acts most relevant to bonded labour include the BLA, BNS, BNSS, the Evidence Act, Minimum Wages Act, JJA and SC/ST Prevention of Atrocities Act (if the victim is from a SC or ST and the perpetrator is not). Other relevant laws such as the Inter-state Migrant Labour Act, The Contract Labour Act, National Holidays Act, the Equal Remuneration Act, the Building Construction Act and the Provident Fund Act may also be applicable depending on the facts and circumstances of a case.<sup>49</sup> Relevant legal provisions covering assault, false imprisonment, kidnapping, rape and other provisions can be added. Supreme Court judgments relevant to bonded labour interventions can be found in **Chapter V**.

**Sample Documents and Practice Aids:** Various relevant documents include:

- ♦ **Legal Intervention Report:** The format for an LIR can be found in Appendix 6. This format can be used to submit a complaint of bonded labour to the DM, the police and any other officials.
- ♦ **Bonded Labour Identification Form:** A bonded labour identification form can be found in Appendix 7.

<sup>46</sup> Refer to guidelines on intelligence collection under Section 3.1, UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 13.

<sup>47</sup> BLA Sections 10, 11 and 12.

<sup>48</sup> Neeraja Chaudhary v. State of Madhya Pradesh, AIR 1984 SC 1099.

<sup>49</sup> This is not an exhaustive list and Advocates must be vigilant in applying other applicable laws. Elements of other crimes in the Bharatiya Nyaya Sanhita and or other legislation in relation to assault, false imprisonment, kidnap and rape may be relevant.

♦ **Complaint before NHRC:** The format for filing a complaint with the NHRC is also provided on their website.<sup>50</sup> The guidelines on how to file a complaint with the NHRC are provided in Appendix 3. Complaints before the NHRC can be registered online on their website. Complaints can also be made in writing and sent by post or fax.

♦ **Complaint before SHRC:** Complaints before SHRC can also be made in writing and sent by post or fax. The format and guidelines for filing a complaint with SHRC is provided in Appendix 4.

## Step 1.3 Preparing the Bonded Labour Rescue Plan

Timeline: The process of planning the rescue could take 2 days.

| NGO                                                 | ADVOCATE                                                                                                                                                       |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should prepare a bonded labour rescue plan. | The Advocate should assist in the preparation of the bonded labour rescue plan by advising the NGO on legal provisions and concepts relating to bonded labour. |

### COMMENTARY

The NGO should plan two different types of meetings: (i) Internal strategy meeting; and (ii) Pre-rescue meetings with government officials.

**Internal strategy meeting:** The NGO must prepare an internal strategic plan for the rescue operation and hold a case opening meeting to discuss the plan operation. At this meeting the NGO representatives must determine which government officials and NGO's should participate in the rescue. The plan should also include location details of the rescue facility, physical layout of the rescue site, entry and exit points, hideouts, sketch map of the rescue site. The above details must be obtained and compiled during reconnoiter (detailed survey) of the place to be searched.

**Pre-rescue meetings with government officials:** The NGO must organize at least two pre-rescue meetings within two or three days from the date of the case opening meeting. The best practice is for representatives from the Revenue Department, police and rescue team to be present together in at least one pre-rescue meeting.

The Advocate should work with the NGO representative to carefully plan the bonded labour inquiry and ensure that the rescue operation plan is in accordance with procedures prescribed by law.

The Advocate must brief the officials about the procedures relating to the following:

1. Receiving of complaint/legal intervention report
2. Confidentiality of complaint/LIR
3. Procedure for detailed inquiry

The Advocate should also sensitize the NGO and government representatives on relevant issues and legal provisions related to bonded labour, such as the process for identifying bonded labour and myths and realities surrounding bonded labour.

<sup>50</sup> National Human Rights Commission website: <http://nhrc.nic.in/>.

The NGO representative must request the government official leading the rescue to call for a pre-rescue meeting and to direct other government representatives to be present for a pre-rescue meeting. In the event the representatives are not sensitive to the issue of bonded labour, the NGO representatives must take the opportunity of educating the officials on bonded labour laws and procedures during this meeting.

Once the scheduled rescue dates have been fixed by the government officer the NGO representatives must call for another internal pre-rescue meeting.

There must be at least two or three strategy meetings with the government officials.



## POINTS TO NOTE

### Complaint

During the pre-rescue meeting a complaint on the incidence of bonded labour may be made to the District Magistrate or to one of their duly authorized subordinates by submitting a LIR or a written complaint. The Advocate should assist the NGO in making the complaint. The main complainant, as pointed out under Step 1.2, can be either the victim, the victim's family, the District Administration or the Police. If the complaint involves child labour, the Labour Department can be made the main complainant.

### Date of Rescue

The date of rescue is decided by the DM and Revenue Department along with the NGO representatives. The information regarding the rescue date is to be kept confidential. It is the responsibility of the DM to involve the Labour Department at the time of rescue. The best practise is to schedule a rescue date within 24 hours from the filing of the complaint.

### Risk Assessment

The NGO must also conduct systematic risk assessment and planning in order to minimize the risks involved in a rescue. Various indicators such as the location of the place to be searched, the profile of the traffickers and the social standing of the accused must be examined to assess the risks. Possible responses to mitigate risks along with a contingency plan in case of unforeseen circumstances must be planned with great care. The NGO representatives must obtain maximum information about the movable and immovable property of the accused. This may provide useful information to authorities during the seizure process.

### Appoint a Team Leader

The NGO should appoint a team leader who will explain the strategy and steps to be taken during the rescue. The team leader should assign roles and responsibilities to the participants in the rescue operation and must be a point of contact for concerned government officials. Divide participants into groups, depending on the targeted number of rescue sites and expected number of victims, and appoint a team leader for each group. Share name and contact details of each participant, team leaders, and roles and responsibilities of each group.

## Familiarize on Bonded Labour Laws

Prior to participating in the rescue, rescue team members must familiarize themselves with laws on bonded/forced labour and incidental laws.

## Non-Involvement of Team

Under no circumstances should the team involved in identification/verification/intelligence gathering be involved in the rescue.

## Pre-Rescue Checklist

- ◇ Prepare rescue kit: The kit should include stationery, camera, torch, battery, video camera, refreshments (drinking water, snacks), first aid kit, vehicles, printer and cartridge, laptops and charger, reference materials (such as case law and bare acts), list of the names of districts, villages, and police stations where the victims belong, clothing, toiletries, and activity books, crayons, and coloured pencils (in the event there are children among the rescued victims). Appoint point person for arrangement of logistics well in advance before the rescue.
- ◇ Alert Shelter Homes:<sup>51</sup> Alert credible government-run/NGO shelter homes at the place of rescue regarding the approximate number of persons likely to be rescued and the date when they are likely to be brought to the home. Ensure that NGO-run shelter homes are licenced by the Government. This should be done in confidentially so that information about the rescue operation is not leaked. It is important for NGO representatives to identify credible shelter homes and maintain a database. NGO representatives must provide such a list to the District Magistrate/ CWC and Advocate to ensure victims are sent to credible shelter homes after a rescue. NGO must strengthen its partnership with credible shelter homes by entering into a MOU whenever possible. Further, NGO representatives must approach the District Magistrate to make arrangements for stay where shelter homes are not available. In the event the shelter homes cannot be immediately found for survivors, care must be taken to ensure that the District Magistrate makes alternate arrangements for their stay and safety.
- ◇ Security of Rescue team: Ensure that the District Magistrate involve police personnel depending on the size of the rescue operation. In case of sensitive or high risk locations, the Advocate with the District Magistrate must ensure that the rescue team is accompanied by sufficient police personnel. Under no circumstances should rescue operations be carried out without police protection.
- ◇ Voluntary Exit: It is essential for NGO representatives to determine whether the identified bonded labourers wish to leave the worksite or not. In the event the labourer does not express a desire to be released, the NGO representatives must educate the labourers on their rights and entitlements under law and highlight that their rights are being violated. Care must be taken not to coerce the labourers into leaving or giving false details. The information should be sought gently, sensitively and correctly.
- ◇ Security of Complainants: Ensure the safety and security of bonded labour complainants.

## Become Familiar with Useful Questions

NGO representatives participating in the rescue must familiarize themselves with useful questions to ask before going into the rescue. Ensure that names are recorded correctly and you are familiar with the native language of the victim. For example, if the victim pronounces his name as "Guddu", clarify with the victim as to whether that is his real name on any identification card. This is for the purpose of ensuring that names of the victims on the Release Certificate are identical to those on their identification cards.

<sup>51</sup>This is applicable to interventions relating to bonded child labour, or where children are employed at bonded labour facilities without their parents.

### Advocate to Remind Authorities

The Advocate must highlight points for the authorities to keep in mind while identifying bonded labour,<sup>52</sup> such as:

- ◇ Forced labour does not necessarily mean use of physical force.
- ◇ Bonded labourers can be of any age.
- ◇ Bonded labour can be of any duration.
- ◇ BLA does not require any documentary evidence.
- ◇ The burden of proof is on the owner to disprove any claim of bonded debt.<sup>53</sup>
- ◇ The Labour Department may initiate action against the employer/owner, especially in the case of child labour.

### Advocate Assisting NGO Not to Be Made Witness

The NGO should take care to ensure that the Advocate who will assist the Public Prosecutor at trial is not a witness at the time of rescue. For this purpose it is recommended that another Advocate be present at the time of rescue.

## LEARN MORE & TAKE ACTION

### Can the Police, Anti-Human Trafficking Unit or the CBI carry out a rescue without the order or presence of the SDM/DM?

Yes, the Police or the AHTU can carry out a rescue in the absence of such an order and without the SDM/DM. However, any rescue carried out without the presence of the SDM/DM will be futile since only the DM/SDM (or designated labour officials) have the power to conduct inquiries or oversee implementation under the BLA.<sup>54</sup>

### Sample Documents and Practice Aids:

1. A pre-rescue planning meeting form listing out roles and responsibilities of each member is provided in Appendix 4.
2. To learn more about the myths and realities of bonded labour that can be shared with government officials, refer to Appendix 5.
3. Appendix 7 is a format for a Bonded Labour Identification Form, which contains a list of useful questions to ask to identify situations of bonded labour.

<sup>52</sup> Refer to information on who is a victim of bonded labour under Section 2.3, UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 11.

<sup>53</sup> Section 15, BLA.

<sup>54</sup> Step 5 under Section 4.1 (Steps to be taken), Ibid, at Page 15.

## Step 1.4 Initiating the Bonded Labour Rescue

Timeline: The rescue, from meeting at the site to carrying out the rescue could take one day

### NGO

The NGO should initiate the bonded labour rescue with other stakeholders according to the rescue plan.

### ADVOCATE

The Advocate should participate in the bonded labour rescue to ensure that it is carried out according to the law.

### COMMENTARY

Meet prior to rescue: Rescue team members comprised of NGO representatives and government officials must meet at a common location at least two hours before the rescue.

Team Leader to reiterate strategy, rescue plan and roles: Leader should explain the strategy for the rescue operations and its various steps at this time. The Team Leader must also explain the roles and responsibilities of each team member and clear any doubts. A surveillance team consisting of NGO representatives must be stationed near the place of rescue to Provide information about any suspicious activity or tip offs.

As described in the steps below, the Advocate can play a vital role in ensuring that the rescue operation is conducted in compliance with applicable laws and is otherwise successful.

## POINTS TO NOTE

### Beginning of Inquiry

It is at the rescue site that the DM/SDM begins the inquiry into the existence of bonded labour.

### DM/SDM Identifies Who the Bonded Labourers are

It is the DM/SDM who will identify who the bonded labourers are and they are solely authorized to conduct an inquiry on the basis of any complaint/legal intervention report made.

### WHO GOES TO THE RESCUE?

The composition of the rescue team for an adult bonded labour rescue should ideally be as follows:

- ◇ At least one official from District Administration (SDM/SDO, Tahsildar or any other Revenue officers who have been vested with the powers of an Executive Magistrate).
- ◇ Officials from police department and representatives from NGO (depending on the size of the rescue).
- ◇ In the case of a child labour rescue the rescue team shall consist of members of the Task Force on Child Labour consisting of at least one official from Labour Department and District Administration (SDM/SDO, Tahsildar or any other Revenue officers who has been vested the power of Executive Magistrate), representatives from NGO, officials from police department and representatives from NGO (depending on the size of the rescue).
- ◇ Rescue team must also consist of female members (in case of female victim).

## Check List for Police

The NGO representatives must provide a checklist to the District officials and the police officials accompanying the rescue operation. The checklist should contain the roles and responsibilities of each official.

## Media Engagement

The media should be engaged *only after the successful completion of the rescue*, as prior intimation could lead to leakage of information. While engaging with the media regarding the release of the bonded labourers the following points should be kept in mind:

- ◇ State accurate facts. When giving numbers, it is important to cite sources as it gives credibility to the information being provided.
- ◇ Draft an organisation media policy, listing the names of representatives who should speak to the media. It is important to appoint a designated person having experience to speak to the media.
- ◇ When wrongly quoted, the NGO representative must request a correction in writing.
- ◇ It is always helpful to provide the media a press release.
- ◇ The objective of sharing stories on bonded labour is to create awareness, empower bonded labourers, shape public opinion and establish the existence of bonded labour. While giving stories, ensure that the story does not receive a political colour.
- ◇ NGO representatives must strive to build relationship with credible media houses. It is useful to prepare an internal database of media in your respective districts.
- ◇ Do not offer a story to the media if the survivor/victim is uncomfortable and does not want to share his/her story. Be sensitive to the power difference and lack of experience with the idea of consent, which may cause the victim to express willingness without really being comfortable or understanding the implications. The safety of the victims and their family must be given primary consideration. Do not disclose information (such as names, photos or home villages) that would endanger the victims.
- ◇ NGO must familiarise itself with standard international guidelines on reporting on children and develop an internal Child Protection Policy in conformity with these guidelines.
- ◇ Never share a story without obtaining consent from the victim/survivor. Develop a consent form to read and explain to the victim/survivor before taking his/her signature or thumbprint.

*It is extremely important to note that:*

- ◇ The engagement of the media must never jeopardize a rescue.
- ◇ NGO representatives must never coerce or force a victim/survivor to share his/her stories.
- ◇ Prior informed consent must be obtained from the victim/survivors before a story involving them is published.

### Key Strategies During a Rescue<sup>55</sup>

Ensure that the rescue team cordons off strategic areas, secures entry and exit points, locates hide outs and identifies a safe place where rescued persons can be kept while the rescue operation is being carried out.

### Sample Documents and Practice Aids

An Advocate's case opening checklist for bonded labour interventions can be found in Appendix 1. The advocate and the NGO may refer to this document to assist the government officials before, during and after the rescue operation.

## ROLES OF VARIOUS AGENCIES

### The Administration (DM/SDM/Tehsildar)

After receiving the complaint, the DM/SDM/Tehsildar is to constitute a team for a swift inquiry to identify, release and rehabilitate the bonded labourers. They will also instruct the local police having jurisdiction to register an FIR and investigate into the crime. The DM/SDM also conducts Summary Trial under the provisions of the BLA.

### Labour Officers

The labour officers are to assist the DM/SDM/Tehsildar during inquiry and record the statements of the labourers to initiate prosecution of violations of various labour related laws, such as the Minimum Wages Act, the Contract Labour Act, the Interstate Migrant Workmen Act, the Payment of Wages Act, the EPF Act, the Equal Remuneration Act, and the National Holidays Act.

### Police Officers

The concerned police officer is to assist and accompany the inquiry officer and keep order during the inquiry. They need to conduct search and seizure at the spot and collect evidence. They will arrest the accused and take up the investigation.

### Vigilance Committee

The members of the Vigilance Committee should assist and accompany the inquiry officer.

### The NHRC

Direct complaint can be filed before the NHRC for spot inquiry, release and rehabilitation of bonded labourers. The NHRC makes sure that the local administration acts in accordance with various laws.

<sup>55</sup> Step 2 under Section 4.1 'Steps to be taken', UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 15.

## Step 1.5 Securing the Bonded Labour Rescue Site

Timeline: The process of securing the site of rescue could take one day.

| NGO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | ADVOCATE                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should assist the police with securing the rescue site to ensure no incriminating evidence is lost.                                                                                                                                                                                                                                                                                                                                                                                                                                                    | The Advocate should advise the NGO and police (if required) regarding the legal procedures for securing the rescue site.                                                                                                           |
| COMMENTARY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                    |
| NGO representative with the help of police personnel may prevent the accused from removing, hiding or destroying incriminating evidence, removing the victims from the place of rescue, or forming a mob. NGO representatives must further ensure that the police personnel immediately secure the perimeter of the rescue site <sup>56</sup> to keep third parties from entering. To prevent leakage of information, the NGO representatives should advise the police to take into custody mobile phones belonging to the accused, contractors, victims, etc. | The Advocate should assist the NGO and police to secure the inquiry site. In the event the Advocate does not participate in the rescue, the Advocate should advise the NGO about the legal procedures while conducting the rescue. |

## Step 1.6 Separating Bonded Labourers from the Accused

Timeline: The process of separating the bonded labourers from the accused should take place on the day of the rescue

| NGO                                                                                                                                                                                                                       | ADVOCATE                                                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should assist the Police in separating the bonded labourers from the perpetrators and moving them to an open area on the rescue site.                                                                             | The Advocate should ensure a fair inquiry and safety of the victims by making sure they are separated from the perpetrators and the police are advised in this process if necessary.                                                                                    |
| COMMENTARY                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                         |
| NGO representatives must ensure that the police immediately separate the victims from the accused to prevent harassment and intimidation. They should gather victims in an open area and arrange the labourers by family. | The Advocate must advise the NGO representatives to refrain from using physical force and violence on any person during this process.<br><br>The Advocate should help facilitate the safe removal of victims and government team to a secure open area on the facility. |

<sup>56</sup> Step 2 under Section 4.1 'Steps to be taken', UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 15.

## POINTS TO NOTE

### First Response to Victims

While separating victims and moving them to a secure onsite location ensure that they are immediately informed as to what is happening, why the Police and the others have come to the facility, and why he or she is being rescued.<sup>57</sup>

### Taking Victims to Open Area

NGO representatives must ensure that the accused persons are not present while the victims are being taken to an open area at a safe place.

## Step 1.7 Gathering Bonded Labour Evidence

Timeline: The process of gathering bonded labour evidence should ideally be completed on the day of the rescue, and varies based on the number of labourers rescued.

### NGO

The NGO should ensure that the Police collect all available evidence pertaining to the existence of bonded labour.

### ADVOCATE

The Advocate should advise the NGO on the legal collection of evidence about bonded labour and ensure that the Police include all available evidence in the Panchnama/seizure memo.

### COMMENTARY

NGO representatives must ensure that all potential evidence is collected by police in the presence of witnesses/independent witnesses, including documents pertaining to ownership or tenancy, ledgers, books of accounts, electricity bill, telephone, water and other bills, ration card, municipal tax receipts, travel documents, physical evidence, licences or No Objection Certificate from appropriate authorities, hazardous items, tools, and equipment (if any) used by the victims.

The Advocate must advise the NGO representatives on the legal procedure relating to collection of material evidence. Under no circumstances should the NGO representatives collect material evidence by themselves.

The Advocate must also advise the NGO representatives to refrain from using physical force and violence on any person while conducting the rescue.

The Advocate must ensure (if present at the rescue) or advise the NGO representatives to ensure that the police prepares Panchnama/seizure memo and site map in the presence of witnesses at the spot and gets them duly signed by the witnesses.

The Advocate participating as a witness cannot represent the victim as their legal counsel.

<sup>57</sup> Section 4.2 of UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 16.

## POINTS TO NOTE

### **Witness**

An NGO representative or social worker accompanying the rescue team can be made an independent witness for the purpose of search and seizure.

### **Search the Entire Rescue Site**

NGO representatives must also ensure that the rescue site is fully searched. The victims may be kept hidden in boxes, attics, toilets, cubicles, locked rooms, etc. The NGO can enlist the help of rescued persons in locating other hidden victims, children, offenders and other incriminating materials.

### **Ensure Police and Government Officials are Made Witnesses**

The NGO representatives must insist that police officials and authorities present at the rescue are made witnesses.

### **List of Material Evidence to be Collected**

Familiarize yourself with the list of material evidence prior to the rescue so that you are aware of what evidence needs to be collected. You may share this list with the police officials present at the time of rescue.

### **Assistance to police officials**

NGO representatives/Advocate can only assist the police officials during the collection of evidence and cannot procure it by themselves.

## LEARN MORE & TAKE ACTION

### **Preserving Crucial Evidence**

The NGO may assist the police in preserving crucial evidence such as account books, business records and other relevant documents by making a note of important documents on perusal as well as taking photographs. This can prevent the perpetrators from hiding or destroying crucial evidence if the Police are to return to seize such material during further course of a formal investigation.

### **What material evidence is to be collected?**

Learn about what material evidence needs to be collected and its relevance for investigation by referring to **Appendix 8**. After referring to the said appendix create a list of materials that would be relevant to an investigation and trial of bonded labour.



## Step 1.8 Recording Bonded Labourer Statements

Timeline: The recording of statements should be done on the day of the rescue

| NGO                                                                                                         | ADVOCATE                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should advise the government officials while recording the statements of the bonded labour victims. | The Advocate should advise the government officials on preliminary questions to ask the victims to determine the existence of bonded labour and should brief the victims about their rights before the process of recording their statement begins. |

### COMMENTARY

NGO representatives should ensure that the initial inquiry is conducted promptly and in a safe environment. NGO representatives should encourage the victims to speak up before the authorities without fear. The NGO representatives should also guide the authorities to adopt a victim-friendly approach while conducting the inquiry.

NGO representatives must assist SDM/Labour officials during recording of statement of victims.

Ensure that the statements answer important questions such as:

1. What are your wages?
2. How much has been received as an advance/loan?
3. By what mode was the loan to be repaid?
4. How long have you been serving there with the particular employer?
5. Have you been abused and/or assaulted?
6. Are you free to work elsewhere?
7. Are you free to leave without paying your advance?

Encourage the victims to speak boldly and truthfully. Point out specific information regarding abuses to the government officials and assist them in identifying criminal offences such as sexual abuse, physical abuse, verbal abuse, and abduction that are connected to bonded labour circumstances.

The Advocate should advise the officials on the rescue team on preliminary questions to ask the victim, in order to determine the existence of bonded labour circumstances. These include:

- ◇ Did you take an advance?
- ◇ Are you free to work elsewhere? Are you free to leave without paying your advance?
- ◇ What are your wages?
- ◇ Have you been abused and/or assaulted?

The Advocate should brief the victims about their rights before the process of recording their statement begins.

The Advocate should immediately inform the labourers that bonded labour is illegal and they have a legal right to be freed from circumstances of bondage.

The Advocate should also reassure the labourers that under law they can be protected from the owner.

The Advocate should attempt to gather specific information regarding other offences such as abduction, assaults, and sexual abuse in order to invoke relevant provisions of law that have been violated.

The Advocate should ensure that the focus of the inquiry is whether forced labour circumstances are present based on the following:

- ◇ No wages or less than minimum wages paid
- ◇ Restricted freedom of employment and movement
- ◇ Restriction on right to sell property or product at market value

## POINTS TO NOTE

### Stages of Inquiry

Depending on the circumstances of the rescue, an inquiry will be held either:

- i. Wholly on the site of rescue: In this case, the inquiry and statement recording (Steps 1.8 and 1.10) will take place at the site of rescue, followed by moving the rescued persons to a secure location (Step 1.9).
- ii. On the site of rescue and offsite: In this case, a preliminary inquiry is held on-site wherein the Revenue Department Official/Tahsildar will ask questions about the circumstances of the bonded labourers. Following this, important documents are gathered from the site of inquiry, and then rescued labourers may be shifted to a secure location (Step 1.9) where their statements are recorded (Step 1.8) and release certificates are granted (Step 1.10).

### When a rescued person is under the age of 18:

There is no system of compulsory age determination of children rescued from a bonded labour facility. However, children rescued from such facilities broadly fall into two categories:

- i. Children rescued along with parent/guardian: If the child is rescued along with his/her family, then the child will remain and be released with his/her family.
- ii. Children rescued without parent/guardian: Due care must be taken when the rescued child has been working in contravention of labour laws without his/her parent or guardian. In such a case, the child will be considered a "child in need of care and protection" under Section 2(14)(ii) of the JJ Act and shall be referred to the district Child Welfare Committee, to determine his/her age and to be placed in a protective home, while further steps are taken for his/her care. The medical needs of the child should be met before referring to CWC.

The child shall be referred to the district Child Welfare Committee, to determine his/ her age and to initially place the child in a protective home, while undertaking the further required steps for due care. Attention must be paid to the medical needs of the child before referring to CWC.

### The Child Welfare Committee

The Child Welfare Committee (CWC) is a statutory body that has been set up in each district under Section 27 of the Juvenile Justice Act, 2015. The CWC should include a chairperson thorough in matters of child welfare and four members, at least one of whom should be a woman. The CWC is the exclusive body determining the welfare of a child in need of care and protection and has powers equivalent to those of a metropolitan magistrate or a judicial magistrate of the first class. Anyone can present before the CWC a child, "in need of care and protection". With the passing of the JJA 2015, the CWC is no longer the final authority in cases of children in need of care and protection. Section 27(10) of the JJA states that the District Magistrate shall be the grievances redressal authority for the CWC and anyone connected with the child may file a petition before the District Magistrate, who shall consider and pass appropriate orders.

### Grant of Release Certificates:

If the DM/SDM determines that it is a case of bonded labour, he/she will state that an inquiry has been conducted and that a certain number of bonded labourers have been identified to whom release certificates will be granted. The release certificates will be given to persons based on their statements .

A few points to note while the inquiry is conducted:

Provide the victims with food and beverage during the time of inquiry: The NGO and Advocate should ensure that those freed promptly receive food and beverage, as they are likely to be hungry and this may impede their giving testimony. The taking of statements may take some hours, so further nourishment and a place to be comfortable and rest should be provided if possible.

### **Treat victims with dignity:<sup>58</sup>**

Victims are entitled to access mechanisms of justice. NGO representatives and Advocate must ensure that any action initiated by the law enforcement agencies employs victim-friendly procedures. The victim should always be made aware that he/she is a victim and should not be subject to harassment. The victims must be kept informed about various stages of information and extended assistance during all stages of intervention.

**Do not get offended if the victims use abusive language as they are suffering trauma.**

### **Best interest of victim is paramount**

Do not force the victims to disclose details of offences if they are not willing to share. The victim must be provided counselling by a trained counsellor. Use translators so that the victim is able to give statements in his/her own language.

### **Be careful about recording incorrect information**

It is possible that the victims who are under threat may give wrong information at this stage. NGO representatives must ensure that the statements of the rescued bonded labourers are recorded only when the victim is willing and able to give the statements. The NGO representatives must immediately inform the victim as to what is happening and attempt to remove any apprehensions/ doubts.

### **Adequate training of NGO representatives while recording statements**

NGO representatives are often approached by government officials to participate in the recording of statements. The NGO should ensure that the representatives participating in the rescue are trained in conducting the inquiry. Whenever possible, NGO representatives conversant with the language of the victim should be sent for rescue.

### **Monitor questions being asked**

The Advocate should monitor questioning by government officials to ensure questions are fair and asked with sensitivity, answers are properly recorded, and the inquiry is completed promptly. Ensure that special procedures and sensitivity are used during questions asked in relation to sexual abuse, assault or children.

### **Inquiry must be completed away from owners:**

The Advocate should ensure that a full inquiry is completed away from the owners at a secure location.

<sup>58</sup> Refer to steps on working with victims, UNODC Standard Operating Procedures on investigation of crimes of Forced Labour, (2008 Publication jointly with Government of India and BBA), at Page 16.

**Purpose of an on-site inquiry during a rescue or raid:** The Supreme Court in *Bhandua Mukhti Morcha*<sup>59</sup> held that the purpose of this inquiry is to identify bonded labourers, release them from their debts and set them on a path to rehabilitation. An Advocate must make sure that the inquiry is not conducted as a formal trial and that effective identification of bonded labourers takes place.

**Key Inquiry Strategies that an Advocate must know:** Firstly, remember the most crucial questions each labourer should be asked include 1) Did you receive an advance? 2) Were you free to leave the facility? 3) Were you free to seek other work? 4) How much wages were you paid? Second, ask open-ended questions (For example, how did you come to work on this facility?) Third, avoid closed questions (requiring a yes or no answer) unless clarifying a specific point.

**Inquiry must always be conducted without the presence of alleged perpetrators or managers of the facility:** Again, in the above case,<sup>60</sup> the Supreme Court held that the owners of a facility should not be present while bonded labourers are being interviewed in an inquiry. The Court also went further in stating that such labourers are to be fully educated about their rights.

**The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** has suggested that the following measures be placed to protect the rights of the victims:

- ◇ Victims should be treated with compassion and are entitled to access mechanisms of justice (Principle 4)
- ◇ Proper assistance to victims must be provided throughout the legal process (Principle 6 (c))
- ◇ Measures must be taken to minimise inconvenience to victims, protect their privacy, keep them safe, and protect them and their families and witnesses from intimidation and retaliation (Principle 6 (d));
- ◇ Provisions for compensation to victims must be made (Principle 12 (a)); and
- ◇ Avoid unnecessary delay in the disposition of cases and execution of orders granting awards to the victims (Principle 6 (e)).

**Sample Document and Practice Aid for list of inquiry questions:** A recommended list of questions is provided in Appendix 7 in the format for bonded labour identification.

<sup>59</sup> AIR 1984 SC 802, Para 34.

<sup>60</sup> AIR 1984 SC 802 Para 37.

## Step 1.9 Moving Bonded Labourers to a Secure Location

Timeline: The bonded labourers should be moved to a secure location on the day of/within 24 hours of the rescue.

### NGO

The NGO should ensure that bonded labourers gather their belongings and are moved to a secure location.

### ADVOCATE

The Advocate should file a protection order to protect the bonded labourers from threats and harassment from the perpetrators.

### COMMENTARY

NGO representatives must ensure that the bonded labourers are removed from the rescue site as quickly as possible, giving them adequate time to collect their belongings.

The victims must be moved to a secure location such as:

- ◇ The office of the Executive Magistrate,
- ◇ Government schools
- ◇ Community hall

In the event that the rescued victims cannot be moved to another location. e.g., when the labourer does not want to leave the workplace and wants to continue working for the same employer or when the labourers are residing in the village itself (in case of agricultural labourers), ensure that there are sufficient police personnel available at the site to protect the rescued victims.

The Advocate must seek a protection order, in the event the rescued victim cannot be moved to another location.

For example, in the case of rescue in agricultural bonded labour, the labourers live in the hut or homestead land provided by their employer. In such cases, the Advocate should approach the police to ensure that adequate security is provided to the victims in order to prevent their owners (who live close by) from threatening and intimidating the victims.

The Advocate should file a harassment protection letter in the event the rescued victim expresses fear about the safety of his/her family members. All fears of the victims must be addressed, and necessary actions should be taken immediately.

### POINTS TO NOTE

**Ensuring children's safety:** In case the bonded labourer has a child, ensure that the child is not separated from the parents.

**Ensuring safety and security:** At the rescue spot, ensure safety and security of all victims. Take special care in cases where the complaint suggests a history of violent abuse by the accused.

### LEARN MORE & TAKE ACTION

**Protection against eviction:** Section 19 of the Bonded Labour Act provides safeguards to freed bonded labourers against eviction.

**Harassment protection letter:** On the day of release, a protection letter or memo may be filed in each victim's jurisdictional police station either by the victim or a social worker, so as to ensure continued protection from perpetrators. A sample of this letter can be found in **Appendix 9**.

## Step 1.10 Securing Bonded Labour Release Order

Timeline: The process of obtaining the Release Order and Release Certificates for the labourers could take one to three days.

### NGO

The NGO should make an application to the SDM or the designated officer under him/her requesting the prompt issuance of a Release Order and Release Certificates.

### ADVOCATE

The Advocate should accompany the NGO to the SDM's office to ensure the prompt issuance of Release Order and Release Certificates for all bonded labourers as required by law.

### COMMENTARY

NGO representative should ensure that:

- ◇ A request is made in writing to the SDM to pass the Release Order and Release Certificates.
- ◇ The SDM or the officers designated by him issues a Release Order and provides Release Certificates to each rescued bonded labourer immediately after the rescue.
- ◇ The Release Order lists the name of each individual labourer and declare that they are officially released from bonded labour.

In the event the SDM is unwilling, the representative must approach the DM. If this does not work, the NGO representatives may file an RTI Application, asking reasons for the same.

NGO representatives may also approach the State Human Rights Commission or the National Human Rights Commission.

Finally, the NGO representatives may contact an Advocate to file a Writ Petition in the High Court or the Supreme Court.

The Advocate should accompany the NGO representatives to secure a Release Order and Release Certificates.

If the DM does not comply with the request to grant the order and issue certificates, the Advocate should file written complaints and Writ Petitions before appropriate forums. The Advocate should also file RTI applications asking reasons for such denial. The Advocate should advise the NGO representatives and assist him/her in securing Release Orders and Release Certificates.

Advocates should be prepared with drafts for applying for grant of release orders. A format of the release certificate should be referred to so that all necessary details are included.



## POINTS TO NOTE

**When and where should the Release Order be issued?** The Release Order should be issued as soon as the inquiry is completed. If the inquiry is completed on-site, the order is granted on-site, but if the inquiry is completed off-site, the order for release is granted off-site (Refer to Note under Step 1.8 for more information).

**When should the Release Certificates be issued?** As per the amendment made to the CSS Scheme on 23.06.2017, the Release Certificates shall be issued immediately upon rescue. Previously, there had been some confusion as to when Release Certificates are issued, as the model form for a Release Certificate under the 2016 scheme included an entry for the date of conviction, suggesting that the Release Certificates are granted only after conviction of the perpetrators. However, the Ministry of Labour and Employment (MoLE), Government of India rectified this error in the 2016 Central Sector Scheme for Rehabilitation of Bonded Labourers and vide amendment/modification on 23.06.2017 (hereinafter referred to as the "CSS BL 2016 (as amended upto 23.6.2017)") removed the date of conviction from the release order, to enable issuance of Release Certificates prior to the conclusion of prosecution. In addition, the Ministry of Labour and Employment vide Office Memorandum dated 17-08-2017 issued the "Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender" which provides that the DM or SDM shall immediately issue a release certificate to the rescued bonded labourers within 24 hours of the rescue. In addition to the above, in light of the Supreme Court Judgment in *Santhal Pargana Antyodaya Ashram v. State of Bihar and Ors.*<sup>61</sup> and the NHRC guidelines<sup>62</sup> it can be interpreted that the Administration is bound to issue Release Certificates as soon as the inquiry is completed.

<sup>61</sup> *Santhal Pargana Antyodaya Ashram v. State of Bihar and Ors* 1987 (1) SCALE 679, 1987 Supp(1) SCC 141, 1987 (Supp) SCC 141.

<sup>62</sup> *Know your rights, Bonded Labour, 2010, National Human Rights Commission, Available at: <http://nlrd.org/wp-content/uploads/2012/02/NHRC-KNOW-YOUR-RIGHTS-Bonded-Labour-English.pdf>*

**Inter-state Release Orders:** The responsibility of giving the Release Order in an interstate rescue must be clear. According to Section 12 of the BLA it is the duty of the District Magistrate to inquire into the existence of bonded labour within his/her jurisdiction and take action. Therefore, under Section 12, the District Magistrate may grant the Release Orders to bonded labourers within his/her jurisdiction.

**The Freedom Speech:** The NGO representatives must ensure the government official delivers a freedom speech informing the rescued bonded labourers that they are freed from bondage and explaining their rights and the need to persevere in remaining free.

**Interim Compensation:** : The advocate should ensure that immediate assistance of Rs. 20,000/= be made available by the DM from District Bonded Labour Rehabilitation Fund to each rescued person under the newly revamped CSS as amended upto 23.06.2017.<sup>63</sup> It is to be noted that the CS Scheme notified on 17-05-2016 has a provision for immediate compensation of Rs. 5,000/- to each released bonded labourer which was later enhanced to Rs. 20,000/- vide Letter bearing F No. S-11012/01/2015-BL .

**Further responsibilities of the administration:** The NGO/Advocate should ensure that the administration removes all the labourers from the place of exploitation and arranges transportation, food, drinking water, train/bus fare, medical care, escort, and sending the survivors safely to their places of origin.



## LEARN MORE & TAKE ACTION

**Ensuring Provision of Release Certificates and Interim Compensation:** In *Santhal Paragana Antyodaya Ashram v. State of Bihar* the Supreme Court stated that Release Certificates should be given to the released bonded labourers 'simultaneously with their release'.<sup>64</sup> The case further provides that Release Orders must direct the appropriate authorities to release interim relief of Rs. 1000/= to each victim of bonded labour.

**Sample Documents and Practice Aids on Release Certificates:** A sample of a Written Representation for Grant of Release Certificates can be found in **Appendix 15**. A sample format of a Release Certificate is provided in **Appendix 16**.

<sup>63</sup> As per Office Memorandum dated 17th January 2017, issued by the Ministry of Labour & Employment, Government of India, the compensation to be awarded by the DM under the District Bonded Labour

<sup>64</sup> Rehabilitation Fund has been enhanced from Rs. 5,000 to Rs. 20,000. Also see Modifications in the Central Sector Scheme for the Rehabilitation of Bonded Labour, 2016 dated 23.06.2017. [1987 (1) SCALE 679].

# 2.0 SUMMARY OF PROCEDURES FOR PROSECUTING PERPETRATORS OF BONDED LABOUR



## FILING THE BONDED LABOUR FIR

Officer in charge of police station records information of bonded labour offenses as an FIR and proceeds with investigation and arrest; ensure all sections are included in FIR and give copy to complainant.



## ARRESTING ACCUSED PERPETRATORS

Police arrests accused as directed by DA and moves forward swiftly with investigation.



## FILING VAKALATNAMA AND APPLICATION TO ASSIST THE PROSECUTION

Victim's Advocate files applications in Court to represent the victim and assist the Prosecution.



## OPPOSING THE BAIL APPLICATION OF THE PERPETRATOR

Advocate works with the Police and Public Prosecutor to oppose any bail petitions filed by the accused.



## RECORDING STATEMENTS DURING INVESTIGATION

Police interviews victims and records statements; statements should not be recorded in police station but somewhere convenient for victim. Supplement prior statements if necessary.



## CLOSING/SEALING OF BONDED LABOUR FACILITY

DA and Labour Dept. order closure and cancellation of registration of facility employing bonded labour.



## RECOVERING MINIMUM WAGES

Labour Dept. (Labour Officer of the District) orders payment of minimum wages pursuant to release order issued by DA.



## FILING OF BONDED LABOUR CHARGE SHEET

The Investigating Officer (Police) files the charge sheet without delay and within 90 days.



## ENSURING APPROPRIATE FORUM FOR TRIAL

After chargesheet is filed, judge takes cognizance of case and commits it to proper court.



## FRAMING OF BONDED LABOUR CHARGES

Court frames the charges on a timely basis (including all applicable offenses supported by the facts) and asks accused for his plea (if pleads guilty, trial ends).



## ASSISTING THE PROSECUTION AT BONDED LABOUR HEARINGS

Advocate should assist the Public Prosecutor at all hearings and secure Victim's Court attendance when required.



## PREPARING BONDED LABOUR WITNESSES TO TESTIFY

Advocate should assist Public Prosecutor with preparing all bonded labour and prosecution witnesses to testify. Court should take victim-sensitive measures, especially for child victims; seek in-camera proceedings if necessary.



## SUBMITTING FINAL BONDED LABOR ARGUMENTS

Public Prosecutor makes final arguments persuading Court of the existence of bonded labour.



## OBTAINING THE FINAL BONDED LABOUR JUDGMENT

Court provides certified copies of judgment to parties.



## BONDED LABOUR APPEAL

Court fairly considers appeal by parties, if filed.

## Step 2.1 Filing the Bonded Labour FIR

Timeline: The filing of a FIR could take between one to three days.

### NGO

The NGO should file information of a bonded labour offence at the police station in the jurisdiction where the of bonded labour took place.

### ADVOCATE

The Advocate should ensure that the information filed is recorded by the officer-in-charge of the police station as a First Information Report (FIR) with all relevant offences listed under the BLA, BNS, ST/ST POA Act (if applicable) and any other applicable sections of law.

### COMMENTARY

The NGO representatives should ensure that the Complaint is filed before the police station, detailing the all information about bonded labour.

The Advocate should ensure that the Complainant files information of the commission of one or more cognizable offences under Section 173(1) of the BNSS with the officer in charge of the police station. The Advocate must be present alongside the NGO at the police station during the lodging of the FIR and assist the police.

#### The FIR may contain the following details:

- ◇ Date and location of the rescue
- ◇ Names and ages of the victims rescued
- ◇ Place where the offences occurred
- ◇ Name and addresses (if known) of the trafficker
- ◇ Details of the offences that occurred
- ◇ Brief description of the rescue site and the materials seized
- ◇ Details of the rescue team that conducted the operation.

The Advocate should ensure that the information is recorded by the officer-in-charge at the police station as an FIR under Section 173(4) of the BNSS.

#### Steps to be taken if an FIR is not being registered:

1. If the information is not being recorded or an FIR is not being registered, the Advocate should send the information in writing and by registered post to the concerned Superintendent of Police pursuant to Section 173(4) of the BNSS.
2. If the information is still not recorded as an FIR, the Advocate should file a complaint under Section 175(4) of the BNSS before the Magistrate to order that the information be recorded and an investigation commenced.



3. If the information is still not recorded as an FIR, the Advocate should file a Petition before the High Court under Article 226 of the Constitution of India.

If the FIR does not identify offences supported by the facts, the Advocate should submit a letter along with an affidavit or other supporting documents for inclusion of additional offences.

## POINTS TO NOTE

**Anyone can make a complaint to file a FIR:** Any person can file information (or complaint) to register an FIR of a crime of bonded labour. The Complainant can be the victim, family member, District Administration, police officials, Labour Department, or Vigilance Committee Member, for the purpose of filing a complaint to lodge the FIR.

**When rescued person was a child when trafficked:** When the rescued person is an adult but was trafficked when he or she was child, invoke sections of law that apply to child trafficking. See Section 98 and 99 of the BNS and Sections 23, 24, 25, and 26 of the JJA as applicable.

**Name of Investigating Officer (IO) must be recorded in the FIR:** The name of the IO registering the FIR along with his designation must be recorded legibly in the FIR. The IO is an important part of the trial, and hence details of the IO must be legibly stated in the FIR.

**Push for investigation under Section 176 of the BNSS:** The Advocate should encourage the police to move forward with the investigation under Section 176 of the BNSS and arrest individuals suspected of commission of a cognizable offence. If the police do not move forward with an investigation, the Advocate should file an application before the magistrate under Section 175(3) of the BNSS to order that the investigation be commenced.

**In cases involving offences under SC & ST Act:** If the case involves offences under SC & ST Act, the Advocate should ensure that the case is investigated by a DSP or a police officer of higher rank and completed within 30 days.

## LEARN MORE & TAKE ACTION

**Mandatory duty to register a FIR:** A police officer in charge of a police station is bound to register an FIR for cognizable cases under Section 173 of the BNSS. The FIR is also to be signed by the person giving information.<sup>65</sup>

To learn more about judgments related to FIR, refer to Chapter V.

**Zero FIR:** A zero FIR can be filed in any police station. One can go to a police station which does not have jurisdiction over the case, and they are supposed to take down the complaint, giving it a “0” number, and then transfer it to the concerned police station.<sup>66</sup> The regular procedure for registering an FIR will be followed, and it is the responsibility of the Police to transfer it to the appropriate police station. A Zero FIR can avoid delays in filing, which may adversely impact the victim and give an opportunity to offenders to escape. It is also useful when the victims/complainant are not in the mental or physical state to travel to the concerned police station.

### Sample documents and practice aids:

- ◊ **Forced labour complaint:** Refer to Appendix 8A for a sample format on a forced labour complaint to be submitted before the RDO.
- ◊ **Complaint letter for filing of FIR:** Refer to Appendix 8B for a sample format on a complaint letter to be submitted for the filing of a First Information Report.
- ◊ **Formats if the police fail to lodge FIR:**
  - **Application to Magistrate under Sections 223 & 175(3), BNSS to lodge an F.I.R.:** Refer to **Appendix 22A** on drafting an application to the Magistrate under Section 223, BNSS to take cognizance of a complaint along with an application under Section 175(3) of the BNSS directing concerned SHO to lodge an FIR.
  - **Application under Section 192(4) of the BNSS to the Magistrate to call for case diary:** Refer to **Appendix 12** for an application under Section 192(4) urging the Magistrate to call for the case diary maintained by the police to aid in preliminary inquiry. However once this application is made it casts suspicion over the IO and thus should be filed only if there exists proper cause.

**FIR:** Contact your local police station or get in touch with JVI to see what an FIR looks like.

**Petition before High Court:** To obtain a draft of a Petition to be filed before the High Court to register FIR, contact JVI.

<sup>65</sup> Section 173 of the BNSS.

<sup>66</sup> In W.P (Crl.) No. 1266 of 2007S, *onu and Ors. v. Govt. of NCT of Delhi and Anr.*:

*“If the crime reported off is not committed within the territorial jurisdiction of a particular police station, the FIR even if registered should be transferred to the concerned police station having jurisdiction.”*

## Step 2.2 Arresting Persons Accused of Committing Bonded Labour

Timeline: The arrest of the accused can take place either on the same day of the rescue, or within a week of the rescue.

| NGO                                                                                                                 | ADVOCATE                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should assist the police in immediately arresting all persons accused of committing bonded labour offences. | The Advocate should assist the police with the immediate arrest of the accused under relevant provisions of the BNSS and encourage the police to move forward swiftly with the investigation.                                                                                                                                                                                        |
| COMMENTARY                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                      |
| The NGO should assist the police in carrying out the arrest, as directed by the DM/SDM                              | <p>The Advocate must assist the police in arresting the accused persons without delay.</p> <p>If an offence is cognizable, a police officer can make an arrest without a warrant; in non-cognizable offences, a warrant is required.</p> <p>All offences under the BLA<sup>67</sup> and offences under the SC &amp; ST POA<sup>68</sup> related to bonded labour are cognizable.</p> |

### LEARN MORE & TAKE ACTION

**Arrest during investigation:** Section 176(1) of the BNSS provides that when carrying out an investigation, a police officer may take measures for the discovery and arrest of offenders if necessary.

**Victim Protection:** The NGO should identify whether the accused has made threats to the victims in the past. If so, the Advocate could file an application for protection of the victim at the concerned police station.

**Cognizability of BNS Offences:** Offences related to bonded labour under the BNS are cognizable offences since any crime punishable with more than 3 years of imprisonment under the BNS is cognizable.

## Step 2.3 Filing a Vakalatnama & Application to Assist the Public Prosecution

Timeline: The process of filing a Vakalatnama and Application to Assist the Prosecution could take one to seven days after the FIR is filed

| NGO                                                                                                                                            | ADVOCATE                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should formally introduce the bonded labour survivors to the Advocate to facilitate the establishment of a lawyer-client relationship. | The Advocate should obtain the consent of the bonded labour survivors to file a Vakalatnama as their legal counsel and an application to assist the Public Prosecution. |

<sup>67</sup> BLA, Section 22.

<sup>68</sup> SC & ST POA Act, Section 3 read with First Schedule, Section 2 of the CrPC 101

## COMMENTARY

The NGO representatives must assist the Advocate in obtaining a Vakalatnama by coordinating between the rescued persons and the Advocate.

The Advocate should obtain a copy of the Vakalatnama to represent the victim. **A Vakalatnama is the document empowering a lawyer to act for and on behalf of his client.**

The Advocate should file an Application to Assist the Prosecution under Section 338(2) of the **BNSS**.



## POINTS TO NOTE

Obtaining the Vakalatnama: The Advocate should obtain a copy of the Vakalatnama to represent the victims as soon as possible after the rescue, while the Advocate is in contact with the victims. In the case of a child victim, the caretaker of the shelter home, parent or guardian must sign the Vakalatnama; if a child is sent to a shelter home, the signature can be obtained when the family comes to meet the child or take him/her back home. In addition, it is useful to obtain at least five copies of signed vakalatnamas for each adult and child victim, which are necessary for filing minimum wage claims as well. The Advocate should file the Vakalatnama with the Court hearing the case.

## LEARN MORE & TAKE ACTION

**How to assist the Public Prosecutor:** Read Section 338(2) of the BNSS. to learn about assisting the Public Prosecutor.

**Formats and Practice Aids:** Refer to **Appendix 12** for the format of the Application to Assist the Public Prosecutor, which also contains a format for a *Vakalatnama*.

# Step 2.4 Opposing the Bail Application of Accused Perpetrators

Timeline: The process of opposing the bail application of the accused could take between one to seven days from the time of arrest and from the time the bail application is filed.

| NGO                                                                                                                                       | ADVOCATE                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should advise and assist the Advocate in opposing bail by providing information about the perpetrator and the bonded labour case. | The Advocate should attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted. |

| COMMENTARY                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO representatives must immediately inform the Advocate about any information regarding bail of the accused and ensure that a bail opposition application is moved. | <p>In the event the accused is arrested for bailable offences only, the Advocate should confirm that the accused has submitted a bail petition and two persons as surety along with a guarantee letter. Though requiring surety and guarantee is under the discretion of the Court, the Advocate may submit before the Court that a certain amount/surety be imposed.</p> <p>In the event the accused is arrested for one or more non-bailable offences (i.e., Section 370 IPC, Section 3 of the SC&amp;ST Prevention of Atrocities (POA) Act, or other non-bailable offences), the Advocate should submit a written application to oppose bail.</p> |



## POINTS TO NOTE

**Attend remand hearings:** Remand reference to the detention of the accused prior to the start of the trial. At these remand hearings the custody of the accused is determined and bail is normally applied for. The Advocate should attend each remand hearing and make sure bail is denied.

**When can bail be cancelled?** In cases where the accused fails to appear in court, evades or attempts to evade the course of justice, or causes hindrance to the administration of justice (i.e., the accused intimidates or bribes witnesses, causes the disappearance of evidence, or interferes with the investigation), the Advocate must move an application for issuance of a non-bailable warrant of arrest and cancellation of bail. An Advocate must be vigilant in assessing when such circumstances exist and in moving such applications.

**Building a relationship with the police and the Public Prosecutor:** The Advocate should build close relationships with higher-ranking police officials and Public Prosecutor to get updates on bail petitions filed by the accused. It is important to maintain a relationship with the police and Public Prosecutor as the accused can be granted bail during a bail hearing that occurs without the knowledge of the NGO's Advocate, thus giving the accused a chance to abscond and stall the trial. If the Advocate somehow misses a bail hearing through being unaware of a bail petition then the whole case is often lost. It is therefore important to submit an application to assist the P.P. and maintain a relationship with the stakeholders involved in the trial.

**Checking status of bail hearings at the High Court:** The Advocate should monitor bail applications listed in the High Court on a daily basis. The Advocate should visit bail court regularly and check if any bail matters have been listed.

## LEARN MORE & TAKE ACTION

**Case law on cancellation of bail:** The Supreme Court in the case of Raghubir Singh v. State of Bihar laid down various grounds for the cancellation of bail.

**Provisions relating to bail:** Sections 478 to 496 of the BNSS are most relevant to bail and an Advocate must apply these sections carefully while ensuring that the right forum (court) is approached for the cancellation of bail.

### Formats and Practice Aids:

- ◇ **Application to oppose bail:** Appendix 14 contains a format for an application to oppose bail, which contains the grounds for opposition of bail.
- ◇ **Quick reference sheet on bail:** To learn more about opposing bail, refer to **Appendix 14A**, which contains a quick reference sheet on bail.

.....  
*Raghubir v. State of Bihar, (1986) 4 SCC 481*

## Step 2.5 Recording Statements During Investigation

Timeline: The process of recording the statements during investigation may take one to 60 days.

| NGO                                                                                                                                                    | ADVOCATE                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should support and encourage the survivor to speak the truth when providing his or her statements under BNSS Section 180 and 183.              | The Advocate should oversee the recording of bonded labour survivor statements under BNSS Section 180 and 183 to support and encourage the survivor to speak the truth and ensure that the statements are recorded in compliance with applicable law.                                                                                                                                       |
| COMMENTARY                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                             |
| The NGO representatives must ensure that the victim is provided with professional counselling and is in a frame of mind to give his or her statements. | <p>The Advocate should encourage the police to orally examine the bonded labourers and any other people who have knowledge about the bonded labour case and record the statements under Section 180 of BNSS.</p> <p>The Advocate should ensure that the statement of an adult or child victim (who may be traumatized) is recorded only after counselling by a well-trained counsellor.</p> |

### POINTS TO NOTE

**Statements:** There are three statements concerning legal casework: Section 180 of the BNSS, supplementary statements and Section 183 of the BNSS. The goal is to take truthful statements about how the survivor was trafficked to the trafficking site and the situation at the site. The statement is the foundation for the victim testimonies used during trial to ensure perpetrator accountability. The NGO and Advocate's role is the same regarding all three statements - to support and encourage the survivor to speak the truth and to assist the police in obtaining the statements.

**Section 161 Statements:** The police can take the 180 statement on the night of the rescue. If the 180 statement is false or the victim reveals new facts, the police together with the Probation Officer may obtain an additional statement, i.e. a supplementary statement. Another option is to apply for a 183 statement. The advantage of a 183 statement is that the survivor gives her statement under oath in front of the Magistrate and it therefore has more credibility than a 180 statement. It is best practice to be present during the recording of the 180 statements, i.e. at the time of the rescue. This is to assist the police and to advocate for the survivor.

**183 Statements:** The Advocate should inform the victim about the importance of and the process of obtaining a 183 statement. The Advocate should also inform the victim about the process of obtaining a 183 statement. Furthermore, the victim should be properly prepared to give his/her statement before the Magistrate. Based on this, Advocate and NGO Staff should assess the victim's willingness and cooperation to give a 183 statement. If he/she is willing and ready to give a 183 statement, the Advocate should notify the police, who will make the application to the court. 183 Statements may be recorded in – camera.

**If police do not apply to Court to record Section 183 statement:** If the police are unwilling to file the application, the survivor may do it together with an Advocate. The application needs at least one signed Vakalatnama from the survivor.

**Prepare statement beforehand:** It is best practice for the Advocate to prepare the victim before the 183 statement is given. Make sure that the victim is confident about giving the statement before the Magistrate and willing to give a truthful statement.

**Trained counsellors:** Only trained and certified counsellors should interact with the victims.

**Statements to be recorded in language known to victim:** The NGO representatives must ensure that the statements are recorded in the language of the victim.

**Forced/Coerced statements:** Adequate checks must be placed to ensure that the victims are not forced to make his/her statement and that the accused are not present during this process.

**Statements must be recorded at place convenient to victim:** The Advocate should ensure that the victim is not taken to the police station for recording of statements. The statements must be recorded at a place convenient to the victim as provided under Section 180(1) of BNSS.

## LEARN MORE & TAKE ACTION

**Recording statements of survivors:** Record statements of survivors when they are ready and able to make statements. Survivors can make additional statements as they heal from their trauma and any contradictions in future statements may be explained by attributing confusion to trauma.<sup>69</sup>

Please see **Journey to Justice**, a manual on Psychosocial Intervention, UNODC, 2008<sup>70</sup> for counselling and psychosocial support to be provided to survivors.

## Step 2.6 Closing/Sealing of Bonded Labour Facility

Timeline: The closing/sealing of the bonded labour facility should ideally be done on the day of the rescue but could take between one to three days.

| NGO                                                                                                            | ADVOCATE                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should provide adequate information to Advocate to move a petition for closure or sealing of facility. | The Advocate should petition the DM and the labour department for closure/sealing of the facility in which bonded labour was taking place. |

## COMMENTARY

|                                                                                                    |                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO representatives must ensure the Advocate moves an application for sealing of the facility. | The Advocate should make a petition to the District Magistrate and Labour Department to order closure and cancellation of registration of establishments employing bonded labour. The petition can be filed immediately after rescue. |
|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<sup>69</sup> Section 7.1, Recording Statements U/S 180 and 183 of the BNSS, UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 24.

<sup>70</sup> Journey to Justice: Manual on Psycho – Social Intervention, 2008, A publication of United Nations Office on Drugs and Crime Regional Office for South Asia. Available here: < [https://www.unodc.org/documents/human-trafficking/India\\_Training\\_material/Journey\\_to\\_Justice\\_-\\_Manual\\_on\\_Psychosocial\\_Intervention.pdf](https://www.unodc.org/documents/human-trafficking/India_Training_material/Journey_to_Justice_-_Manual_on_Psychosocial_Intervention.pdf) >.

## LEARN MORE & TAKE ACTION

**BNSS provisions that aid in the closure or sealing of factories:** Section 105 A-L of The BNSS should be replaced by Section 110 of the BNSS.

**Other relevant statutes:** The Labour Department can move applications before the Magistrate to order closure of illegally operating factories and even cancel the registration of factories exploiting people with bonded labour under the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Factories Act 1948, Shops and Commercial Establishments Acts and other relevant laws.<sup>71</sup>

## Step 2.7 Recovering Minimum Wages

Timeline: The process of recovering minimum wages could take between 1 to 90 days.

### NGO

The NGO should assist the bonded labour survivors and the Advocate in moving an application for recovery of minimum wages before the Labour Department.

### ADVOCATE

The Advocate should file an application for recovery of minimum wages on behalf of the bonded labour survivors before the Labour Department.

### COMMENTARY

The NGO representatives must ensure the Advocate moves an application for recovery of minimum wages.

The Advocate should ensure that the release order makes a claim for recovery of minimum wages. Under Section 20 (2) of the Minimum Wages Act, a claim petition has to be filed before the Claiming Authority, i.e. the Labour Officer of the District. The Advocate may file it along with the release order on behalf of the bonded labourer. The Advocate must also request in the petition for imposition of a maximum penalty in addition to the claim.

### POINTS TO NOTE

Release order to contain directions for payment of back wages: The DM/SDM while granting release certificates to the released labourers (immediately on rescue and completion of inquiry) must pass a release order through which the Labour Department is to ensure the payment of back wages.

<sup>71</sup> Section 6.5, on closure or sealing of factories UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 22.

## LEARN MORE & TAKE ACTION

Read Chapter V to read about landmark judgments with regard to bonded labour interventions, including the recovery of unpaid wages.

**Period for which back wages to be paid:** A person rescued is entitled to back wages for the six months preceding the rescue.

**Rate of Minimum Wage:** The minimum wage for a person is based on whether they are classified as skilled, semi-skilled or unskilled labour. The minimum wage rate is different for each state. To check the minimum wage rate, check [here](#).

To read more about the Minimum Wages Act refer to Chapter IV.

## Step 2.8 Filing of Bonded Labour Chargesheet

Timeline: The process of filing the bonded labour chargesheet could take 1 to 90 days.

### NGO

NGO should follow up with the Advocate regarding the filing of the chargesheet.

### ADVOCATE

The Advocate should ensure that the chargesheet is filed by the police within the stipulated period without delay and includes all applicable offences.

### COMMENTARY

The NGO representatives should follow up with the Advocate to ensure that the chargesheet is filed without delay.

The Advocate should ensure that the IO files the charge sheet within the stipulated time period.

In the event the IO fails to file the chargesheet within the stipulated time period, the Advocate should approach the Additional Commissioner of Police (ACP) to seek direction for immediate filing of chargesheet.

If the chargesheet is still not filed, the Advocate should approach the Court under Section 192 of the BNSS.

## POINTS TO NOTE

**Copy of a chargesheet:** The Advocate should obtain a copy of the chargesheet. If the chargesheet does not include all of the charges supported by the facts the Advocate should make an application with the police to file a supplementary chargesheet with the appropriate charges.

**Presence of Advocate at the time of filing of chargesheet:** The Advocate should be present at the time of filing of the chargesheet.

**Protest Petition:** The Advocate may file a Protest Petition before the Court to protest the non-inclusion of appropriate sections of the law. The Allahabad High Court has ruled that the Magistrate can then review the case diary, and if there is sufficient evidence against the accused to warrant a finding that the IO has submitted an erroneous final report, the Magistrate can summon the accused on the basis of the evidence in the case diary and the case can proceed as a State case against the accused. Even if there is insufficient evidence in the case diary for summoning the accused

persons, the Magistrate can on his own discretion pass an order for registration of the protest petition as a complaint. But if he reaches a conclusion that there is insufficient evidence against the accused and he is of the view that further investigation by the police is required, he may direct the police to investigate further into the matter; alternatively if the Magistrate reaches a conclusion that the evidence in the case diary was insufficient to summon the accused persons and the complainant desires to examine some more witnesses to substantiate his allegation, then the Magistrate can treat the protest petition as a complaint and in that case the summoning order can be passed only after recording the statement of the complainant and witnesses.<sup>72</sup>

## LEARN MORE & TAKE ACTION

See sample forms and formats provided in Appendix 21, which includes a sample Format for Written Arguments to be submitted in bonded labour trials.

## Step 2.9 Ensuring the Appropriate Forum for Trial

Timeline: Finding the appropriate forum for trial can be done within 6 months from the time of framing of charges.

### ADVOCATE

The Advocate should ensure that the case is committed before the appropriate court and follow the guidelines under the Central Sector Scheme for the rehabilitation of bonded labourers (w.e.f. from 7<sup>th</sup> February 2022).<sup>73</sup>

### COMMENTARY

Once the chargesheet is filed, the Judge (who may be a Chief Metropolitan Magistrate, a Metropolitan Magistrate, a Chief Judicial Magistrate, an Additional Judicial Magistrate, or Sub – Divisional Judicial Magistrate) will take cognizance of the case and the case will be committed before the appropriate Court. The Advocate should ensure that the process of committing the case before the Sessions Court follows procedures established by law. Charges that must be included are offences under the BLA and the BNS sections 143/144.

## POINTS TO NOTE

**If Section 370 or any applicable offences are not in the chargesheet:** Section 239 of the BNSS gives the Judge the power to add charges. An Application under Section 216 may be made to the Court to add charges.

**Summary Trial:** Charges pertaining to the BLA can be tried under summary trial before the DM/SDM vide the CSS for Rehabilitation of Bonded Labourer 2016. There has recently been some uncertainty regarding the constitutionality of summary trials in bonded labour cases, and the high courts of Bombay, Madhya Pradesh, and Madras have declared summary trial unconstitutional. However, until a state has declared summary trials unconstitutional, they can be used in cases where only BLA offenses are being tried.

**Committal of case before the Sessions Court:** According to Section 232 of the BNSS, a case can be committed to the Sessions Court when a case is to be tried by it exclusively. When Section 370 is mentioned in the chargesheet, the case is to be exclusively tried by the Sessions Court.

<sup>72</sup> Aun Mohammad Naqvi alias Siddan and another v. State of UP and another; Criminal Misc. Application No. 7259 of 2005.

<sup>73</sup> Central Sector Scheme for Rehabilitation of Bonded Labourer, 2021, File No. S-11012/01/ –BL, Government of India, Ministry of Labour & Employment dates 7<sup>th</sup> February 2022 .

## LEARN MORE & TAKE ACTION

Refer to **Chapter IV** to learn more about laws and offences related to bonded labour.

To learn more about which cases are to be exclusively tried by the Sessions Court, refer to the **THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023**.

### Step 2.10 Framing of Bonded Labour Charges

Timeline: The framing of bonded labour charges is done at the discretion of the Court and hence no timeline can be suggested.

#### NGO

The NGO may follow up with the Advocate to ensure that the charges have been framed by the court.

#### ADVOCATE

The Advocate should ensure that charges are framed by the court on a timely basis and include all applicable offences supported by the facts.

#### COMMENTARY

The NGO representative must be present on the date of framing of charges.

The Advocate should be present in Court at the date of framing of charges. The Advocate should also ensure that all charges are framed as part of the trial.

### POINTS TO NOTE

**Short court dates and preventing undue delay:** Ensure that the Court does not keep adjourning the matter, and if it does, push for short dates so as to frame charges. Under Section 346 of the BNSS, "In every inquiry or trial ...proceedings shall be held as expeditiously as possible." The CrP.C also restricts the grant of adjournments in certain circumstances.

**Plea of guilty:** After framing of charges, the Sessions Court will ask the accused if he pleads guilty to the charges framed. If the accused pleads guilty, the trial will end at this point or else the trial will proceed.

## LEARN MORE & TAKE ACTION

To read about bonded labour offences, refer to Chapter IV and V. To read about a plea of guilty, refer to Section 252 of the BNSS.

## Step 2.11 Assisting the Public Prosecution at all Bonded Labour Hearings

Timeline: The process of assisting the prosecution at all bonded labour hearings will depend on the length of trial, which could take one to ten years.

### NGO

NGO should send a representative who is well versed with the facts and circumstances of the case to be present at every hearing. This will enable the NGO to update the victims and their families regarding the status of the case.

### ADVOCATE

The Advocate should meet with the Public Prosecutor to develop a case strategy prior to commencement of the trial and be present in court at every hearing to assist the prosecution.

### COMMENTARY

The Advocate should be present at every stage of the trial.

## Step 2.12 Preparing Bonded Labour Witnesses to Testify

Timeline: It could take one month to prepare the bonded labour witnesses to testify.

### NGO

The NGO should assist the Advocate in preparing the bonded labour witnesses to testify truthfully and boldly.

### ADVOCATE

The Advocate should assist the Public Prosecutor by preparing witnesses for the examination in chief by the prosecution and the cross examination by defence counsel.

### COMMENTARY

During this stage, the Public Prosecutor has an opportunity to ask the witnesses questions regarding the incidence of bonded labour. The defence lawyer is then allowed to cross-question the statements of the witness. The NGO representative should counsel the survivors of bonded labour to be as descriptive and detailed as possible while answering questions placed by the Public Prosecutor and not to be disturbed by the cross questioning.

The Advocate should prepare the rescued persons for the process of examination in chief and cross-examination. The Advocate should explain clearly to the persons testifying the importance of their statements in creating evidence. The Advocate should ensure that all documentary and physical evidence is entered into the record of the Court.

**Mock trial:** Before the stage of evidence begins, it is advisable for the NGO and Advocate to take the survivors to a Court room to show them what it looks like. Furthermore, ensure that a mock trial is held to help the survivor understand the process of witness examination and allay his/her fears.

**Victim-sensitive measures:** Apart from making the survivor comfortable with the Court, the NGO and Advocate may encourage the Magistrate and the Court officers to be sensitive to the history of the survivor.

**Sensitive measures to be adopted when case deals with children:<sup>74</sup>**

- a. Inform child victims/witnesses about their role in regard to court proceedings;
- b. Insure their views are heard and respected;
- c. Minimize inconvenience to them and respect their privacy;
- d. Reduce delays in the proceedings;
- e. Avoid aggressive questioning or cross examination of child victims (if necessary, engage the judge);
- f. Arrange for trials in camera;
- g. Protect the identity of the child victim;
- h. Prepare child victims for the judicial process and do not rush the prosecution if a child is not ready to go to court;
- i. The investigator should ascertain the need for medical examination of the child victim and when examination is undertaken, ensures that multiple re- examination is avoided;
- j. Conduct the medical examination in the presence of the parent/guardian and social worker/counsellor as far as possible;
- k. Record the child's testimony in the presence of a social worker/counsellor as soon as possible after the abusive incident, with other witnesses at hand;
- l. Provide adequate translation/ interpretations and translators/ interpreters who are sensitive to the children's needs;
- m. In case of a mentally challenged child, the competent service provider should depose on behalf of the child;
- n. The special needs of the child victims/witnesses should be accommodated, including the following:
  - i. Enable children to familiarise themselves with the court surroundings; Inform children of the different roles of the key persons at court, such as the judge, the defence lawyer and the prosecutor;
  - ii. Inform the court of the special needs of children in general and of individual children in specific cases;
  - iii. Help children to be comfortable in the proceedings;
  - iv. Encourage questioning to be short and clear so as not to confuse child witnesses; and
  - v. Permit children below eight years of age to respond to leading questions facilitated by a social worker

**Examination in chief:** During the main examination, the Advocate may assist the P.P. by submitting written questions to be asked to the witnesses.

**Cross Examination:** The purpose of cross-examination is to expose flaws in the prosecution story. It is helpful to conduct a mock cross-examination so that witnesses are not perturbed by the process and are prepared to handle the questions from the defence lawyers.

**In-Camera Proceedings:** The statement of a witness, under Section 183 of the BNSS, may be recorded in camera in an environment that is not intimidating. Such a prayer can be made by the IO under Section 366(2) of the BNSS and by referring to Sakshi v. Union of India.<sup>75</sup>

**Witnesses:** Witnesses include the victims of bonded labour, the IO, and persons present at the rescue (including representatives of the NGO).

**If witness(es) turn hostile:** During the course of trial, if a prosecution witness turns hostile, the Advocate should ensure that the Public Prosecutor declares such prosecution witness as hostile and conducts a cross-examination.

<sup>74</sup> These measures are based on the guidelines provided for the Children's Court to follow under the Goa Children's Act, 2003. These are guiding measures on how to treat the child with sensitivity.

<sup>75</sup> (2001) 10 SCC 732.

## LEARN MORE & TAKE ACTION

Make sure to read **sections 142 to 150 of the BSA** since they address the same topics of chief examination and cross examination of witnesses.

**Day to day examination of witnesses to ensure expeditious trial:** Under Section 346(1) of the BNSS, “once the examination of witnesses has begun, the same is to take place day to day until all the witnesses in attendance have been examined”, and any adjournments are to be made only for the reasons recorded.

**An Advocate must be familiar with the various stages of a trial under the BNSS and the IBharatiya Sakshya Adhiniyam.**

Contact JVI for information on how to prepare witnesses for the evidence stage during a trial.

## Step 2.13 Submitting Final Bonded Labour Arguments

Timeline: Final bonded labour arguments should be submitted at the conclusion of the trial but before the final period.

### NGO

The NGO should assist the Advocate in preparing final arguments at the end of the trial.

### ADVOCATE

The Advocate should make final oral arguments (if allowed by the court) and submit written arguments in support of the conviction of the bonded labour perpetrator.

### COMMENTARY

The NGO should provide as much information as possible to the Advocate for the written submissions.

The Advocate should draft and file written submissions based on the format provided.

The Advocate should be present at the Court to assist the Public Prosecutor in making arguments to persuade the court on the existence of bonded labour. The Advocate should also present final oral arguments if allowed by the court.

## POINTS TO NOTE

Though not required by law, it is strongly recommended that the Advocate prepare and submit written final arguments to ensure that the Court is well informed of the arguments put forward. This can greatly persuade the Court to pass a fair judgment in favour of the survivor. Under Section 338(2) of the BNSS the victim/complainant can file written arguments even after the stage of evidence is closed.

The written submissions should be supplemented with proof from the testimonies of the witnesses.

## LEARN MORE & TAKE ACTION

Refer to Appendix 20 for a format for written submissions and other relevant documents.

## Step 2.14 Obtaining the Judgement and Securing Release Certificates

Timeline: It takes between 1 to 15 days to obtain the judgment.

### NGO

The NGO should assist the Advocate in obtaining certified copies of the final judgment from the court and securing the Release Certificates from the court that conducted summary trial (most likely, it should be SDM or DM).

### ADVOCATE

The Advocate should make applications for certified copies of the final judgment. If Release Certificates have not been granted thus far, the Advocate should assist the bonded labourers to secure them from the court that conducted summary trial (most likely, it should be SDM or DM).

### COMMENTARY

After the judgment is pronounced, the NGO should assist the Advocate in obtaining certified copies of the final judgment.

Advocate should make applications for certified copies of the final judgment from the court.



### LEARN MORE & TAKE ACTION

The Advocate must be aware of the formats of appeal as per the requisite court of jurisdiction. Contact JVI for further information on steps to be taken after the judgment is given.

## Step 2.15 Filing of Appeal

Timeline: The appeal should be filed within 60 days from the date of pronouncement of the judgment.

### NGO

NGO should assist the Advocate in preparing an appeal, if required.

### ADVOCATE

The Advocate should file an appeal or revision application on an adverse judgment, if required.

### COMMENTARY

If the NGO representatives along with the victims want to appeal the judgment of the court, they must approach the Advocate for the same.

The Advocate must file the appeal or revision application in the prescribed format within the stipulated time and as soon as possible.

## POINTS TO NOTE

Once the trial has ended, the Advocate must be vigilant in ensuring that an appeal filed by the accused is not missed or that if an appeal is to be filed on behalf of survivors it is filed within the period of limitation.<sup>76</sup>

If an appeal is filed by the accused, the Advocate must be ready to oppose the appeal. However, if the accused is acquitted, the Advocate may file an appeal or revision application against the acquittal in the High Court.

## LEARN MORE & TAKE ACTION

The Advocate must be aware of the formats of appeal or revision as per the requisite court of jurisdiction. A revision application is similar to an appeal and may be filed on grounds provided under Sections 438 to 442 of the BNSS.

Contact JVI for further information on steps to be taken in order to file an appeal or revision or with regard to appeal/revision formats.

<sup>76</sup> Time allowed for filing of an appeal after the judgment of a lower court is passed.



# 3.0 SUMMARY OF PROCEDURES FOR RESTORING BONDED LABOUR SURVIVORS



## ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

Rescue team arranges for immediate medical care, keeping victims' identity confidential; if children rescued, must have medical care before referring to CWC.



## PROVIDING SHORT-TERM PROVISIONS

Rescue team assists in providing basic short-term essentials, such as food, clothing, temporary shelter, and transportation upon release.



## SECURING SUBSISTENCE ALLOWANCE FOR RESCUED BONDED LABOURERS.

Sub-Divisional Magistrate orders subsistence allowance pursuant to release order.



## SECURING BLA FUNDS AND REHABILITATION FUNDS

DA intervenes to assist NGO's request for BLA and rehabilitation funds and insures such funds reach labourers promptly; Labour Dept. collects fine of Rs. 20,000 from anyone employing children and deposits into Child Labour Rehabilitation Welfare Fund.



## SECURING BASIC GOVERNMENT ENTITLEMENTS AND IDENTIFICATION DOCUMENTS

DA insures that access to ID, housing, employment, etc. are provided to labourers.



## REPATRIATING BONDED LABOUR SURVIVORS

Assist in obtaining documents necessary for repatriation; for child labourers, CWC to complete home verification report.



## FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES

Assist in providing access to private sector resources related to food, clothing, shelter, land rights, education, employment, health care, counselling and other entitlements.



## ENGAGING LOCAL BLA VIGILANCE COMMITTEES

State Governments form Vigilance Committees for the purpose of overall rehabilitation of victims; chaired by DM/SDM.



## ENSURING SURVIVORS ENJOY PERMANENT FREEDOM

DA informs victims of rights and need to persevere in remaining free; vigilance committee works to facilitate continued rehabilitation and protection.

## Step 3.1 Ensuring Immediate Access to Medical Care

Timeline: Access to medical care should be provided within 48 hours of the rescue.

| NGO                                                                                                                          | ADVOCATE                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should ensure that the bonded labour survivors receive a medical examination and any required medical care.          | The Advocate should ensure that medical examinations are carried out and urgent care is provided with respect accorded to the bonded labour survivor's right to privacy and other rights.                                                                 |
| COMMENTARY                                                                                                                   |                                                                                                                                                                                                                                                           |
| The NGO must ensure that the rescued persons are extended immediate medical care without delay and are treated with dignity. | The Advocate must ensure the NGO representative is permitted to be present during this process. The Advocate must ensure that the survivors are sent for a medical examination. The Advocate must ensure that the rescued person is treated with dignity. |

### POINTS TO NOTE

**Medical needs of a child:** Attention must be paid to the medical needs of the child before referring to CWC, in instances where the child has been rescued without a family member or guardian.

**Victim-centric approach:** Treat victims with dignity. Inform victims about what is happening as the employers often threaten them. The rescue team must be trained to meet all challenges such as language barrier and social and cultural differences and must make immediate efforts to win the confidence of the victim.

**Confidentiality:** The identity of the bonded labourer should be kept confidential. Under no circumstances should the name, photograph and information be disclosed and published in any print and visual media. Refer to Section 21 of Juvenile Justice (Care and Protection of Children) Act for safeguards provided to juveniles and children.

**Medical examination of female victim:** The Advocate must ensure that the medical examination, in case of a female victim, is conducted by or under the supervision of a female doctor as mandated under Section 51(2) (3) of the BNSS. In the absence of a female doctor, the Advocate should ensure that a female police official or a female representative from the NGO is present during the process of medical examination. **Informed consent** of the victim must be obtained prior to conducting the medical examination. The NGO representatives may counsel the survivor regarding the importance of this step.

### Step 3.2 Providing Short-Term Provisions

Timeline: Short-term provisions could be provided within 48 hours of the rescue.

#### NGO

The NGO should facilitate the provision of basic short-term essentials such as food, clothing, temporary shelter, and transportation upon their release.

#### COMMENTARY

The representatives of the NGO should assist the rescued labourers by ensuring that they are able to obtain access to food, clothing and temporary shelter and provide transportation after their release.

### Step 3.3 Securing Subsistence Allowance for Rescued Bonded Labourers

Timeline: The process of securing subsistence allowance and immediate assistance for rescued bonded labourers could take between 2 to 7 days.

#### NGO

The NGO should ensure that the bonded labour survivors receive subsistence financial relief (allowance) at the time of receiving Release Orders and no later than seven days after their rescue.

#### ADVOCATE

The Advocate should advise the SDM regarding legal provisions mandating the provision of subsistence financial relief at the time of issuance of bonded labour release certificates.

#### COMMENTARY

The NGO representatives must ensure that the rescued bonded labourers receive Rs. 1000 as a form of subsistence allowance as per Supreme Court guidelines when they receive Release Orders and immediate financial assistance of Rs. 30,000/= be made available by the DM from the Corpus of District Bonded Labour Rehabilitation Fund to each rescued person under the CSS no later than 7 days after their rescue.

The Advocate should draw the attention of the SDM to the Supreme Court rulings that have directed the State government to provide Rs. 1000/- as subsistence allowance to all rescued bonded labourers immediately upon their release. The Ministry of Labour & Employment, Government of India under the revamped scheme Central Sector Scheme for Rehabilitation of Bonded Labourer-2021,<sup>77</sup> increased this immediate assistance amount to Rs. 30,000.<sup>78</sup>

<sup>77</sup> Central Sector Scheme for Rehabilitation of Bonded Labourer 2021, File No. S-11012/01/2019 –BL, Government of India, Ministry of Labour & Employment dated 7th February 2022 and modifications in the Central Sector Scheme for the Rehabilitation of Bonded Labour, 2016 dated 23.06.2017.

<sup>78</sup> The original compensation amount of Rs. 5,000 under the Central Sector Scheme for Rehabilitation of Bonded Labour, 2021, has been enhanced to Rs. 30,000 vide Office Memorandum dated 7th February 2022 issued by the Ministry of Labour & Employment, Government of India.

## POINTS TO NOTE

**Subsistence relief differs from total compensation.** Subsistence relief refers to the amount that the State Government is to provide rescued persons as subsistence allowance, immediately upon their release. This differs from other forms of interim compensation that are to go beyond provision for subsistence and can also be used for rehabilitation.

### LEARN MORE & TAKE ACTION

**Case Law:** In <sup>79</sup> the Supreme Court has stated that once “the bonded labourers are identified and released, they have to be rehabilitated forthwith” and have directed that under the Centrally Sponsored Scheme, “the State Governments shall provide Rs. 1000/- as subsistence allowance to a bonded labour immediately on his/her identification.”

**Interim compensation at the time of granting release certificates:** While the DM/SDM/RDO issues release orders and release certificates, the Advocate must ensure that the release order also directs the Tahsildar to provide the labourers with an interim compensation of Rs. 1000.

### Step 3.4 Securing BLA Funds and Rehabilitation Funds

Timeline: The process of securing BLA funds and rehabilitation funds could take between 3 to 12 months.

#### NGO

The NGO should submit a request for BLA funds and other rehabilitation funds for both cash and non-cash components available from the State and Central government on behalf of the bonded labour survivors.

#### ADVOCATE

The Advocate should advise and assist the NGO in securing BLA funds for both cash and non-cash components and other rehabilitation funds on behalf of the bonded labour survivors.

### COMMENTARY

The NGO representatives must be aware of the different levels of compensation. The NGO must ensure that the funds for rehabilitation through State and Central Government Schemes reach rescued bonded labourers promptly.

The NGO representatives must contact the concerned authority responsible for releasing the rehabilitation grant and respectfully request them to do so. If this does not work, The NGO representatives may approach the DM asking for his/her intervention. The NGO representatives may also file RTI Application seeking explanation as to why rehabilitation funds are not being released. If this fails, the NGO representatives may file an appeal before SHRC or the NHRC. If nothing works, the NGO representative should contact an Advocate and ask him to file a Writ Petition before High Court or Supreme Court.

The Advocate should prepare RTI applications, Written Complaints and Writ Petitions and file these documents before appropriate forums. The Advocate should advise the NGO representatives and assist them in securing rehabilitation grants.

The Advocate should also ensure that the government officials acknowledge the role of the NGO in effective rehabilitation and involves them in this process.

<sup>79</sup> (2004) 12 SCC 381; [2004] Supp (2) SCR 64; Read text of judgment here.

♦ **Types of Compensation:** There are three levels of compensation to be aware of:

- **Bonded Labour Rehabilitation Funds:** Previously all rescued bonded labourers were entitled to compensation under the Centrally Sponsored Compensation Scheme 2000 [Rs. 20,000: Rs. 10,000 from the State Government and Rs. 10,000 from the Central Government], but the scheme was revamped in 2016 and 2021 and is now called the Central Sector Scheme for the rehabilitation of Bonded Labourers-2021.<sup>80</sup> The Rehabilitation assistance under the 2021 Scheme is Rs. 1,00,000/- per adult male beneficiary. For Special category beneficiaries i.e. children including orphans or those rescued from organized and forced begging rings or other forms of forced child labour, and women, the rehabilitation package is Rs. 2,00,000 out of which Rs. 1,25,000/- shall be deposited in an Annuity Scheme and balance shall be transferred to BL account through Direct Benefit Transfer (DBT). In cases of BL/forced labour of extreme deprivation/marginalized like transgenders, or women or children rescued from CSE, placement agencies, trafficking, differently-abled persons or the circumstances where the DM deems fit, the rehabilitation package is Rs.3,00,000/-, out of which Rs.2,00,000/- shall be deposited in an Annuity Scheme and Rs.1,00,000/- shall be transferred to BL account through DBT.

♦ **Special Funds for SC/ST Community:** A bonded labourer who is a member of the SC/ST community is entitled to separate compensation, as determined by the State Government. This compensation is received in three stages:

1. **Once the FIR is registered:** SHO/ IO is bound to write recommendations to the concerned department (Social Welfare Department) to release interim compensation to bonded labour victim, which is 25% of the total compensation on the FIR being filed.
2. **When the Chargesheet is filed:** The next 25% is to be given to the rescued labourer when the Chargesheet is filed.
3. **At the conclusion of the trial:** On the conviction of the accused, the rescued labourers receive the remaining 50% of the compensation. However, if there is an acquittal, then this 50% is forfeited.

♦ **Compensation Granted by the Judiciary**

- **Section 395 of the BNSS:** If the accused is convicted, the judge can slash the quantum of sentence by asking the accused to compensate the victims of bonded labour. This application is required to be made by the Advocate in the name of the victim.
- **Under Section 395 of the BNSS:** Under this Section, the judge has the power to recommend additional compensation in line with the Centrally Sponsored Victim compensation scheme based on the recommendations of the District or State LSA (Legal Services Authorities).

♦ **Compensation to Child Labourers:** The Advocate must ensure that the Labour Department collects a fine of Rs. 20,000 from the owner and deposits it in a fund known as the Child Labour Rehabilitation cum Welfare Fund. The Advocate must also ensure that in cases where a child is in employment in a factory or a mine or in other hazardous work, an adult in the child's family is given a job, in lieu of the child. In cases where it is not possible to provide employment to the adult member, the appropriate government must deposit a sum of Rs.25,000 every month for each child employed, in the Child Labour Rehabilitation cum Welfare Fund.<sup>81</sup> On 12th June 2016, the Chief Minister of Bihar launched a new scheme wherein every rescued child labourer under the age of 14 will get Rs.25,000. Under the scheme the child should be registered with the concerned CWC and enrolled under the Child Labour Tracking System.<sup>82</sup>

<sup>80</sup> <<https://labour.gov.in/whatsnew/central-sector-scheme-rehabilitation-bonded-labourer-2021>>

<sup>81</sup> See *M C Mehta v. State of Tamil Nadu* 1996 6 (SCC) 756.

<sup>82</sup> For more information, read: <<http://indiatoday.intoday.in/story/nitish-announces-rs-25000-for-every-rescued-child-labour/1/690171.html>>.

## LEARN MORE & TAKE ACTION

**Case law on presence of NGO for rehabilitation:** The Advocate must draw the attention of the officials to the Supreme Court ruling in *P. Sivaswamy v. State of Andhra Pradesh*,<sup>83</sup> where the Court stated as follows:

“Whatever rehabilitation is provided to the freed bonded labourers, it must be provided in the presence of a representative of...social action group or voluntary agencies so as to ensure that rehabilitation provisions actually reach the hands of such labourers”.

**Law on compensation in the BNSS:** Read Sections 395 and 395A of the BNSS to learn more about victim compensation.

**Victim Compensation Case Law:** Contact JVI for a copy of its Victim Compensation Case Law Ready Reckoner, which summarizes key court judgments pertaining to victim compensation in India.

**Format for victim compensation: Appendix 19** comprises an application under Section 395A of the BNSS for victim compensation from the Magistrate/Judge during passing of sentence.

## Step 3.5 Securing Basic Government Entitlements and Identification Documents

Timeline: The process of securing basic government entitlements and identification documents could take between 1 to 2 months.

| NGO                                                                                                                                                                                                                                                                                                                                                                                                                                            | ADVOCATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>The NGO should assist the bonded labour survivors in obtaining basic government identification documents such as ration cards, voter identification cards and other documentation.</p> <p>The NGO should assist the bonded labour survivors with accessing government entitlements related to food, clothing, shelter, land rights, education, employment, health care, counselling, and other entitlements.</p>                            | <p>The Advocate should advise the NGO and assist the bonded labour survivors (if required) in petitioning government authorities to issue basic government identification documents such as a ration card, voter identification card and other documentation.</p> <p>The Advocate should provide legal assistance to the NGO and bonded labour survivors to petition government agencies to provide government entitlements if such entitlements are wrongly denied.</p> |
| COMMENTARY                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Along with these rehabilitation funds being provided to the bonded labour victims they should also be provided with:</p> <ul style="list-style-type: none"> <li>◇ Allotment of house-site</li> <li>◇ Arrangements of low cost dwelling</li> <li>◇ Animal husbandry, dairy, poultry, piggery, etc.</li> <li>◇ Wage employment, enforcement of minimum wages etc,</li> <li>◇ Collection &amp; processing of minor forest products,</li> </ul> | <p>The Advocate should ensure that the NGO and government authorities collect details from victims related to rehabilitation including name, age, and address of the village where labourer would like to relocate. The Advocate must inquire from the victim whether he/she has a ration card, land patta, voter ID or community certificate.</p> <p>The Advocate must assist the NGO representative to secure government rehabilitation schemes for the victim.</p>    |

<sup>83</sup> 1988 AIR 1863.

- ◇ Supply of essential commodities under PDS, and
- ◇ Aadhaar cards
- ◇ Ration cards
- ◇ Land pattas
- ◇ Community certificates
- ◇ Job cards under employment schemes (MNREGA)
- ◇ Others welfare schemes of the CM prevalent in the concerned State
- ◇ Employment schemes
- ◇ Medical facilities
- ◇ Other benefits under the Social Security Scheme
- ◇ Bank accounts

The NGO should make sure that the above rehabilitation schemes are provided to the bonded labour victims by the concerned local administration and seek the help of an Advocate whenever required. The NGO must ensure that economic rehabilitation is accompanied by psychosocial rehabilitation. In all this, the focus should be not only on an individual bonded labourer but also his entire family that is in need of rehabilitation.

The NGO representative shall ensure the provision of basic provisions such as food, clothing, temporary shelter, and transportation to the rescue bonded labourers upon their release.

The NGO should ensure that free legal aid is provided to the released bonded labourers. The NGO should request the Advocate to provide trainings for the victims on accessing government entitlements.

The Advocate should work towards empowering the survivors by sensitizing them about their rights and ways to access them.

In the event the released bonded labourer chooses to return to his/her native village, the Advocate should request the government to ensure safe repatriation back to his/her native place

## POINTS TO NOTE

**Adequate economic rehabilitation:** NGO representatives must ensure that the economic rehabilitation of released bonded labourers is not restricted to grants under Centrally Sponsored Scheme but combined with the convergent approach of pooling together economic benefits available from various department of Government and other agencies.

Assisting rescued persons with opening a bank account: Rehabilitation grant is usually paid by cheque. NGO representatives should assist the rescued bonded labourers to open bank accounts in any nationalized bank. NGO representatives must encourage rescued bonded labourers to cultivate saving habits. NGO representatives must also assist the rescued bonded labourers to purchase property tied to his/her skills (such as sewing machine, livestock, cart etc.) with the rehabilitation grant. However, this must only be done in consultation with the bonded labourer. The best practice is for rehabilitation plans to be designed in consultation with the bonded labourers.

**Rehabilitation Schemes:** Broadly, the NGO should ensure that the following are provided to the survivor:

| SCHEME                                                                         | RESPONSIBLE GOVERNMENT AUTHORITIES                                                                                       |
|--------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Rs. 1,00,000 to Rs. 3,00,000<br>Rehabilitation Funds <sup>84</sup>             | District Treasury, Collector, RDO, Tahsildar, and/or any other body established for disbursement for the said funds.     |
| Ration Card                                                                    | Local Taluk Supply Office                                                                                                |
| Community (Caste) Certificate                                                  | Tahsildar or Deputy Tahsildar                                                                                            |
| Land Patta                                                                     | Revenue Inspector, Survey Department and Collector/RDO/Tahsildar                                                         |
| Employment through MNREGA                                                      | Ministry of Rural Development and Accessible through the Local Gram Panchayat or Program Officer or designate authority  |
| Education                                                                      | Department of School Education and Literacy; Labour Inspectors (responsible when child labour is involved) <sup>85</sup> |
| Central Sector Scheme for Rehabilitation of Bonded Labourer 2021 <sup>86</sup> | District Administration                                                                                                  |

## LEARN MORE & TAKE ACTION

To read about NHRC's **Guidelines For Release Of Funds Under The Centrally Sponsored Scheme For Rehabilitation Of Freed Bonded Labour**, click [here](#).

**Government Entitlements Manual:** For a detailed step-by-step guide for accessing government entitlements see the Advocacy Manuals on the Emanuel Hospital Association Website at <https://www.eha-health.org/downloads/category/9-advocacy-manuals>.<sup>87</sup>

**Legal Services Authority (LSA):** If the NGO is unsuccessful in assisting the survivor with securing access certain government entitlements, the NGO and the survivor may avail free legal aid from the local Legal Services Authority office. To learn more about the role of the Legal Services Authority read the Legal Services Authorities Act, 1987.

**Land Patta:** A patta is a legal Government document that is issued in the name of the land owner. The government has set aside land for use by low-income families. Bonded labourers who receive a Release Certificate are eligible to apply for land patta. Contact JVI to obtain details on the process of obtaining land patta.

<sup>84</sup> Vide the 2016 Central Sector Scheme for the Rehabilitation of Bonded Labourers, the cash component is 100% supported by the Ministry of Labour Employment, Government of India and non-cash component to be supported by the concerned State Government.

<sup>85</sup> Save the Childhood Foundation v. Union of India and Ors. Writ Petition (Civil) 15090 of 2006, available at: <<http://stophumantrafficking-mha.nic.in/writere-addata/WPC-9767-2009-govt-of-delhi-vs-save-the-childhood-foundation.pdf>>. Their role is essential for enrolling the children rescued from CL/BL.

<sup>86</sup> Central Sector Scheme for Rehabilitation of Bonded Labourer 2021, File No. S-11012/01/2019 –BL, Government of India, Ministry of Labour & Employment dated 7th February 2022 and modifications in the Central Sector Scheme for the Rehabilitation of Bonded Labour, 2016 dated 23.06.2017.

<sup>87</sup> Developed by Emmanuel Hospital Association and recently updated by JVI.

## Step 3.6 Repatriating Bonded Labour Survivors

Timeline: The process of repatriating bonded labour could take 2 days to 1 week.

### NGO

The NGO should assist bonded labour survivors with safely repatriating to their family/native place or an alternative safe location, including completing verification report as specified by the CWC for minor survivors.

### ADVOCATE

The Advocate should advise the NGO representatives to ensure that the restoration process is carried out in accordance with procedures established by law.

### COMMENTARY

The NGO may conduct a home verification study in case of bonded child labourers and juveniles and submit a report before relevant authorities.

The Advocate should ensure that child bonded labourers are presented before the CWC and placed in an appropriate aftercare home. The release of the child bonded labourer from the said home should not be allowed unless a home inquiry report is submitted before the CWC. The Advocate should oppose the release of the rescued child prior to submission of the Home Inquiry Report.

### POINTS TO NOTE

**Role of CWC in repatriation of child labourers:** In the case of child labourers rescued without their parents, it is the role of the CWC to make adequate inquiry into their background, through the submission of home inquiry reports, to determine the steps to be taken to repatriate the child to his/her place of origin. The CWC within whose jurisdiction the rescue took place shall pass appropriate orders under the provisions of the JJ Act to repatriate the child to the CWC within whose jurisdiction the child's place of origin lies. This should be done as soon as possible to ensure that the child is quickly repatriated. The NGO may assist the CWC in ensuring the repatriation takes place as soon as possible.

**Order of CWC to give custody of child to parent:** The CWC is responsible for the welfare of the child and restoring the victim. Under Section 37 of the JJ Act, the CWC can order the restoration of the child into the custody of his/her parent or guardian after the home inquiry report has been submitted.

**Cross-border/Inter-state trafficking:** In the case of cross-border or inter-state trafficking, stakeholders and NGOs of both countries must undertake effective measure to ensure quick repatriation of rescued women, children or men to their country of origin.

**Repatriation to Nepal or Bangladesh:** The following are the steps to be undertaken to ensure safe repatriation to Nepal and Bangladesh:

1. The first step is to meet the Consul General for Nepal and Bangladesh. The NGO representatives must introduce themselves and inform the representatives from the Consul about the case. The relationship with the Consulate is very important. Each consulate has certain rules and regulations by which the repatriation process is completed. The NGO representatives need to become familiar with the process and the documents that will be required. NGO representatives should act as liaison between the applicable Indian government agency and the Consulates to work through the repatriation process from beginning to end.
2. In the case of child labourers rescued without their parents the NGO representative should request the CWC to order a Home Study Report and, after its completion, to pass an order for repatriation depending on the Home Study Report.

3. The NGO representatives must also build relationships with the NGO conducting the home study. NGO representative must maintain a data base of credible organization and recommend CWC to contact these organizations to conduct a home study and assist in repatriation.

**Important documents required for international repatriation:** The following documents are needed from the following agencies:

- ◇ Nationality verification – Country of origin
- ◇ Repatriation Order and Consent letter – Ministry of Home Affairs, India
- ◇ No Objection Certificate – District office and State office at the Department of Women and Child Development (DWCD).
- ◇ Travel documents – Country of origin
- ◇ Release order – Aftercare home
- ◇ Notification about clearance for travel – Foreign Registry Office, State government
- ◇ Permission to leave India – Government of India
- ◇ Permission to re-enter the country of origin may also be required from the origin country. If the country to which the survivor belongs is not willing to acknowledge the survivor as being its national, then there is not much that the Government of India can do to repatriate the survivor. The NGO can play a crucial role in ensuring that the country of origin is able to recognize the nationality of the survivor and agree to allow the repatriation of the survivor.

#### **STANDARD OPERATING PROCEDURE FOR REPATRIATION OF NEPALESE CHILDREN:**

1. Concerned Department of the State Government should submit complete details of the child, to the extent possible, as in 'Annexure' to Deputy Secretary, Northern Division, Ministry of External Affairs (MEA), South Block, New Delhi-110001.
2. Upon receipt of information, Northern Division, Ministry of External Affairs (MEA) will take up the matter with the Embassy of Nepal in Delhi requesting for verification of identity of the child and details of the child's family.
3. Upon receipt of confirmation from Embassy of Nepal about the child's identity, Northern Division, MEA will issue a communication to facilitate the handing over of the child to his/her parent/authorized guardian/ legal heir.
4. The State Government will hand over the child to the parents/legal heir at the Embassy of Nepal in Delhi in the presence of a representative from the Northern Division, MEA at a mutually agreed date & time. The date and time of such a handover will be decided only after the issue of response to the State Government by MEA.
5. Northern Division, MEA will send quarterly report of such repatriations to Women Safety Division, MHA.

**NGO should ask for copies of all the needed documents. NGO should provide all concerned parties with necessary information about the survivor.**

### **LEARN MORE & TAKE ACTION**

**Rehabilitation family format:** A sample rehabilitation family format can be found in **Appendix 19**. The CWC must clearly state the name of the NGO to conduct the home inquiry.

## **Step 3.7 Facilitating Access to Private Sector Resources**

Timeline: The process of facilitating access to private sector resources could take between 1 to 2 months.

### **NGO**

The NGO should assist the bonded labour survivors with accessing available private sector (NGO and business) resources related to both cash (Rs. 3,00,000/= under the newly revamped CSS-2021 for rehabilitation of bonded labourers and victims rescued from brothels etc.) and non- cash components like education, employment, health care, counselling, and other entitlements.

## COMMENTARY

The NGO representatives can facilitate the access of bonded labourers to private facilities by networking with partner organizations and relevant stakeholders who may be able to provide alternate livelihoods, interim shelter, assistance with obtaining documentation, education, healthcare, counselling, and other entitlements. See below regarding follow up visits.

### Step 3.8 Engaging Local BLA Vigilance Committees

Timeline: Engaging local BLA Vigilance Committees could take between one to two months.

#### NGO

The NGO should ensure that the District Administration where the bonded labour survivor resides has an established Vigilance Committee and work with such Vigilance Committee to facilitate the continued rehabilitation and protection of survivors.

#### ADVOCATE

The Advocate should assist the NGO in petitioning the district administration to form a bonded labour vigilance committee if one does not already exist.

## COMMENTARY

Pursuant to Section 13 of the BLA, each state government is responsible for ensuring that Vigilance Committees are formed and operating effectively in every District in the state. Vigilance Committees are constituted for the purpose of the overall rehabilitation of the Bonded Labour victims and are chaired by the District Magistrate.

The NGO should advocate with District Administration to constitute Vigilance Committees in Districts and Sub Divisions where Vigilance Committees have not been formed and encourage them to conduct surveys on the prevalence of bonded labor. NGO representatives must ensure that victims are being treated with dignity and sympathy and not as criminals.

The Advocate must ensure that each district has a Vigilance Committee constituted as per the BLA.

## POINTS TO NOTE

NGO representatives must ensure that aftercare services are provided within the stipulated time frame. The best practice is to provide aftercare services for two years which may be extended on an as-needed basis. While it is expected that the Vigilance Committee will provide for the social and economic rehabilitation of freed bonded labourers under Section 14 of the BLA, NGOs may follow up with the Vigilance Committee and the District Administration with regard to compensation. The NGO may assist the District Administration and Vigilance Committees in ensuring adequate rehabilitative support.

## LEARN MORE & TAKE ACTION

Refer to Chapter IV to learn about the roles and responsibilities of the District Magistrate in the rehabilitation of bonded labourers. Refer to Chapter VI on Supreme Court judgments on rehabilitation of bonded labourers.

## Step 3.9 Ensuring Survivors Enjoy Permanent Freedom

Timeline: It could take up to two years to ensure that survivors enjoy permanent freedom.

### NGO

The NGO should maintain an ongoing relationship with the bonded labour survivor for at least 24 months from rescue to ensure sustained rehabilitation and permanent freedom.

### ADVOCATE

### COMMENTARY

The NGO representative must make efforts to restore a labourer back to the family/native place after release. In the case of a child labourer, orders from the Child Welfare Committee must be sought prior to restoration. The NGO should do necessary follow up from time to time. The NGO should conduct family assessments, draft individualized treatment plans, and work closely with the District Administration to ensure that rescued survivors can access their welfare benefits and compensation. Survivors shall also be assisted in opening their individual bank account in order to deposit government compensation cheques.

The Advocate should advise the NGO representatives to ensure that the restoration process is carried out in accordance to procedures established by law and not by force.

### POINTS TO NOTE

**Adequate Counselling:** It is important to ensure that the released labourers are counselled and not coerced into leaving for their native village if they do not wish to. In the case of a minor, an individual care plan must be prepared and submitted to the CWC. The NGO can also maintain a care plan for the survivors and submit this to the Magistrate if asked to do so. The NGO representative must also make efforts to reintegrate the labourer back into family and community.

**Goal of restoration:** The goal of restoration is to ensure that a released labourer reaches a place of sustainability, where he/she is able to provide for herself/himself.

**Completion of home study:** The NGO representatives must seek permission from CWC before conducting the Home Study for child labourers. During the Home Study, the representatives travelling to the child's native place must take care not to share information with the community that would lead to stigmatization of the child, as the family and the community may not welcome the child back home. The NGO representative must assess the risk of re-trafficking and present the report and recommendation to the CWC.

**Planning:** The reintegration and repatriation of trafficking victims is a long process that must be planned, taking into account the specific short and long- term needs and expressed priorities of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims.

### LEARN MORE & TAKE ACTION

A checklist of Aftercare Services to be provided in bonded labour interventions can be found in **Appendix 18**.

# SOPs FOR SEX TRAFFICKING INTERVENTIONS

## (WITHOUT COMMENTARY)

Set forth below are the SOPs for Sex Trafficking Interventions. The SOPs are subdivided into three parts:

1. Procedures for rescuing of victims
2. Procedures for prosecuting perpetrators
3. Procedures for restoring survivors

## 1.0 SUMMARY OF PROCEDURES FOR RESCUING SEX TRAFFICKING VICTIMS



### IDENTIFYING SEX TRAFFICKING VICTIMS

District Administration (DA) inquires into existence of sex trafficking based on evidence provided by NGO.



### PREPARING THE SEX TRAFFICKING RESCUE PLAN

Police prepare a confidential rescue plan with details of location, physical layout of rescue site, entry and exit points, hideouts, sketch map of rescue site, etc.; SPO notes in case diary.



### INITIATING THE SEX TRAFFICKING RESCUE

Rescue Team (including women police constable enters site and locates victims. Police coordinates with surveillance team and takes photos/videos of crime scene.



### SEPARATING SEX TRAFFICKING VICTIMS FROM THE ACCUSED

Police separate victims from accused and takes victims to secure open area; women police constables interact with rescue victims; social worker engages with victims.



### RECORDING SEX TRAFFICKING VICTIM STATEMENT

Police and/or Probation Officer records statements, provide counselling and translation if necessary, refer children to CWC.



### SUBMITTING THE SEX TRAFFICKING COMPLAINT

Local Special Police Officer (SPO) receives complaint; District/State AHTU or C.B.I. can also receive complaint but must coordinate investigation with Police.



### CONDUCTING PRE-RESCUE MEETING WITH POLICE

SPO (preferably female officer) attends pre-rescue meetings with NGO to schedule rescue date and review checklist of responsibilities; rescue team should also include 2 panchas or reputable witnesses from locality, one of whom is female, and social worker.



### SECURING THE SEX TRAFFICKING RESCUE SITE

Police secures rescue site to ensure all victims are rescued and no material evidence is lost.



### GATHERING SEX TRAFFICKING EVIDENCE

In presence of two or more independent witnesses, Police collects evidence (diaries and registers, ledgers, books of accounts showing networking with other traffickers, cash, bills for electricity, telephone, and water, ration card, municipal tax receipts, travel documents, photographs, albums, condoms).



### ENSURING PROTECTIVE CUSTODY FOR SURVIVORS

Police escorts rescued victims to Magistrate or CWC, if available; if unavailable, Police escorts victims to Shelter Home or Children's Home.

## Step 1.1 Ensuring Survivors Enjoy Permanent Freedom

Timeline: The process of identifying victims of sex trafficking could take between one to seven days

### NGO

The NGO should gather and verify facts supporting the existence of sex trafficking.

### ADVOCATE

The Advocate should confirm whether the facts gathered support the legal elements of sex trafficking under the Immoral Trafficking in Persons Act, Section 143 of BNS, and other applicable legal provisions.

### COMMENTARY

The NGO may receive information from one of the following sources:

- ◇ Victims or victims family/community/survivor
- ◇ NGO/ community leaders
- ◇ Anti-Human Trafficking Units (State and District level)
- ◇ CWC
- ◇ Any person having knowledge of the crime
- ◇ Victim
- ◇ Informant

The NGO may also acquire information through intelligence gathering at source and transit points, demand areas and from media reports.

The Advocate should advise the NGO representatives to ensure that the restoration process is carried out in accordance to procedures established by law and not by force.

- ◇ victims or victims family/community/survivor
- ◇ NGO/community leaders
- ◇ Anti-Human Trafficking Units (State and District level)
- ◇ CWC
- ◇ Any person having knowledge of the crime
- ◇ Victim
- ◇ Informant

The Advocate should also advise the NGO on matters related to decoy operations and confidentiality while gathering information.

### POINTS TO NOTE

Who is a victim of sex trafficking: For the purpose of investigation into trafficking for commercial sexual exploitation, a "victim" is anyone who has been recruited, transported, harboured, transferred or received by using threats, using force or forms of coercion, by abduction, by practicing fraud or deception, by abuse of power, or by inducement, for the purpose of sexual exploitation.<sup>88</sup>

According to the ITPA, a victim of trafficking may be:

- ◇ A child: Any person who has not completed the age of 16
- ◇ A minor: Any person who has completed the age of 16 but has not completed the age of 18
- ◇ Major: Anyone who has completed the age of 18

<sup>88</sup> See the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000.

**Means of gathering information and intelligence:** The following are means and places from which information on the incidence of commercial sexual exploitation can be identified:

- ♦ **Source Area:** Collect intelligence on victims and potential victims in source areas. Victims include women and children who are forced to perform acts of a sexual nature. Keeping a close watch on high risk places and communities will help prevent vulnerable victims from being trafficked. The NGO should sensitize and motivate community members to keep watch for irregular movements of victims. Intelligence from source areas can also be gathered from interviews with survivors.
- ♦ **Transit Points:** Depute team at transit points to collect intelligence on victims and perpetrators in transit. Transit points include bus stops, railway stations, airports, immigration or custom offices at borders and tourist destinations.
- ♦ **Destination Areas:** Collect intelligence at areas or activities where commercial sexual exploitation is carried out such as massage parlours, brothels, sex tourism operators, dance bars and hotels.
- ♦ **Decoy Operations:** Information may be obtained by conducting decoy operations.

Precautions to be taken: While obtaining information, the following precautions ought to be taken:

- ♦ **Maintain confidentiality:** Information relating to the victims, the rescue site to be searched, and the brothel owner or pimp must remain confidential. The NGO representatives or Advocates should not disclose information to any other persons who do not need to know.
- ♦ **Contact the local police:** If you believe you have someone or received information about a victim of sex trafficking, alert the local police station immediately. Do not attempt to rescue or help the victim on your own. An NGO or any person cannot conduct a rescue on its own and needs assistance from law enforcement agencies.
- ♦ **Drafting a complaint for submission to the local police/AHTU/C.B.I.:** NGO representatives may seek the assistance of an Advocate to prepare a written complaint or a Legal Intervention Report (LIR). A written complaint or Legal Intervention Report should list all violations and invoke all applicable sections of law.

**Decoy Operations:** Information may be obtained by conducting decoy operations. A decoy operation occurs when a person goes undercover (the 'decoy') and uses his/her guise to obtain information about the existence of commercial sexual exploitation. The decoy also helps gather any other information that could be useful to conduct a rescue operation but cannot be procured without such an operation. Decoy operations are dangerous and only a trained person should be deployed as a decoy.

**Who can be employed as a decoy:** A decoy can be a police official, a representative of the NGO, or any other person willing to be sent as a decoy.

- ♦ **Who can a decoy be disguised as:** A decoy can pose as a bogus customer.
- ♦ **Brief the decoy:** The decoy must be sensitized to the plight of the victims and the risks involved in carrying out such operations. The decoy must be made aware of the vulnerability of the trafficked person and should neither traumatize the victim further by his presence nor take advantage of the situation.

**Role and importance of decoy customer in sex trafficking interventions:** The decoy customer is also known as a bogus customer, who ensures that the targeted victim is present in the brothel during the rescue operation. During decoy operations strong evidence about a girl being sexually exploited can be obtained. Recovery of marked transaction money in the presence of independent witness from the brothel keeper/ manager/ owner implicates them in the crime. Even if the victim is not traced during the trial, there can be a conviction for running a brothel based on the testimony of a decoy and independent witness, without which the trial will not move forward.



**Important points for decoy customer:** The following points must be kept in mind by the decoy customer.

- ◇ Decoy customer should be of good reputation with no criminal background.
- ◇ He should not be a very young man.
- ◇ He should preferably be from the NGO.
- ◇ He should be familiar with sex trafficking or the workings of the red light area.
- ◇ He should be introduced to the special police officer before he is sent to the brothel.
- ◇ During the pre-rescue report (panchnama), the details of the decoy customer should be mentioned. He should be frisked and a note made of all his possessions.
- ◇ The importance of the operation should be explained to the decoy customer. He should be briefed on the do's and don'ts by the SPO.
- ◇ The marked money for the transaction is to be given by the police to the decoy customer in the presence of the independent witnesses. The decoy customer should pay the marked/noted money to the brothel keeper/manager/owner.
- ◇ He should not engage in sexual activities with the victim.
- ◇ As soon as the transaction is done he should inform the police in a predetermined code.
- ◇ As the police approach the brothel he should try and keep the girl with him and not allow her to leave the room.
- ◇ If he is forced to leave the girl behind (due to suspicion of raid/tips off), then he should accompany the girl so that he can see where the girl is being hidden.
- ◇ The statement of the decoy customer should be reduced to writing by the police officer.
- ◇ The decoy customer should be deposed before the court during trial.

## LEARN MORE & TAKE ACTION

**Who is a victim of sex trafficking** (Trafficking for Commercial Sexual Exploitation): Section 5 of the ITPA provides information on who is a victim of trafficking for commercial sexual exploitation. Learn more about the elements of trafficking provided in Chapter IV.

**Document the existence of sex trafficking:** The NGO representatives should carefully document the existence of sex trafficking.

**Sample documents and Practice Aids:** Learn about the myths surrounding trafficking provided in **Appendix 22**.



## Step 1.2 Submitting the Sex Trafficking Complaint

Timeline: The process of submitting the sex trafficking complaint could take between 1 to 2 days.

### NGO

The NGO should use the facts gathered to draft a sex trafficking complaint to be submitted to the police and other government officials.

### ADVOCATE

The Advocate should review the sex trafficking complaint to ensure it presents a persuasive legal argument for initiating a sex trafficking rescue and assist the NGO in submitting the complaint to the police and other government officials.

### COMMENTARY

The NGO should discuss the information in detail with the informant to verify the accuracy of the information.

However, the NGO is duty bound to report the information to appropriate authorities immediately as time is of the essence.

Decoy operations or reconnoiter visits may be carried out to authenticate the available information received from informants.

The Advocate should ascertain if the elements of trafficking as defined in BNS and ITPA are satisfied and come to a conclusion as to whether the person has been trafficked or not and whether other offences have been committed against the victim. The Advocate should be present at the police station or wherever the complaint is being submitted to ensure that the appropriate sections of law are included and an explanation, if required, is given.

### POINTS TO NOTE

**Who is the complainant:** Prior to the rescue, the NGO may make a complaint in the name of the victim or victim's family/guardian. When the family member is not traceable, the NGO's representative may be made the complainant.

**Who should the sex trafficking complaint be submitted to:** The sex trafficking complaint (or information) under the ITPA is to be submitted to the local Special Police Officer (SPO) concerned with the jurisdiction or area within which the offences are committed or the District/State AHTU or C.B.I.<sup>89</sup> The complaint should ideally be submitted to a SPO who is reliable and trustworthy and can be taken to the rescue without any danger of leaking information.

**Making a cross-border enquiry:** With respect to a cross-border enquiry there are five specific channels that are available to district police for collection/corroboration of information from overseas:

- Indian Missions (Embassies or High commissions) in the concerned country can be contacted through the proper channel for simple information of any kind.
- The Ministry of Overseas Indian Affairs (MOIA), Government of India can also be contacted through the proper channel for information related to Indian emigrants.
- The Interpol branch of the concerned country can be contacted through the Interpol wing of the Central Bureau of Investigation (CBI) through the office of Interpol Liaison officers (ILO) of the state.
- Ministry of Home Affairs (Government of India)
- Ministry of External Affairs (Government of India) Standard Operating Procedures

<sup>89</sup> Section 15 (1) ITPA (Note: The MHA has mandated the constitution of AHTUs in all States and Districts throughout India to detect crimes pertaining to HT. The CBI is also mandated to detect and investigate crimes pertaining to HT). More information about the same can be found here: <<http://timesofindia.indiatimes.com/india/CBI-sets-up-centralized-anti-human-trafficking-unit/articleshow/11369341.cms?referral=PM>>

## LEARN MORE & TAKE ACTION

**Summary of offences:** For details on penal provisions that may be invoked, refer to the summary of offences provided in Chapter IV.

**Sample documents and practice aids:** If the Police fail to act, the Advocate should immediately approach higher authorities or an appropriate forum seeking directions to be passed to the concerned authorities to respond as required by law.

Refer to **Appendix 22A** on how to draft an application to a Magistrate to summon the presence of the accused and to request the SHO to register a First Information Report.

### Step 1.3 Preparing the Sex Trafficking Rescue Plan

Timeline: Preparing a rescue intervention plan could take a day.

#### NGO

The NGO should prepare a comprehensive sex trafficking rescue plan in consultation with the police and relevant authorities, which must include a detailed physical map of the site.

#### ADVOCATE

The Advocate should advise and assist the NGO in preparing the rescue plan, ensuring it includes the presence of an adequate number of decoy customers and panch witnesses/independent witness as required under the ITPA.

#### COMMENTARY

The NGO must prepare a strategic plan for the rescue operation. The plan should include details of the location, physical layout of the rescue site, entry and exit points, hideouts, and sketch map of the rescue site. The above details must be obtained and compiled during reconnoitre of the place to be searched.

The Advocate may assist the NGO representatives in the preparation of a rescue plan and ensure that the rescue operation is planned in accordance with procedures laid down by law.

### POINTS TO NOTE

**Risk assessment:** The NGO must conduct a systematic risk assessment and have a plan to minimize the risks involved in a rescue. Other factors such as the location of the place to be searched, the profile of the traffickers and the social standing of the accused must be examined to assess the risks. Possible responses to mitigate risks along with a contingency plan in case of unforeseen circumstances must be planned with great care.

**Avoid sharing rescue site information:** The physical map of the rescue site should be kept confidential. Victims had gone missing in the past when information was leaked from various sources. It is best to avoid sharing the information with too many stakeholders.

## LEARN MORE & TAKE ACTION

**Pre rescue plan:** Contact JVI for a sample pre rescue plan that lists out the roles and responsibilities of team members.

**Sex Trafficking Intervention Checklist:** Appendix 29 has a Checklist for a Sex Trafficking/CSE intervention rescue operation.

## Step 1.4 Conducting a Pre-Rescue Meeting With Police

Timeline: The pre – rescue meeting with the police can be completed in a day's time.

### NGO

The NGO should conduct a pre-rescue meeting in accordance with the rescue plan where roles and responsibilities are assigned to team members.

### ADVOCATE

The Advocate should advise and assist the NGO during the pre-rescue meeting by sensitizing the NGO and government representatives on legal provisions and important information relating to the rescue to be undertaken.

### COMMENTARY

Appoint team leader who shall explain the strategy and steps to be taken during the rescue. The team leader shall assign responsibilities and explain the role of participants in the rescue operation. Divide participants into groups, depending on the targeted number of rescue locations and expected number of victims.

Appoint a team leader for each group. Share the names and contact details of each participant and team leaders and the roles and responsibilities of each group.

Prior to participating in the rescue, team members must be familiar with the laws related to trafficking and commercial sexual exploitation of persons.

Note: Under no circumstances should the team that was involved in identification/verification/intelligence gathering be involved in the rescue so as to protect their identity and to ensure an effective rescue operation.

Two Panch witnesses are recommended to insure sufficient evidence is recorded during a rescue.

The Advocate should be present at the pre-rescue meeting with the police and representatives from the NGO to convince the police to act swiftly. During this meeting, the Advocate should sensitize the NGO and government representatives on various issues related to trafficking, legal provisions on trafficking and myths and realities with regard to trafficking.

The Advocate should also explain the process of assembling the panch witnesses or independent witness required under ITPA. The Advocate must advise police officers to exercise caution while selecting panch witnesses. (Government or quasi government officials may be made pancha witnesses in order to ensure credibility so as to avoid witnesses from turning hostile during trial).

Finally, the Advocate should request that the police provide decoy customers for the rescue operation. In the event the police are unable to do so, the Advocate in consultation with the NGO may provide a decoy customer. The decoy customers should be introduced to the independent witness/pancha. The police should give the transaction money to be given to pimp/brothel owner during the rescue in the presence of the Pancha.

## POINTS TO NOTE

**Composition Of Rescue Team:** The rescue team should consist of designated Special Police Officers or the trafficking police officer, NGO representatives and social worker of which one has to be a woman. The rescue team should comprise:

- ◇ Two female staff of any rank. If a female police officer isn't available any female officer can be present along with a female social worker from an NGO. If no female staff is available, get in touch with Childline to ask one of their staff to come.
- ◇ At least one police officer who is legally empowered to conduct a rescue or any police officer above the rank of SI duly authorized by the Magistrate<sup>90</sup> to conduct the rescue. Police officers authorized to investigate crimes under ITPA, 1956 are:<sup>91</sup>
  - Notified police officers under Sec. 13 (1), (2);
  - Subordinated police officers authorized by the State Government under Sec. 13(3) (a); or
  - Central (Anti) Trafficking Police Officers under Sec. 13(4).

**Appoint a Team Leader:** Appoint a team leader who will explain the strategy and steps to be taken during the rescue. The team leader should assign responsibilities and explain the role of participants in the rescue operation. Divide participants into groups, depending on the targeted number of rescue sites and expected number of victims. Appoint team leaders for each group. Share the names and contact details of each participant, the names and contact details of team leaders and the roles and responsibilities of each group.

**Be Familiar with Sex Trafficking Laws:** Prior to participating in the rescue, team members must familiarize themselves with all laws relevant to sex trafficking.

### A Pre-Rescue Checklist:

- ◇ **Prepare a rescue kit:** The kit is to include stationery, cameras, torches, batteries, video cameras, refreshments (drinking water, snacks), a first aid kit, vehicles, printer and cartridges, laptops and chargers, reference materials such as case laws and bare acts, list of the districts/villages, and police stations within the jurisdictions to which the victims belong, clothing, toiletries, and activity books, crayons, colour pencils (in the event there are children among the rescued victims). Appoint a point of contact for the arrangement of logistics well in advance of the rescue
- ◇ **Alert Shelter Homes:** Alert credible Government-run/NGO shelter homes at the place of rescue regarding the approximate number of persons likely to be rescued and the date when they are likely to be brought to the home. Ensure that NGO-run shelter homes are licenced by the Government. This should be done in confidentiality so that information about the rescue operation is not leaked. It is important for NGO representatives to maintain a database of credible shelter homes. NGO representatives must provide the list to the District Magistrate or CWC and the Advocate so that the victims are sent to a credible shelter home. NGO's must strengthen their working relationship with credible shelter homes by entering into a MOU wherever possible. Further, NGO representatives must approach the District Magistrate to make alternate arrangements where shelter homes are not available.
- ◇ **Size of Rescue Team:** Ensure that the SPO involves adequate police personnel depending on the size of the rescue operation, especially in high risk locations. Under no circumstances should a rescue operation be carried out without police protection.

**Become familiar with useful questions:** NGO representatives participating in the rescue must familiarize themselves with standard rescue protocol before going on a rescue.

<sup>90</sup> See Sec. 16 (1), ITPA.

<sup>91</sup> UNODC SOP on Investigating Crimes of Trafficking for Commercial Sexual Exploitation, 2007. Available at: <[https://www.unodc.org/pdf/india/sop\\_investigation\\_131207.pdf](https://www.unodc.org/pdf/india/sop_investigation_131207.pdf)>.

## Step 1.5 Initiating the Sex Trafficking Rescue

Timeline: The actual rescue can be completed in one day.

### NGO

The NGO should initiate the sex trafficking rescue with the police and other stakeholders according to the rescue plan.

### ADVOCATE

The Advocate should participate in the sex trafficking rescue to ensure that it is carried out according to the law.

### COMMENTARY

On the day of rescue, the NGO representatives should do the following:

- ♦ **Prior to rescue, meet at common location and wait for signal:** Rescue team members must meet at a common location well before the rescue and wait for the decoy or panch witnesses to give signal. The strategy that would be adopted for the rescue operations and its various steps should be explained at this time. Explain each team member's role in the rescue operation and clarify any doubts that she/he may have.
- ♦ **Stationing of surveillance team:** A surveillance team must be stationed at strategic location near the place of rescue to provide information about any suspicious activity/tip offs.
- ♦ **On receiving signal enter site of rescue:** The NGO participant, upon reaching the strategic location must immediately enter the rescue site where the victim is confined or kept and ensure that the site is fully searched. The victims may be kept hidden in boxes, attics, toilets, cubicles, cupboards, false ceilings, wall panels, bathrooms etc. The NGO can accept the help of rescued persons in locating other hidden victims, children, offenders and other incriminating materials.
- ♦ **Video/Photos of the scene of crime to be captured by the Police:** The NGO representatives must also ensure that police record video or photographic evidence of the scene of crime and offenders are carried out by the police. Ensure that no one from the NGO captures photos or videos of victims or the brothel area without appropriate permissions.

On the day of rescue, the Advocate is responsible for the following:

- ♦ **Advice on collection of material evidence:** The Advocate must advise the NGO representatives on the legal procedures relating to the collection of material evidence. Under no circumstances should the NGO representatives collect material evidence by themselves.
- ♦ **Refrain from physical force:** The Advocate must also advise the NGO representatives to refrain from using physical force and violence on any person while conducting the rescue.
- ♦ **Police formalities:** The Advocate must ensure that all police formalities are completed.
- ♦ **Pre-trap Panchnama:** The Advocate should ensure that details with regard to the currency and denomination of the note to be used in the operation are recorded in the pre-trap Panchnama. The Advocate must also ensure that the pre-trap Panchnama is signed by both the witnesses. The Advocate must ensure that the police explains the roles and responsibilities of the decoy customers as well as the Pancha witness.
- ♦ Advocate who is a witness cannot represent victims at trial: The Advocate can be a part of the rescue operation but cannot represent the victim during the pre-trial and trial process if he/she is made a witness.

## POINTS TO NOTE

**Custody of phones:** To prevent leakage of information, mobile phones and any other instruments of communication belonging to the rescue operation team members, including government officials, may be taken into custody by the police officer prior to the rescue.

**Ensure legal composition of rescue team:** Make sure that the composition of your rescue team is in accordance with law. **Ensure the team has at least one police officer who is legally empowered to conduct a rescue (Special Police Officer or “SPO”)** or any police officer above the rank of SI duly authorized by the Magistrate to conduct the rescue (see points to note under 1.4 for further details). There should be two panchas or independent witnesses of repute from the locality, one of whom should be a female.

**Recheck rescue kit:** Ensure that your entire rescue tool kit is in place (details mentioned under Points to Note 1.4).

**Ensure that shelter homes have been alerted:** Ensure that credible and licenced Government /NGO shelter homes are ready to take in the number of survivors estimated (details mentioned under Points to Note 1.4).

**Ensure security of rescue team:** Ensure that the team is accompanied by sufficient police personnel, especially women police constables (WPC). Under no circumstances should a rescue operation be carried out without police protection.

**FIR before the rescue:** According to the UNODC SOP on Investigating Crimes of Trafficking for Commercial Sexual Exploitation,<sup>92</sup> a rescue is possible before or after filing of the FIR. A rescue can be executed even before the FIR is filed as an authorized rescue can be carried out under Section 15 and 16 of the ITPA:

- ♦ **Under Section 15, ITPA:** When an SPO or Central Anti-Trafficking Police Officer notified by the Central Government has reasonable grounds to believe that an offence under the ITPA is being committed and a search must be made without delay, then such officer may enter and search the premises without a warrant and remove persons found therein.
- ♦ **Under Section 16, ITPA:** When a Magistrate (i.e. a MM, JMFC, DM or SDM) receives information about a person facing commercial sexual exploitation, he/she may direct a police officer of the rank of SI or an SPO, or a Central Trafficking PO (notified by the Government) to rescue the person(s) being exploited. The said police official can rescue all victims and take all suspects into custody and produce them before the Magistrate who issued the order.

**In most cases, the FIR is filed after the rescue on the basis of the statement of the persons being rescued.**

**Accused not to be present while moving rescued persons:** NGO representatives must ensure that the accused persons are not present while the victims are being taken to a safe location.

**Media Engagement: Media should be engaged only after the rescue.** While engaging with the media the following points should be kept in mind:

- ♦ State accurate facts. While giving numbers, it is important to cite sources as it gives credibility to the information being provided.
- ♦ Draft an organisation media policy that lists the names of representatives who should speak to the media. It is important to appoint a designated person with experience to speak to the media.
- ♦ When wrongly quoted, the NGO representative must place a request for a correction in writing.
- ♦ It is always helpful to provide the media with a press release after the rescue operation has been successfully completed.
- ♦ The objective of sharing stories must always be to create awareness about trafficking, sensitize the general public, and take action against sex trafficking. While giving stories, ensure that the story does not receive a political colour or draw attention to the victim's identity.
- ♦ NGO representatives must strive to build relationships with credible media houses. It is useful to prepare an internal database of media in your respective districts.
- ♦ Do not offer a story to the media if the survivor is uncomfortable and does not want to share her story. Be

.....  
<sup>92</sup> Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation, 2007, A publication of United Nations Office on Drugs and Crime Regional Office for South Asia, available here: <[https://www.unodc.org/documents/human-trafficking/India\\_Training\\_material/SOP\\_on\\_Investigation\\_of\\_Crimes\\_of\\_Trafficking\\_for\\_Commercial.pdf](https://www.unodc.org/documents/human-trafficking/India_Training_material/SOP_on_Investigation_of_Crimes_of_Trafficking_for_Commercial.pdf)>.

sensitive to the power difference and lack of experience with the idea of consent that might cause the victim to express willingness without being comfortable or understanding the implications. The safety of the victims and their families must be given primary consideration. Do not disclose personal information (such as names, photos or home villages).

- ◇ The NGO must familiarise itself with standard international guidelines on reporting on children and develop an internal Child Protection Policy in conformity with these guidelines.

**Never share a story without obtaining consent from the victim or survivor.** Develop a consent form to read and explain to the survivor before taking her signature/thumbprint. **The actual names of victims should never be mentioned.** It is extremely important to also note that:

- ◇ The engagement of the media must never jeopardize a rescue.
- ◇ NGO representatives must never coerce or force a victim/survivor to share his/her stories.
- ◇ An alias name can be used for the purpose of reporting.

**Survivors should not be coerced:** NGO representatives and/or Advocates should never coerce or force a victim/survivor to share her stories.

## Step 1.6 Securing the Sex Trafficking Rescue Site

Timeline: The site on which the rescue takes place can be secured on the day of the rescue.

### NGO

The NGO should assist the police with securing the rescue site to ensure all victims are rescued and safe during the process.

### ADVOCATE

The Advocate should advise the NGO and police (if required) regarding the legal procedures for securing the rescue site.

### COMMENTARY

The NGO representatives should carefully secure the site of the rescue so as to avoid losing important material evidence.

The Advocate must assist the rescue team in securing the rescue site and must advise the NGO representatives about the legal procedures for conducting the rescue.



## Step 1.7 Separating Sex Trafficking Victims from the Accused

Timeline: The victims should be separated from the accused immediately after the rescue.

### NGO

The NGO should assist the police in separating the sex trafficking victims from the perpetrators and assuring survivors of their safety.

### ADVOCATE

The Advocates should advise the police that sex trafficking survivors should be separated from the perpetrators so as to ensure a safe and legal inquiry.

### COMMENTARY

NGO representatives must assist the police to immediately separate the victims from the accused to prevent harassment and intimidation.

NGO representatives must ensure that the victims are being treated with dignity and sympathy and not as criminals.

NGO representatives must encourage the women police constables to interact with the potential rescue victims at the site.

NGO representatives must also be aware of their body language and should not make any unnecessary contact with or use physical force on any victims in the brothel. They should sensitize the police officials and ensure that the police personnel do not use vulgar or inappropriate language or cause physical harm to inmates in the brothel. NGO representatives must also ensure that male members in the rescue team do not touch female victims.

The Advocate must advise the NGO representatives to refrain from using physical force and violence on any persons during the rescue.

The Advocate should help facilitate the safe custody of victims to female social workers/counsellors and thereafter to protective government custody.

## POINTS TO NOTE

**Treat victims with dignity:** Victims have the right to be treated with dignity. NGO representatives and the Advocate must ensure that any action initiated by the law enforcement agencies is based on **victim-friendly procedures** and conducted by a woman police constable (WPC) during the rescue process. The victim should always be made aware of her rights and should not be subject to harassment. The victims must be kept informed about various stages of information and must be extended help and assistance during all stages of intervention.

**Do not get offended** if the victims use abusive language or are uncooperative during the rescue process, as they are suffering from trauma.

Ensure that WPC and NGO social workers escort the victims throughout the process until they are in the custody in a government or private licenced shelter home.

The rescue team must include a professional counsellor or a social worker who is trained in managing trauma symptoms. This will allay the victims' fears and help them understand that they are being removed from the brothel site for their own safety, freedom and protection.

**Best interest of victim is paramount:** Do not force victims to disclose details of offences or abuse that they are not willing to share. The victim must be provided counselling by a trained counsellor. Use translators so that the victim is able to give her statements in her own language.

## LEARN MORE & TAKE ACTION

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>93</sup> has suggested that the following measures be used to protect the rights of the victims:

Victims should be treated with compassion and are entitled to access mechanisms of justice (Principle 4).

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures (Principle 5).

Proper assistance to victims must be provided throughout the legal process (Principle 6 (c)).

Measures must be taken to minimise inconvenience to victims and their privacy must be protected where necessary. In addition, the victims, their families, and witnesses on their behalf should be protected from intimidation and retaliation ( Principle 6 (d)).

Provisions for compensation to victims must be made (Principle 12 (a)). Avoid unnecessary delay in disposition of cases and execution of orders granting awards to the victims (Principle 6 (e)).

### Step 1.8 Gathering Sex Trafficking Evidence

Timeline: Evidence from the site of rescue should be gathered on the same day.

#### NGO

The NGO should ensure that the police collect all evidence identifying and proving sex trafficking.

#### ADVOCATE

The Advocate should advise the NGO on the laws related to collecting evidence about sex trafficking and ensure that the police seize all available evidence.

#### COMMENTARY

The NGO representatives should ensure that all possible material evidence (such as diaries and registers in the brothel, ledgers, books of accounts showing networking with other traffickers, cash, electricity bill, telephone, water and other bills, ration card, municipal tax receipts, travel documents, photographs, albums, used and unused condoms) is collected by the police in the presence of two or more independent witnesses,<sup>94</sup> such evidence is important for prosecution.

The NGO may ask police to collect material for forensic examination.

The Advocate must advise the NGO representatives on the legal procedures relating to the collection of material evidence. Under no circumstances should the NGO representatives collect material evidence by themselves.

The Advocate should assist the police in gathering material evidence and make sure that all relevant evidence is included in the Panchnama/ seizure memo.

The Advocate must ensure that the police make a Panchnama or seizure memo and a site map in the presence of witnesses/independent witnesses at the spot. This must be duly signed by two or more witnesses, one of whom must be from the locality where the search is situated.

The Advocate must also ensure that at least one of the witnesses is a female. The female witness need not be from the locality where the rescue operation is conducted. The Advocate should advise the police to involve a female witness from an NGO.

<sup>93</sup> <https://www.ohchr.org/Documents/ProfessionalInterest/victims.pdf>.

<sup>94</sup> See Sec.15(2), ITPA.

## Step 1.9 Recording Sex Trafficking Victim Statements

Timeline: Ideally, the victim's statement should be recorded as soon as the victim is counselled and has visibly recovered from the trauma.

### NGO

The NGO should assist the police with recording the statements of the sex trafficking victims.

### ADVOCATE

The Advocate should brief the victims about their rights before the process of recording their statement begins.

### COMMENTARY

NGO representatives must ensure that the victim is not forced to speak and that counselling is provided to the victim by a trained counsellor. The NGO representative must also arrange translators for victims who speak in a different language.

The NGO representative should build a good rapport with victims and obtain detailed information as to how they were trafficked, where they were trafficked and how long they were abused.

The Advocate must ensure that a detailed interview of the victim is taken in order to secure information such as personal details, age, address, family history etc. The Advocate must further ensure that the interview is carried out by a women police officer or in the presence of female representatives of an NGO.

## POINTS TO NOTE

### General guidelines for recording Statements:

- ♦ **Rapport building with the survivor:** Rapport building with the survivor is a crucial element in obtaining truthful statements. One of the most important elements of building rapport is to spend time with the survivor. However, this is not always possible, especially when obtaining the Section 180 statement on the night of the rescue. Still, there are a few general ways to build rapport: making sure the survivor is comfortable while sharing her story, explaining the full process of obtaining the statement and explaining why it is important for the survivor to speak the truth.
- ♦ **Working together with the police and Probation Officer:** In order to obtain a truthful statement NGO Legal Staff also has to work closely with the police and/or the Probation Officer.
- ♦ **Confidentiality:** Confidentiality is critical to building trust with the rescued person. However, to obtain a good and truthful statement, it is equally important to encourage the rescued victim to speak up and share her story. That being said, a rescued victim should never be pressured in an unethical way to share her story.

*Refer to Step 2. 6 for more information on recording Section 180 and 183 statements.*

**Safety of victims:** At the rescue spot, ensure the safety and security of all victims.

**Be cautious when there is history of violent abuse by accused:** Take special care in cases where the complaint suggests a history of violence by the accused.

**Rescue of minors and children:** If the rescued victim is a minor or a child, they must be referred to the Child Welfare Committee.

**The Child Welfare Committee:** The Child Welfare Committee ("CWC") is a statutory body that has been set up under Section 27 of the Juvenile Justice Act, 2015. Each district is required to set up at least one CWC. The CWC is comprised of a chairperson and four members, at least one of whom should be a woman. The chairperson is expected to be thorough in matters of child welfare. The CWC's powers are equivalent to those of a metropolitan magistrate or a judicial magistrate of the first class. The CWC is the exclusive body responsible for determining the welfare of a child in need of care and protection. Anyone can present a child, who is considered to be "in need of care and protection" before the CWC.

**CWC and the new JJA 2015:** The new JJA 2015 makes a few changes to the functioning of the CWC:

- ♦ **CWC no longer the final authority:** With the passage of the JJA 2015, the CWC is no longer the final authority in cases of children in need of care and protection. Section 27(10) of the JJA states that the District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders.
- ♦ **Social investigation on all children to be carried out and submitted within 15 days:** Under Section 36 of the JJA 2015, the CWC shall carry out an investigation on all children produced before it. Under this Section, a speedy social investigation has to be carried out by a social worker or Child Welfare Officer or Child Welfare Police Officer and submitted within 15 day.
- ♦ **Final order within 4 months:** The social investigation report has to be submitted before the CWC in 15 days so that the CWC may pass a final order within **4 months** from the time of first producing the child before the CWC.

After the rescue, the NGO representatives must take care to ensure that minors and children are presented before the CWC so that their statements are recorded and orders are passed to ensure their safe custody.

## LEARN MORE & TAKE ACTION

Contact JVI for more information on how to record a survivor's statement with sensitivity and accuracy.

### Step 1.10 Ensuring Protective Custody for Survivors

Timeline: To the extent possible, protective custody of the victims should be ensured on the day of the rescue.

#### NGO

The NGO should accompany the rescued persons while they are produced before the Magistrate or the CWC.

#### ADVOCATE

The Advocate should advise and assist the NGO while the survivors are produced before the Magistrate or the CWC.

#### COMMENTARY

After step 2.2 below, the Magistrate or CWC will determine which home the rescued persons are to be placed in for a certain period of time. The rescued victim(s) must be handed over to the protective/ children home that is either run by an NGO or the government. Survivors are to be counselled by the aftercare staff about their stay in protective custody and that they have been placed there on a temporary basis for their own safety and well-being.

The NGO aftercare staff must accompany the rescued victim when- ever she travels to and from her place of safety.

The Advocate should ensure that the brothel is locked and the keys are kept in safe custody of the police.

The Advocate must ensure the rescued persons are escorted by the police. In case the Magistrate/ CWC is in office and the required documents (such as injury report, forwarding report) need to be prepared, the rescued person may be escorted to the Magistrate/CWC.

In the event the rescue is conducted after sunset and the Magistrate or CWC is not available, the rescued person must be transferred to a shelter home or children's home.

Under no circumstances should the rescued person be kept in the police station overnight.

The Advocate must also ensure that the FIR is promptly registered and that survivors receive a copy of the FIR.

# 2.0 SUMMARY OF PROCEDURES FOR PROSECUTING PERPETRATORS OF SEX TRAFFICKING



## FILING THE SEX TRAFFICKING FIR

Officer in charge of police station records information of sex trafficking offenses as an FIR and proceeds with investigation and arrest; insure all sections are included in FIR and give copy to complainant.



## APPEARANCE OF SURVIVORS BEFORE THE MAGISTRATE OR CWC

Magistrate orders medical exam and temporary stay at shelter home; CWC takes statement of minors and decides on safe custody based on Home Inquiry Report; woman police constable escorts to medical examination and shelter.



## ARRESTING PERSONS ACCUSED OF SEX TRAFFICKING OFFENSES

Police arrests accused and moves forward swiftly with investigation.



## FILING VAKALATNAMA & APPLICATION TO ASSIST THE PROSECUTION

Victim's Advocate files applications in Court to represent the victim and assist the Prosecution; A Legal Services Authority Advocate may provide legal representation.



## OPPOSING THE BAIL APPLICATION OF THE ACCUSED PERPETRATORS

Advocate works with the Police and Public Prosecutor to oppose any bail petitions filed by the accused.



## RECORDING STATEMENTS DURING INVESTIGATION

Police interviews victims and records statements; statements should not be recorded in police station but somewhere convenient for victim. Supplement prior statements if necessary.



## EVICTING OFFENDERS AND CLOSING OF BROTHELS

Magistrate orders eviction of offenders and suspension of licenses of businesses where sex trafficking occurred; Magistrate orders placement of victims in protection home or aftercare facility; Police closes and seals brothels.



## FILING FOR SEX TRAFFICKING VICTIM COMPENSATION

Court orders compensation to victims of sex trafficking.



## FILING OF SEX TRAFFICKING CHARGE SHEET

The Investigating Officer (Police) files the charge sheet without delay and within 90 days of FIR, if possible.



## ENSURING APPROPRIATE FORUM FOR TRIAL

After chargesheet is filed, judge takes cognizance of case and commits it to proper court.



## FRAMING OF SEX TRAFFICKING CHARGES

Court frames the charges on a timely basis (including all applicable offenses supported by the facts) and asks accused for his plea (if pleads guilty, trial ends.)



## ASSISTING THE PROSECUTION AT SEX TRAFFICKING HEARINGS

Advocate should assist the Public Prosecutor at all hearings and secure victim's Court attendance when required.



## PREPARING SEX TRAFFICKING WITNESSES TO TESTIFY

Court should take victim-sensitive measures, especially where child victims are involved; Advocates should prepare victims for chief and cross-examination testimony; seek in-camera proceedings if necessary.



## SUBMITTING FINAL ARGUMENTS TO PROVE SEX TRAFFICKING

Advocate drafts and files written submissions for final arguments to be submitted before the court through the Public Prosecutor; Advocate presents final oral arguments.



## OBTAINING THE JUDGMENT

Court provides certified copies of judgment to parties.



## FILING OF APPEAL

Court fairly considers appeal by parties, if filed.

## Step 2.1 Filing of the Sex Trafficking FIR

Timeline: The FIR, if being filed after the rescue, should ideally be lodged within 48 hours of the rescue.

### NGO

The NGO should file the First Information Report (FIR) at the police station within whose jurisdiction the sex trafficking took place.

### ADVOCATE

The Advocate should ensure that the FIR is registered with all applicable sex trafficking and other offences included.

## COMMENTARY

The NGO representatives should ensure that the complaint is filed at the police station and includes all relevant offences. Remember, if there is doubt as to whether a survivor is a minor, she should be treated as a minor.

The NGO should seek the help of an Advocate should the police fail or refuse to register an FIR.

The Advocate should ensure that the Complainant files information of the commission of one or more cognizable offences under Section 173(1) of the BNSS with the officer-in-charge of a police station.

Any person can file a complaint or information with regard to sex trafficking offences for registration of an FIR. The Advocate may encourage the government officials, the victim, the family of the victim, or anyone present to file the FIR.

### Important information that should be included in an FIR:

- ◇ Date and location of the rescue,
- ◇ Time of the rescue,
- ◇ Distance of the site from the police station
- ◇ Names and ages of the victims rescued,
- ◇ Place where the offences occurred
- ◇ Name and addresses (if known) of the brothel owner/trafficker
- ◇ Details of the offences that occurred
- ◇ Brief description of the rescue site and the materials seized.
- ◇ Details of the rescue team who conducted the operation.

The Advocate should ensure that the information is recorded by the officer- in-charge at the police station as an FIR under Section 173(1) of the BNSS.

### Steps to be taken if an FIR is not being registered by the police:

If the information is not being recorded or an FIR is not being registered, the Advocate should send the information in writing and by post to the concerned Superintendent of Police pursuant to Section 1173(4) of the BNSS.

If the information is still not being recorded as an FIR, the Advocate should file an application before the Magistrate seeking an order that the information be recorded and an investigation commenced.

## COMMENTARY

If the information is still not recorded as an FIR, the Advocate should file a High Court Petition under Section 528 of the BNSS.

If the FIR does not identify offences supported by the facts, the Advocate should submit a letter along with an affidavit or other supporting documents for inclusion of additional offences.

## POINTS TO NOTE

**Anyone can file a complaint for an FIR:** Any person can file a complaint to register an FIR of a sex trafficking offence. The complainant may be a police officer, the NGO, the CWC, parents/relatives of the victim, primary care givers of the victim, any other person who has knowledge of the said crime, or the victim herself.

**When rescued person was a child when trafficked:** When the rescued person is an adult but was trafficked when she was child, invoke sections of law that apply to child trafficking. See Section 98, 99 of the BNS.

**Name of Investigating Officer must be recorded in the FIR:** The name of the IO registering the FIR along with his designation must be recorded legibly in the FIR. The IO is an important part of the trial, and hence details of the IO must be legibly stated in the FIR.

**Push for investigation under Section 176, BNSS:** The Advocate should encourage the police to move forward with the investigation under Section 176 of the BNSS and arrest individuals suspected of committing a cognizable offence. If the police do not move forward with an investigation, the Advocate should file an application before the magistrate under Section 175(4) BNSS to order that the investigation be commenced.

**In cases involving offences under SC & ST Act:** If the case involves offences under the SC & T Act, the Advocate should ensure that the case is investigated by a DSP or a police officer of higher rank and completed within 30 days.

## LEARN MORE & TAKE ACTION

**Mandatory duty to register an FIR:** A police officer in charge of a police station is bound to register an FIR for cognizable cases under Section 173 of the BNSS. The FIR is also to be signed by the person giving information<sup>131</sup>.

To learn more about judgments related to FIRs, refer to Chapter V.

Formats for use when police refuse to file an FIR:

- ◇ Application to Magistrate under Sections 223 & 175(4), BNSS to lodge an FIR: Refer to Appendix 22A on drafting an application to the Magistrate under Section 223, BNSS to take cognizance of a complaint along with an application under Section 175 (3), BNSS directing concerned SHO for lodging of FIR.
- ◇ Application under Section 192(4), BNSS to the Magistrate to call for case diary: Refer to Appendix 25 for a draft application under Section 192(4) urging the Magistrate to call for the case diary maintained by the police to aid in preliminary inquiry.

**FIR:** Contact your local police station or get in touch with JVI to see what an FIR looks like.

To obtain a draft of a petition to be filed before the High Court to register FIR, contact JVI.

## Step 2.2 Appearance of survivors before the Magistrate or CWC

Timeline: Whenever possible, the survivors should appear before the Magistrate/CWC (if minor) as soon as the rescue is completed, within 24 hours of the rescue

### NGO

The NGO should ensure that rescued adults are presented before the Magistrate, while rescued minors are produced before the CWC.

### ADVOCATE

The Advocate should advise officials to treat victims as minors whenever in doubt.

### COMMENTARY

NGO representatives must accompany the victims before the Magistrate and ensure that the victims are treated with utmost sensitivity and dignity.

NGO aftercare workers must accompany the rescued victims along with a woman police constable for a medical examination and then escort them to the shelter home where they are placed.

The Advocate must ensure that the child is produced before the CWC. In the event the age of the victim cannot be ascertained, the Advocate should assist the police in deciding whether to produce the victim before the CWC. When in doubt, the victim must be treated as a minor.

The Advocate should advise the police to enter the victim's statement before the CWC in the Case Diary.

The Advocate should ensure that adult survivors are produced before the ITPA Special Court and that a medical examination by a female medical practitioner is immediately conducted.

The production before the Special Court Magistrate is to ensure that orders are passed for the medical examination and the survivor's temporary stay at the government or private licenced shelter home.



## POINTS TO NOTE

If the rescue is held at night: If the rescue is executed at night, the night duty Magistrate may be approached. Find out in advance who the night duty Magistrate is and the procedure for approaching such Magistrate.

Oppose custody applications: The Advocate should also oppose custody applications filed by parent or relatives of minors whenever there is an indication of violence at home or when a Home Verification Report is pending.

Safeguards with regard to the rescue team: Under no circumstances should the rescue team be detained in the police station or neglected and thus exposed to further risks.

When a rescued victim looks like a minor: In case of uncertainties regarding the age of the rescued victim, the rescued person should be referred to the CWC. According to Section 94 of the JJA, where it is obvious to the CWC based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the CWC shall record such observation stating the age of the child as nearly as can be determined and proceed with the inquiry under section 36 (inquiry on child in need of care and protection), without awaiting further confirmation of the age. If the CWC is in doubt regarding the age of the person brought before it, it shall seek to determine the age of the person through the following evidence:

- ◇ The **date of birth certificate** from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- ◇ The **birth certificate** given by a corporation or a municipal authority or a panchayat; or
- ◇ In the absence of the above, age can be determined by an **ossification test** or any other latest medical age determination test conducted on orders of the CWC, provided it is completed within 15 days of such an order being passed.

**Production before the Magistrate or CWC and arrest of the perpetrator:** Both Step 2.2 and Step 2.3 could take place simultaneously, and in some cases (e.g. when the rescue takes place at night) Step 2.3 would precede Step 2.2. It would be best for the NGO representatives to split the team in such a way that one team is present at the site of arrest, and the other is present before the Magistrate or CWC.

## LEARN MORE & TAKE ACTION

**Child in need of care and protection:** A rescued child will be considered a child in need of care and protection and will fall within the jurisdiction of the CWC of the said District. The CWC has the authority to determine the age of the minor. Read Sections 2(14), 31, 36 and 94 of the Juvenile Justice Act, 2015 for more information. The CWC will determine the age of the child presented before it under Section 94.

**Home Inquiry Report:** The CWC is to direct and oversee a submission of a Home Inquiry Report and make decisions regarding the safe custody of the child accordingly. A format for the Home Inquiry Report is provided in **Appendix 29**. As per Section 33 of the Juvenile Justice Act, 2015, the CWC has to clearly state in its order the name of the NGO who is to carry out the Home Inquiry.

**Order of CWC to give custody of child to parent:** The CWC is responsible for the welfare of the child and restoring the victim. Under Section 37 of the Juvenile Justice Act, 2015, the CWC can order the restoration of a child into the custody of her parent or guardian, on consideration of the Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view. **Representatives of the NGO and the Advocate must ensure that the child is being handed over to her parent(s)/guardian and must oppose her release if they are apprehensive or believe that the person seeking custody will re-traffic the child.**

JVI can provide more information on how to oppose the release of a child or minor to a suspected trafficker.

## Step 2.3 Arresting Persons Accused of Sex Trafficking Offences

Timeline: The arrest of the accused should be done immediately, or at least within seven days of the rescue.

### NGO

The NGO should assist the police in immediately arresting all of the accused involved with the sex trafficking offences.

### ADVOCATE

The Advocate should assist the police with the immediate arrest of the accused under relevant provisions of the BNSS and encourage the police to move forward swiftly with the investigation.

### COMMENTARY

If the NGO has any information from the survivors regarding the identity of the accused, the information must be immediately passed on to the police and the Advocate.

The Advocate should also ensure that all arrests and further investigation are done in accordance with law.

The Advocate should encourage the police to move forward with the investigation under Section 176 of the BNSS and arrest individuals suspected of committing of a cognizable offence.

The Advocate should advise the IO to arrest the offender without any delay.

## POINTS TO NOTE

**In case of arrest of a female offender:** The Advocate should advise the police to follow the procedures laid down in Section 43(5) BNSS which states that no woman should be arrested after sunset and before sunrise, except in exceptional circumstances and where the arresting woman police officer has obtained prior permission from the jurisdictional Magistrate First Class. A female offender should be searched only by a WPC.

**Cognizable and Non-Cognizable Offences:** If an offence is cognizable, a police officer can make an arrest without a warrant but a warrant is required for non-cognizable offenses. The First Schedule of the BNSS classifies offences as per their cognizability.



## LEARN MORE & TAKE ACTION

**Grounds for making an arrest:** Under Section 338(2) of the BNSS a police officer can arrest a person if there exists any of the following objective grounds:<sup>95</sup>

1. To prevent the person arrested from committing any further offence;
2. For the purpose of proper investigation of the offence;
3. To prevent the person arrested from causing either disappearance of evidence or tampering with the evidence;
4. To prevent the person arrested from giving any inducement, threat or promise to a witness for the purposes of either alluring such witness or dissuading the witness from giving his statement to the police officer or deposing before court; or
5. To ensuring the presence of the person arrested before a court as and when required for the purposes of court proceedings.

**The words “custody” and “arrest” do not mean the same things.** In the legal sense, an arrest with regard to a criminal offence is the taking into custody of a person for the purpose of holding or detaining the person to answer a criminal charge or of preventing the commission of a criminal offence.

### Step 2.4 Filing Vakalatnama and Application to Assist the Public Prosecution

Timeline: The process of filing Vakalatnama and Application to Assist the Public Prosecution could take one to seven days from the date of filing the FIR.

#### NGO

The NGO should ensure that the sex trafficking survivors provide necessary information to the Advocate and that qualified female counsellors or female legal guardians are present when survivors meet with the Advocate.

#### ADVOCATE

The Advocate should obtain the consent of sex trafficking survivors to file a vakalatnama as their legal counsel and file an application to assist the prosecution under Section 338(2) of the BNSS.

#### COMMENTARY

In case of a child victim, the caretaker of the shelter home must sign the Vakalatnama and the NGO should assist the Advocate in this process.

The Advocate should obtain a copy of the Vakalatnama to represent the survivor as soon as she has settled into protective custody. In case of a child victim, the care taker of the shelter home must sign the Vakalatnama.

A Vakalatnama is the document empowering an Advocate to act for and on behalf of her client.

The Advocate should file the Vaklatnama before the Court along with an affidavit to assist the Public Prosecution under Section 338(2) of the BNSS.

<sup>95</sup> See Ratanlal & Dhirajlal, *The Bharatiya Nagarik Suraksha Sanhita*, 2023. Manohar, V.R.; p. 103

## POINTS TO NOTE

**An Advocate can make the following applications on behalf of survivors before the Magistrate:**

- ♦ **For medical examination of rescued victim:** The Advocate should file appropriate applications under sections 15(5-A) of the ITPA seeking an order for the medical examination of the rescued victim to ascertain the age and whether sexual abuse occurred.
- ♦ **To ensure that victim is kept in a place of safety and a Home Inquiry Report (HIR) is submitted:** The Advocate should file appropriate applications under section 17 of the ITPA seeking orders for keeping the rescued victim in place of safety and for ensuring the filing of a HIR and carrying out related procedures.
- ♦ **To ensure that the victim is kept at a place of safety:** The Advocate should file appropriate applications under sections 19 of the ITPA seeking an order for being temporarily kept in protective home or provided care and protection.

### LEARN MORE & TAKE ACTION

Sample documents and practice aids: Refer to Appendix 25 for a format of an application to assist the Public Prosecution. The Appendix also contains a format for a Vakalatnama.

#### Sample documents and practice aids

The following documents contain relevant formats:

- ♦ **Format for requesting the Court to refer custody application to the C.W.C can be found in Appendix 28**
- ♦ **Format for an HIR can be found in Appendix 30**

Contact JVI for templates of applications under Sections 15 (5-A), 17 and 19 of ITPA.

## Step 2.5 Opposing the Bail Application of Accused Perpetrators

Timeline: An application opposing the accused's bail application should be filed immediately after the bail application is filed.

### NGO

The NGO representatives should be proactive in immediately passing on to the Advocate any information received regarding bail applications filed by the accused

### ADVOCATE

The Advocate should attend all bail hearings to oppose bail orally and by written application and to argue for stringent bail conditions, should bail be granted.

### COMMENTARY

The NGO representatives must inform the Advocate whenever they have information about bail applications of the accused.

The NGO should extend all support required to the Advocate for getting a duly signed Vakalatnama and affidavit (application) to support the prosecution filed.

In the event the accused is arrested for one or more non-bailable offences, the Advocate should submit a written opposition to bail, contesting the granting of bail to the accused.

The Advocate should attend each remand hearings and make sure bail is denied.

In the event bail is granted to the accused, the Advocate should be vigilant with regard to the existence of appropriate circumstances that allow for cancellation of bail before the appropriate forum.

## POINTS TO NOTE

**Attend remand hearings:** Remand is in reference to the detention of the accused in police or judicial custody person prior to the start of the trial. The Advocate should attend each remand hearings and make sure bail is denied.

**When can bail be cancelled?** In cases where the accused fails to appear in court, evades or attempts to evade the course of justice, or causes hindrance to the administration of justice (i.e. the accused intimidates or bribes witnesses, causes the disappearance of evidence, or interferes with the investigation), the Advocate must move an application for issuance of a non-bailable warrant of arrest and cancellation of bail. An Advocate must be vigilant in assessing when such circumstances exist and in moving such applications.

**Building a relationship with the police and the Public Prosecutor:** The Advocate should build close relationships with higher-ranking police officials and the public prosecutor to get updates on bail petitions filed by the accused. It is important to maintain a relationship with the police and Public Prosecutor as the accused can be granted bail during a bail hearing which occurs without the Advocate's knowledge, thus giving the accused a chance to abscond and stall the trial. If the Advocate somehow misses a bail hearing through ignorance of a bail petition, the whole case can be lost. It is therefore important to submit an application to assist the Public Prosecutor and maintain a relationship with the stakeholders involved in the trial.

**Checking status of bail hearings at the High Court:** The Advocate should monitor bail applications listed in the High Court on a daily basis and visit bail court regularly to check if any bail matters have been listed.

## LEARN MORE & TAKE ACTION

See **Appendix 27** for a format on an application to oppose bail.

**Opposing the grant of bail:** Refer to **Appendix 14A** for a bail opposition reference sheet. This appendix provides information on what various courts of law have stated with regard to opposition of bail.

**Cancellation of Bail:** The grounds for cancellation of bail are illustrative and not exhaustive.<sup>96</sup> Generally these grounds include:

1. Interference or attempt to interfere with the due course of administration of justice which includes the following:
  - a. Interference with the course of investigation
  - b. Attempting to tamper with evidence or witnesses
  - c. Threatening witnesses or intimidating or corrupting witnesses, or indulging in similar activities that would hamper smooth investigation.
2. Evasion or attempt to evade the course of justice which includes the following:
  - a. Attempting to leave or depart from the country
  - b. Going underground or becomes unavailable to the investigating agency
  - c. Going beyond the reach of the sureties.
3. Abuse of liberty granted to the accused, including indulging in similar criminal activity.

Therefore, bail may be cancelled subsequently on merits when supervening circumstances exist, as mentioned above.

<sup>96</sup> *Aslam Babalal Desai v. State of Maharashtra* AIR 1993 SC 1.

## Step 2.6 Recording Statements During Investigation

Timeline: The process of recording the statements during investigation could take between one and sixty days.

### NGO

The NGO representatives should assist the victims while their witness statements are being recorded and provide quality victim counselling support during the process.

### ADVOCATE

The Advocate should advise the police in recording witness statements of relevant witnesses under Section 180 of the BNSS and ensure that victim statements are recorded before the Magistrate, under Section 183 of the BNSS.

### COMMENTARY

The NGO representatives should be present during this process and ensure that the victims are not coerced into giving false statements.

The Advocate should ensure that the victims are examined separately from the accused and other witnesses during this process.

The Advocate should encourage the police to orally examine all people who have knowledge about the case and record the statements under Section 180 of the BNSS.

The Advocate should ensure that recording the victim's statement under Section 183 of the BNSS before the Magistrate takes place only after sufficient counselling and when a victim is ready and able. A Section 164 statement of the victim should ideally be taken after she has been counselled adequately and the Advocate is sure that the victim's statement will be favorable to the trial.

## POINTS TO NOTE

**Statements:** There are three statements concerning legal casework: BNSS 180 statements, supplementary statements and 183 statements. The goal is to take truthful statements for the purpose of gathering information about how the survivor was trafficked and the situation at the trafficking site. The statement is the foundation for the victim testimonies used during trial to ensure perpetrator accountability. The NGO and Advocate's role is the same regarding all three statements to support and encourage the survivor to speak the truth and to assist the police and Superintendent/Probation Officer in obtaining the statements.

**Section 180 Statements:** The police can take the 180 statement on the night of the rescue. If the 180 statement is false or the victim reveals new facts, the police together with the Probation Officer may obtain an additional statement, i.e. a supplementary statement. Another option is to apply for a 183 statement. The advantage of a 183 statement is that the survivor gives her statement under oath in front of the Magistrate and it therefore has more credibility than a 180 statement. The survivor will be present before the Magistrate alone and the Magistrate will seal the statement until trial begins. It is best practice to be present during the recording of the 180 statements, i.e. on the night of the raid. This is to assist the police and to advocate for the survivor.

**Section 183 Statements:** The Advocate should inform the victim about the importance of a 183 statement and the process of obtaining it. Furthermore, the victim should be properly prepared to give her statement before the Magistrate. Based on this, the Advocate and NGO Staff should assess the victim's willingness and cooperation to give a 183 statement. If she is willing and ready to give a 183 statement, the Advocate should notify the police, who will make the application to the court. 183 Statements may be recorded in-camera.

**In-Camera Proceedings:** The statement of a witness, under Section 183, may be recorded in camera in an environment that is not intimidating. Such a prayer can be made by the IO under Section 366(2) of the BNSS and by referring to *Sakshi v. Union of India*.<sup>97</sup> In the Supreme Court judgment of *State of Punjab v. Gurmit Singh*<sup>98</sup> the Court has stated that in cases of rape, trial of cases should be in camera and as far as possible conducted by female judges.

**If police do not apply to Court to record Section 183 statement:** If the police are unwilling to file the application, the survivor might do it herself together with an Advocate. The application needs at least one signed Vakalatnama from the survivor.

**Prepare statement before hand:** It is best practice for the Advocate to prepare the victim before the 183 statement is given. Make sure that she is confident about giving her statement before the Magistrate and that she is willing to give a truthful statement. A Section 183 statement should be recorded only if the Advocate is certain that the rescued person has been adequately counselled and the survivor is prepared to provide an accurate statement at the trial.

**False statement given on day/night of rescue:** If the rescued victim gives a false statement at the time of rescue or reveals additional information the Legal and NGO Staff should encourage the rescued victim to give a supplementary statement.

**Supplementary statement to be recorded with probation officer:** The police should record the supplementary statement in front of the Probation Officer. If the police refuse to take the supplementary statement, the Probation Officer may record it and hand it over to the police. NGO Legal Staff may assist the Probation Officer with this task. It is best practice to make sure that the date the Probation Officer signs the statement is the same date as when the Probation Officer recorded the statement.

**Trained counsellors:** Only trained and certified counsellors should interact with the victims. In the absence of a trained counsellor, a social worker with experience in managing trauma symptoms would also be a suitable alternative. However efforts should be made by the NGO to ensure that the survivor receives professional counselling as part of her treatment plan.

**Statements to be recorded in language known to victim:** The NGO representatives must also ensure that the statements are recorded in the language of the victim.

**Forced/Coerced statements:** Adequate checks must be placed to ensure that survivors are not forced to make statements and that they are recorded when survivors are willing and able to make them. Further, the accused should not be present during this process.

**Statements must be recorded at place convenient to victim:** The Advocate should ensure that the victim is not taken to the police station for recording of statements. The statements must be recorded at a place convenient to the victim as provided under Section 179(1) of the BNSS.

## LEARN MORE & TAKE ACTION

**Recording statements of survivors:** Record statements of survivors when they are ready and able to make statements. Survivors can make additional statements as they heal from their trauma and any contradictions in future statements may be explained by attributing confusion to trauma.<sup>99</sup>

Please see "Journey to Justice,"<sup>100</sup> a manual on Psychosocial Intervention, UNODC, 2008 for counselling and psychosocial support to be provided to survivors.

<sup>97</sup> (2001) 10 SCC 732 136 AIR 1996 SC 1393.

<sup>98</sup> MANU/SC/0366/1996.

<sup>99</sup> Section 7.1, Recording Statements U/S 180 and 183 BNSS, UNODC Standard Operating Procedures on Investigation of Crimes of Forced Labour, 2008, Government of India and BBA, p. 24.

<sup>100</sup> Journey to Justice: Manual on Psycho-Social Intervention, 2008, A publication of United Nations Office on Drugs and Crime Regional Office for South Asia. Available here: <[https://www.unodc.org/documents/human-trafficking/India\\_Training\\_material/Journey\\_to\\_Justice\\_-\\_Manual\\_On\\_Psychosocial\\_Intervention.pdf](https://www.unodc.org/documents/human-trafficking/India_Training_material/Journey_to_Justice_-_Manual_On_Psychosocial_Intervention.pdf)>

## Step 2.7 Evicting Offenders and Closing Brothel

Timeline: If possible evict the offenders and close the brothel on the same day, but sealing a brothel could take up to 60 days.

| NGO                                                                                                                                                                                                                                                                                                            | ADVOCATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should provide sufficient information to enable the Advocate to move petitions and representations for closure, sealing and/or eviction of a brothel or place of exploitation before the relevant authorities.                                                                                         | The Advocate should make a petition to the Magistrate for closure/sealing of the facility in which sex trafficking was taking place.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| COMMENTARY                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| The NGO representatives should assist the police to ensure safe removal of victims from the brothel. <sup>101</sup> The NGO must ensure that all women evicted from the brothel (whether identified as victims previously or not) should be presented before the Magistrate to be placed in an aftercare home. | <p>The Advocate should seek an eviction order from the Magistrate under the ITPA. The eviction under Section 18 (1) of ITPA is possible even before conviction and without registering an FIR.</p> <p>The Advocate should also move an application under Section 7 (2) of the ITPA to suspend the commercial sexual exploitation of persons. Further, in the case of offences being committed against a child or a minor, an application may be moved to cancel the license of such a hotel or commercial establishment.</p> <p>The Advocate shall also make an application under Section 19 of ITPA to the Magistrate or under Section 31 of the JJA 2015 before the CWC (in case the evicted persons are minor), to place the evicted women and/or girls in a safe facility like a protection home or an aftercare home.</p> |

## Step 2.8 Filing for Sex Trafficking Victim Compensation

Timeline: Filing for compensation could take 1 to 3 months.

| NGO                                                                                                                                                               | ADVOCATE                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should assist the Advocate in moving applications for compensation before the courts under Section 395 of the BNSS.                                       | The Advocate should move an application for compensation on behalf of the survivors before the courts, under Section 395 and 395A of the BNSS.                                                                                                                                                                                                                                                       |
| COMMENTARY                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                      |
| The NGO representatives must follow up with the Advocate for filing of victim compensation and accompany victims when called to appear before appropriate forums. | <p>The Advocate must file a Compensation Application on behalf of victims before an appropriate forum.</p> <p>As part of the trial, the victim is entitled to compensation. The Advocate must ensure that during the course of the trial, compensation should be ordered from the Court under Sections 3395 and 395A of the BNSS, apart from the Central and State Government sponsored schemes.</p> |

<sup>101</sup> Under Section 15(4) of the ITPA, it is mandatory for the police to safely remove all persons found in the brothel.

## LEARN MORE & TAKE ACTION

Refer to **Chapter V** to learn about Supreme Court judgments on rehabilitation of rescued victims.

**Compensation that can be granted by the Judiciary to a victim of sex trafficking:** Under the following provisions of the BNSS, the Judge can order compensation for the victim of sex trafficking. The relevant provisions are:

- ♦ **Under Section 395, BNSS:** If the accused is convicted, the judge can slash the quantum of sentence by asking the accused to compensate the victims of bonded labour. This application is required to be made by the Advocate in the name of the victim.
- ♦ **Under Section 395A, BNSS:** Under this Section, the judge has the power to recommend additional compensation in line with the Centrally Sponsored Victim compensation scheme based on the recommendations of the District or State LSA.

**Case law on compensation under 395 and 395A of the BNSS:** The Supreme Court observed in the case of Ankush Shivaji Gaikwad v. State of Maharashtra.<sup>102</sup> that “The amendments to the BNSS brought about in 2008 focused heavily on the rights of victims in a criminal trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where “the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated.” Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation.”

**Sample documents and practice aids:** Appendix 31 contains a format for the application for victim compensation.

## Step 2.9 Filing of Sex Trafficking Chargesheet

Timeline: The chargesheet should be filed by the police within ninety days of the FIR being lodged.

| NGO                                                                                                                                                                                                                                     | ADVOCATE                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should follow up with the Advocate regarding the filing of a chargesheet.                                                                                                                                                       | The Advocate should ensure that the chargesheet is filed within the stipulated time by working closely with the police and the Public Prosecutor.                                                                                                                                                                                                                                                                |
| COMMENTARY                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                  |
| The NGO representatives should follow up with the Advocate to ensure that the chargesheet is filed without delay and must assist where necessary in making applications to police authorities for an expeditious filing of chargesheet. | <p>The Advocate should ensure that the investigating officer files the chargesheet within the stipulated time in the BNSS.</p> <p>In the event the IO fails to file the chargesheet within the stipulated time period, the Advocate should approach the ACP to seek his assistance filing the chargesheet immediately.</p> <p>If the chargesheet is still not filed, the Advocate should approach the Court.</p> |

<sup>102</sup> (2013) 6 SCC 770.

## POINTS TO NOTE

**Copy of a chargesheet:** The Advocate should obtain a copy of the charge sheet. If the charge sheet does not include all of the charges supported by the facts the Advocate should make an application with the police to file a supplementary charge sheet with the appropriate charges. A protest petition may be filed with the Magistrate to include sections of legislation that have been left out.

**Presence of Advocate at the time of filing of chargesheet:** The Advocate should be present at the time the chargesheet is filed.

### LEARN MORE & TAKE ACTION

**Sample documents and practice aids:** Refer to **Appendix 24** for a format on written submissions for filing of a chargesheet.

## Step 2.10 Ensuring the Appropriate Forum for Trial

Timeline: The trial will be carried out by the Sessions Judge or Additional Sessions Judge.  
The timing of trial is up to the discretion of the Court.

### ADVOCATE

Once the chargesheet is filed, the Advocate must ensure that based on the charges, the case is committed before the appropriate forum.

### COMMENTARY

Once the chargesheet is filed, the Judge (who may be a Chief Metropolitan Magistrate, a Metropolitan Magistrate, a Chief Judicial Magistrate, an Additional Judicial Magistrate, or Sub – Divisional Judicial Magistrate) will take cognizance of the case and the case will be committed before the appropriate Court.

The Advocate should ensure that the process of committing the case before the Sessions Court conforms to procedures established by law. Charges should include offences under the Immoral Traffic Prevention Act, 1956, the Bharatiya Nyaya Sanhita Sections 143 and 144 and the Protection of Children from Sexual Offences Act if there are minors who are rescued.

If Section 143 is mentioned in the chargesheet, the Judge may commit the case before the Sessions Court.

## POINTS TO NOTE

**If Section 370 or any applicable offences are not in the chargesheet:** Section 239 of the BNSS gives the judge the power to add charges. An application under Section 239 may be made to the Court to add charges.

**Committal of case before the Sessions Court:** According to Section 239 of the BNSS a case can be committed to the Sessions Court when a case is to be tried by it exclusively. When Section 411 of the BNSS is mentioned in the chargesheet, the case is to be exclusively tried by the Sessions Court.

### LEARN MORE & TAKE ACTION

**Laws and offences on sex trafficking:** Turn to Chapter IV to learn more about laws and offences relating to sex trafficking.

**Appropriate forum for particular offences:** To learn more about which cases are to be tried by which court, refer to the **First Schedule of the Bharatiya Nagarik Suraksha Sanhita (BNSS)**.

## Step 2.11 Framing of Sex Trafficking Charges

Timeline: Ideally, the charges should be framed by the Court within three months from filing the chargesheet.

### NGO

Once the chargesheet is filed before the court, the NGO should follow up with the Advocate to ensure that charges are framed expeditiously.

### ADVOCATE

Once the chargesheet is filed, the Advocate should ensure that appropriate charges are framed before the court at the earliest opportunity.

### COMMENTARY

The NGO representative must be present on the date of framing of charges. The NGO must work closely with the Advocate to ensure that court procedures move forward as expeditiously as possible.

The Advocate must be present in the court when charges are framed to ensure that all the relevant charges have been added.

The Advocate must be vigilant in ensuring that court procedures move forward without delay.

## POINTS TO NOTE

**Short court dates and preventing undue delay:** Ensure that the Court does not keep adjourning the matter, and if it does, push for short dates so as to frame charges. Under Section 346(1) of the BNSS, *"In every inquiry or trial ...proceedings shall be held as expeditiously as possible..."*<sup>103</sup> The BNSS also restricts the grant of adjournments in certain circumstances.<sup>103</sup>

**Plea of guilty:** After framing of charges, the Sessions Court will ask the accused if he pleads guilty to the charges framed. If the accused pleads guilty, the trial will end at this point; otherwise, the trial will proceed.

## LEARN MORE & TAKE ACTION

**Sex trafficking offences:** To read about sex trafficking offences, refer to Chapters IV and V.

To read about making a guilty plea in a Sessions Court Trial, refer to **Section 252 of the BNSS**.

## Step 2.12 Assisting the Public Prosecution at all Sex Trafficking Case Hearings

Timeline: This assistance is required throughout the case hearings.

### NGO

Once the trial begins, a representative from the NGO should be present in court for all required hearings.

### ADVOCATE

The Advocate should attend every court hearing and be ready to assist the Public Prosecutor at every stage of the trial.

### COMMENTARY

The NGO should send a representative knowledgeable about the facts of the case and the latest updates. This could help the advocates for the Public Prosecution answer any questions put forward by the court, particularly with regard to the testimony of survivors.

The Advocate should be present at every stage of the trial and meet with the public prosecutor before every hearing if possible.

An Advocate is permitted to assist the prosecution under Section 338(2) of the BNSS.

<sup>103</sup> Section 346(1) and 346(2) of the BNSS.

## Step 2.13 Preparing Sex Trafficking Witnesses to Testify

Timeline: Preparing the sex trafficking witnesses could take 1 month.

### NGO

During the trial, the NGO should help prepare survivors for their witness testimony by counselling them to testify boldly, accurately and with clarity.

### ADVOCATE

The Advocate should attend every court hearing and be ready to assist the Public Prosecutor at every stage of the trial.

### COMMENTARY

NGO representatives who were witnesses during filing of FIR must testify before the court according to their statements. NGO representatives must accompany victims to the court and ensure that outstation victims are brought safely to the court to testify as witnesses. NGO representatives should ensure that the witnesses are not influenced by the accused persons.

Trained and qualified counsellors from the NGO must prepare the survivors for examination in chief and cross-examination so that they may be able to boldly and accurately testify in spite of the trauma caused by the process, particularly in response to questions put forward by defence counsel.

The NGO staff must also debrief the survivor and her family (if present) after she has testified.

The Advocate should work with the NGO to prepare the survivors for the process of examination in chief and cross-examination. This preparation should ideally be done at a place that is comfortable to the survivor.

The Advocate should explain clearly to the persons testifying the importance of their statements in creating evidence and keep them updated about the case.

The Advocate should also obtain a copy of the testimony of all Public Prosecution witnesses.

The Advocate should file an application to conduct the case at fast track court whenever applicable.

The Advocate must explore the opportunity of recording the evidence of the victim through video conferencing in the event the victim is unable to appear in person before the court.

The Advocate must attend all court proceedings in respect to evidence (cross and chief examination). The same Advocate who prepared the victim should accompany her to court. This allows continuity and helps to build trust with the rescued victim.

### POINTS TO NOTE

**Mock trial and courtroom visit:** The NGO and Advocate should help the survivor become comfortable in the courtroom by taking her there ahead of time so she will not be entering a court for the first time when she has to testify. This helps reduce the tension. Secondly, by holding a mock trial at a convenient place, the survivor will be better prepared to testify against the accused.

**Sensitive measures to be adopted in cases involving children:<sup>104</sup>**

- Child victims/witnesses are informed of their role in regard to court proceedings;
- Their views are allowed to be heard and respected;
- Inconvenience to them is minimized and their privacy is respected;
- Delays in the proceedings are reduced;
- Aggressive questioning or cross-examination of child victims is avoided and the same, if necessary, is done through the judge;

<sup>104</sup> Based on guidelines for the Children's Court under the Goa Children's Act, 2003.

- f. Provisions are made for trials in camera;
- g. The identity of the child victim is protected;
- h. Child victims are prepared for the judicial process and prosecution of alleged abusers is not rushed if a child is not ready to go to court;
- i. The investigator ascertains the need for medical examination of the child victim and when examination is undertaken, ensures that multiple re-examination is avoided;
- j. The medical examination should be conducted in the presence of the parent/guardian and social worker/counsellor as far as possible;
- k. Child's testimony should be recorded in the presence of a social worker/counsellor as early as possible after the abusive incident with other witnesses at hand;
- l. Adequate translation/ interpretations and translators/ interpreters who are sensitive to the children's needs should be provided wherever needed.
- m. In the case of a mentally challenged child, the competent service provider should testify on behalf of the child;
- n. The special needs of the child victims/witnesses should be catered to, including the following:
  - i. Enable children to familiarise themselves with the court surroundings;
  - ii. Inform children of the different roles of the key persons at court, such as the judge, the defence lawyer and the Public Prosecutor;
  - iii. Inform the court of the special needs of children in general and of individual children in specific cases;
  - iv. Help children to be comfortable in the proceedings;
  - v. Encourage questionings to be short and clear so as not confuse child witnesses;
  - vi. Permit children below eight years of age to respond to leading questions facilitated by a social worker.

**Examination in chief:** During the main examination, the Advocate may assist the P.P. by submitting written questions to be asked to the witnesses.

**Cross Examination:** The purpose of cross-examination is to create flaws in the prosecution story. It is good practice to do a mock cross-examination so the witnesses are not perturbed by the process and are prepared to handle the questions from the defence Advocates.

**Witnesses:** Witnesses include the survivors, panch witnesses, decoy customers, Investigating Officer and any other witnesses required to prove the Public Prosecution's case.

## LEARN MORE & TAKE ACTION

**In Delhi Domestic Working Women's Forum v. Union of India**<sup>105</sup> the Hon'ble Supreme Court has held as follows:

*"The role of the victim's Advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interest in the police station represents her till the end of the case".*

Be sure to read Sections 142 to 150 of the BSA for provisions specific to chief examination and cross examination of witnesses.

**Day to day examination of witnesses to ensure expeditious trial:** Under Section 346(1) of the BNSS, "once the examination of witnesses has begun, the same is to take place day to day until all the witnesses in attendance have been examined", and any adjournments are to be for reasons recorded.

An Advocate must be familiar with the various stages of a Trial under the BNSS and the Bharatiya Sakshya Adhiniyam.

**Practice questions during trial:** Contact JVI for a set of practice questions that can be asked in a trial with regard to trafficking for sexual exploitation.

<sup>105</sup> Based on guidelines for the Children's Court under the Goa Children's Act, 2003.

## Step 2.14 Submitting Final Arguments to prove Sex Trafficking

Timeline: Drafting of final arguments is dependent on the lawyer but they are to be submitted at the conclusion of the trial, before the pronouncement of the final judgment.

### NGO

At the later stage of the trial, the NGO should provide as much information as possible to help the Advocate file comprehensive written submissions.

### ADVOCATE

The Advocate should draft and file written submissions for final arguments to be submitted before the court through the Public Prosecutor (or directly if the Prosecutor refuses to cooperate). The Advocate should also present final oral arguments when allowed by the Court.

### COMMENTARY

The NGO should provide as much information as possible to the Advocate for the written submissions.

The Advocate should draft and file written submissions (whether final or interim) before the Court in the appropriate format.

The Advocate should be present at the Court to assist the P.P. in making final oral arguments to persuade the Court on the strength of the prosecution's case.

## POINTS TO NOTE

**The Supplement written submissions with case law and appropriate extractions:** The written submissions should be supplemented with sufficient case law and relevant extracts of witness evidence to prove the Public Prosecution's case.

Under Section 338(2) of the BNSS the victim/complainant can file written arguments even after the stage of evidence is closed (with the permission of the court).

## LEARN MORE & TAKE ACTION

**Format for written submissions:** Refer to **Appendix 32** for a format for written submissions.

## Step 2.15 Obtaining the Judgment

Timeline: Obtaining an official copy of the judgment could take fifteen days.

### NGO

The NGO should assist the Advocate in obtaining certified copies of the final judgment from the court

### ADVOCATE

The Advocate should make applications for certified copies of the final judgment.

### COMMENTARY

After the judgment is pronounced, the NGO should assist the Advocate in obtaining certified copies of the final judgment.

Advocate should make applications for certified copies of the final judgment from the court.

## LEARN MORE & TAKE ACTION

The Advocate must be aware of the formats of appeal as per the requisite court of jurisdiction.  
Contact JVI if further information is required on steps to be taken after the judgment is given.

### Step 2.16 Filing of Appeal

Timeline: Appeal should be filed within sixty days of the judgment being passed.

#### NGO

NGO should assist the Advocate with the preparation of an appeal, if required.

#### ADVOCATE

The Advocate should file an appeal or revision application on an adverse judgment, if required.

#### COMMENTARY

If the NGO representatives along with the victims want to appeal the judgment of the court, they must approach the Advocate.

The Advocate must file the appeal or revision application in the prescribed format within the stipulated time and as soon as possible.

### POINTS TO NOTE

Once the trial has ended, the Advocate must be vigilant in ensuring that an appeal filed by the accused is not missed or if an appeal is to be filed on behalf of survivors it is filed within the period of limitation.<sup>106</sup>

If an appeal is filed by the accused, the Advocate must be ready to oppose the appeal. However, if the accused is acquitted, the Advocate may file an appeal or revision application against the acquittal in the High Court.

## LEARN MORE & TAKE ACTION

The Advocate must be aware of the formats of appeal or revision as per the requisite court of jurisdiction.  
A revision application may be filed on grounds provided under Sections 438 to 442 of the BNSS.  
Contact JVI for further information on steps to be taken in order to file an appeal or revision or for formats with regard to appeal/revision.

<sup>106</sup> Time allowed for filing of an appeal after the judgment of a lower court is passed.

# 3.0 SUMMARY OF PROCEDURES FOR RESTORING SEX TRAFFICKING SURVIVORS



## ENSURING IMMEDIATE ACCESS TO MEDICAL CARE

Magistrate orders medical examination, HIV test, and sexual abuse test with victim's consent and under supervision of female doctor; minor victims referred to CWC; Police escorts victims to medical examination and recovers victims' property from rescue site.



## PLACING SURVIVORS IN SAFE CUSTODY

Magistrate makes order regarding placement of victims in protective shelter home; social workers place victims in home and accompany victims if they leave home for visits to Magistrate or CWC.



## FACILITATING ACCESS TO COUNSELING SERVICES

Female counsellors visit victims within 48 hours of admission to shelter home (with permission from the home); Magistrate issues orders approving counselling plans.



## SUBMITTING A HOME VERIFICATION REPORT

Magistrate/CWC orders home verification report and opposes release of survivors into anyone's custody prior to the submission of report that guarantees safety.



## SECURING SEX TRAFFICKING SURVIVOR COMPENSATION

District Administration assists victims in recovering compensation under several schemes intended to rehabilitate sex trafficking survivors.



## REPATRIATING OR REHABILITATING SEX TRAFFICKING SURVIVORS

Assist in obtaining documents necessary for repatriation; Magistrate/CWC may extend stay at protective home for further rehabilitation if victim's family is unfit to provide care and protection, in a home verification report.



## FACILITATING ACCESS TO GOVERNMENT ENTITLEMENTS

Assist in providing access to private sector resources related to food, clothing, shelter, land rights, education, employment, health care, counselling and other entitlements.



## FACILITATING ACCESS TO PRIVATE SECTOR RESOURCES

Assist in providing access to private sector resources related to food, clothing, shelter, land rights, education, employment, health care, counselling and other entitlements.



## ENSURING SURVIVORS ENJOY PERMANENT FREEDOM

Work with NGO to prevent re-trafficking and ensure reintegration of survivors; do follow up as necessary.

## Step 3.1 Ensuring Immediate Access to Medical Care

Timeline: Access to basic medical care and gynaecologist should be provided within 24 hours of the intervention being carried out, while bone ossification test should be carried out within one week of the rescue.

### NGO

The NGO should ensure that the sex trafficking survivors receive a medical examination and any required medical care.

### ADVOCATE

The Advocate should ensure that medical examinations are carried out and urgent care is provided with respect accorded to the sex trafficking survivor's right to privacy and other rights.

### COMMENTARY

The NGO should request that the Magistrate do the following:

- ◇ Order age-verification, medical examination, HIV test (to be taken only with informed consent of the survivor including pre-test and post-test counselling) and STI testing to be done at a hospital. Request the Magistrate to order sexual abuse tests.
- ◇ Allow aftercare staff to accompany the survivors for medical examination.
- ◇ Order property recovery of all the survivors with the help of the police, accompanied by NGO staff.
- ◇ The NGO should also suggest placement of the survivors in the best possible aftercare home.

The Advocate should ensure that the medical examination is conducted by or under the supervision of a female doctor as mandated under Section 51(2) of the BNSS.

The Advocate may also request the Magistrate to pass an order for the NGO to conduct home inquiries for the rescued survivors.

### POINTS TO NOTE

**Medical examinations are conducted after obtaining an order from the Magistrate following the rescue process and recording the victim's statements.** NGO aftercare staff will escort the rescued victims to the hospital for the medical exam along with a WCP and then escort them to the shelter home for safe custody. **Informed consent** of the survivor must be obtained prior to performing the medical examination.

**What to do in the absence of a female doctor:** In the absence of a female doctor, the Advocate should ensure that a female official or a female representative from the NGO is present during the medical examination. The Advocate must ensure that the rescued person is treated with dignity.

**Age verification test:** Advocate must ensure that the age verification test is carried out according to established scientific methods. The age verification test is mandatory under Section 15(5A) of the Immoral Traffic Prevention Act, 1956 to determine whether the person rescued is a major, minor or a child. If the survivor is age verified 17-18 or younger, remind the Magistrate/ Public Prosecutor that the Magistrate has no jurisdiction over the survivor and that the survivor must be transferred to the Child Welfare Committee. Under Section 94 of the JJA 2015, if it is obvious to the CWC based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the CWC shall record such observation stating the age of the child as nearly as may be determined and proceed with the inquiry under section 36 (inquiry on child in need of care and protection), without waiting for further confirmation of the age. If the CWC is in doubt regarding the age of the person brought before it, it shall seek to determine the age of the person by seeking evidence by obtaining:

- ◇ The **date of birth certificate** from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof the

- ◇ The **birth certificate** given by a corporation or a municipal authority or a panchayat
- ◇ In the absence of i. and ii., age can be determined by an **ossification test** or any other medical age determination test conducted on orders of the CWC, provided it is completed with 15 days of such an order being passed.

Section 94 of JJA further states that the age recorded by the CWC shall be deemed to be the true age of the child. Request that the Magistrate specify which CWC will handle the case. If the NGO knows beforehand that the survivor is a minor, inform the Advocate so that they will attend the remand hearing.

### Step 3.2 Placing Survivors in Safe Custody

Timeline: The survivors should be placed in safe custody as soon as possible but within 24 hours.

| NGO                                                                                         | ADVOCATE                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should ensure that the survivor is safely transferred to a protective shelter home. | The Advocate should advise and assist the survivor and the NGO before government authorities to ensure that the survivor is safely transferred to a protective shelter home. |

| COMMENTARY                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aftercare staff must accompany the victim whenever she leaves the home for visits to the Magistrate or CWC. | <p>The Advocate should coordinate with the social worker to ensure that the victims are safely placed in a shelter home.</p> <p>The Advocate must also ensure that the child rescued is produced before the CWC. In the event the age of the victim cannot be ascertained, the Advocate should assist the police in deciding whether to produce the victim before the CWC.</p> <p>The Advocate should ensure that the adult victims are produced before the Magistrate.</p> |

### POINTS TO NOTE

**When unsure if rescued person is a minor:** If in doubt, the victim must be treated as a minor. There is a medical examination known as a bone ossification test that is conducted on a victim based on which the physician will determine if she is a minor or major. Refer child to CWC to determine age. Refer to Section 94 under the JJA 2015 for guidelines on age determination by the CWC.

**General guidelines:**

- ◇ Establishing professional rapport with the Magistrate goes hand in hand with building rapport with the survivor and empowering her to speak truthfully before the Magistrate.
- ◇ Aftercare staff should also ask for permission to conduct home inquiries for all survivors.
- ◇ **Empowering the survivor:** Whatever decision is made by the Magistrate is highly important for the survivor and her future. Therefore, it is of the utmost importance that the survivor expresses her informed will before the Magistrate. It is the aftercare staff's role to inform the survivor about the remand process and provide psychosocial counseling so that she may make an informed decision and express it before the Magistrate.
- ◇ **Keep to required timelines:** The Magistrate cannot detain a survivor for more than three weeks, except for special circumstances. Hence, the Magistrate has to take the final decision within three weeks of the rescue.<sup>107</sup>

<sup>107</sup> The Immoral Traffic (Prevention) Act, 1956, Section 17(3).

## Step 3.3 Facilitating Access to Counselling Services

Timeline: Counselling services should be facilitated within 48 hours.

### NGO

The NGO should provide the survivor with access to trained and qualified female counsellors to help promote the healing process after obtaining due permission from the concerned authority.

### ADVOCATE

The Advocate should advise the survivor and the NGO about the survivor's right to counselling and other aftercare services.

### COMMENTARY

Once the rescued victim is admitted to the protective home, the aftercare team must visit the victim preferably within 24-48 hours of admission. The counsellors should have official permission from the home before providing after care support. The counsellors should also immediately be available upon any emergency requirement. Male counsellors should strictly be prohibited from providing counselling services.

Counsellors must develop individualised counselling plans for each survivor.

Counsellors and social workers/case managers must visit the survivor regularly at the aftercare homes to provide counselling and psychosocial support.

Case managers must develop treatment and recovery support plans for each survivor and share them with the shelter home staff.

Case managers will utilize their connections with education, vocational and counselling organizations to help victims access these services to prepare them for entry into mainstream society or repatriation back to their home states.

Case managers will also liaise with NGOs in survivor's home states for their continued aftercare in their respective shelter homes.

The Advocate should coordinate with the social worker to ensure that the victims are safely placed in a shelter home.

The Advocate should work in close collaboration with the NGO case managers/social workers to develop treatment plans for each individual survivor. These treatment plans should be shared with the Magistrate to enable the issuance of orders approving such plans.

The NGO must provide regular updates to the court about the progress of the rescued victim.

## Step 3.4 Submitting a Home Verification Report

Timeline: The Home Verification Report should be submitted within 21 days.

### NGO

The NGO should prepare a well- documented Home Verification Report after verifying details concerning the family and social background of the survivor.

### ADVOCATE

The Advocate should request that the CWC/ Magistrate order a home verification report and oppose the release of survivors to the custody of anyone prior to submission of the Home Verification Report.

### COMMENTARY

The NGO should send a team to meet with the survivor within 48 hours of the admission of a rescued person in protective custody and ascertain facts that will enable them to carry out a social investigation report.

Home Verification Report must cover the following facts.

- a. Family details
- b. How long the victim has been missing
- c. Last contact with the victim
- d. Details of trafficker if known by the family
- e. Measures taken by family to trace the victim / Any missing persons report filed at the local police station
- f. Recommendation if the family is fit / unfit to ensure care and protection if the victim is restored back to family.
- g. Documentation establishing that family traced is biological parents of the victim.

The home verification must be initiated within 72 hours from the time of rescue and a home verification report submitted to the Magistrate within two weeks from the date of rescue.

Details regarding the victim being rescued from sex trafficking may not be disclosed to the family to prevent stigma.

The NGO aftercare staff's role is to conduct the home inquiry, write the recommendations and present the report to the Magistrate and/or CWC, as the case may be. In order to do so, the aftercare staff has to work with all concerned parties, such as the survivor, the survivor's family and the Probation Officer. The aftercare staff may also have to coordinate with a partner organization to conduct the home verification process.

The Advocate should request the relevant authorities conduct a social investigation under Sections 31 and 36 of the JJA. The Advocate should oppose release of any rescued person to anyone (including parents and relatives) before the Home Verification Report is submitted.

## POINTS TO NOTE

**NGO may request the Magistrate for permission to conduct the home study:** The NGO can request permission from the Magistrate to conduct a home verification report for the survivor when the Magistrate orders a Home Study Report. The NGO should prepare a well-documented Home Verification Report after verifying details concerning the family and social background of the survivor.

**Timeline for submitting Home Verification Report:** The home inquiry report must be submitted within 21 days of the rescue operation.<sup>108</sup> If the survivor is a major and opts for recovery assistance at the shelter home, the Magistrate may permit the NGO to complete the report over a longer period. If the victim is a minor, the social investigation report would have to be completed within 15 days, and the CWC would be required to pass final orders within four months of the child being produced before it for the first time. Refer to Section 36 of the JJA 2015 for more information.

**Goal of the Home Verification Report/Social Investigation Report:** The goal of a Home Verification Report/Social Investigation Report is to gather information about the survivor's family and recommend whether they are fit to care for their daughter or son. The report presents the will of the family and the will of the survivor. Based on this, the NGO provides the Magistrate and/or CWC with recommendations for release or protective custody.

**Basis of recommendations in the report:** It is best practice to make sure that aftercare's recommendations are based on: (1) the informed will of the survivor, (2) the will of the family, (3) NGO's professional assessment of the family's involvement in trafficking and the home environment, and (4) the Probation Officer's suggested options for best recovery process.

### **General recommendations:**

- ◇ If the family is willing to accept their daughter/wife and the Home Verification Report recommends release, do not recommend any time spent at an aftercare home.
- ◇ In general, aftercare should recommend that the Magistrate and/or CWC reunite survivors with their children, regardless of whether they are released or sent to protective custody.
- ◇ The fact that the survivor has to work to support her family is not sufficient to recommend protective custody.
- ◇ The Home Verification Report should not recommend protective custody based on the family's financial situation, or family stressors (e.g., substance abuse). The Magistrate is unlikely to consider this if the family is willing to accept the survivor and she wants to return to them.

### **Recommendations for release should be based on:**

- ◇ The survivor's own free will to return to her family/husband/independent living
- ◇ The family's willingness to accept their daughter/wife back home.
- ◇ The survivor being able to live with her children again.
- ◇ The family/husband not having been involved in trafficking or profited from the survivor's involvement in prostitution.
- ◇ The family's/husband's ability to care and protect their daughter/wife.

## LEARN MORE & TAKE ACTION

**How to conduct a home verification study and submit a report:** Refer to **Appendix 30** for a sample **Home Inquiry Report**.

<sup>108</sup> *The Immoral Traffic (Prevention) Act, 1956, Section 17(3).*

## Step 3.5 Securing Survivor Compensation

Timeline: Securing survivor compensation could take between one to three months.

### NGO

The NGO should assist the Advocate with filing compensation applications and accompany survivors when called to appear before appropriate forums.

### ADVOCATE

The Advocate should file compensation applications on behalf of the survivor before the appropriate forum.

### COMMENTARY

NGO representatives must ensure that compensation is provided at the earliest possible time and must provide the Advocate with all the information required to make any applications.

The Advocate should be familiar with victim compensation laws at the state and central government level. The Advocate should also ensure that such applications are made and compensation received as expeditiously as possible.

## LEARN MORE & TAKE ACTION

Refer to Chapter VI to learn about Supreme Court judgments on rehabilitation of rescued victims.

**Important case law regarding compensation of sex trafficking victims:** *Budhadev Karmaskar V. State Of West Bengal*<sup>109</sup> is a judgment regarding the rehabilitation and compensation of rescued sex workers. The text of the judgment can be read [here](#).

**Victim Compensation Schemes:** There are several schemes under which victims of sex trafficking can apply for compensation:

- ♦ **Ujjawala:** Ujjawala is a comprehensive scheme to prevent trafficking and provide rescue, rehabilitation and reintegration of victims of trafficking for commercial sexual exploitation. It was started under the Ministry for Women and Child Development in 2007 and implemented by several NGO's. It attempts to "provide rehabilitation services both immediate and long-term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including counselling, legal aid and guidance and vocational training." The Scheme also provides victims with funding to meet the travel costs incurred en route to being restored with their families, as well as "seed money" of 5,000 INR to each victim. In 2013, 116 new projects of the Ujjawala Scheme have been considered and 63 projects have been approved. An amount of Rs. 14.97 crore was released during this period. Refer to this website: <https://wcd.nic.in/schemes/ujjawala-comprehensive-scheme-prevention-trafficking-and-rescue-rehabilitation-and-re> for more information about the states where the Ujjawala Scheme has been sanctioned.
- ♦ **Swadhar Grah:** This is a scheme for women in difficult circumstances, launched under the Ministry of Women and Child Development during the year 2001-2002. The Swadhar Grah Scheme is meant "to provide temporary accommodation, maintenance and rehabilitative services to women and girls rendered homeless due to family discord, crime, violence, mental stress, social ostracism or who are being forced into prostitution and are in moral danger." Beneficiaries of the Swadhar Grah Scheme include trafficked women/girls who were rescued or escaped from brothels or other places where they were exploited.
- ♦ **National Compensation Scheme for commercially sexually exploited victims by NALSA:** Information about the scheme can be found on their website: [https://nalsa.gov.in/sites/default/files/document/VC\\_SCHEME.pdf](https://nalsa.gov.in/sites/default/files/document/VC_SCHEME.pdf).

<sup>109</sup> Supreme Court, Criminal Appeal No. 135 of 2010, [2011] 10 S.C.R. 577.

- ♦ **Central Sector Scheme for Rehabilitation of Bonded Labour 2016:**<sup>110</sup> Under Clause 5(iv) of this scheme, in cases of bonded or forced labour involving extreme cases of deprivation or marginalization such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc. , trafficking, cases of differently abled persons, or in other situations where the District Magistrate deems fit, the rehabilitation assistance shall be 3 lakhs, out of which at least Rs. 2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and Rs. 1 lakh shall be transferred to the beneficiary account through ECS.

## Step 3.6 Repatriating or Rehabilitating Sex Trafficking Survivors

Timeline: The process of repatriating or rehabilitating sex trafficking survivors could take between six months to one year.

| NGO                                                        | ADVOCATE                                                                                                                 |
|------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| The NGO should assist with safe repatriation of survivors. | The Advocate should advise and assist the survivor and the NGO on legal matters related to repatriation of the survivor. |

### COMMENTARY

No rescued victim should be sent back to family without ensuring social acceptance and family support, to prevent re-trafficking and further exploitation.

In case a family is unfit to provide care and protection to the victim the CWC/Judicial Magistrate may order to extend the stay at protective home for further rehabilitation through counseling, education, and vocational training. The NGO may assist in the administrative process by helping the concerned aftercare home to gather all needed documents and to put pressure on the government to follow up on the process.

The Advocate should prepare all the necessary applications for the complete repatriation reintegration of the victim under Sections 31 and 38 of JJ Act.

### POINTS TO NOTE

**Cross-border/Inter-state trafficking:** In the case of cross-border or inter-state trafficking stakeholders and NGO of the countries must undertake effective measure to ensure quick repatriation of rescued victims to their country of origin.

**Repatriation to Nepal or Bangladesh:** The following are the steps to be undertaken to ensure safe repatriation to Nepal and Bangladesh:

1. First, meet the Consul General for Nepal and Bangladesh. The NGO representatives must introduce themselves and inform the representatives from the Consul about the case. The relationship with the Consulate is very important. Each consulate has certain rules and regulations by which the repatriation process is completed. The NGO representatives need to become familiar with the process and the required documents. NGO representatives should act as liaisons between the CWC and the Consulates to work through the repatriation process from beginning to end.
2. The NGO representative should request that the CWC order the Home Studies and, after completion of the

<sup>110</sup> Scheme available here: [http://labour.gov.in/sites/default/files/OM\\_CSS\\_Rehab\\_BL\\_2016.pdf](http://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016.pdf)

Home Study report, pass an order for repatriation depending on the Home Study Report.

3. The NGO representatives must also build a relationship with the NGO conducting the home study. The NGO representative must also maintain a database of credible organizations and recommend that CWC contact these organizations to conduct a home study and assist in repatriation.

**Important documents required for international repatriation:** The following documents are needed from the following agencies:

- ◇ Nationality verification – Country of origin
- ◇ Repatriation Order and Consent letter –Ministry of Home Affairs, India
- ◇ No Objection Certificate – District office and State office at the Department of Women and Child Development (DWCD) in Maharashtra
- ◇ Travel documents – Country of origin
- ◇ Release order – Aftercare home
- ◇ Notification about clearance for travel – Foreign Registry Office, State
- ◇ Permission to leave India – Government of India
- ◇ Permission to re-enter the country of origin may also be required from the origin country. If the country to which the survivor belongs is not willing to acknowledge the survivor as being their national, there is not much that the Government of India can do to repatriate the survivor. The NGO can play a crucial role in ensuring that the country of origin is able to recognize the nationality of the survivor and agree to allow repatriation

**NGO should ask for copies of all the needed documents. NGO should provide all concerned parties with necessary information about the survivor.**

## Step 3.7 Facilitating Access to Government Entitlements

Timeline: The process of facilitating access to government entitlements could take 12 months.

| NGO                                                                                                                                                                                                                                                                                                                                                 | ADVOCATE                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The NGO should assist the sex trafficking survivors with accessing government entitlements related to both cash (Rs. 3,00,000/= under the newly revamped CSS-2021 for rehabilitation of Bonded Labour and victims rescued from brothels etc.) and non-cash components like education, employment, health care, counselling, and other entitlements. | The Advocate should provide legal assistance to the NGO and CSE survivors to petition government agencies to provide government entitlements if such entitlements are wrongly denied. |
| COMMENTARY                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                       |
| The NGO can play a key role in helping survivors access government entitlements. The NGO should request the Advocate to provide trainings for the victims on accessing government entitlements.                                                                                                                                                     | The Advocate should empower the survivors by informing them about their rights and how to access available resources.                                                                 |

## LEARN MORE & TAKE ACTION

Government Entitlements Manual: For a detailed step-by-step guide for accessing government entitlements see the Advocacy Manuals on the Emanuel Hospital Association Website at <https://www.eha-health.org/downloads/category/9-advocacy-manuals>.<sup>111</sup>

Legal Services Authority (LSA): If the NGO is unsuccessful in assisting the survivor with securing access to certain government entitlements, the NGO and the survivor may pursue free legal aid from the local Legal Services Authority office. To learn more about the role of the Legal Services Authority read the Legal Services Authorities Act, 1987, on the National Legal Services Authority's website: <http://nalsa.gov.in/actrules.html>.

### Step 3.8 Facilitating Access to Private Sector Resources

Timeline: The process of facilitating access to Private entitlements could take 12 months.

#### NGO

The NGO should assist sex trafficking survivors with accessing available private sector (NGO and business) resources related to education, employment, health care, counselling, and other entitlements."

#### COMMENTARY

The NGO representatives can facilitate access to private facilities by networking with partner organizations and relevant stakeholders who can provide specialized care in the form of alternate livelihoods, interim shelter, assistance in obtaining documentation, education, health care, counseling, and other assistance.

### Step 3.9 Ensuring Survivors Enjoy Permanent Freedom

Timeline: The process of ensuring that survivors enjoy permanent freedom may take over two years.

#### NGO

The NGO should maintain an ongoing relationship with the sex trafficking survivor for at least 24 months after rescue to ensure sustained rehabilitation and permanent freedom.

#### ADVOCATE

The Advocate should remain accessible to the survivor to provide advice and counsel regarding the survivor's rights in the community.

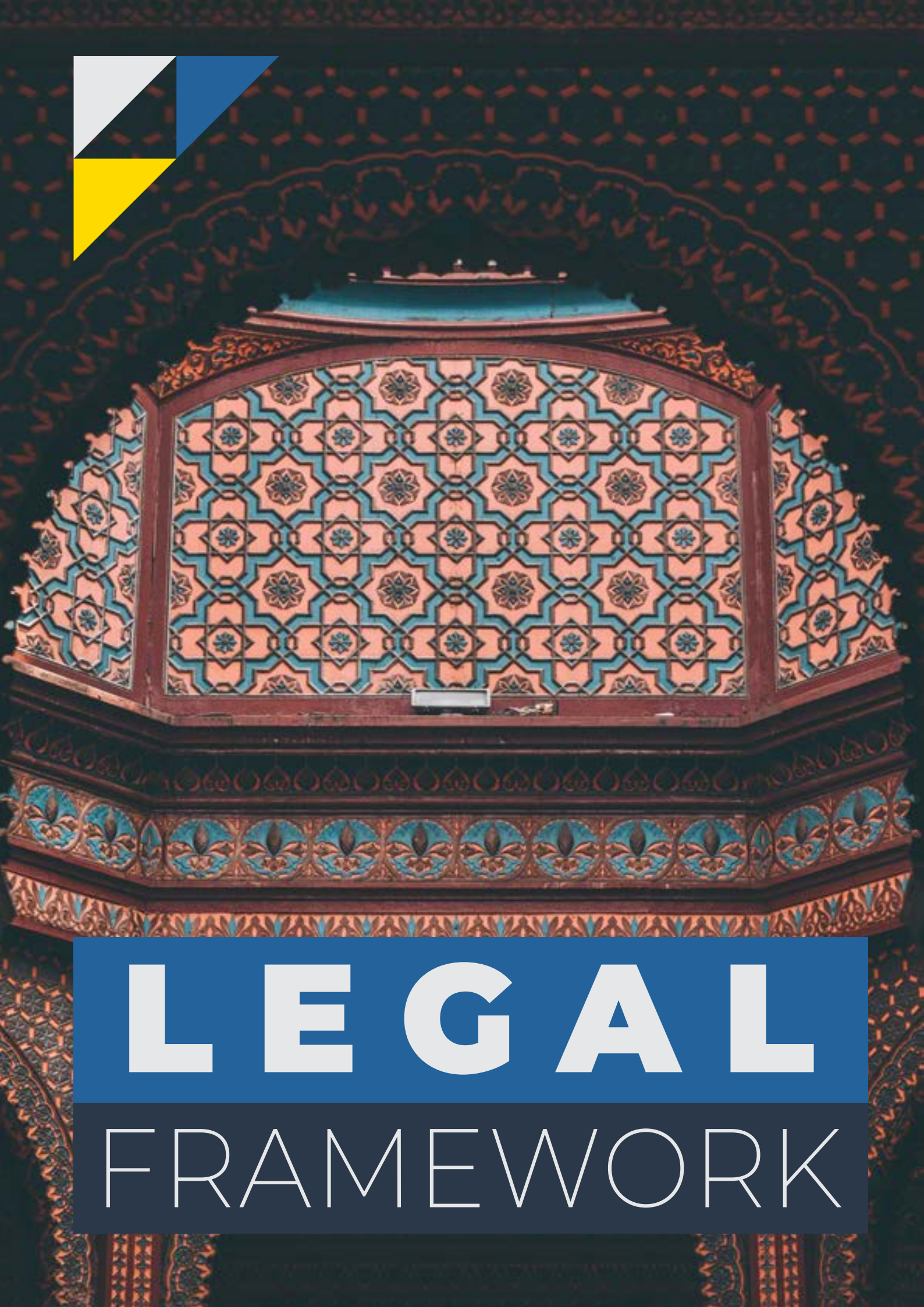
#### COMMENTARY

The NGO should work closely with the government authorities in providing them relevant information and documentation to prevent re-trafficking and ensure reintegration of survivors. The NGO should conduct necessary follow up as required from time to time.

The NGO should conduct family assessments, draft individualized treatment plans, and work closely with the district administration to ensure that rescued survivors can access their welfare benefits and compensation. The NGO should also assist survivors with opening individual bank accounts as the government compensation cheques are deposited to these accounts.

The Advocate should assist with preparing training material for survivors to ensure they are aware of their rights and are not re-trafficked.

<sup>111</sup> Developed by Emmanuel Hospital Association and recently updated by JVI.



**LEGAL**

FRAMEWORK

There are several laws, both international and national, that address the criminality of human trafficking. While most international laws and covenants are not binding on a country unless it has ratified the treaty or agreement, they play an influential role in determining national policy and legislation. Below are international covenants and conventions, regional covenants and conventions and Indian laws that influence human trafficking.

## A. INTERNATIONAL COVENANTS AND CONVENTIONS ON HUMAN TRAFFICKING

The United Nations (“U.N.”) is an international organization comprising 193 countries, including India. Conventions and other instruments adopted under the auspices of the United Nations are among the main sources of international law and convention.

International law is a powerful tool for combating modern-day slavery as it provides the framework within which a State defines its laws in order to address the problem effectively. However, enforcement of international law depends on whether an individual country (“State Party”) has signed and ratified an international convention. There are several conventions and instruments that form a part of the legal framework relevant to the fight against modern-day slavery.

The most relevant of these instruments are set forth in Box 1 (for greater detail on the terms of these instruments, please refer to Appendix 35).



### Box 1: Primary international conventions and other resources addressing modern slavery

- ◇ Universal Declaration of Human Rights, Article 4
- ◇ International Covenant on Civil and Political Rights, Article 6
- ◇ International Covenant on Economic, Social and Cultural Rights, Articles 6, 7, and 12
- ◇ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- ◇ Convention on the Elimination of All Forms of Discrimination Against Women
- ◇ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- ◇ Conventions on the Rights of the Child
- ◇ Convention on the Worst Forms of Child Labour
- ◇ Abolition of Forced Labour Convention
- ◇ A selection of relevant resources is listed in Box 2 (additional resources can be found in **Appendix 35**).

### Box 2: Additional resources on international legal framework for addressing modern slavery

- ◇ Convention concerning minimum age for admission to employment (Convention No. 138), of the International Labour Organization

- ◇ Convention concerning migration for employment (Convention No. 97), of the International Labour Organization
- ◇ Convention concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers (Convention No. 143), of the International Labour Organization
- ◇ Convention concerning private employment agencies (Convention No. 181), of the International Labour Organization
- ◇ Convention concerning labour inspection in industry and commerce (Convention No. 81), of the International Labour Organization
- ◇ Slavery Convention of 1926 and the Protocol amending that Convention
- ◇ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- ◇ International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Articles 8, 11, 16-17 and 39
- ◇ Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees
- ◇ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ◇ Convention concerning decent work for domestic workers

## B. REGIONAL COVENANTS AND CONVENTIONS

India is also a party to regional bodies. One such body is the South Asian Association for Regional Co – Operation (“SAARC”) which is comprised of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

The SAARC Conventions relevant to trafficking are provided below:

| REGIONAL CONVENTIONS                                                                                            |                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. <sup>112</sup> | Article 3: The State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties, which take into account its grave nature. |

## C. NATIONAL LAWS

The Constitution of India prohibits trafficking. In addition, several laws relate to aspects of modern day-slavery, such as child labour, bonded labour, juvenile justice and protection, child marriage, sex trafficking and exploitation of marginalized groups such as Scheduled Tribes and Scheduled Castes.

### THE CONSTITUTION OF INDIA<sup>113</sup>

The Constitution of India provides the basic legal framework for the functioning of the state, the courts, and the laws of the country. Rights contained in the Constitution are intrinsic and belong to every person in the country. The Fundamental Rights in Part III and Directive Principle in Part IV address trafficking-related issues.

The provisions on trafficking in the Constitution are provided below:

<sup>112</sup> Available at: <https://www.india.gov.in/my-government/constitution-india>.

| ARTICLE       | PROVISIONS                                                                                                                                                                  |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Article 23(e) | Prohibits traffic in human beings and forced labour, providing that it shall be an offence punishable according to the law.                                                 |
| Article 24    | Prohibits employment of children below the age of 14 years in factories, mining and other hazardous employment.                                                             |
| Article 39(e) | Ensures health and strength of individuals are not abused and no one is forced to do work unsuited to their age or strength by economic necessity.                          |
| Article 39(f) | Childhood and youth should be protected against exploitation.                                                                                                               |
| Article 42    | State to provide just and humane conditions of work.                                                                                                                        |
| Article 51(c) | Makes it mandatory to respect obligations arising out of international law. This can be especially important when approaching a court for a violation of international law. |

## BHARATIYA NYAYA SANHITA 2023 “BNS”

The Bharatiya Nyaya Sanhita, passed by Parliament in December 2023 and came into effect on July 1, 2024 forms a part of the criminal law of India, and its provisions should be used for prosecution of traffickers and exploiters. The BNS replaces the Indian Penal Code. Knowing the relevant sections of the BNS is vital, as you should include the relevant sections when filing the First Information Report (FIR) to commence prosecution of a trafficking case.

The BNS, particularly Section 143, replaces and expands upon previous human trafficking provisions in the Indian Penal Code (IPC) (sections 370 and 370A). It defines trafficking as the recruitment, transport, harboring, transfer, or reception of a person for exploitation through various coercive means. Crucially, it explicitly includes "beggary" as a form of exploitation in the definition of human trafficking. This expanded definition aims to cover a broader range of trafficking scenarios, including labor and organ trafficking. Also, the BNS recognizes human trafficking, including trafficking for prostitution, as a form of organized crime under Section 111.

Under the Bharatiya Nyaya Sanhita, 2023, offences against women and children have, for the first time, been consolidated into Chapter I. The statute prescribes stringent punishments, extending up to the death penalty, for crimes committed against women. In particular, the offence of gang rape of a woman below the age of eighteen years is punishable with imprisonment for the remainder of the convict's natural life or with death. Furthermore, the Sanhita introduces a new offence whereby engaging in sexual intercourse under circumstances involving a false promise of marriage, false assurances of employment or promotion, or by concealment of identity has been explicitly criminalized.

### Box 3: Definition of trafficking according to Section 143, BNS

Whoever, for the purpose of exploitation, recruits, transports, harbours, transfers, or receives, a person or persons by,

- ◇ using threats; or
- ◇ using force, or any other form of coercion; or
- ◇ by abduction; or
- ◇ by practicing fraud, or deception; or
- ◇ by abuse of power; or
- ◇ by inducement, including the giving or receiving of payments or benefits, in order to achieve the

<sup>113</sup> Available at: <https://www.india.gov.in/my-government/constitution-india>

consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

**Explanation 1:** The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary or forced removal of organs.

**Explanation 2:** The consent of the victim is immaterial in determination of the offence of trafficking.

Section 143 can be applied to a person in any stage of the trafficking process. The meaning of “exploitation” is broad and can be applied to many cases. You do not need to prove that there was no consent by the victim, as per Explanation 2. The punishments prescribed under Section 370 vary depending on the offence and the age of the victim.

There are higher punishments for: (1) trafficking of children (those under 18); (2) repeated offenders or those who traffic more than one person at the same time; and (3) for public servants, including police officers, who are involved in trafficking. Note, however, that Section 144 applies only to those trafficked persons who are sexually exploited.<sup>114</sup>

The chart below provides miscellaneous provisions in the BNS that are relevant to trafficking and other forms of modern-day slavery.<sup>115</sup>

| SECTIONS | PROVISIONS                                                 | SECTION IPC |
|----------|------------------------------------------------------------|-------------|
| 96       | Procuring of minor girls                                   | 366A        |
| 141      | Importation of girl below 21 years for sexual exploitation | 366B        |
| 140(4)   | Kidnapping/Abduction                                       | 367         |
| 145      | Habitual dealing in slaves                                 | 371         |
| 98       | Selling minor for purposes of prostitution                 | 372         |
| 99       | Buying minor for prostitution                              | 373         |
| 146      | Compelling a person to labour                              | 374         |
| 126-127  | Wrongful Restrain/Wrongful Confinement                     | 339-341     |
| 64       | Sexual Assault                                             | 376         |
| 115      | Hurt                                                       | 319-338     |
| 129-136  | Criminal Force/Assault                                     | 349-356     |
| 318      | Cheating                                                   | 415         |

<sup>114</sup> Section Section 144: (1) Whoever, knowingly or having reason to believe that a child below the age of eighteen years has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine; (2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine..

<sup>115</sup> Supra note 79.

## IMMORAL TRAFFIC (PREVENTION) ACT, 1956 ("ITPA")

The Immoral Traffic (Prevention) Act criminalizes sex trafficking specifically. It only addresses trafficking for the purpose of sexual exploitation and not for other purposes such as domestic work, bonded labour, child labour and organ harvesting. The Act does not criminalise all exchange of sex for money; however, prostitution within notified areas and within 200 meters of specified public places notified in the Act is punishable for both the prostitute as well as the person availing himself or herself of the service. The Act also criminalizes related crimes such as brothel keeping, pimping, living on the earnings of a prostitute.

### Box 3: Definitions under ITPA

"Prostitution" means the sexual exploitation or abuse of persons for commercial purposes, or for money or any other consideration.<sup>116</sup>

"Brothel" includes any house, room, vehicle, place, or any part of them which is used for the purposes of sexual exploitation or abuse for the gain of another person.<sup>117</sup>

The table below provides an overview of ITPA:

| SECTIONS                  | PROVISIONS                                                                              |
|---------------------------|-----------------------------------------------------------------------------------------|
| Section 3                 | Managing or keeping a brothel or assisting in either                                    |
| Section 3 (2)             | Knowingly allowing premises to be used as a brothel                                     |
| Section 4 (1)             | Living on the earnings of prostitution                                                  |
| Section 5                 | Procuring, inducing or taking person for prostitution with or without consent           |
| Section 6 (i)             | Detaining person in a brothel                                                           |
| Section 7 (1) and 7 (1-A) | Carrying on prostitution in a public place                                              |
| Section 8                 | Seducing or Soliciting                                                                  |
| Section 9                 | Seduction of person in custody                                                          |
| Section 15                | Warrantless search procedures by Special Police Officers                                |
| Section 16                | Rescue on Magistrates Directions                                                        |
| Section 17                | Rules governing inquiry by Magistrates regarding intermediate custody of rescued victim |
| Section 18 (1)            | Closure of brothel & eviction of perpetrators                                           |
| Section 19                | Provisions for providing care and protections by the Court                              |

## PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ("POCSO") ACT, 2012<sup>118</sup>

This Act criminalises sexual offences against children and creates special procedures for the investigation and trial of these offences. A child is any person under 18 years, including boys. The Act also prescribes the formulation of Special Courts.

<sup>116</sup> Sec. 2(a), ITPA, 1956.

<sup>117</sup> Sec. 2(f), ITPA, 1956.

<sup>118</sup> Available at: <https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf>

## OFFENCES UNDER POCSO ACT, 2012

- ◇ Sexual Assault<sup>119</sup> - Molesting a child without any penetration.
- ◇ Aggravated Sexual Assault<sup>120</sup> - Molestation of a child by a person in authority or in a position of trust, repeated offences, molestation by more than one person, using weapons or causing physical injury to the child.
- ◇ Penetrative Sexual Assault<sup>121</sup> - Sexual penetration of a child.
- ◇ Aggravated Penetrative Sexual Assault<sup>122</sup> - Sexual penetration of a child by a person in authority or in a position of trust over the child, repeated offences, assault by more than one person, using weapons or causing physical injury to the child.
- ◇ Sexual harassment<sup>123</sup> - Verbal sexual harassment of the child; showing the child pornographic pictures or a part of the body with sexual intent; or following a child.
- ◇ Using children in any form of media for pornographic purposes and indecent visual depiction of children for sexual gratification.<sup>124</sup>
- ◇ Storage of child pornography.<sup>125</sup>
- ◇ Abet/attempt to commit any of the above offences.<sup>126</sup>

Under Section 19, any offence under the Act can be recorded in writing with the Special Juvenile Police Unit<sup>127</sup> or the local police station. They must report the case to the Child Welfare Committee within 24 hours. Section 20 makes it compulsory for media personnel, hotels, lodges, photographic studios, and hospitals to report child sexual abuse to the police. Failure to do so is punishable. The Act also provides an option for a child to choose his/her own legal counsel.

Some of the relevant provisions in addition to the ones specified above are provided in the table below:

- ◇ The media must protect the privacy of the child and other details of identity, unless permitted to disclose the details by the Special Court.<sup>128</sup>
- ◇ When recording the statement of the child, police officers should not be in uniform and the statement shall be recorded at the residence of the child or any place where he/she is comfortable. The child cannot be detained in the police station at night.<sup>129</sup> (Section 24)
- ◇ The trial shall finish within 1 year from the date the Special Court takes it up.<sup>130</sup>
- ◇ During the trial, the child cannot be subjected to aggressive cross-examination, should be allowed frequent breaks, and should not be called repeatedly to court. In camera proceedings shall be instituted, which means that the public is not allowed to be present in the Court.<sup>131</sup>
- ◇ The Special Court can also order interim compensation.

<sup>119</sup> Sec. 7, Protection of Children from Sexual Offences Act, 2012

<sup>120</sup> Sec. 9, Protection of Children from Sexual Offences Act, 2012

<sup>121</sup> Sec. 3, Protection of Children from Sexual Offences Act, 2012

<sup>122</sup> Sec. 5, Protection of Children from Sexual Offences Act, 2012

<sup>123</sup> Sec. 11, Protection of Children from Sexual Offences Act, 2012

<sup>124</sup> Sec. 13, Protection of Children from Sexual Offences Act, 2012

<sup>125</sup> Sec. 15, Protection of Children from Sexual Offences Act, 2012

<sup>126</sup> Sec. 16, Protection of Children from Sexual Offences Act, 2012

<sup>127</sup> Special Juvenile Police Unit (SPJU): SPJUs were established under the Juvenile Justice Act. The purpose of these police units is to enable police who deal with children to be better equipped with knowledge and procedures on dealing with them. The act provides for a police officer in every police station who is trained as a juvenile or child welfare officer.

<sup>128</sup> Sec. 20, Protection of Children from Sexual Offences Act, 2012.

<sup>129</sup> Sec. 24 (1)(4), Protection of Children from Sexual Offences Act, 2012.

<sup>130</sup> Sec. 35 (2), Protection of Children from Sexual Offences Act, 2012.

<sup>131</sup> Sec. 33, Protection of Children from Sexual Offences Act, 2012.

## BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Building on Article 23 of the Constitution of India, the Parliament enacted the Bonded Labour System (Abolition) Act of 1976 ("BLA") to implement the protections articulated in the Constitution. Bonded labour is a type of forced labour that involves the victim providing labour in exchange for an advance, other economic consideration or in pursuance of a "custom" or "social obligation". In India the phrase "debt bondage" is another term sometimes used to describe bonded labour.

### Box 4: Definition of Bonded Labour<sup>132</sup>

The BLA identifies two components to bonded labour:

- ◇ The labourer enters into, or is presumed to have entered into, an agreement
- ◇ To provide forced, or partly forced labour

As the first component can be presumed, the essential component of bonded labour is "forced labour."

What constitutes bonded labour?

## Bonded Labour



### AGREEMENT

Due to an Advance  
Due to Customary or Social Obligation  
To Repay Relative's Debt  
Due to Receiving Economic Consideration  
By Birth into a Particular Community



### FORCED CIRCUMSTANCES

Restricted Freedom of Employment  
Restricted Freedom of Movement  
Payment is Below Minimum Wage Standards  
No Freedom to Sell Goods and Service in the Marketplace

While the language of Section 2 of the BLA provides that bonded labour must involve an "agreement" between the victim and the employer, several key Supreme Court rulings have rejected this narrow interpretation. Instead, the Supreme Court has given a wider interpretation of bonded labour based on the original intentions of the Act. In this series of decisions, the Supreme Court removed the need to show an "agreement" by creating two presumptions. As illustrated below, the rulings made allowances such that any form of forced labour can be presumed to be bonded labour.<sup>133</sup>

<sup>132</sup> Davidar, P.W.C., I.A.S., *Hand Book for the Release and Rehabilitation of Bonded Labourers*.

<sup>133</sup> *Bandhua Mukti Morch v. Union of India*, 1984 (3) SCC 161, paragraph 24.

## 1. Bandhua Mukti Morch v. Union of India<sup>134</sup>

The Supreme Court held that “This system, under which one person can be bonded to provide labour for another for years and years until an alleged debt is supposed to be wiped out, which never seems to happen during the life time of the bonded labourer, is totally incompatible with the new egalitarian socio-economic order which we have promised to build ....”<sup>135</sup> Explaining that:

*“It is clear that bonded labour is a form of forced labour and Section 12 of the Bonded Labour System (Abolition) Act, 1976, recognizes this self-evident proposition by laying a duty on every District Magistrate and every officer specified by him to inquire whether any bonded labour system or any other form of forced labour is being enforced . . . The thrust of the BLA is against the continuance of any form of forced labour.”*<sup>136</sup>

## 2. People’s Union for Democratic Rights v. UOI<sup>137</sup>

In this case also known as the “Asiad Workers” case, the Supreme Court rejected a narrow reading of Article 23 that suggested that the prohibition against “forced labour” only applied to labour for which no wages were paid. Instead, the Court held that “forced labour” included workers who received some wages for their labour even if the workers entered into, or remained in, their employment voluntarily.<sup>138</sup> Further, the Court dismissed the notion that forced labour requires physical force or torture. In writing for the Court, HMJ Bhagwati made it clear that the requisite “force” can or originate from “any” source, even one outside of the perpetrator’s control:

*“It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as ‘force’ and if labour or service is compelled as a result of such ‘force’, it would be ‘forced labour’.”*

It was held by the SC that:

*“A contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson’s Choice,<sup>139</sup> either to starve or to submit to the exploitative terms dictated by the powerful employer.”*

<sup>134</sup> 1984(3) SCC 161 See also *Bandhua Mukti Morch v. Union of India*, 1991 (1) SCC 174 (*Bandhua II*); and *Bandhua Mukti Morch v. Union of India*, 1991 (4) SCC 117 (*Bandhua III*). The Supreme Court revisited the 1983 *Bandhua* case twice (*Bandhua II & III*) and called states to do a better job rehabilitating victims and prosecuting perpetrators.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> 1982 AIR (SC) 1473

<sup>138</sup> ‘Every form of forced labour, “begar” or otherwise, is within the prohibition of Art. 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be covered by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion.’

<sup>139</sup> ‘The option of taking what is offered or nothing; no choice.’ Hobson’s choice is said to have had its origin in the name of one T. Hobson (1554-1631), at Cambridge, England, who ran a livery stable and gave his customers a choice between ‘the next horse or none at all.’ Shorter Oxford English Dictionary, 5th Edition, Oxford University Press, Oxford, England 2002, Volume 1, p. 1251. In 1914 Henry Ford offered purchasers of the Model T a famous Hobson’s choice, making it ‘available in any color so long as it is black.’

It was further held by the SC that

*"We are therefore of the view that where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him **clearly falls within the scope and ambit of the words "forced labour" under Art. 23.** Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art.23".<sup>140</sup>*

### 3. "Neeraja Chaudhary v. State of Madhya Pradesh, 1984(SC) 1099

The SC held that "Whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer." For more information about these and other landmark judgments see Chapter V.

## CRIMINAL OFFENCES UNDER THE BLA

Under the BLA, the perpetrator can be held accountable for the following acts:

1. Accepting Payments from Victims for Bonded Debts;
2. Compelling Victims to Work in a Bonded Labour System;
3. Advancing Money in a Bonded Labour System;
4. Enforcing the Bonded Labour System;
5. Failing to Restore Property to a Released Victim;
6. Abetting Any of These Crimes;
7. Offences by companies.

### OTHER RELEVANT PROVISIONS OF BLA

- ◇ According to Section 4, every bonded labourer shall be considered free after the enactment of this legislation and nobody can be forced to do labour.
- ◇ Further, under Section 5, any custom, tradition or agreement due to which any person was forced to work as a bonded labourer, shall be 'void', which means that it is not valid.
- ◇ Under Chapter III Section 6, any liability to repay a bonded debt shall no longer exist. Any order for the recovery of a bonded debt passed before the Act shall be considered to have been fully satisfied. Property which has been forcefully taken shall be restored to the person from whom it was taken.
- ◇ Under Section 7, the property of the bonded labourer shall be considered free from any charge, lien, mortgage or encumbrances.

## ROLE OF STATE GOVERNMENTS AND DISTRICT ADMINISTRATIONS:

The BLA empowers state governments to confer powers on the Executive Magistrates to implement the BLA's various provisions.<sup>141</sup> District Magistrates may delegate various duties to their subordinates.<sup>142</sup> The Supreme Court has encouraged District Administration to actively engage in the fight against bonded labour:

*We fail to see why the [District] administration should feel shy in admitting the existence of bonded labour because it is not the existence of bonded labour that is a slur on the administration but its failure to take necessary steps for the purpose of putting an end to the bonded labour system by quickly identifying, releasing and permanently rehabilitating bonded labourers."<sup>143</sup>*

<sup>140</sup> *People's Union for Democratic Rights v. Union of India*, 1982 AIR (SC) 1473, 1982 (3) SCC 235 (Supreme Court 1982) (emphasis added).

<sup>141</sup> Sec. 10 & 2, *Bonded Labour System (Abolition) Act*, 1976.

<sup>142</sup> Sec. 10, 11 & 12, *Bonded Labour System (Abolition) Act*, 1976.

<sup>143</sup> *Neeraja Chaudhary v. State of Madhya Pradesh*, 1984 AIR (SC) 1099, 1984 (3) SCC 243 (Supreme Court 1984).

## VIGILANCE COMMITTEES

In an effort to generate momentum and political will to address the crime of forced labour, the Parliament requires that committees of concerned individuals (known as Vigilance Committees) be constituted in every district in India to ensure the eradication of forced labour. In India, forced labour comprises of bonded labour, but does not include commercial sexual exploitation (which is treated separately). Along with the critical roles played by District Magistrates and Sub Divisional Magistrates under the BLA, these Vigilance Committees are to provide a framework for eradicating bonded labour at the district level. The BLA and the Bonded Labour System (Abolition) Rules ("BLA Rules") contemplate that Vigilance Committees will play a central role in ensuring the identification, release and rehabilitation of bonded labourers, as well as monitoring the public prosecution of perpetrators.

**Section 13 of the BLA mandates** the State Governments to formulate Vigilance Committees comprised of:

- ◇ The District Magistrate;
- ◇ Two social workers;
- ◇ Three people representing SCs and STs;
- ◇ One person representing the financial and credit institutions; and
- ◇ A maximum of three people to represent the official or non- official agencies in the district connected to rural development

The six specific functions of Vigilance Committees under Section 14 of the BLA are to:

1. Advise district magistrates about the implementation of the BLA,
2. Locate individuals committing bonded labour offences,
3. Monitor the public prosecution of perpetrators,
4. Defend freed bonded labourer in court,
5. Coordinate adequate credit,
6. Provide for economic and social rehabilitation.



## CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Under this Act, children under the age of 14 are prohibited from working in certain occupations and processes. The 2006 amendment to this Act included domestic service and working in roadside restaurants as prohibited industries. Part II of the Act prohibits children from working in any occupation listed in Part A of the Schedule, which includes: catering at railway establishments, construction work on the railway or anywhere near the tracks, plastics factories, automobile garages, manufacturing crackers, handloom industry and mines. Employment of children as domestic servants, in dhabas, restaurants, hotels, tea shops, etc. is also prohibited.

The Act also prohibits children from working in places where certain processes are being undertaken, as listed in Part B of the Schedule, which includes: beedi making, carpet making, tanning, soap manufacture, brick kilns and roof tiles units, and the building and construction industry.

Part III of the Act outlines the conditions under which children may work in permitted occupations:

- ◇ The number of hours of an establishment or class of establishments is to be set and no child can work for more than the set hours in that particular place.
- ◇ Children are not permitted to work for more than three-hour stretches and must receive an hour's break after three hours.
- ◇ Children are not permitted to work for more than six-hour stretches including their break interval and cannot work between the hours of 7 p.m. and 8 a.m.
- ◇ No child is allowed to work overtime or work in more than one place in a given day.
- ◇ A child must receive a holiday from work every week.
- ◇ The employer of the child is required to send a notification to an inspector about a child working in their establishment and keep a register of all children being employed for inspection.

Any dispute about the age of a child is to be determined by a prescribed medical authority according to Section 10. In 1996, the Supreme Court ordered that all victims of child labour be compensated Rs. 20,000 by their employer.<sup>144</sup> The new Act (assented on 1/09/2016) amends the prior act and prohibits employment of children in all occupations and processes to facilitate their enrolment in schools (in view of the Right of Children to Free and Compulsory Education Act, 2009) (RTE Act). There are a few exceptions, such as where a child helps his family in a non-hazardous occupation after school hours. A "child" is defined as a person who has not completed his fourteenth year of age or such age as may be specified in the RTE Act, whichever is greater. It also introduces the definition of an "adolescent" as a person between ages 14 to 18, prohibits employment of adolescents in hazardous occupations and processes, and regulates the conditions of their employment in line with the ILO Convention 138 and Convention 182.

The Act increases the punishment for employers violating the Act to imprisonment for a term not less than six months and up to two years, or a fine not less than twenty thousand rupees and up to fifty thousand rupees, or both. However, the parents or guardians of such children are not subject to such punishment unless they permit such children for commercial purposes. The Act further empowers the appropriate Government to confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of the proposed legislation are properly carried out.

<sup>144</sup> *M.C. Mehta v. State of Tamilnadu & Ors*, 1996 (6) SCC-756.

## JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. The new Act allows 16 to 18-year-olds to be tried for heinous crimes, after psychologists and sociologists assess whether they should be tried as adults. The Act deals with the care and protection of juveniles as well as with juveniles in conflict with the law. A juvenile is defined as any child below the age of 18 years. With regard to trafficking, the following portions of the Juvenile Justice Act are important:

**Section 2(14) defines a child in need of care and protection as a child:**

- ◇ who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- ◇ who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- ◇ who resides with a person (whether a guardian of the child or not) and such person: (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- ◇ who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- ◇ who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- ◇ who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- ◇ who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- ◇ who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
- ◇ who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or who is being or is likely to be abused for unconscionable gains; or who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage.

**Section 2(14)(viii)** specifically provides for protection of children who have been subjected to or are likely to be subject to drug abuse or trafficking. The Act also provides for the establishment of special homes by the State Government or by a voluntary or non-governmental organization. Section 48 of the Act provides information on the running of special homes.

**Section 75** criminalises anyone subjecting a child to cruelty.

**Section 76** criminalises employing a juvenile for begging.

**Section 77** criminalises giving intoxicating drugs or psychotropic substance to a child.

**Section 79** makes it an offence to engage a child and keep him/her in bondage.

**Section 27** provides for the State Government to establish Child Welfare Committees (CWC) to ensure the care and protection of children in need.

**As per Section 29**, the CWC shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

According to **Section 10**, as soon as a child alleged to be in conflict with law is apprehended by the Police, the child must be placed under the charge of the Special Juvenile Police Unit ("SJPU") or designated child

welfare police officer, who shall produce the child before the Juvenile Justice Board within twenty-four hours of apprehending the child.

**Section 2(21)** defines a child care institution as a Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under the Act for providing care and protection to children, who are in need of such services. The establishment and running of a children's home is provided in **Section 50** of the Act

**Section 39 and 40** provides for restoration of a child to parents, adopted parents and foster parents, fit institutions, shelter homes, etc.

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 made 29 amendments to the principal act, including (1) providing more stringent criteria for selecting members to the CWC (e.g., requiring specialized education and experience and prohibiting appointment of anyone with a past record of violating child rights or other misconduct), (2) terminating appointment to CWC for non-attendance at sessions, (3) enhancing the duties of CWC, (4) increasing the role of the child, (5) providing more stringent inspection of institutions, (6) protecting the identity of children even in pending cases, and (7) providing for all offenses under the act to be tried by the children's court.

### **THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

This Act criminalizes atrocities against members of Scheduled Castes and Scheduled Tribes (SC/ST) by non-SC/ST members. It calls upon all States to convert an existing Sessions Court in each district into a Special Court to try cases and creates provisions for States to declare areas with high levels of caste violence to be "atrocities-prone". In these areas States can appoint qualified officers to monitor and maintain law and order. Members of Scheduled Castes or Scheduled Tribes are more vulnerable to human trafficking. Thus the provisions of this Act can be used in addition to those under the BNS, ITPA and the Bonded Labour Act.

The table below provides relevant provisions of the Act:

- ♦ **Section 3** enumerates the acts that constitute "atrocities", which include forcing a person to work.
- ♦ **Section 3(1)(h)** states that forcing a member of SC/ST to undertake forced or bonded labour is an atrocity. Punishment is a minimum of six months and up to 5 years, along with a fine.
- ♦ **Section 3(w)(i) and (ii)** make it punishable to touch, make gestures to, or make sounds to a SC/ST woman when it is intentional and of a sexual nature. Punishment is a minimum of six months and up to 5 years, along with a fine.
- ♦ **Section 5** provides that a conviction for a second offence under the Act shall be punishable with imprisonment for a term of at least one year but which may extend to the punishment provided for that offence.
- ♦ **Section 14** allows the State Government to, by notification in the Official Gazette, specify for each district a Sessions Court to be a Special Court to try the offences under this Act.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 provides additional protection to members of SC/ST:

- ◇ Establishes special courts for the trial of offences against members of the Scheduled Castes and Scheduled Tribes and the rehabilitation of victims;
- ◇ An investigating officer does not require the approval of any authority for the arrest of an accused, and a preliminary inquiry will not be required for the registration of a First Information Report against a person accused under the Act; and
- ◇ Persons accused of committing an offence under the Act cannot apply for anticipatory bail. The Act seeks to clarify that this provision will apply despite any judgements or orders of a court that provide otherwise. Despite protests that a bar on the grant of anticipatory bail violates an accused's fundamental right to personal liberty under Article 21 of the Constitution, a three-judge bench of the Supreme Court upheld the 2018 Amendment in 2020.

## MINIMUM WAGES ACT

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The object of this Act is to provide for fixing minimum rates of wages in certain employments. The Minimum Rates of Wages are to be fixed by the appropriate government (Central or State). The employer must pay every employee engaged in scheduled employment, at a rate not less than the minimum rate of wages, as fixed by Government notification. The minimum wage is revised every six months and varies between the States.

It should be noted that the Minimum Wages Act was one of four laws that were consolidated into the Code on Wages, 2019, which regulates wage and bonus payments in all employment where any industry, trade, business, or manufacture is carried out. The provisions of the Code on Wages pertaining to minimum wages are substantially similar to the Minimum Wages Act, but there are some key differences, including the application of the wage laws to all employees regardless of wage ceiling and sector, the establishment of a "floor wage" below which the minimum wage cannot be fixed, an increase in the limitation period for filing claims, and greater penalties for violations. As of the date of publication, the entire Code on Wages is not yet being enforced, as only those provisions pertaining to the establishment of the Central Advisory Board have been put into effect.



| SECTION                                        | DESCRIPTION                                                                                                                                                                                                                                                                                   | COMPETENT AUTHORITY                                                         | CLAIMANT                                                                                                                                 | REMARK                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 20 (2)<br>- Claim                      | <b>Limitation</b> -<br>Within 6 months from the date on which the minimum wages became payable.                                                                                                                                                                                               | ALC/DLC                                                                     | Any employee, or his advocate, any inspector, or any person acting with the permission of the authority appointed under sub- section (1) | In a claim alleging payment of less than the minimum wage, the employee can be awarded the amount by which minimum wages payable exceeds the amount actually paid, with additional compensation as the Authority sees fit, <b>(not to exceed ten times the amount)</b> .                                                                      |
| Section 22<br>- Penalties for certain offences | <b>Punishment</b> -<br>Imprisonment which may extend to six (6) months or fine which may extend to Rupees five hundred.                                                                                                                                                                       | <b>ALC/DLC</b><br>or Judicial Magistrate Ist Class, Metropolitan Magistrate |                                                                                                                                          | Provides that in imposing any fine for an offence under this section, the Court shall take into consideration the amount of any compensation already awarded <b>against the accused in any proceedings taken under Section 20.</b>                                                                                                            |
| Section 22 - B<br>Cognizance of offence        | Section 22 B(a) unless an application in respect of the facts constituting such offence has been presented under Section 20 and has been granted wholly or in part, and the appropriate Government or any officer authorized by it in this behalf has sanctioned the making of the complaint. | <b>ALC/DLC</b><br>or Judicial Magistrate Ist Class, Metropolitan Magistrate |                                                                                                                                          | No Court shall take cognizance of any offence - (a) under clause (a) or clause (b) of section 22, unless complaint there is made within one month of the grant of sanction under this section; (b) under section 22-A, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed. |

Up to date information on minimum wage can be found online at:  
<http://www.paycheck.in/main/salary/minimumwages>.

## THE FACTORIES ACT, 1948<sup>145</sup>

The Factories Act is part of Indian labour law, which govern the employer- employee relationship. The basic philosophy behind labour laws is that of “protection”. Thus, opting out of labour legislation is not permitted.

### APPLICABILITY OF THE ACT

Any premises whereon 10 or more workers with the aid of power or 20 or more workers without aid of power are working on any day of the preceding 12 months, wherein manufacturing process is being carried on.

This Act forbids the employment of children below fourteen years of age in all factories. Children between the ages of 14 and 18, defined in this Act as “adolescents”, can be employed only if they have a certificate of fitness from an authorised doctor. Adolescents are prohibited from working night shifts and are only allowed to work 4.5 hours a day. The Act also lays down a number of safety and welfare measures to be taken.

## THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979<sup>146</sup>

This Act regulates the employment of inter-state migrant workers, including conditions of service and worker rights.

### INTER-STATE MIGRANT WORKERS:

*Definition: An “Inter-State migrant workman” means any person:*

- ◇ who is recruited by, or through a contractor in one State,
- ◇ under an agreement or arrangement for employment in an establishment in another State,
- ◇ whether with or without the knowledge of the employer in the new establishment.

*Applicability*

- ◇ To every establishment in which at least five inter-state migrant workmen are employed or were employed in the last year.
- ◇ To every contractor who employs at least five inter-state migrant workmen or employed them in the last year.

In relation to rights, migrant workers are entitled to:

- ◇ Equal or better wages than those paid to local workmen or the minimum wage as set out in the Minimum Wages Act, whichever is greater;
- ◇ An allowance for being displaced from their home state (Section 14);
- ◇ An allowance to travel to their home state including payment of wages during the period (Section 15);
- ◇ Regular payment of wages;
- ◇ Equal pay for equal work irrespective of the sex of the person; and
- ◇ Provide for economic and social rehabilitation.
- ◇ Satisfactory accommodation and medical facilities free of charge.

<sup>145</sup> The Factories Act is one of 13 labour laws that were consolidated into the Occupational Safety, Health and Working Conditions Code, 2020, assented by the President of India on 28.09.2020.

<sup>146</sup> The Inter-State Migrant Workmen Act is one of 13 labour laws that were consolidated into the Occupational Safety, Health and Working Conditions Code, 2020, assented by the President of India on 28.09.2020.

Complaints must be lodged with the authorities within three months of any incident. The Act also requires establishments to be registered and contractors to have licences. There should be registers detailing each migrant worker employed, the nature of the employment and the rate of wages.

*The use of the Inter-State Migrant Workers Act is a tactical way for community leaders to formalize the circumstances of workers, who could otherwise be vulnerable to bonded labour. Getting them registered is a feasible and recommended practice.*

## TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

The Transplantation of Human Organs Act 1994 was enacted to regulate the removal, storage and transplantation of human organs for therapeutic purposes and prevent commercial dealings in human organs, and other similar matters.

The Transplantation of Human Organs (Amendment) Act, 2011 allows swapping of organs. Additionally, the rules of the amended law have been notified to widen the donor pool by including grandparents and grandchildren in the list, while making stringent provisions against commercial dealings in the sector.

### SIGNIFICANT LEGAL PROVISIONS

**Section 2 (o)** defines “therapeutic purposes” as systematic treatment of any disease or measures to improve the health according to any particular method or modality.

**Section 2 (p)** defines “transplantation” as grafting of any human organ from any living or deceased person to some other living person for therapeutic purposes.

**Section 9** lists the restrictions on removal and transplantation of human organs and tissues or both.

**Section 11** prohibits the removal or transplantation of human organs for any purpose other than therapeutic purposes.

**Section 18 (1)** states that any person who at a hospital and who, for purposes of transplantation, conducts or helps in the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to ten years and with fine which may extend to twenty lakh rupees.

**Section 19** provides for punishment for commercial dealings in human organs, stating that “Whoever:

- ◇ makes or receives any payment for the supply of, or an offer to supply, any human organ;
- ◇ seeks to find a person willing to supply for payment any human organ;
- ◇ offers to supply any human organ for payment;
- ◇ initiates or negotiates any arrangement involving the making of any payment for the supply of, or an offer to supply, any human organ;
- ◇ takes part in the management or control of a body of persons, whose activities consist of [illegal transplantation of organs];
- ◇ publishes or distributes or causes to be published any advertisement [regarding transplantation of organs] shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall be liable to fine which shall not be less than twenty lakh rupees but may extend to one crore rupees. The court may, for any adequate and special reason to be mentioned in the judgement, impose a prison sentence for a term of less than two years and a fine less than ten thousand rupees.”

**Section 19A** provides for punishment for illegal dealings in human tissue.



**Trafficking in Persons Bill, 2018:** Introduced in Lok Sabha on July 18, 2018 and passed on July 26, 2018, the bill never got introduced in the Rajya Sabha due to opposition from various Parliamentary leaders and was criticized for being too criminal-centric and not victim-centric enough. Based on the criticism and feedback on this Bill, the Ministry of Women and Child Development released the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

**Highlights of the 2021 Bill:** The objective of the bill is “to prevent and counter-trafficking in persons, especially women and children, to provide for care, protection, and rehabilitation to the victims, while respecting their rights, and creating a supportive legal, economic and social environment for them.”

While the 2018 bill dealt with trafficking, rescue, protection and rehabilitation of victims, the 2021 bill expands the scope to include offences taking place outside India.<sup>147</sup> The draft bill expands the definition of “victim” to include transgenders in addition to women and children and makes the National Investigation Agency the central investigation authority looking into such offences. The bill proposes imprisonment up to 20 years and death penalty if the offenders are found guilty. Once the bill becomes an Act, the central government will notify and set up a National Anti-Trafficking Committee, while state governments will set up these committees at state and district levels to ensure effective implementation.

<sup>147</sup> The Inter-State Migrant Workmen Act is one of 13 labour laws that were consolidated into the Occupational Safety, Health and Working Conditions Code, 2020, assented by the President of India on 28.09.2020.

## D. SUMMARY OF OFFENCES

### SUMMARY OF OFFENCES AND PUNISHMENTS RELATING TO MODERN-DAY SLAVERY

| OFFENCE                                                                              | ACT & SECTION                           | PUNISHMENT                                                                              | COGNIZABLE/BAILABLE/COURT                                   |
|--------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Kidnapping or maiming a minor for begging                                            | Bharatiya Nyaya Sanhita, Section 139    | Life imprisonment and fine                                                              | Cognizable, non-bailable and triable by a Court of Sessions |
| Procuring a minor girl                                                               | Bharatiya Nyaya Sanhita, Section 96     | 10 years and a fine                                                                     | Cognizable, non-bailable and triable by a Court of Sessions |
| Importation of girl below the age of 21 from foreign country                         | Bharatiya Nyaya Sanhita, Section 144    | 10 years and a fine                                                                     | Cognizable, non-bailable and triable by a Court of Sessions |
| Trafficking in persons                                                               | Bharatiya Nyaya Sanhita, Section 143(2) | 7 years to 10 years and a fine                                                          | Cognizable, non-bailable and triable by a Court of Sessions |
| Trafficking of more than one person                                                  | Bharatiya Nyaya Sanhita, Section 143(3) | 10 years to life and a fine                                                             | Cognizable, non-bailable and triable by a Court of Sessions |
| Trafficking of a minor                                                               | Bharatiya Nyaya Sanhita, Section 143(4) | 10 years to life and a fine                                                             | Cognizable, non-bailable and triable by a Court of Sessions |
| Trafficking of more than one minor                                                   | Bharatiya Nyaya Sanhita, Section 143(5) | 14 years to life and a fine                                                             | Cognizable, non-bailable and triable by a Court of Sessions |
| If convicted more than once of trafficking a minor                                   | Bharatiya Nyaya Sanhita, Section 143(6) | Imprisonment for life, which shall mean the remainder of the person's life, and a fine. | Cognizable, non-bailable and triable by a Court of Sessions |
| When a public servant or police officer is involved in the trafficking of any person | Bharatiya Nyaya Sanhita, Section 143(7) | Imprisonment for life, which shall mean the remainder of the person's life, and a fine. | Cognizable, non-bailable and triable by a Court of Sessions |
| Sexual exploitation of a trafficked minor                                            | Bharatiya Nyaya Sanhita, Section 144(1) | 5 to 7 years and a fine                                                                 | Cognizable, non-bailable and triable by a Court of Sessions |

| OFFENCE                                                                  | ACT & SECTION                                                      | PUNISHMENT                                                                                          | COGNIZABLE/BAILABLE/COURT                                                                  |
|--------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Sexual exploitation of a trafficked person (non minor)                   | Bharatiya Nyaya Sanhita, Section 144(2)                            | 3 to 5 years and a fine                                                                             | Cognizable, non-bailable and triable by a Court of Sessions                                |
| Habitual dealing in Slaves                                               | Bharatiya Nyaya Sanhita, Section 145                               | Life or a term not exceeding 10 years and fine                                                      | Cognizable, non-bailable, non compoundable and triable by a Court of Sessions              |
| Selling a minor for the purpose of prostitution                          | Bharatiya Nyaya Sanhita, Section 98                                | Up to 10 years and a fine                                                                           | Cognizable, non-bailable, non compoundable and triable by a Court of Sessions              |
| Buying minor for the purpose of prostitution                             | Bharatiya Nyaya Sanhita, Section 99                                | Up to 10 years and a fine                                                                           | Cognizable, non-bailable, non compoundable and triable by a Court of Sessions              |
| Unlawful compulsory labour                                               | Bharatiya Nyaya Sanhita, Section 146                               | Up to 1 year and fine                                                                               | Cognizable, non-bailable, non compoundable and triable by a Court of Sessions              |
| Aggravated rape                                                          | Bharatiya Nyaya Sanhita, Section 63 and 64, 65, 66, 67, 68, 70, 71 | 7 years to life and fine                                                                            | Cognizable, non-bailable and triable by a Court of Sessions                                |
| Aggravated rape                                                          | Bharatiya Nyaya Sanhita, Section 146                               | At least 10 years and up to life, and a fine                                                        | Cognizable, non-bailable and triable by a Court of Sessions                                |
| For keeping a brothel/allowing a premises to be used as a brothel        | Immoral Traffic Prevention Act 1965, Section 3                     | 2 to 3 years and fine up to Rs. 10,000. Second conviction - 3 to 7 years and fine up to Rs. 2 lakhs | Cognizable, non-bailable (except 3(2)) and a triable by a Magistrate 1 <sup>st</sup> Class |
| Living on the earnings of prostitution                                   | ITPA, Section 4                                                    | Up to 2 years or with fine up to Rs. 1000                                                           | Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class                 |
| Living on the earnings of prostitution of a minor                        | ITPA, Section 4                                                    | 7 to 10 years                                                                                       | Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class                 |
| Procuring or inducing a person to undertake prostitution                 | ITPA, Section 5                                                    | 3 to 7 years and fine                                                                               | Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class                 |
| Taking or inducing a person to undertake prostitution against their will | ITPA, Section 5                                                    | Up to 14 years                                                                                      | Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class                 |
| Obtaining a minor for prostitution                                       | ITPA Section 5                                                     | 7 years to life                                                                                     | Cognizable, non-bailable and triable by a Magistrate 1 <sup>st</sup> Class                 |

| OFFENCE                                                                                                    | ACT & SECTION                                                              | PUNISHMENT                                                                                                                                          | COGNIZABLE/BAILABLE/COURT                                      |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| Trafficking of a person (recruits, transfers, harbours, or receives)                                       | ITPA Section 5B                                                            | At least 7 years, and second conviction with imprisonment for life.                                                                                 | Cognizable, non-bailable and triable by a Magistrate 1st Class |
| Person found in a brothel for the purpose of sexual exploitation of any victim of trafficking              | ITPA Section 5C                                                            | Imprisonment up to 3 months, or with fine up to Rs. 20,000, or both. Second conviction to be punishable up to six months and fine up to Rs. 50,000. | Cognizable, non-bailable and triable by a Magistrate 1st Class |
| Detaining a person in a place where prostitution is carried on, with or without their consent              | ITPA Section 6                                                             | 7 to 10 years                                                                                                                                       | Cognizable, non-bailable and triable by a Magistrate 1st Class |
| Prostitution in the vicinity of a public place                                                             | ITPA Section 7                                                             | Up to 3 months                                                                                                                                      | Cognizable, non-bailable and triable by a Magistrate 1st Class |
| Allowing a premises to be used as a brothel or for prostitution, by a landlord or keeper of a public place | ITPA Section 7(2)                                                          | Up to 3 months and fine, and second conviction up to 6 months. A hotel's licence can be suspended.                                                  | Cognizable, non-bailable and triable by a Magistrate 1st Class |
| Seduction of a person in custody                                                                           | ITPA Section 9                                                             | 7 years to life or 10 years and a fine                                                                                                              | Cognizable, non-bailable and triable by a Magistrate 1st Class |
| Penetrative sexual assault of a child                                                                      | Protection of Children from Sexual Offences Act, 2012 ("POCSO"), Section 4 | 7 years to life and a fine                                                                                                                          | Cognizable, non-bailable and triable by a Court of Sessions    |
| Aggravated penetrative sexual assault of a child                                                           | POCSO Section 6                                                            | 10 years to life and a fine                                                                                                                         | Cognizable, non-bailable and triable by a Court of Sessions    |
| Sexual assault of a child                                                                                  | POCSO Section 8                                                            | 3 years to 5 years and fine                                                                                                                         | Cognizable, non-bailable and triable by a Court of Sessions    |
| Aggravated sexual assault of a child                                                                       | POCSO Section 10                                                           | 5 years to 7 years and fine                                                                                                                         | Cognizable, non-bailable and triable by a Court of Sessions    |
| Sexual harassment of a child                                                                               | POCSO Section 12                                                           | Up to 3 years and fine                                                                                                                              | Cognizable, non-bailable and triable by a Court of Sessions    |

| OFFENCE                                                                                                                            | ACT & SECTION                                                      | PUNISHMENT                                                                                          | COGNIZABLE/BAILABLE/COURT                                   |
|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Using a child for pornography                                                                                                      | POCSO Section 14                                                   | Up to 5 years, and up to 7 years in case of a second conviction.                                    | Cognizable, non-bailable and triable by a Court of Sessions |
| Compelling a person to render bonded labour                                                                                        | Bonded Labour System (Abolition) Act, Section 16                   | Up to 3 years and fine                                                                              | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Advancing money in a bonded labour system                                                                                          | BLSA Act Section 17                                                | Up to 3 years and fine                                                                              | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Enforcing any custom, contract, tradition, etc by virtue of which any person is required to render bonded labour                   | BLSA Act Section 18                                                | Up to 3 years and fine.<br>Payment shall be made to the victim from the fine amount.                | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Failing to restore property to a released victim                                                                                   | BLSA Act, Section 19                                               | Up to 1 year and a fine                                                                             | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Employing a child under 14 in a prohibited occupation or process                                                                   | Child Labour (Prohibition and Regulation) Act, 1986, Section 14    | 3 months to one year and/or fine from Rs. 10,000 to 20,000. Second conviction - 6 months to 2 years | Non-cognizable, bailable, triable by a Magistrate 1st Class |
| Failing to give notice, maintain a register, or failing to comply with any other conditions under the Child Labour Prohibition Act | Child Labour (Prohibition and Regulation) Act, 1986, Section 14(3) | Imprisonment up to 1 month and/or fine up to Rs.10,000                                              | Non-cognizable, bailable, triable by a Magistrate 1st Class |
| Cruelty/ abandonment of a child                                                                                                    | Juvenile Justice Act, Section 75                                   | Up to 3 years or fine or both                                                                       | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Employing a child for begging                                                                                                      | JJ Act, Section 76                                                 | Up to 5 years and fine                                                                              | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Giving intoxicating liquor, narcotic drug or psychotropic substance to a child                                                     | JJ Act, Section 77                                                 | Up to 7 years and fine                                                                              | Cognizable, bailable, triable by a Magistrate 1st Class     |

| OFFENCE                                                                     | ACT & SECTION                                                                              | PUNISHMENT                                                                                                                                                                    | COGNIZABLE/BAILABLE/COURT                                   |
|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Exploitation of a juvenile or child employee                                | JJ Act Section 26                                                                          | Up to 3 years and fine                                                                                                                                                        | Cognizable, bailable, triable by a Magistrate 1st Class     |
| Removing a human organ without proper authority                             | Transplantation of Human Organs Act, 1994                                                  | Up to 5 years and a fine. A doctor will have their name removed from the State Medical Council Roll for 2 years for the first offence and permanently for the second offence. | Non-cognizable, bailable, triable by a Magistrate 1st Class |
| Commercial dealings in organs                                               | Transplantation of Human Organs Act, 1994                                                  | 2 years to 7 years, fine from Rs. 10,000 to Rs. 20,000                                                                                                                        | Non-cognizable, bailable, triable by a Magistrate 1st Class |
| Contravening any other provision of the Transplantation of Human Organs Act | Transplantation of Human Organs Act, 1994                                                  | Up to 3 years or with fine up to Rs. 5,000                                                                                                                                    | Non-cognizable, bailable, triable by a Magistrate 1st Class |
| Compelling an SC/ST person to do forced labour                              | Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Section 3(1)(h) | 6 months to 5 years and fine                                                                                                                                                  | Cognizable, non-bailable and triable by a Court of Sessions |
| Rape of a woman belonging to SC/ST                                          | SC/ST (Prevention of Atrocities) Act, Section 3(1)(xii)                                    | 6 months to 5 years and fine                                                                                                                                                  | Cognizable, non-bailable and triable by a Court of Sessions |
| Offence against SC/ST person under the SC/ST (Prevention of Atrocities) Act | SC/ST (Prevention of Atrocities) Act, Section 7                                            | Offender's property, both movable and immovable can be attached during the trial. Property used for the commission of the offence can be forfeited to the Government          | Cognizable, non-bailable and triable by a Court of Sessions |

**LANDMARK JUDGEMENTS**  
FROM THE SUPREME COURT OF  
**INDIA**  
AND OTHER HIGH COURTS  
**OF VARIOUS STATES**



In exercising their jurisdiction for enforcement of fundamental rights, the Supreme Court and various High Courts have issued numerous landmark judgments strengthening the government's power to combat trafficking. This section provides a summary of judgments relevant to human trafficking and forced labour in India for lawyers and social workers.

The compilation of judgments on all major issues relating to trafficking presented below has been taken from Putting Justice First: Legal Strategies to Combat Trafficking in India.<sup>148</sup> Both High and Supreme Court cases are referenced. High Court precedent only binds the relevant state, although it may be persuasive when a similar issue arises in another state. Supreme Court judgements are binding on all states in India.

## USE OF PUBLIC INTEREST LITIGATION – ARTICLE 32 CONSTITUTION OF INDIA

The Supreme Court is empowered under Article 32 of the Constitution to protect fundamental constitutional rights via directions, orders or writs. Under Article 142, the Court can adopt enforceable binding orders, which constitute binding precedent (*Gaurav Jain v. Union of India*, AIR 1997 SC 3021). There are no restrictions on who can apply for relief to the Supreme Court under Article 32. The victims of violation or any bona fide representative of a victim can move to the Court. The court can develop any method to deal with issues raised in petitions, including appointing Commissioners. (*Bandhua Mukti Morcha v. Union Of India (UOI) and Ors.*, AIR 1984 SC 802).

## SEX TRAFFICKING & GENERAL CRIMINAL JUSTICE PROVISIONS

**Duty to prosecute:** Law enforcement agencies have a duty to investigate and prosecute those responsible for violating the law and fundamental Constitutional rights (*PN Swamy v. Station House Officer*, 1998 (1) ALD 755). It is the duty of law officers of the state entrusted with handling criminal cases, including public prosecutors, to advise police officers regarding their lawful duties and responsibilities in the matter of investigation. (*Manoj Shaw Vs. The State of West Bengal* 2020 CriLJ 1292 (05.08.2019)).

**Special Police Officer must be at rescue:** A person must be rescued by someone that is a Special Police Officer or a police officer authorised by the Magistrate. (*Pushpa v. State of UP and Ors*, 2004 Cri LJ 4540, 2004).

**Guidelines for Investigating Authorities in ITPA cases:** Investigating officers involved in investigating offences under the ITPA, 1956 and/or other cognate offences under the Bharatiya Nyaya Sanhita shall not arrest any sex worker in the course of investigation and shall treat them as victims of crime and extend to them all remedial measures available under the law, including witness protection programmes, grant of interim compensation and/or other rehabilitative measures and protective custody. A minor victim should be forwarded to CWC for her care, protection and rehabilitation. (*Manoj Shaw Vs. The State of West Bengal* 2020 CriLJ 1292 (05.08.2019)). In *State of West Bengal Vs. Sangita Sahu @Shaw MANU/WB/0559/2018*, the court laid down procedures for ITPA cases, including the following: (1) FIRs should be investigated by a specialized agency such as AHTUs; (2) victim statements must be mandatorily recorded under Section 183 of the BNSS victims should receive medical and financial assistance and police protection; and (4) prosecution should be done promptly.

**First Information Report:** The FIR is a vital piece of evidence for the purpose of corroborating oral trial evidence. If the FIR is doubtful, the entire Public Prosecution case becomes doubtful. Any person who

<sup>148</sup> Appendix 1, *Putting Justice First: Legal Strategies to Combat Trafficking in India*, launched by Thomson Reuters Foundation in partnership with Freedom Fund. Luthra & Luthra Law Offices provided the compilation of the case law cited in this section, pro bono to Freedom Fund. Comprehensive tables of legislation and relevant case law compiled by Luthra & Luthra are available upon request from The Freedom Fund.

verifies it must know the contents. (Mohammad Ali Al Gitar v. State of UP 2014 (1) ACR 279). A small error, such as a wrong address in the FIR is not fatal to the Public Prosecution case, especially when later rectified (Asha Tamang v. State of West Bengal, 2012 (1) CHN 465). An FIR regarding offences under the Immoral Traffic (Prevention) Act can be lodged by any person (2011 (2) ACR 1435, 2011).

Police must register an FIR for the commission of a cognizable offence, as this is the first step of a victim's right to access justice. The police do not have the option or discretion to refuse to register an FIR, even if the information is not credible or reasonable. (Lalita Kumari Vs Govt of Uttar Pradesh and Ors, AIR 2014 SC 187 (A Judgment of the Constitution Bench of the Supreme Court of India)). The Supreme Court has held that the police have a duty to register an FIR in case of a cognizable offence even if the offence had been committed inside the territorial jurisdiction of a different police station; in such a situation, the FIR should be forwarded to the correct police station having jurisdiction to investigate that offence, commonly referred to as a 'zero FIR'. (Satvinder Kaur vs State (Govt of NCT of Delhi), AIR 1999 SC 3596). A Magistrate, in exercise of the power under Section 175(4) of the BNSS, can not only direct the police to register an FIR and investigate a case but can also monitor the investigation and ensure that it is being conducted in a fair and proper manner, particularly in cases where the investigation is not being conducted properly. (Sakiri Vasu Vs The State of UP and Ors, AIR 2008 SC 907).

**Presumption against Bail:** In the case of Guria, Swayam Sevi Sansthan v. State of UP Ors, (2009 (10) SCALE 516), the Supreme Court held that the High Court should not have granted bail to those accused of sex trafficking due to the gravity of the offence (sex trafficking of minor girls).

In the 2008 case of Shaikh Jaffar Shaikh Ahmed v. State of Maharashtra & Ors. (2008 Cr. L. J. 2413), the High Court of Maharashtra also held that cases under the ITPA are very serious in nature and, unless there are exceptional circumstances or facts, bail should be denied. In addition to the seriousness of the offence, the wealth and influence of the accused, and hence the ability to influence the investigation and intimidate witnesses, can be considered when determining the granting of bail (SoudaBeevi v. S.I. of Police, Pallickal Police Station and Another 2012 (1) Crimes 574).

In Freedom Firm Vs. Respondent: Commissioner of Police, Pune and Ors. MANU/MH/3295/2015, the court laid down extensive guidelines for considering bail applications under the ITPA, including: (1) bail should be denied to habitual offenders, where victim is a minor, and in violent offenses, absent compelling circumstances; (2) bail should be denied to brothel owner until brothel is closed and sealed; (3) weekly attendance of accused pending trial should be a bail condition; (4) accused should never be allowed to access victim; (5) victim has the right to legal representation during bail proceedings; and (6) Magistrates and Judges must use the provided bail checklist pro forma while deciding an application for bail, which includes a consideration of criminal history.

**The right to a speedy trial, especially if in pre-trial detention:** Especially when a person is held in custody before a trial, they have a right to a speedy trial. (Rajdev Kumar Mathura Yadav Pappu v. The State of Maharashtra Criminal Application No. 4943of2009).

**Video Conferencing:** If inconvenient for witnesses to travel interstate due to particular circumstances, statements can be recorded via video conferencing (Court on its own Motion v. State (Crl. M. 1467/04 in Crl. W. 532/1992; Order: 27.02.2004). When using video conferencing, judge must abide by safeguards set out by Supreme Court in State of Maharashtra v. Dr.Praful B. Desai, (2003) 4 SCC 601.

The Supreme Court ordered secure video conferencing facilities for human trafficking victims and virtual recording of testimonies of child victims/witnesses of human trafficking who are required to depose in courts, many of whom may be living in remote places in other States. In Re: Contagion of Covid 19 Virus in Children Protection vs. N. Raghupathy on 1 December, 2020 [SMW (C) No.4/2020]. The Apex Court stated that although the pandemic triggered the need to find an alternative way for children and other vulnerable victims to testify in court as witnesses, the practical suggestion of video conferencing could be made a

permanent norm for recording the testimonies of children/victims of human trafficking in cases which are of inter-State, inter-city or inter-district jurisdiction.

In a public interest litigation case filed by JVI relating to the recording of evidence of child victims and witnesses in human trafficking cases during the Covid-19 pandemic, the Supreme Court directed that the testimonies of child witnesses be recorded via video conferencing in two cases, thereby allowing the children to record their testimony from their place of residence. *Santosh Vishwanath Shinde & Anr. v. Union of India & Anr*, SMW(C) No. 4/2020 with W.P. (Crl). No. 274/2020 (sub-judice at the time of publication).

In *Re Children in Street Situation* the Supreme Court issued directions to ensure the testimony of children, who are victims of inter-state/inter-district child trafficking, is recorded through video conferencing either at the video conferencing room of the court complex in the district or vulnerable witness room in the court complex of the district or the office of DLSA in the district where the child is residing.

**Victim turning hostile – reliance on earlier statements:** Evidence of a hostile witness cannot be discarded in toto and the earlier testimony of such witness can be used to corroborate other reliable evidence. When no prejudice is caused to the accused due to non-examination of the witness or when there is other acceptable evidence available from the relevant documents or testimony, the Public Prosecution case will not be affected. (*Asha Tamang v. State of West Bengal* 2012 (1) CHN 465).

**Child prostitution and trafficking:** Establishment of Advisory Committees: All state and Union Territory governments should set up Advisory Committees to suggest measures to eradicate child prostitution and programmes to be implemented for care, treatment, development and rehabilitation. All government should take steps in providing rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors. (*Vishal Jeet v. Union of India and Others* AIR 1990 SC).

**Implementation of POCSO Act:** *Arjun Kishanrao Malge v. State of Maharashtra & Ors.* [Cr.PIL 5 of 2021)]. On 8th April 2021, the Bombay High Court issued clear directions to ensure strict implementation of the POCSO Act, 2012 and POCSO Rules 2020. The order placed certain duties on accused's counsel, the police officers and the court to enforce two vital rights of child sexual abuse victims, namely the right to be informed and the right to legal representation.

- ◊ Duty of the Counsel for the Accused: To inform the victim by serving a notice upon the victim (through the victim's parents, support person or lawyer) whenever the accused files any application in Court (e.g., bail application). This allows victims to participate in the legal proceedings and place their concerns before the Court. If any application is moved in a POCSO Court without informing the victim or providing the victim with a copy of such application, then the victim has a remedy in law to challenge the order passed on any such application.
- ◊ Duty of the police officers in charge of the case: (1) To inform the victim (through the victim's parents, support person or lawyer) about every step of the legal proceeding. (2) To inform the Court about whether or not the notice has been served upon the victim (through the victim's parents, support person or lawyer).
- ◊ Duty of the Court: To ascertain the status of service of notice before hearing the application.

The Bombay High Court also reconfirmed that the victims of child sexual abuse have a right to be legally represented, which means that a victim can appoint a lawyer to assist the Public Prosecutor in the legal proceedings. The minor victims can also avail of free legal aid services. The victim can place his/ her concerns before the Court through his/her lawyer.

**Sending women and girls to rehabilitation homes:** The provisions of ITPA that empower the Magistrates to order rescued women be kept in custody in rehabilitation homes are not unconstitutional. However, government welfare homes must be renovated and NGOs given licences to establish welfare homes. (*PN Swamy v. Station House Officer* 1998 (1) ALD 755). In the later 2011 case of *Budhadev Karmaskar v. State*

of West Bengal the Supreme Court observed that compelling sex workers to remain in these homes after rescue sometimes amounted to treating adult women as prisoners. Further, it observed that temporary or long-term custody homes are not a long-term solution, but rather up-skilling and empowerment needs to occur

The Court ordered:

- ◇ State and Union Territories (through specialist panels) to carry out surveys of sex workers and determine who is seeking assistance to move into a new area of employment.
- ◇ NGOs or authorities must report situations where a family is forcing a girl into sex work to the Executive Chairman/Secretary of the State Legal Services Authority.
- ◇ State Legal Services Authorities should provide a legal aid and general assistance helpline number for all actors to use: the NGOs, State officials, sex workers and trafficking victims.
- ◇ Alternative forms of employment and rehabilitation should be organised for sex workers.
- ◇ Sex trafficking victims should be returned to their home state for rehabilitation if possible (Savera, Smt. Tara Kerkar and Ors. v. State of Goa and Ors. Writ Petition No. 365 of 1997 with Civil Application No. 206/97).

Adult (major) victims cannot be subjected to unnecessary detention contrary to their wishes, and their fundamental right to move from one place to another or to reside at a place of their choice and select their vocation must be considered. (Kajal Mukesh Singh v. State of Maharashtra 2020(4)BomCR(Cri)172).

**Closure of, and eviction from, a brothel:** A place where sex work is being under-taken within 200m of a public space can be closed without requiring a criminal Public Prosecution. However, a conviction is required to evict the occupier (Chitan J. Vaswani and Anr. v. State of West Bengal and Anr (1975)). The occupier doesn't have to be the owner, and can be a lessee. If the Magistrate deems that the owner had no knowledge of the activities, the premises shall be restored to him/her (Dhansingh Gopal Chauhan v. State of Maharashtra 2005 (3) MhLJ 500); however, the Court can also order that the property be 'attached' so that, if the owner wants to lease the property again, he/she must get the approval of the court first. (The State v. Kalpana Ranganath Galphade ).

- ◇ **Participatory rights of victims:** A 'victim' within the meaning of the Bharatiya Nagarik Suraksha Sanhita cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision (Jagjeet Singh and Ors. vs. Ashish Mishra and Ors. AIR 2022 SC 1918)
- ◇ **Informing victims about bail applications:** Rule 4 of the POCSO is not restricted to informing the victims/complainants about the bail applications moved by the accused, but is also applicable to any/all the applications moved by the accused before the trial Court. (Arjun Kishanrao Malge vs. State of Maharashtra and Ors)
- ◇ **Interim Victim Compensation:** Upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child, whether the Accused is convicted or not, or in cases where the Accused has not been traced or had absconded. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule

7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. (Nipun Saxena and Ors. vs. Union of India (UOI) (2019) 2 SCC 703) (Bijoy @ Guddu Das v. State of West Bengal (2017)).

- ♦ **Right to Receive Compensation:** The Right to receive just compensation (Section 396 of the BNSS) as a victim of a crime, notwithstanding the result of the criminal proceedings emanating out of the incident of crime, can be read into Article 21 of the Constitution of India guaranteeing Right to life. Right to life, encompasses within its fold, the Right to live with dignity. (Piyali Dutta vs. The State of West Bengal and Ors )W.P. No. 26174 (W) of 2014))
- ♦ **Copies of Documents to the victim:** It is the duty of the Magistrate to ensure supply of copies of documents under Section 230 of the BNSS. AS per Section 25(2) POCSO Act, 2012. (Ms S. Representing her victim daughter vs State of West Bengal (CRR 2574 of 2022))
- ♦ **Non-Disclosure of Victim's Identity:** Not only publication of name of victim is prohibited but also disclosure of any other matter which may make known identity of such victim. It also means that identity of victim should not be discernible from any matter published in media, even if the accused is acquitted. The identity of the victim particularly his/her name, parentage, address or any other particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special Court unless such disclosure of identity is in the interest of the child. (Nipun Saxena and Ors. vs. Union of India (UOI) and Ors (2019)2 SCC 703))
- ♦ **Verification for Custody of Minor Victim:** Proper verification must be carried out over age verification, release and rehabilitation of the minor victims of sexual offences. (Hanif Ur Rehman vs. State of Bihar 2021 SCC PAT 2775)

## CHILD LABOUR AND CHILD TRAFFICKING

**M C Mehta v. State of Tamil Nadu 1996 6 (SCC) 756:** The Supreme Court directed all State governments and the Central government to conduct a survey to identify all children below 14 years of age working in hazardous industries. Governments were directed to remove the children identified from work and ensure they receive education. Additionally, the Court suggested that any employer in breach of the Child Labour Act pay a fine which is placed in a rehabilitation fund.

The Court also directed an Advocates Committee to prepare comprehensive report with recommendations to tackle child labour. The recommendations included (not exhaustive):

- ♦ Employers should not let children work for more than six hours a day.
- ♦ Piece-rate wages should be abolished, and payment should be made on a monthly basis. Wages should be commensurate to the work done by the children.
- ♦ Transport for children to and from work, a basic diet, facilities for recreation, socialization and education and all included in the insurance scheme.
- ♦ A welfare fund and committee should be created, answerable either to the Supreme Court or to the High Court. Employers and States should each deposit Rs. 2 per month per worker into the fund.
- ♦ A National Commission for children's welfare, answerable to the Supreme Court, should be set up to prepare a scheme for child labour abolition in a phased manner.

**Public at Large Vs State of Maharashtra and Ors, 1997 (4) BomCr 171:** The court issued various directions pertaining to child trafficking, including the following: (1) strict vigilance should be maintained in areas where

sex workers operate so that child sex workers are rescued and traffickers are punished; (2) State Government must take steps to prevent trafficking in women; (3) rehabilitation homes should be established for rescued sex workers, including children; and (4) State Government must submit periodic reports stating what steps have been taken pursuant to the court's directions.

**In re: Contagion of COVID-19 Virus in Children Protection Homes Re: The State of West Bengal (W.P. 5327 of 2020) (10.06.2020) (Court on its own motion):** The High Court of Calcutta directed the Secretary, Labour Department, to investigate findings that the lifting of the Covid-19 lockdown would result in a surge in child trafficking for labour and commercial sexual exploitation and file a report as to the steps taken by the Labour Department to prevent child labour and punish the perpetrators.

**Child labour and wages in Karnataka: A Srirama Babu v. Chief Secretary, Gov. of Karnataka, Bangalore and Others:** (Order, not a judgment) 1998 (1) KarLJ 191

- ◇ Equal wages for children and adults may be notified under the Minimum Wages Act.
- ◇ There should be a total ban on employing children below the age of 10.
- ◇ The State should create a separate independent department concerned with child welfare.
- ◇ The State should maintain a record of the birth and progress of children until the age of 14. The progress should monitor whether the child is in school or working and, if so, where.
- ◇ The State should establish as many after-care homes as feasible for street children.
- ◇ All labour legislation should also be enforced by the State strictly. There should be medical checks, and the factory or workplace must be made congenial and hygienic. In places where large numbers of children are employed, the State should endeavour to establish a school as indicated by the Supreme Court (MC Mehta case).
- ◇ The State should ensure children enjoy the same benefits as adults.
- ◇ The Government should create a fund to provide social security to the child labourers who are working in unorganized sectors.
- ◇ The Government should maintain a record of employers that breach the law and take this into consideration when granting licences and other benefits.

**Child labour in Uttar Pradesh:** The 2008 Uttar Pradesh case of Vishnu Dayal Sharma 2009 (64) ACC 52 held that:

- ◇ Public Prosecution cases should be decided expeditiously, within three months if possible.
- ◇ UNICEF and NGOs to conduct a survey of rescued children to determine the reasons for disappearance. All rescued children to be produced before CWC.

An update is to be provided by the next court date on:

- ◇ Constitution of Juvenile Justice Boards and Child Welfare Committees in each district.
- ◇ Efforts being made for enrolment of all the available remaining child labourers in government schemes and school. Consider providing credit to families of child labour, after they constitute self-help groups.
- ◇ Establishment of progress website on a pilot basis to identify and monitor out-of-school children and enrolment in school. Implementation of a 'data bank' scheme to monitor the progress of children of why they may drop out.
- ◇ Information regarding legal aid available for missing children and parents to be provided.

**Child Welfare Committee – Maharashtra case:** At the first possible instance, the Magistrate should have the age of the person determined, and if they are a juvenile send them to the Child Welfare Committee. The CWC has the final say in disposing of the cases regarding the care, protection and repatriation of children, including assessing whether the parent/ guardian is fit to take custody of the child. No advocate can appear

before CWC on behalf of a child, only parents and guardians can appear themselves or through an advocate (Prerana v.State of Maharashtra and Others, 2003).

**Importance of Child Welfare Committee:** *Munni vs State of Maharashtra- Criminal Writ Petition no. 227 of 2011 (Bombay High Court)*. In upholding a Magistrate's order to refrain from deciding an application for custody of a minor victim of trafficking and forwarding the same to the CWC for consideration, the Court held that the decision as to protective custody of a child in need of care and protection with a view to rehabilitate the rescued minor child should be considered by the competent quasi-judicial authority like Child Welfare Committee created under the JJ Act. *Sampurna Behrui v. Union of India*, (2018) 4 SCC 433 [09.02.2018]. In addressing the failure of State Governments to implement provisions of the JJ Act, Supreme Court gave directions that (1) the assistance of NGOs and civil society should be taken to implement JJ Act and maintain registered Child Care Institutions; (2) State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously, and they have regular sittings so that a minimal number of inquiries are pending at any given point of time; (3) the duties of Special Juvenile Police Units and Child Welfare Police Officers should be identified for the benefit of children; and (4) authorities such as JJBs and CWCs, Probation Officers, members of the Child Protection Societies and District Child Protection Units, Special Juvenile Police Units, Child Welfare Police Officers and managerial staff of Child Care Institutions must be sensitized and given adequate training relating to their positions.

**FIRs must be lodged in child labour cases, and businesses shut down until back wages are paid – Delhi case:** In *Save the Childhood Foundation v. Union of India and Others* the Delhi High Court ordered FIRs to be lodged in all cases of child labour, as well as the sealing of businesses (cancellation/suspension of licences) until back wages or court fines, as applicable, are paid. A conviction is not required.

**Placement agencies– Child trafficking and labour:** In the 2012 *Bachpan Bachao and Others v. Union of India and Others* case the Supreme Court made a number of directions regarding child trafficking and labour, particularly the regulation of placement agencies that place children and adults in workplaces:

- ◇ Labour Department must register all placement agencies that deploy people in Delhi for employment.
- ◇ CWCs must produce a report outlining action undertaken to address complaints of child domestic workers. Information on how to access CWC services must be put online.
- ◇ A single enforcement agency should be created to reduce confusion and improve accessibility.
- ◇ The adoption of guidelines for NGOs and Police set out in the report "Indian Child: India's Eternal Hope and Future" prepared by the Solicitor General.
- ◇ Gram Nyayalayas and Panchayats should be encouraged to identify children who need protection. A contact point in each Zila Parishad must be established.

The Integrated Child Protection Scheme should be implemented.

## MISSING CHILDREN

In the 2013 case of *Bachpan Bachao Andolan v. Union of India and Ors.* the Supreme Court ordered:

- ◇ In all missing children cases, there will be a presumption of the crime of kidnapping or trafficking unless proven otherwise from investigation. Therefore, all cases are to be registered as a cognizable offence and investigated. Where an FIR has not been lodged and the child is still missing, it must be lodged within a month.
- ◇ A missing child is "a person below eighteen years of age, whose whereabouts are not known to the parents, legal guardians and any other person who may be legally entrusted with the custody of the child, whatever may be the circumstances/ causes of disappearance. The child will be considered

missing and in need of care and protection within the meaning of the later part of the Juvenile Act, until located and/or his/her safety/well-being is established.”

- ◇ If a missing child is not recovered four months after the FIR is lodged, the matter is forwarded to the Anti-Human Trafficking Unit for intensive investigation. The AHTU shall file status reports every three months to keep the Legal Services Authorities updated on the investigation.
- ◇ All complaints regarding children (for non-cognizable offences) are to be investigated after referring them to a magistrate.
- ◇ Every recovered child should have his/her photograph taken by the police.
- ◇ A Standard Operating Procedure must be developed to handle the cases of missing children. As part of the Standard Operating Procedure, a protocol should be established by the local police with the High Courts and the State Legal Services Authorities for monitoring missing children cases.

The court also directed that:

- ◇ Each Police Station should have one Juvenile Welfare Officer as directed under the Juvenile Justice Act. Additionally, a Special Juvenile Officer should be on duty in shifts in Police Stations to ensure that directions in this order are duly implemented. A paralegal volunteer recruited by Legal Services Authority should also be stationed at police stations to monitor the management of missing children complaints.
- ◇ A computerized programme creating a network between child protection and child police units should be created to trace and repatriate missing children.

Guidelines for searching for missing children. In *Hori Lal vs Commissioner of Police, Delhi & Ors Respondents* (14.11.2002), the Supreme Court laid down guidelines for searching for missing children, including the following:

- ◇ Within one week of report, publish photographs of the missing persons in the newspaper and telecast them on television promptly;
- ◇ Make inquiries in the neighborhood and place of work/study and whether there have been past incidents or reports of violence in the family;
- ◇ Investigation officer should follow up to ensure records requested are received from parents
- ◇ The reward for furnishing clues about the missing person should be announced within a month of her disappearance.
- ◇ In metropolitan cities such as Delhi, Mumbai, Kolkata and Chennai the Investigating Officer should immediately check the red light areas for the minor girls. If any minor girl (who may or may not be recently brought there) is found she may be taken to the children's home, with her permission (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000), and the I.O. should take appropriate steps to provide medical/ other facilities to her.

Meaning of Forced Labour and who can apply for a remedy:

People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235:

- ◇ "Forced labour" under Article 23 includes getting paid less than the minimum wage. "Force" does not need to be physical force and can be compulsion due to poverty and financial conditions (also stated in 2002 Bihar case of Rajpati Devi v. State of Bihar, 2002 (2) PLJR 203).
- ◇ Bonded child labour can violate Article 24 (child labour), Article 14 (equal pay), Article 21 (life and liberty, due to the wide interpretation in Maneka Gandhi v. Union of India regarding loss of human dignity and liberty when being forced to work) and Article 23 (forced labour).
- ◇ Construction is a hazardous industry and therefore children below 14 cannot work in this sector under Article 24 of the Constitution.
- ◇ An NGO or member of the public can apply for a legal remedy on behalf of a victim.

**Presumption that there has been an agreement for an advance:** In the case of Bandhua Mukti Morcha v. Union of India (UOI) and Others. AIR 1984 SC 802, the Supreme Court held that whenever it is shown that a labourer has provided forced labour, the Court makes a presumption that the labourer was required to do so in consideration of an advance or other economic consideration received by him. He is therefore a bonded labourer entitled to the benefit of the provisions of the Act. This presumption may be rebutted if satisfactory evidence is produced.

In the Allahabad High Court case of Shiva Ent Udyog v. National Human Rights Commission and Ors, 2011 (3) ADJ 189, the Court held that even if there is no evidence of an advance or agreement, having no freedom to choose one's employment or livelihood results in bonded labour. Bonded labour is a violation of human rights as defined under Section 2(d) and (f) of the Protection of Human Rights Act, 1993 and the National Human Rights Commission has the authority to enquire, investigate and take action in accordance with that Act.

**NGOs should be included on rescues when they have identified bonded labourers:** Neeraja Chaudhary v. State of M.P., AIR 1984 SC 1099. Whenever any representative of an NGO identifies bonded labour, the state government should take immediate action to identify and release the labourers. The government officials should take the representative with them to the rescue and provide a copy of the report. Officers dealing with the problem of bonded labour rehabilitation should be specifically trained and sensitized. There should be constant checks on the activities of officers charged with the task of securing identification, release and rehabilitation of bonded labourers.

## DIRECTIONS FOR IMPROVED ACTION ON BONDED LABOUR & ROLE OF NHRC

Public Union for Civil Liberties (PUCL) v. State of Tamil Nadu and Or (2004) 12 SCC 381 and Public Union of Civil Liberties v. State of Tamil Nadu and Others, 115 (2013) CLT 535 (SC).

NHRC is ordered by the Supreme Court (1997 order) to monitor the implementation of the provisions of the BLA. 2013 Supreme Court Directions:

- ◇ All States and Union Territories shall constitute Vigilance Committees within 6 months.
- ◇ All States and UTs shall make proper arrangements for rehabilitation of released bonded labours or identify two NGOs to perform this role. Plans for rehabilitating released bonded labourers must be prepared within 6 months.
- ◇ Bonded labour surveys to be conducted every three years by District Level Vigilance Committees and Sub Divisional Vigilance Committees and submitted to the NHRC. Findings to be collated in a database available online.

- ◇ All Gram Panchayats and local bodies must be directed to report bonded labour to the District Magistrate, identify child domestic workers, and ensure that they get education.
- ◇ States that report no bonded labour may have had a faulty methodology in their surveys. NHRC Guidelines on the identification of bonded labourers are to be followed with suitable modifications for local conditions. Steps are to be taken to enhance the rehabilitation package from the present limit of Rs. 20,000.
- ◇ The District Magistrates are directed to effectively implement the Act as well as the Minimum Wages Act, the Workmen Compensation Act, the Inter-State Migrant Workmen Act, Child Labour (Prohibition and Regulation) Act.

**Supreme Court urges action on bonded labour rescues:** In *Zahid Hussain vs. State of UP & Ors.* Civil Writ Petition No.503/ 2020, a complaint was filed alleging inaction by the District Magistrates of Sambhal, UP and Rohtas, Bihar in rescuing bonded labour victims. The Supreme Court called upon the District Magistrates to submit a detailed report of the action taken by them in liberating 187 bonded labour victims working in brick kilns, in response to directions issued by the NHRC. Further, the Apex Court also requested the NHRC to consider issuing guidelines for protection, release and rehabilitation of the bonded laborers during the unprecedented Covid-19 pandemic.

**Using the Legal Services Authorities – Uttar Pradesh:** In *Sageer & Others v. State of UP and Others* 2012 (91) ALR 59 , the High Court noted:

- ◇ As the Vigilance Committees often fail, paralegals trained by Legal Service Authorities may be in a better position to tackle the bonded labour problem. The Court directed the Uttar Pradesh State Legal Services Authority to make sincere efforts to set up legal aid clinics and provide for paralegals and lawyers in order to address bonded labour.
- ◇ National and State Human Rights Commissions can issue directions on bonded labourers.
- ◇ Senior police and labour officials should direct subordinate officials to initiate immediate action in relation to bonded labour complaints and inform the District and Sub-divisional Legal Services Authorities (LSAs). LSAs shall examine the complaints and investigate into their credibility and give legal assistance to the bonded labour complainants.

**Guidelines for Rescue During Pandemic:** *Zahid Hussain vs State of Uttar Pradesh and others* [Writ Petition (civil) No. 503 of 2020]. A PIL was filed in the Supreme Court seeking directions to the District Administration of Sambhal U.P. and Rohtas, Bihar for taking immediate steps in doing a spot Inquiry and rescue of approximately 187 bonded labourers under the jurisdiction of the said districts and to repatriate them, following Covid protocols. All three intervention cases under this PIL were NHRC cases and despite orders from the NHRC, the District Administration had not taken steps for rescue. Upon the Court's intervention, all 187 bonded labourers were safely rescued and repatriated, and the Court directed the NHRC to frame guidelines for rescue, repatriation and rehabilitation during the Covid-19 pandemic vide their order dated 9/6/2020. The NHRC framed such guidelines, which were implemented to the benefit of many bonded labourers during the pandemic period.

**Minimum Wages:** Mohan Bind vs State of Bihar, CWJC- 16246 of 2019 at Patna High Court. JVI filed a writ to initiate minimum wage recovery proceedings on behalf of 12 bonded labour families rescued from a brick kiln in Gaya. The Hon'ble Court made a landmark observation, stating inter-alia: "It is a primary duty of the Labour Department to look into the interest of agriculture labourers and if it is found that they are being paid less than rate of wages, obligation lies upon them to take appropriate action in accordance with law even including filing a complaint before the competent authority under the Minimum Wages Act claiming the difference of wages which the labourers are entitled to, that too by giving a notice to the employers who are said to have employed them as agricultural labour". After this order, the Labour Department of Bihar issued a notification to all District Magistrates of Bihar to suo moto initiate minimum wages proceedings in cases of agricultural bonded labourers. In this case, the minimum wages claim hearing has been concluded and a final order for release of an amount of Rs. 34.28.736/- in favour of the 12 bonded labour families has been issued and is pending for execution.

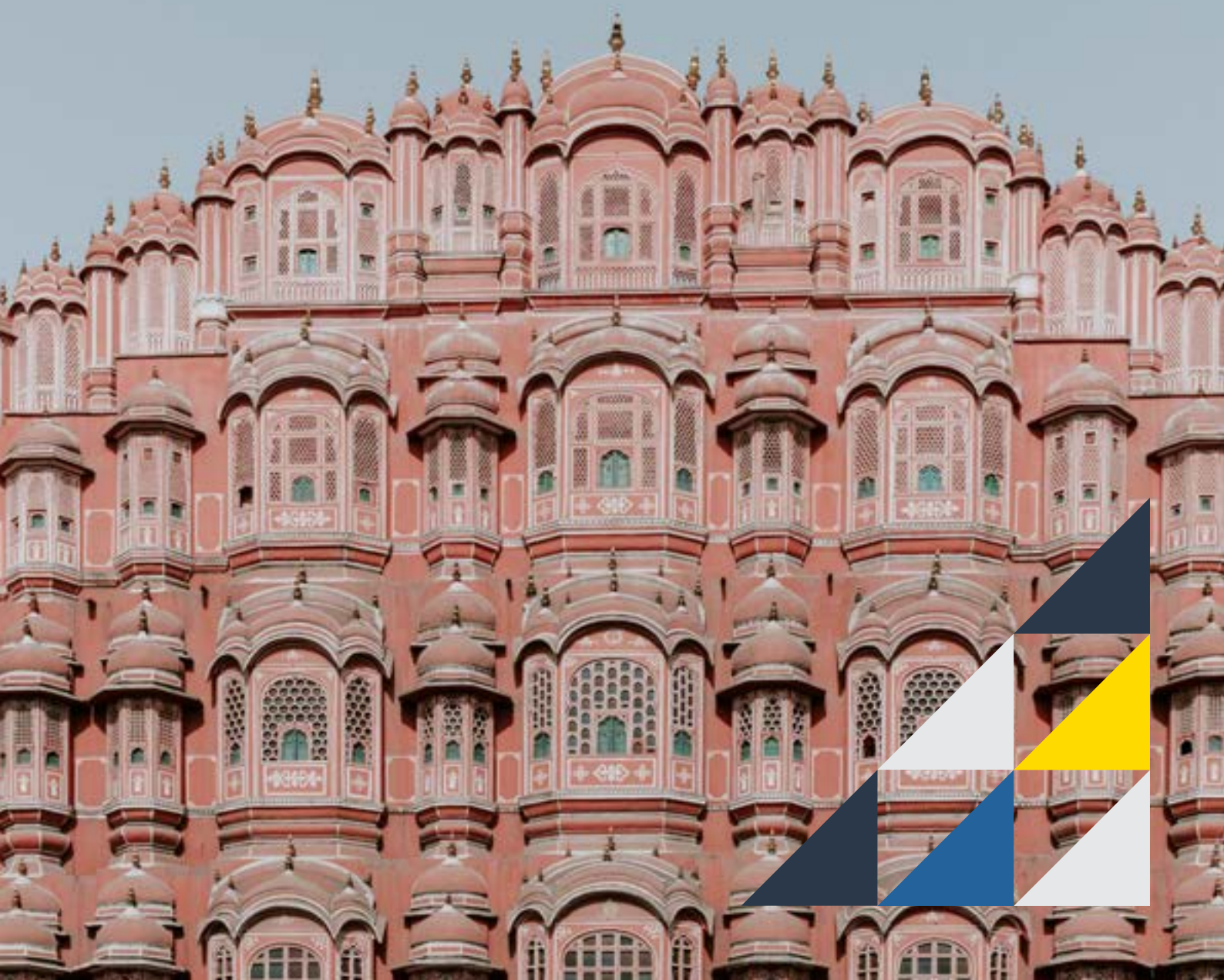
**Land rehabilitation:** Kari Sada & Others vs State of Bihar [Writ Petition (civil) No. 497 of 2018] (case sub-judice at time of publication). JVI filed a writ on behalf of 38 rescued bonded labour families of Madhubani seeking land rehabilitation, i.e. 3 decimal homestead land for all 38 families and for securing other non-cash components of the Central Sector Scheme for Bonded Labourer 2016 (CSS) issued by the Union Ministry of Labour. In a landmark move, the Supreme Court vide an order dated 25.02.2020 directed the learned District Judge of Madhubani to personally visit and supervise the demarcation and allotment of 3 decimals of land to each of the 38 families within a period of one day. In accordance with the terms of the order, the Madhubani District Administration demarcated and allotted 3 decimals of land to each of the 38 families, who have erected houses on their land provided and are living peacefully. The Supreme Court is also monitoring the efforts of the District Administration in providing non-cash components to the said survivors, which has resulted in water tap connections, electricity, pakka road, MNREGA job cards, ration cards and other benefits being delivered to survivors, making this a model case of successful bonded labour rehabilitation.

**Immediate Compensation Writ:** Zahid Hussain vs State of Bihar [CWJC No. 7980 of 2020 (PIL)] Patna High Court (Case Sub-judice at time of publication). JVI filed a case in 2020 to compel government authorities to urgently grant Rehabilitative Immediate Financial Assistance to 180 victims of bonded labourers, pursuant to the terms of the CSS-2016, and to formulate a state-specific SOP for identification, rescue and rehabilitation of bonded labourers. The Court applied such pressure on the government authorities that within a span of one week in July 2020, around 200 released bonded labourers received their immediate compensation of Rs. 20,000/- each, resulting in approximately Rs. 40,00,000/- being paid to the survivors. This case highlighted the poor coordination between state and union governments in the disbursement of funds under the CSS. The matter is pending for argument on the creation of a comprehensive SOP with a fund disbursement timeline and interest paid to survivors whose compensation is delayed.



# MODERN-DAY SLAVERY

## INTERVENTIONS





*Below is a compilation of stories about modern day slavery interventions carried out by various AHT organizations. Steps were taken to ensure that the photos and identities included in these stories would not put victims at risk and have been captured with the informed consent of the participants.*



## FROM REPRESSION TO RESTORATION: 76 BONDED

### LABOURERS FIND FREEDOM FROM A BRICK KILN IN BIHAR

On 19th June 2015, a total of 76 adult bonded labourers from the Mahadalit community (the most marginalized) were freed from deception and slavery when law enforcement officials surrounded the brick kiln. The victims shared how violence and coercion systematically robbed them of their basic humanity.

The rescued labourers' statements to the enquiry team revealed how the owner manipulated the debt of the illiterate labourers, charged excessive interest, and falsified wage records. Several weeks prior, the brick kiln owner had forcefully evicted the labourers from their hutments without settling the advance and clearing their dues. Mr. Dhirendra Jha, Senior Deputy Collector, Nawada District, Labour Enforcement Officer, Circle Officer and other officials led the rescue operation with support from JVI.

“They had continued to believe that nobody would care to approach them. It seems these labourers waited in hope and despair. Today, they are happy and their faith in Bihar government and all humanity, is restored.”—Prem Kumar, State Manager  
— JVI Project, Bihar.

<sup>147</sup> All references herein to "JVI" refer collectively to Justice Ventures International and its partner organizations.

The labourers worked under especially difficult conditions for over 12 hours making 1500 bricks a day for less than the minimum wage of Rs 500 (US\$7.87). The thekedar (contractor/agent) employed by the brick kiln owner, disregarded all previous assurances and disbursed only khuraki (food allowance) of Rs 100 (US\$1.57) per day. This financial compensation was meant to support the entire family, including minor children.

“The open grounds of the brick kiln with scorching heat, coupled with back-breaking labour by the entire family, little children included, depicted how slavery and oppression still exists. Their hands get coarser with brick-making, day after day and their souls become charred for life.” – Social Worker.

The labourers shared with the team how they were often forced to work for more than 12 hours and pressured to make more bricks. However, in case of sudden rain, the number of raw bricks destroyed was considered loss on the part of the labourer. They were required to make a fresh set of bricks all over again.

“After we spoke with the rescued labourers we understand that they seem to have no authority over their own lives. Bondage and deception, in the hands of the brick kiln owner rules them. I just met a labourer outside his hutment, which is open from two sides, where he lived with his family. The extent of vulnerability in which the labourers were held captive is inexorable.” – Rajan Shah, JVI Project, Bihar.

The rescued labourers were grateful to share their stories of suffering and freedom with the rescue team. As dusk slowly settled over the brick kiln, the team delivered the "Freedom Speech" to the labourers who were listening attentively with tears of gratitude for their new found freedom.



# NHRC BEGINS FIGHT AGAINST KAMIYA SYSTEM: 160 BONDED LABOURERS RESCUED IN BIHAR

"We have completed 67 years of independence. However, for many generations, these labourers were deceived into believing this was the only way of life. The present generation disapproves of this form of bondage. They have been waiting to be freed from bonded labour, and this is their fight." – Mr. A.K. Parashar, Joint Registrar (Law), National Human Rights Commission (NHRC).

"My family has served for the past three generations. But I want freedom. We want a better life for our children and for future generations."

Earlier this year, senior NHRC officials walked with a rescue team down a slippery path in Gaya District, Bihar. The NHRC-led team included representatives of the Gaya Administration, Police, Labour Department, and Justice Ventures International (JVI) Project. The destination was a small village some distance from the nearest road, in which 160 labourers and dependents were reported to be trapped in the Kamiya system, a generational form of customary bondage in agriculture. The labourers and their ancestors had been working in the

fields for the same group of families for between three and five generations.

The NHRC and District Administration issued 68 Release Certificates on the same day, freeing the labourers of all bondage through customary obligation. An FIR was filed against the accused for violations of the Bonded Labour Act, SC/ST Act, Child Labour Act, Juveniles Justice Act, and Minimum Wages Act, in addition to multiple sections of the Bharatiya Nyaya Sanhita.

In the observation of Hem Raj, Director – North India, JVI Project, who was present during the operation, "The rescued labourers were receiving only rice as compensation for their physical work in the fields. In addition, they experienced continuous psychological, verbal, and physical abuse, with no exception made even for their children. Their cry for freedom had to be heard. Their courage has made this rescue operation a success."

The Sub-Divisional Magistrate, Circle Inspector, Block Development Officer, Labour Officers, Station House Officer, Police Officers from concerned stations, and other government officials participated in the joint operation. This historic intervention signals an opening in the fight against the Kamiya system in Bihar.

# BIHAR GOVERNMENT EXTENDS COMPENSATION, BENEFITS AND DIGNITY TO BONDED LABOUR SURVIVORS

“We quickly realised that to speak with the authorities as one voice would benefit us more. Today, we have job cards, voter ID cards, bank accounts and compensation from the state government and also under the SC/ST welfare scheme. We continue to live in the same village and now watch our children going to school every day. Ours is now a life of dignity and freedom from bondage.” – Bonded labour survivor.

The restoration journey continues for the 38 families freed from multi-generational bonded labour on 22nd January 2015. Thereafter, the Madhubani District Administration issued release certificates to 101 survivors on 7th February 2015, with active support of the National Human Rights Commission (NHRC) and Justice Ventures International (JVI) Project. Within a week, on 14th February 2014, sixty-four labourers received state compensation amounts of Rs. 10,000/- each via cheques from the District Administration, while the cheques for the remaining thirty-seven were under process. A senior government official gave a ‘Freedom Speech’, declaring the survivors bonded labour.

“Since the day of distribution of release certificates, the authorities have tried to hand over the cheques to us. But, we were unable to accept them, as we did not even have bank accounts. Now, we have bank passbooks, which the officials produced overnight with all our details, and so finally we were able to accept the cheques. We are so happy to receive the compensation.” – Bonded labour survivor.

JVI played an important role in this entire rehabilitation process by maintaining contact every day with the survivors, the administration and NHRC. By 16th February 2015, job cards under Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) were issued, and sixty-two survivors were also registered to receive Voter ID cards. Two self-help groups for female survivors were formed by the Bihar Rural Livelihood Promotional Society (BRLPS).

“My child pleaded to go to school; however, I had no option but to take him to work. Our walk every day to the fields with my child broke my heart. However, when a few days ago the government officials came and announced that our children have been admitted in the village school, I cried tears of joy. Now I watch my son run to school.” – Bonded labour survivor.

“This has been a great learning for us at JVI. The government of Bihar and its various departments came forward and covered the crucial gaps in the aftercare programme. We also acknowledge the dynamic role of NHRC with deepest



gratitude. On 27th February 2015, on the orders of the District Magistrate, the entire District Administration was at the village asking the survivors to share their requirements and pressing needs. This is encouraging, and we are honoured to be a part of the freedom process.” – Hem Raj, Director-North India, JVI Project.

This historic restoration story continues. On 16th March 2015, compensation of Rs. 22,500/- each under the SC/ST welfare scheme was distributed to ninety-nine survivors. This will help the survivors rebuild their lives and prevent them from falling back into bondage. JVI continues to engage with the Bihar government departments, in an effort to connect the survivors with other schemes and benefits such as housing, land and livelihood opportunities.

## **BONDED LABOURERS EXIT BRICK KILN DUE TO EFFECTIVE LEGAL INTERVENTION BY GURIA**

Ram was promised a decent wage, along with fair living and working conditions to work at Payal Marka brick kiln in Jamalpur. She belongs to a scheduled caste community and has a large family in poor financial condition. Ram decided to work at the brick kiln so that she might earn enough money to provide food for her family. Shortly after beginning her employment at the brick kiln, Ram found the living and working conditions to be deplorable and her experience very different than what was promised.

One day, she

requested her outstanding wages to cover expenses for her son’s marriage. The brick kiln denied this request telling Ram that her account would be settled at the end of the season. After this conversation with the brick kiln owner, on April 1, 2015 Ram submitted an application to Guria requesting assistance to withdraw 62 bonded labourers from the Payal Marka brick kiln. Another bonded labourer in the brick kiln named Puneet validated Ram’s description of the circumstances in the brick kiln.

After verifying the facts, Guria submitted the information to the District Magistrate, Mirzapur and the National Human Rights Counsel chairperson, New Delhi. Neither the District Magistrate nor the Labour Department took any action. On April 20, 2015, Guria tried again, providing the District Magistrate the same information and application in person, but these individuals took no further action. Guria approached the Honorable High Court and filed a Habeas Corpus Writ Petition for the rescue of the bonded labourers, providing full details about the place of rescue. The Honorable High Court ordered the District Magistrate, Mirzapur to comply within a period of four weeks from receipt of the order.

After receiving the order, a rescue team comprised of individuals from the Labour Department, the police and the organization went to the Payal Marka brick kiln. The brick kiln owner and his peers strongly opposed the rescue of the workers, using threatening and abusive language and even threatening to kill Guria. Despite the confrontation with the brick kiln owner, the police and Labour Department officials rescued 62 bonded labourers on June 11, 2015. The bonded labourers who had exited the brick kiln were taken to a safe place and provided with food and psychosocial support.

An application, detailing the inappropriate behaviour of the brick kiln owners and their peers towards the Guria staff members, was submitted to the District Magistrate, Mirzapur by Ram on June 13, 2015. Unfortunately, no further action has been taken to penalize the brick kiln owner. Guria once again

approached the Honorable High Court, Allahabad for contempt of the Honorable High Courts' order by the District Magistrate Mirzapur for not properly facilitating the rescue operation, and not issuing release certificates and rehabilitation packages to the bonded labourers.

## COLLECTIVE ACTION EFFECTIVE TO PROTECT COMMUNITY MEMBERS' LAND

For decades, rich, high-class contractors in Shankergarh relied on poor and marginalized individuals to work their land. The contractors were known for the mistreatment of their workers. If any of the labourers pursued higher wage jobs, their families were told by the contractors that they would be thrown out of the village. Many a time, if the labourers refused to work, or were found not working, they were badly abused. Through the formation of a self-help group (SHG), the group of labourers was able to gain collective influence to pressure the contractor to stop mistreating them. Unfortunately, those who were not a part of the group continued to suffer the same trauma and abuse. The contractors were also known to forcefully take over the land of families residing next to them. In response to this, the SHG members collaborated and fought to stop the contractors from continuing to take land that was not rightfully theirs.

For the last three decades, Ganesh and his family have resided in the Kutcha house of the village. They had open land near their house of two Biswas which was surrounded by a wall of mud. This land was predominantly used for productive activities. The contractor, Kamta, who owned a large house across from this property, wanted to take the open land and use it to his own benefit. He was willing to acquire the land at any cost, so he offered Ganesh some money if he agreed to vacate the land. When Ganesh refused to give up his land, the contractor wrongfully and forcefully took the land. Because of Kamta, he filed a case with the Civil Judge Court. This case continued for four years, until the court finalized the case in favor of the marginalized community.

In 2014, Kamta's son began hauling sand, bricks and cement onto Ganesh's land. When Ganesh confronted him, 20-25 contractors approached him with guns and rifles. They began threatening Ganesh, claiming they would take his land and shoot or kill whomever came in their way. Ganesh's family was frightened by these severe threats. They did not dare to stand up to them. Ganesh gathered with others in the community to discuss the situation. They decided it was not worth confronting the contractors, for fear that they would be killed.

As she became aware of the issue, Ganesh's wife began speaking to other women in the village including Sita, one of the SHG group members. Sita spoke to other members of the group with members of another SHG. Both of these groups met to discuss the issue, and decided they would not let the contractors take Ganesh's land. The women then went to Ganesh's house where they decided they would stand strongly together and confront the contractors. On the same night, they contacted the police station and the District Magistrate and described the situation to them. By ten o'clock that night, many policemen from Shankergarh came, standing up against Kamta and his son. After seeing the unity of the women, and the police response, Kamta backed down immediately. He understood their strength and did not threaten them again.



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## DISCLAIMER

Efforts have been made to ensure that the formats and sample documents provided here are up to date and accurate. However, the law changes frequently, along with the formats, forms and procedures, which also vary based on local jurisdiction. Thus, please take care to verify the accuracy of all information used in this manual according to your needs. JVI takes no responsibility for any errors contained herein or other inconvenience caused by any reliance on these appendices.

## NEW CRIMINAL CODE IN INDIA

The Parliament of India has enacted three new criminal laws, the “Bharatiya Nyaya Sanhita,” the “Bharatiya Nagarik Suraksha Sanhita,” and the “Bharatiya Sakshya Adhiniyam,” which have replaced the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act respectively, effective from 1 July 2024. The new codes have brought about many changes to the existing law and also introduced newer laws which are relevant in deterring the offence of human trafficking and assisting victims.

JVI has created charts that can be helpful in identifying the old provisions and their current equivalent

### Provision under the Bharatiya Nyaya Sanhita, 2023 [BNS]

#### Offences Against Women

| Old Section (IPC) | New Section (BNS) | Offence                                                                             | Changes                                                                                                                                                                                                    |
|-------------------|-------------------|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 375               | 63                | Rape                                                                                | Age of Consent: 15 years is replaced by 18 years in BNS. Exception 2 of Section 63 states that “sexual intercourse or acts by a man with his wife, the wife not being under 18 years of age, is not rape”. |
| 376(1) & 376(2)   | 64                | Punishment for rape.                                                                | Word “military” is replaced with “army”.                                                                                                                                                                   |
| 376(3)            | 65(1)             | Punishment for rape in certain cases- rape on a woman under sixteen years.          | No Change.                                                                                                                                                                                                 |
| 376AB             | 65(2)             | Punishment for rape in certain cases- rape on a woman under twelve years.           | Section is included as sub-section in BNS sans heading.                                                                                                                                                    |
| 376A              | 66                | Punishment for causing death or resulting in persistent vegetative state of victim. | No Change.                                                                                                                                                                                                 |
| 376B              | 67                | Sexual intercourse by husband upon his wife during separation.                      | No Change.                                                                                                                                                                                                 |
| 376C              | 68                | Sexual intercourse by a person in authority.                                        | No Change.                                                                                                                                                                                                 |
| 376(D)            | 70(1)             | Gang rape.                                                                          | No Change except IPC section is included as subsection in BNS.                                                                                                                                             |

|              |       |                                                                                     |                                                                                                                                                                                                                                              |
|--------------|-------|-------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 376DB        | 70(2) | Gang rape on women under the age of eighteen.                                       | In 376DB IPC, the age of the victim is 12 years, and punishment is the death penalty. In 70(2) BNS, the age of the victim is under 18 years, and punishment is the death penalty. Section is included as a sub-section in BNS, sans heading. |
| 376E         | 71    | Punishment for repeat offenders.                                                    | No Change.                                                                                                                                                                                                                                   |
| 228A (1)/(2) | 72    | Disclosure of identity of victim of certain offences etc.                           | Word “minor” is replaced by ‘child’.                                                                                                                                                                                                         |
| 228A(3)      | 73    | Printing or publishing any matter relating to court proceedings without permission. | Sub-section of IPC is treated as individual section in BNS with heading.                                                                                                                                                                     |
| 354          | 74    | Assault or use of criminal force to woman with intent to outrage her modesty.       | No Change.                                                                                                                                                                                                                                   |
| 354A         | 75    | Sexual harassment.                                                                  | No Change.                                                                                                                                                                                                                                   |
| 354B         | 76    | Assault or use of criminal force to woman with intent disrobe.                      | Words “Any man who” is replaced by “Whoever”.                                                                                                                                                                                                |
| 354C         | 77    | Voyeurism                                                                           | Words “Any man who” is replaced by “Whoever”.                                                                                                                                                                                                |

## Offences Against Children

| Old Section (IPC) | New Section (BNS) | Offence                                                                                             | Changes                                                                                                                                                                    |
|-------------------|-------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 317               | 93                | Exposure and abandonment of child under twelve years of age, by parent or person having care of it. | No Change.                                                                                                                                                                 |
| 366(A)            | 96                | Procuration of Child                                                                                | The term ‘child’ has replaced ‘minor’ and ‘young person’ in many sections in as Section of 2 (3) of the BNS defines ‘Child’ as any person below the age of eighteen years. |
| 372               | 98                | Selling child for purpose of prostitution, etc.                                                     | No Change.                                                                                                                                                                 |
| 373               | 99                | Buying child for purposes of prostitution, etc                                                      | The term ‘child’ has replaced ‘minor’. Increased punishment which may extend to fourteen years.                                                                            |
| 361               | 137               | Kidnapping                                                                                          | Removed distinction between minor girl and boy. Kidnapping of boys and girls below 18 constitutes an offence.                                                              |
| 366(B)            | 141               | Importation of girl or boy from foreign country                                                     | Included boy in definition making the victim gender neutral                                                                                                                |
| 293               | 295               | Sale, etc., of obscene objects to child                                                             | Replaced young person with child                                                                                                                                           |
| 367               | 140 (4)           | Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.                  | No Change except IPC section is included as subsection in BNS.                                                                                                             |

## Offence of Human Trafficking

| Old Section (IPC) | New Section (BNS) | Offence                              | Changes                                                        |
|-------------------|-------------------|--------------------------------------|----------------------------------------------------------------|
| 370               | 143               | Trafficking of person                | Recognizes 'begging' as a form of exploitation for trafficking |
| 370(A)            | 144               | Exploitation of a trafficked person. | No Change.                                                     |
| 371               | 145               | Habitual dealing in slaves           | No Change.                                                     |
| 374               | 146               | Unlawful compulsory labour           | No Change.                                                     |

## New Provisions under BNS

|                |                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 48     | Abetment outside India for offence in India                | Whoever <b>hires, employs or engages any child to commit an offence</b> shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided                                                                                                                                                                                                                                                                                                                                                                        |
| Section 69     | Sexual intercourse by employing deceitful means etc.       | Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.<br><br>Explanation. – "deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.                                                                                                                                                                          |
| Section 95     | Hiring, employing or engaging a child to commit an offence | Whoever <b>hires, employs or engages any child to commit an offence</b> shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.                                                                                                                                                                                                                                                                                          |
| Section 111    | Organized Crime                                            | Any continuing unlawful activity <b>including</b> kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, <b>trafficking of persons</b> , drugs, weapons or illicit goods or services, <b>human trafficking for prostitution or ransom</b> , by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means <b>to obtain direct or indirect material benefit including a financial benefit</b> , shall constitute organised crime. |
| Section 111(2) | Punishment of Organized Crime                              | Whoever commits organised crime shall,— (a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees; (b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.                                                                                                                                                                                                             |

## Provisions under Bharatiya Nagarik Suraksha Sanhita, 2023

### Comparative Chart of relevant provisions

| Old Section (CrPC) | New Section (BNSS) | Provison                                                       | Changes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------|--------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2(1)(wa)           | 2(1)(y)            | Definition of Victim                                           | Definition of victim broadened to eliminate the requirement of the accused person being formally charged. This modification expedites the process of victims receiving compensation entitled to them in certain cases.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 154                | 173                | Information in cognizable cases                                | # Zero FIR incorporated into law.<br># information of cognizable offence may be given orally or by electronic communication. In case of information given by electronic communication, it shall be taken on record by officer-in-charge on being signed within three days by the person giving it.<br># The right of the victim to get a free of cost copy of FIR forthwith introduced.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 161                | 180                | Examination of witnesses by police                             | No change                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 164                | 183                | Recording of confessions and statements                        | # The word 'Metropolitan Magistrate or Judicial Magistrate' is replaced by 'Magistrate'.<br># Section 164 (5A) is replaced by Section 193 (6A) i.e. In cases punishable under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023, the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:<br><br><b>*New Inclusion-</b><br>Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman:<br><br>Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer: |
| 173                | 193                | Report of police officer on completion of investigation        | The investigation of sexual offences under BNS and POS-CO shall be completed within two months from the date on which the information was recorded.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 207                | 230                | Supply to accused of copy of police report and other documents |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 231                | 254                | Evidence for prosecution                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

|     |     |                                      |                                                                                                                                                                                                                                                                                                                                        |
|-----|-----|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 172 | 192 | Diary of proceeding in investigation | <p># Section 172(2) has been replaced by Section 192(4).</p> <p><b>*New Inclusion-</b></p> <p>192 (2) The statements of witnesses recorded during the course of investigation under section 180 shall be inserted in the case diary.</p> <p>192 (3) The diary referred to in sub-section (1) shall be a volume and duly paginated.</p> |
|-----|-----|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## New Provisions of the BNSS

| Section              |                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Notes                                                                                                                                                                       |
|----------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 107          | Attachment, forfeiture or restoration of property              | <p>Where a <a href="#">police officer making an investigation</a> has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.</p> <p>(2) If the Court or the Magistrate has reasons to believe, <a href="#">whether before or after taking evidence</a>, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.</p> | <p>Even at the stage of investigation, the application can be made for attachment of property</p> <p>Attachment can be done at any stage of the trial or investigation.</p> |
| Section 193 (3) (ii) | Report of police officer on completion of investigation        | The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including electronic communication to the informant or the victim.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Requirement to inform the progress of investigation to the informant or victim within 90 days of the investigation.                                                         |
| Section 356          | Inquiry, trial or judgment in absentia of proclaimed offender. | Notwithstanding anything contained in this Sanhita or in any other law for the time being in force, when a person declared as a <a href="#">proclaimed offender</a> , <a href="#">whether or not charged jointly</a> , has absconded to evade trial and there is no immediate prospect of arresting him, <a href="#">it shall be deemed to operate as a waiver of the right of such person to be present and tried in person</a> , and the Court shall, after recording reasons in writing, in the interest of justice, <a href="#">proceed with the trial in the like manner and with like effect as if he was present</a> , under this Sanhita and pronounce the judgment:                                                                                                                                                                                                                 |                                                                                                                                                                             |

## Provisions under Bharatiya Sakshya Adhiniyam, 2023

### Comparative Chart of relevant provisions

| Old Section (IEA) | New Section (BNS) | Offence                             | Changes                                                                                |
|-------------------|-------------------|-------------------------------------|----------------------------------------------------------------------------------------|
| 65B               | 63                | Admissibility of electronic records | The new additions are highlighted in the complete text of Section 63 reproduced below. |

#### Section 63 of BSA-

- Notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer **or any communication device or otherwise stored, recorded or copied in any electronic form** (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- The conditions referred to in sub-section (1) in respect of a **computer output** shall be the following, namely:—
  - the computer output containing the information was produced by the computer or communication device during the period over which the computer or communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer **or communication device**;
  - during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or communication device in the ordinary course of the said activities;
  - throughout the material part of the said period, the computer **or communication device** was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
  - the information contained in the electronic record reproduces or is derived from such information fed into the computer **or communication device** in the ordinary course of the said activities.
- Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by means of one or more computers or communication device, whether—
  - in standalone mode; or**
  - on a computer system; or**
  - on a computer network; or**
  - on a computer resource enabling information creation or providing information processing and storage; or**
  - through an intermediary,**  
all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.
- In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the
  - identifying the electronic record containing the statement and describing the manner in which it was produced;
  - giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);
  - dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be **signed by a person in charge** of the computer **or communication device** or the management of the relevant activities (whichever is appropriate) **and an expert** shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

**PRE RESCUE DOCUMENTATION FORM**

| Case Logistics                        |  |
|---------------------------------------|--|
| PI (Preliminary Investigation) Number |  |
| Case Number                           |  |
| Caseworker                            |  |
| Date PI Opened                        |  |
| Date Updated                          |  |

| Facility            |  |
|---------------------|--|
| Industry            |  |
| Name of Business    |  |
| Address of Facility |  |
| Village             |  |
| Taluk               |  |
| Revenue Division    |  |
| District            |  |
| State               |  |
| Pin Code            |  |
| Phone at Facility   |  |
| Landmark            |  |

|                                | Victims | Reference |
|--------------------------------|---------|-----------|
| No. of Estimated Victims       |         |           |
| No. of Documented Victims      |         |           |
| Pay Day                        |         |           |
| Estimated Wages (per day)      |         |           |
| Day Off/Market Day             |         |           |
| Victim's Work Schedule         |         |           |
| Victim's Native District       |         |           |
| Victim Contact Information     |         |           |
| Affidavits Filled Out & Signed |         |           |

<sup>149</sup> This form can be used as a Bonded Labour case opening checklist.

## Map to Facility

|                               |  |  |
|-------------------------------|--|--|
| Distances/Driving Times       |  |  |
| Indicates N S E W direction   |  |  |
| Nearest police station        |  |  |
| Nearest Taluk/RDO Office      |  |  |
| Nearest Hospital              |  |  |
| Nearest Bus Stand             |  |  |
| Nearest Village(s)            |  |  |
| Nearest Major Town(s)         |  |  |
| Nearest Railway Station       |  |  |
| Safe Haven 1                  |  |  |
| Safe Haven 2                  |  |  |
| Map reviewed                  |  |  |
| Date Victim List Last Updated |  |  |
| Caste of Victims              |  |  |

## EVIDENCE CHECKLIST

### Follow Up Reports (FUR)

- ☐ There is an FUR for every trip taken for the PI
- ☐ All FURs have been reviewed, marked and corrected
- ☐ All questions and corrections have been addressed and FURs have been updated

### Victim Documentations

- ☐ All documentation forms are filled out completely.
- ☐ All statements are signed and filled out correctly.
- ☐ Video interviews were taken of documented victims.

### Comments on Victim Support

### Additional Comments

### Need following things:

1. Photo of the establishment,
2. Photo of the victim,
3. Typed & transcribed conversation (recorded by the INV at the time of Documentation or before),
4. Video clips, if any,
5. Maps (as mentioned above also).
6. Details of the dependents of the labourers, if any.

## APPENDIX 3: GUIDELINES ON HOW TO FILE A COMPLAINT WITH THE NATIONAL HUMAN RIGHTS COMMISSION

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### **GUIDELINES ON HOW TO FILE COMPLAINT WITH THE NHRC**

1. Complaint may be made to the Commission by the victim or any other person on his behalf.
2. Complaint should be in writing either in English or Hindi or in any other language included in the eighth schedule of the Constitution. Only one complaint needs to be submitted to the Commission.
3. Complaint may be sent either by post or faxed at Nos. 91-11-23382911/23382734 or through e-mail covdnhrc@nic.in
4. No fee is chargeable on such complaints.
5. The complaint shall disclose i) violation of human rights or abetment thereof or; (ii) negligence in the prevention of such violations, by a public servant.
6. The jurisdiction of the Commission is restricted to the violation of human rights alleged to have been committed within one year of the receipt of complaint by the Commission.
7. Documents, if any, enclosed in support of the allegations in the complaint must be legible.
8. Name of the victim, his/ her age, sex, religion/ caste, state and district to which the incident relates, incident date etc. should invariably be mentioned in the complaint.
9. Please submit the complaint preferably in the enclosed format.
10. Following types of Complaint(s) are not ordinarily entertainable:
  - a. Illegible;
  - b. Vague, anonymous or pseudonymous;
  - c. Trivial or frivolous in nature;
  - d. Any matters which are pending before a State Human Rights Commission or any other Commission;
  - e. Any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed;
  - f. Allegation is not against any public servant;
  - g. The issue raised relates to civil dispute, such as property rights, contractual obligations, etc;
  - h. The issue raised relates to service matters;
  - i. The issue raised relates to labour/industrial disputes;
  - j. Allegations do not make out any specific violation of human rights;
  - k. The matter is sub-judice before a Court/ Tribunal;
  - l. The matter is covered by judicial verdict/decision of the Commission.
11. As far as possible complainants are encouraged to make use of the format given above to file their complaints. The guidelines indicate the kind of information, which would facilitate in processing a complaint.

## APPENDIX 4: SAMPLE STATE HUMAN RIGHTS COMMISSION COMPLAINT REGISTRATION FORM

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**NOTE: GIVEN BELOW IS THE COMPLAINT REGISTRATION FORM FOLLOWED BY  
GUIDELINES ON HOW TO FILE A COMPLAINT AT THE BIHAR HUMAN RIGHTS COMMISSION**

To  
Chairperson  
Bihar Human Rights Commission  
9, Bailey Road,  
Patna - 800 015

### **BHRC COMPLAINT REGISTRATION FORM**

#### A. Complainant's Details

---

1. Name
2. Sex
3. Contact/Mobile No.
4. Address
5. District State Pin-Code

#### B. Incident Details

---

1. Place of Incident (Village/Town/City)
2. District/State
3. Date of Incident

#### C. Victim's Details

---

1. Name
2. No. of Victims
3. Address
4. District/State
5. Pin-Code
6. Religion (Hindu/Muslim/Sikh/Christian/Buddha/Others)
7. Caste (SC/ST/OBC)
8. Sex (Male/Female)
9. Age (Years)
10. Disabled (Yes/No)

#### D. Brief Summary of Facts/Allegations of Human Rights involved

---

#### E. Is this complaint against Members of Armed Forces/Para-Military (Yes/No)?

---

#### F. Whether similar complaint has been filed before any Court/State Human Rights Commission or any other Commission in the State ?

---

G. Name, Designation and Address of the Public Servant against whom complaint is being made:

---

H. Name, Designation and Address of the Authority/Officials to whom the Public Servant is answerable:

---

I. Prayer/Relief if any, sought:

---

## **GUIDELINES ON HOW TO FILE COMPLAINT WITH THE BHRC**

1. Complaint may be made to the Commission by the victim or any other person on his behalf.
2. Complaint should be in writing either in English or Hindi or in any other language included in the 8th Schedule of the Constitution. Only one set of complaint needs to be submitted to the Commission.
3. Complaint may be sent by Post or Faxed at (0612)-2232280 or through E-Mail at sec- bhrc@nic.in.
4. No fee is chargeable on submission of a complaint.
5. The complaint shall disclose - (i) violation of human rights or abetment thereof of; (ii) negligence in the prevention of such violation by a public servant.
6. The jurisdiction of the Commission is restricted to the violation of human rights alleged to have been committed within one year of the receipt of complaint by the Commission.
7. Documents, if any enclosed in support of the allegations in the complaint, must be legible.
8. Name of the victim, his/her age, sex, religion/caste, state and district to which the incident relates, date of incidence, etc. should invariably be mentioned in the complaint.
9. The submission of the complaint in the specified format helps the Commission to expedite the disposal.
10. Following types of complaints are not ordinarily entertainable – (a) illegible (b) vague, anonymous or pseudonymous (c) trivial or frivolous in nature (d) matters which are pending before any other State Human Rights Commission or other Commission (e) any matter after the expiry of one year from the date on which the act constituting violation of human rights is brought to the notice of the Commission (f) allegation is not against any public servant (g) the issue raised relates to service matters or to labour/industrial disputes (h) allegations do not make out any specific violation of human rights (i) the matter is sub-judice before a Court/Tribunal (j) the matter is covered by judicial verdict/decision of the Commission.
11. As far as possible, complainants are encouraged to make use of the format given above to file their complaints. The guidelines indicate the kind of information which would facilitate in processing a complaint.
12. Action will be initiated only after the receipt of relevant petition.

**PRE-RESCUE PLANNING MEETING FORM**

Name of Establishments:

No of Victims to be Rescued:

Facility:

Location:

Reassemble Point:

Team Member:

| S. No. | Name of TM | Organization | Contact No. |
|--------|------------|--------------|-------------|
| 1      |            |              |             |
| 2      |            |              |             |
| 3      |            |              |             |

Purpose of Meeting:

Details of Rescue Operation (Target Point):

- a. Area:
- b. Establishment:
- c. Community:
- d. Risk:
- e. Establishments:

| S. No. | Points    | Unit | Address | Distance |
|--------|-----------|------|---------|----------|
| 1      | Point - A |      |         |          |
| 2      | Point - B |      |         |          |
| 3      | Point - C |      |         |          |

Important Contact Numbers:

| S. No. | Name of the Person | Department | Contact No. | Alternate No. |
|--------|--------------------|------------|-------------|---------------|
| 1      |                    |            |             |               |
| 2      |                    |            |             |               |

<sup>150</sup> Please note that this form is for internal use only and should not be circulated externally prior to reaching the rescue site.

Responsibilities of Team:

| S. No. | Name | Role<br>(Brief examples of some of some of the roles are provided below)    | Supporting Staff |
|--------|------|-----------------------------------------------------------------------------|------------------|
| 1      |      | Over all Co-ordination, SDM                                                 |                  |
| 2      |      | Photographer                                                                |                  |
| 3      |      | Surveillance                                                                |                  |
| 4      |      | Facility Sealing                                                            |                  |
| 5      |      | Refreshment                                                                 |                  |
| 6      |      | Group Counselling                                                           |                  |
| 7      |      | Registration                                                                |                  |
| 8      |      | Detailed Forms Filling                                                      |                  |
| 9      |      | Coordination with Medical Team                                              |                  |
| 10     |      | Coordination with Labour Department                                         |                  |
| 11     |      | Coordination with SDM                                                       |                  |
| 12     |      | Coordination with CWC (in case of child)                                    |                  |
| 13     |      | Coordination with police/ FIR                                               |                  |
| 14     |      | Coordination with Shelter Home and safe transfer of victims to Shelter Home |                  |
| 15     |      | Logistics & Rescue Kit                                                      |                  |
| 16     |      | Arrangement for Food                                                        |                  |
| 17     |      | Evidence Collection                                                         |                  |

TEAM-A-Responsibilities of each team members:

| S. No. |            | Name of the Person | Contact No. | Responsibility |
|--------|------------|--------------------|-------------|----------------|
| 1      | Facility 1 |                    |             |                |
| 2      |            |                    |             |                |
| 3      |            |                    |             |                |
| 4      |            |                    |             |                |
| 5      |            |                    |             |                |

TEAM-A-Responsibilities of each team members:

| S. No. | Name of the Person | Contact No. | Responsibility |
|--------|--------------------|-------------|----------------|
| 1      |                    |             |                |

List of Items (examples provided below):

- All types of forms
- A4 Sheet
- Torch
- Cameras
- First Aid Kit
- Food
- Water & Snacks
- Tags & Slips for Identification of Victims
- Staplers & Pins
- Pen & Note Pads
- Copy of Judgment and Acts
- Bare Act/Criminal Manual
- Activity book, crayons, color pencils in case there are children to be rescued
- Printer
- Extension Cord

Instructions to all:

- Avoid confrontation/arguments with enforcers/perpetrators/traffickers/on lookers;
- Safe custody of victims is a priority;
- Ensure safety of team members as well;
- Ensure that your mobile phones are fully charged and that you have saved important contact numbers/emergency numbers

Important Contact List:

| S. No. | Name | Designation              | Contact Nos |
|--------|------|--------------------------|-------------|
| 1      |      | SDM                      |             |
| 2      |      | ACP Police Station       |             |
| 3      |      | Labour Department        |             |
| 4      |      | SHO, police station      |             |
| 5      |      | Supervisor, Shelter Home |             |

List of Witnesses:

| S. No. | Name | Organization | Contact Nos. | Building |
|--------|------|--------------|--------------|----------|
| 1      |      |              |              |          |
| 2      |      |              |              |          |
| 3      |      |              |              |          |

**TABLE ON MYTH AND REALITY OF BONDED LABOUR<sup>151</sup>**

| Myth                                                                                                                                                                                                                                                                                                               | Reality                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Victims of bonded labour must be physically beaten to be “forced”</p> <p>Facilities must have walls or other physical restraints for victims to be forced.</p> <p>Seasonal workers or those who work from home cannot be bonded labourers.</p> <p>Victims MUST be paid less than minimum wage to be bonded.</p> | <p>“Forced” is defined by the Supreme Court to be any factor that deprives a person of choice. Bonded labour does not require chains or physical force to be “forced”.</p> <p>A person may be forced to remain a bonded labourer by threats of violence, threats of legal punishment or threats of destitution.</p> <p>Any situation of bonded labour is illegal – regardless of location or period of time. As long as a debt or obligation leads to one of the four forfeitures of freedom at any point in time, it is bonded labour.</p> <p>Failure to pay minimum wage is only ONE of the four rights/ freedoms that may be forfeited in a bonded labour system.</p> |

<sup>151</sup> *Trafficking of Persons: Law and Procedure for Bonded Labour, IJM.*

## APPENDIX 7: SAMPLE LEGAL INTERVENTION REPORT FORMAT

### Legal Intervention Report

Sector:

Village:

Sub Division:

District:

P.O:

P.S:

Date:

#### Basic Facts & Terms

Picture of Establishment

##### THE LABOURERS

As per the confidential information, the labourers (the "Labourers") who are likely to be bonded labour labourers at the above said agricultural land, have been identified: \_\_\_\_\_

Picture of one of the labourers' family

##### THE FACILITY

\_\_\_\_\_

##### THE ACCUSED

\_\_\_\_\_

##### CRIMINAL OFFENCES

- Bonded Labour Act violations.
- Bharatiya Nyaya Sanhita violations.
- The SC/ST (Prevention of Atrocities) Act violations.
- The Minimum Wages Act violations.
- The JJ Act violations.
- The Child Labour Act violations.

*"Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."*

- Article 23 of the Constitution of India<sup>152</sup>

*"[Bonded labourers] are non-beings, exiles of civilization, living a life worse than that of animals, for the animals are at least free to roam about as they like.... This system, under which one person can be bonded to provide labour for another for years and years until an alleged debt is supposed to be wiped out, which never seems to happen during the lifetime of the bonded victim, is totally incompatible with the new egalitarian socio-economic order which we have promised to build...."*

- Former Supreme Court Justice P.N. Bhagwati<sup>153</sup>

<sup>152</sup> Indian Constitution, Article 23.

<sup>153</sup> Bandhua Mukti Morcha v. Union of India, 1984 AIR (SC) 802, 1984 (3) SCC 161 (Supreme Court 1983).

The undersigned Petitioner on behalf of people forced to labour at situated at:

|           |               |      |
|-----------|---------------|------|
| Village:  | Sub Division: |      |
| District: | P.O:          | P.S: |

1. Criminal bonded labour occurs at

|           |               |      |
|-----------|---------------|------|
| Village:  | Sub Division: |      |
| District: | P.O:          | P.S: |

2. The names of the respective owners and their respective Labourers of the alleged ..... have been mentioned in the attached list which is ANNEXURE - ..... which may be read as part and parcel of the instant petition

3. The Accused have:

- a. Employed the Labourers in pursuance of the customary /social obligations under Kamiya Bondage System which has devolved on them by succession (in violation of the provisions of Bonded Labour System (Abolition) Act, 1976) in the above referred agricultural units and have trapped them in bonded labour system.
- b. Failed to pay the labourers statutory minimum wages (which is again in violation of the provisions of Bonded Labour System (Abolition) Act, 1976,
- c. Restricted the labourers' freedom of movement throughout India (again in violation of the provisions of Bonded Labour System (Abolition) Act, 1976 and Bharatiya Nyaya Sanhita,
- d. Restricted the labourers' freedom of employment (which is again in violation of the provisions of Bonded Labour System (Abolition) Act, 1976.

4. The Labourers belong to ..... community, which falls under the Scheduled Caste a protected group under Section 3(1)(vi) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Therefore, the Accused have committed violations of The Bonded Labour System (Abolition) Act, 1976 (in short the "BLA"), the Bharatiya Nyaya Sanhita, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act"), the Minimum Wages Act, 1948, the Juvenile Justice (Care and Protection of Children) Act, 2015, the Child Labour (Prohibition and Regulation) Act and the Constitution of India.

## I. BONDED LABOUR IS PRESENT AT: \_\_\_\_\_

A bonded labour system, as defined in Section 2(g) of the Bonded Labour System (Abolition) Act, 1976, is a system of forced or partly forced labour under which a labourer enters into an agreement with an employer to the effect that he would forfeit freedoms or rights because of a debt, obligation or other consideration.

The BLA lists four freedoms or rights which a labourer may have forfeited in consideration of a bonded debt:

1. Forfeited the freedom of employment; or
2. Forfeited the freedom of movement throughout India; or
3. Forfeited the right to receive minimum wages<sup>154</sup> or
4. Forfeited the freedom to sell goods and services in the marketplace.

***Only one of the above forfeitures must be established to prove that bonded labour exists.***

In this case, however, AT LEAST THREE of the above conditions are clearly present at the said .....  
[Location]. Kindly see below:

#### **A. FORFEITURES OF FREEDOM (ONLY ONE REQUIRED FOR FINDING OF BONDED LABOUR)**

##### **i. Forfeited Freedom of Movement and Forfeited Freedom of Employment:**

The Accused do not allow the Labourers to leave the ..... without permission. They also prohibit the Labourers from working anywhere else. In this way, the Accused restrict the Labourers' freedom to move and work and, therefore, labourers work in a system of bonded labour.

##### *Forfeited Freedom of Movement*

The movement of the Labourers are restricted, and the Labourers are not permitted to leave the said ..... at will. All the families stated that only one member of a family (which is always accompanied with agents of the owners) can go to the market to buy monthly ration and other family members have to stay back inside the facility to make sure the person who leaves will return to the establishment.

Most of the labourers also stated that when they attempted to go out without the owner/agents permission, they (their entire family) were beaten. In other instances they were threatened that the owner/agents would inform the police. Hence they have no freedom to go out at their will and are kept in perpetual bondage since it is impossible for them to repay their advance given the extremely low payment well below the minimum wage.

##### *Forfeited Freedom of Employment*

The Labourers are not allowed to leave the said ..... and work for other employers. The Accused have control over the movements of the Labourers, resulting in their restricted freedom of employment.

Most of the labourers described that the owner/agents did not allow them to work under other employers. And some labourers stated that the owner/agents had a control over what the labourers could buy and sell at the market.

In summary, the Accused prohibited the Labourers from moving, travelling, or working freely with other employers. The labourers are paid far less than minimum wages, receiving instead

a meagre monthly wages against their hard labour rendered. Most of the labourers belong to the Scheduled Caste category (maha dalits), work more than ..... per day. They are trapped in a bonded labour system in which the labourers are not free to move about India or to be employed elsewhere.

(Violations of Sections 9, 16, 17 and 18 of BLA; Sections 115, 127(6), 143, 144 of BNS and Sections 3(1) (vi) of SC/ST Act).

.....  
<sup>154</sup> Section 2(g)(1-4), Bonded Labour System (Abolition) Act, 1976.

ii. Forfeited Right to Receive Minimum Wage:

In ..... the minimum wage (w.e.f. ....14) for semiskilled worker is at least Rs. .... per day  
The accused promised to pay the labourers, ..... The labourers are paid far less than minimum wages or nominal wages or no wages at all, ..... (Violations of Sections 9, 16 and 18 of the BLA; Sections 146 of the BNS & Section 22 of the Minimum Wages Act.)

**Note: The Labourers in this case are uneducated and may not always understand numbers/figures.a**

#### **A. ADVANCE: A BONDED DEBT**

The Accused gave advances to the Labourers in exchange for the Labourers' labour. The Labourers state that the Accused gave advances and forced them to work in the ..... to pay off their advances, and that the Accused deducted money from their wages as payment towards their advances. However the labourers stated that they were not informed or kept abreast by the owner/agents on the books of accounts and are not sure as to how much they still owe the owner/agents.

The Labourers described that they have availed advances from the owner.

**Note: The advances, if given in consideration of a forfeiture of freedom (kindly see above), are illegal advances. Accordingly, deductions taken towards such advances are also illegal, (Violations of Sections 4, 5, 6, 9 and 17 of BLA)**

#### **II. COMPELLING ISSUES:** \_\_\_\_\_

#### **III. DUTIES OF THE DISTRICT ADMINISTRATION:**

1. The Bonded Labour System (Abolition) Act of 1976 empowers and requires the District Administration to intervene immediately on behalf of these Labourers.
2. The law prescribes the District Administration with the following DUTIES:
  - a. To RELEASE the Labourers immediately;
  - b. To PROCEED with PROSECUTION of the Accused; and
  - c. To PROVIDE meaningful REHABILITATION of the Labourers in this matter.

THEREFORE, because the above information provides that human beings are being victimized as bonded labourers, and because the ..... situated at ....., the Petitioner Complainant RESPECTFULLY SUBMIT before this Hon'ble Commission that the said District Administration of ..... be directed do the following:

1. RAID .....to extract the Labourers involving the Complainant/Informant NGO;
2. INQUIRE the Labourers involving the Complainant/Informant NGO;
3. IDENTIFY the Labourers as BONDED LABOURERS, from those inquiry statements that demonstrate a prima facie case of bonded labour the Complainant/Informant NGO; and
4. RELEASE, involving the Complainant/Informant NGO, and REHABILITATE the Labourers found to be bonded labourers (applicable law provided below, (vide "Appendix ....").

FURTHERMORE, following the inquiry of the Labourers in accordance with the BLA, it is prayed that this

Hon'ble Commission also be pleased to direct the said Administration to do the following:

1. File a First Information Report ("FIR") against the Accused and any other responsible individuals.
2. ARREST the perpetrator/s immediately.
3. Conduct a thorough investigation or direct the police concerned to do so, in order to verify the identity of the perpetrators and to ensure appropriate criminal accountability for all those responsible, according to the law.
4. Provide subsistence allowance of Rs.1000/- to each individual identified as bonded labourer immediately during the rescue as per the guidelines of the Hon'ble Supreme Court of India in case titled P.U.C.L. v. State of Tamil Nadu.
5. Provide proper and adequate arrangements for the short stay, food, water, security and safety, transportation etc. of labourers immediately post rescue and release.
6. Any other order or direction may kindly be passed to which this Hon'ble Commission may deem fit and proper to the facts and circumstance.

#### **"APPENDIX" - A: SUMMARY OF OFFENCES TO BE INCLUDED IN THE FIRST INFORMATION REPORT**

##### **THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976**

Section 9: Accepting Payments Against a Bonded Debt,

Section 16: Compelling Person to Work in a Bonded Labour System,

Section 17: Advancing Money in a Bonded Labour System,

Section 18: Enforcing a Bonded Labour System.

*Bharatiya Nyaya Sanhita*<sup>155</sup>

Section 126/127: Wrongful Restraint/Confinement'

Section 143: Human Trafficking

Section 146: Unlawful Compulsory Labour

##### **THE SCHEDULED CASTE AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1976**

Section 3(1)(vi): Compels or entices a member of a SC or ST to do 'begar' or other similar forms of forced or bonded labour.

##### **THE MINIMUM WAGES ACT, 1948**

Section 22: Penalties for less wages or no wages.

##### **THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015**

Section 75: Cruelty etc. on child.

Section 79: Exploitation of a child employee

Section 81: Sale and procurement of children for any purpose

##### **THE CHILD LABOUR (PROHIBITION & REGULATION) ACT**

<sup>155</sup> This list provided is not exhaustive. Other sections, as applicable and relevant can be included.

Section 3: Prohibition of children into certain establishments etc.

Section 14: Penalties.

## **“APPENDIX” - B: GUIDELINES FOR EFFECTIVE BONDED LABOUR INQUIRY UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976**

### **I. INQUIRY ESSENTIALS IN BRIEF**

#### *A. Receiving the Complaint & involvement of social action group*

The Bonded Labour System (Abolition) Act, 1976 (“the Act”) confers special powers and responsibilities upon the District Administration to carry out the provisions in the Act.<sup>156</sup> The Hon’ble Supreme Court has directed that whenever any representatives of the Social Action Group points out the District Magistrate or the Deputy Magistrate about the existence of Bonded Labour the District Magistrate shall take such representative with him for the release of bonded labourer and shall provide copy of the report immediately to such representative.<sup>157</sup>

#### *B. Receiving the Complaint & involvement of social action group*

It is imperative that an inquiry be conducted immediately after a Complaint is submitted, as even the slightest delay could lead to related problems, such as serious intimidating tactics, threats and coercion on the part of the employer.<sup>158</sup>

#### *C. Perpetrators Not Needed At Inquiry*

It is not necessary to interview the perpetrators at the inquiry. It is also imperative that the labourers be inquired apart from the perpetrators so as to minimize their feelings of fear and intimidation and ensure a fair inquiry.<sup>159</sup>

#### *D. Release Certificates*

Release Certificates should be issued to the labourers immediately upon release certifying that he is a bonded labourer and has been released from the bondage.<sup>160</sup>

#### *E. Initial Rehabilitation Payment i.e. Subsistence Allowance*

Every victim who receives a Release Certificate should immediately be given Rs. 1000 for initial rehabilitation needs. The State Governments shall provide Rs. 1,000/- as subsistence allowance to a bonded labourer immediately on his identification.<sup>161</sup>

#### *F. Direct the Filing of an First Information Report*

At the conclusion of the inquiry, if a First Information Report (“FIR”) has not already been filed against the Accused, the District Administration should direct the police to file an FIR against the Accused for all of the offences set forth in Appendix A.<sup>162</sup>

<sup>156</sup> BLA, Section 10.

<sup>157</sup> Neeraja Chaudhary v. State of MP, AIR 1984 SC 1099.

<sup>158</sup> Davidar, P.W.C., I.A.S., Hand Book for the Release and Rehabilitation of Bonded Labourers , Section 3.8.

<sup>159</sup> Davidar, P.W.C., I.A.S., Hand Book for the Release and Rehabilitation of Bonded Labourers , Section 3.9 and 4.22; Bandhua Mukti Morcha v. Union of India, 1984 AIR (SC) 802, 1984(3) SCC 161, paragraph 28 (Supreme Court 1983): ‘The object and purpose of the inquiry... is not to fasten any liability on the (owners) but to secure the release and repatriation of those labourers who claim to be bonded labourers and who want to leave the employment and go somewhere else.’

<sup>160</sup> Santhal Paragana Antyodya v. State of Bihar & Others, 1987 Supp. (1) SCC 141.

<sup>161</sup> P.U.C.L. v. State of Tamil Nadu & Others, in Writ Petition 3922 Of 1985, dated 5 May, 2004.

<sup>162</sup> Davidar, P.W.C., I.A.S., Hand Book for the Release and Rehabilitation of Bonded Labourers , Section 4.2 and 4.4.

## II. DEFINITION OF BONDED LABOUR

### A. Bonded Labour Elements in Detail

The Act outlines a bonded labour system as an agreement which contains the following elements:

- ◇ The victim forfeits certain freedoms or rights;
- ◇ In consideration of a debt or other obligation<sup>163</sup>

#### 1. Forfeiture of Rights or Freedoms

One of the below forfeitures must be established to prove that bonded labour exists. The Labourers have:

- a. Forfeited the ability to work else where; or
- b. Forfeited the ability to travel freely; or
- c. Forfeited the ability to sell their goods and services in the marketplace; or
- d. Forfeited the right to receive minimum wage.<sup>164</sup>

#### 2. Debt or Obligation

The Accused has employed the most common form of debt, the advance.<sup>165</sup>

- a. The advance can be oral or written.<sup>166</sup>
- b. Interest is not required.<sup>167</sup>
- c. Advance can be taken by victim or by victim's lineal ascendants or descendants<sup>168</sup>

### B. Presumptions of Bondedness

The Supreme Court of India has construed the Act liberally in favour of the victim's release. An illegal bonded labour system may be proved to exist if the below presumptions apply:

#### 1. Restricted Movement/Employment

The Indian Supreme Court has held that proof of forced labour through the restriction of the freedom of movement or employment, raises the presumption of an illegal bonded debt.<sup>169</sup>

#### 2. Failure to Pay Minimum Wages

If the worker does not receive a wage equivalent to, or greater than, the established minimum wage, the worker is presumed to be a bonded victim.<sup>170</sup> That person should immediately be released upon inquiry.

## III. ACCOUNTABILITY AND PUBLIC PROSECUTION

### A. Four Offences

There are four enumerated offences within the Act for which a perpetrator can be held accountable:

1. Section 9: Accepting payments from labourers for bonded debts.
2. Section 16: Compelling labourers to work in a bonded labour system.
3. Section 17: Advancing money in a bonded labour system.

<sup>163</sup> BLA, Section 2(g)

<sup>164</sup> BLA, Section 2(g)(1-4).

<sup>165</sup> BLA, Section 2(g)(i).

<sup>166</sup> BLA, Section 2(b).

<sup>167</sup> BLA, Section 2(g)(i).

<sup>168</sup> BLA, Section 2(g)(i).

<sup>169</sup> *Bandhua Mukti Morcha v. Union of India*, 1984 AIR (SC) 802, 1984 (3) SCC 161 (Supreme Court 1983).

<sup>170</sup> *Neeraja Chaudhary v. Madhya Pradesh*, II L.L.N. 219, 223 (1984).

4. Section 18: Enforcing the bonded labour system.

#### *B. Power to Try the Case*

The Act provides that the Judicial Magistrate has concurrent powers of an Executive Magistrate for the trial of offences under the Act.<sup>171</sup>

1. Section 9: Accepting payments from labourers for bonded debts.
2. Section 16: Compelling labourers to work in a bonded labour system.
3. Section 17: Advancing money in a bonded labour system.
4. Section 18: Enforcing the bonded labour system.

Submitted by:

.....

.....  
<sup>171</sup> BLA, Section 21.

**PRE-RESCUE PLANNING MEETING FORM**

Name: \_\_\_\_\_ Gender: \_\_\_\_\_

Age: \_\_\_\_\_ Date: \_\_\_\_\_

|                  | Full Name | Gender | Age | Facility | Escaped? | Contact Details |
|------------------|-----------|--------|-----|----------|----------|-----------------|
| Father           |           |        |     |          |          |                 |
| Mother           |           |        |     |          |          |                 |
| Husband/<br>Wife |           |        |     |          |          |                 |
| Children         |           |        |     |          |          |                 |

Native Address: \_\_\_\_\_ Village Name: \_\_\_\_\_

Taluk: \_\_\_\_\_ District \_\_\_\_\_ State: \_\_\_\_\_

Owner Name: \_\_\_\_\_ Contractor Name: \_\_\_\_\_

How long have you worked at the facility? \_\_\_\_\_

Did you receive any advance or borrow any money from the Owner/Contractor?

- ◇ Amount?
- ◇ Who gave you the debt/advance?
- ◇ For whom was it given?
- ◇ Are there any deductions as a result of the debt/advance?
- ◇ How much does the Owner/Contractor say that you currently owe?
- ◇ If the amount owed has increased, why?
- ◇ Other obligation

If you did not receive an advance, why did you work for the Owner/Contractor?

- ◇ Are you working for a debt of a relative? If yes, whose?
- ◇ Did the Owner/Contractor promise you any food or housing? What was promised?

**Wages**

- ◇ What wages were you promised when you came to work at the facility? .....
- ◇ How much did the owner say he would pay you? .....
- ◇ How much money did you actually receive in hand when you were paid your wages?.....

- ◇ How often do you receive your wages?.....
- ◇ Is the wage for your family or just for you? Provide the names of people who are included .....
- ◇ What time do you begin work? What time do you finish work? .....
- ◇ Do you have a day off? .....

### Restricted Freedom

---

#### Freedom of Movement

- ◇ Are you free to leave the facility with your family? .....
- ◇ Are you free to travel to your native village with your entire family? .....
- ◇ Are you free to go to the market with your entire family on any day you choose without supervision? .....
- ◇ Have you ever tried to leave without permission from the Owner/Maestri? What happened if you did? .....

#### Freedom of Employment

- ◇ Can you work for another employer, if you still have a debt/advance? .....

#### Economic Freedom

- ◇ Does the owner restrict what you can buy or sell? .....

### Other Abuses

---

- ◇ Have you/your family been threatened or verbally abused by the Owner/Maestri? .....
  - Why? .....
  - What did he say? .....
- ◇ Have you/your family been physically abused by the Owner/Maestri or his supervisors? .....
  - Why? .....
  - What happened? .....
- ◇ What injuries occurred? .....

Name of Labourer:

Thumbprint/Signature of Labourer:

Date:

## APPENDIX 8A: SAMPLE FORMAT FOR SUBMITTING A COMPLAINT TO THE RDO ON EXISTENCE OF FORCED LABOUR

---

### **SAMPLE FORCED LABOUR COMPLAINT TO THE RDO**

[Insert address of Complainant]

[Date]

#### **VIA HAND DELIVERY AND REGISTERED POST WITH ACKNOWLEDGEMENT DUE**

[Insert name of official]

Revenue Divisional Officer

X Revenue Division

Kancheepuram District

Tamil Nadu - [insert PIN]

Re: X Salt Works – Forced Labour Violations

Dear Sir/Madam,

We have identified an illegal forced labour system within your jurisdiction, at the X Salt Works, located in the Y Village, Z Taluk, T Revenue Division, Kancheepuram District, Tamil Nadu. The Salt Works are owned and operated by A and his son, B. We believe these men have perpetrated criminal offences against approximately [estimate number] victims at the Salt Works. While there may certainly be more forced labour victims inside the Salt Works, the names of the victims that we have identified thus far are:

[victims names]

#### **Details of Forced Labour Offences**

The victims have all been forced to work in consideration of illegal cash advances given by the Accused to entice the Victims to submit themselves to the Accused's unlawful system of forced labour. Until the illegal Advances are declared by the Accused to be repaid, the Victims are forced to live with their families at the Salt Works, and they were not free to work elsewhere or travel freely throughout India. When the Victims have attempted to escape, they have been hunted down by the Accused and forced to return to the Salt Works. They are paid far below the minimum wage and much of this meagre amount is deducted purportedly towards repayment of the illegal advances.

Not only have the Accused trapped these Victims into a forced labour system from which it is virtually impossible to escape; they ensure domination over their labourers through physical and verbal abuse. They beat the Victims into subjugation on numerous occasions, striking them on the face, neck and back. On one occasion, an escaped victim [insert name of Victim] was hunted down, brought back to the Salt Works and beaten by the Accused, C, with a plastic pipe.

**BACK**

## Law

These vulnerable Victims have no realistic hope of escaping this oppressive forced labour system on their own. Fortunately, Indian law protects them.

The Bonded Labour System (Abolition) Act of 1976 empowers and requires the District Administration to intervene immediately on behalf of these Victims.

The District Administration has a duty:

- a. to release the Victims immediately
- b. to provide meaningful rehabilitation for the Victims; and
- c. to proceed with Public Prosecution of the Accused.

## Intervention Required

As X Salt Works is located within your Revenue Division, Kancheepuram District, we request this Administration to do the following:

1. conduct a raid of the Salt Works to extract all victims;
2. immediately conduct an off-site enquiry of the labourers found inside and any who have recently escaped;
3. upon the presentation of a prima facie case of forced labour by the victims, find them to be bonded labourers as required by law; and
4. immediately issue Release Certificates to and rehabilitate those found to be bonded labourers.

In accordance with the directive of the Supreme Court of India, staff members of [insert NGO name] will be present to assist the Administration during each phase of the enquiry, release, Public Prosecution and rehabilitation proceedings under the Bonded Labour System (Abolition) Act, 1976 (Neeraja Chaudhary v. State of M.P., 3 SCC 252 (1984)).

Respectfully submitted,

[SIGN COMPLAINT]

[TYPE DESIGNATION OF COMPLAINANT]

cc: District Collector, Kancheepuram District

### SAMPLE COMPLAINT LETTER TO FILE AN FIR

[Insert address of Complainant]

[Date]

#### VIA HAND DELIVERY AND REGISTERED POST WITH ACKNOWLEDGEMENT DUE

The Inspector

X Police Station

Kancheepuram District

Tamil Nadu - 603 001

Re: Criminal Activities of X Salt Works and its owners and operators – Request for Filing of FIR.

Dear Sir,

We request that you take immediate criminal action against the perpetrators of the abusive system of forced labour at the X Salt Works. In this connection, [enter number of victims and caste/tribe] and their families, including children (the "Victims") have suffered under an abusive system of forced labour enforced at the Salt Works, which is owned and operated by A and his co-conspirators B, C and D (the "Accused").

On 26 September 2006, the X RDO and his officials conducted an official enquiry under the Bonded Labour System (Abolition) Act ("BLA") and confirmed these findings. On that day, the X RDO issued official release certificates to [enter number] of the Victims, on the basis of the RDO's findings that these Victims had been forced to work in the Salt Works in violation of the BLA. Copies of the Release Certificates given to the Victims are enclosed.

#### Forced Labour

The Victims had all been forced to work in consideration of illegal cash advances given by the Accused to entice the Victims to submit themselves to the Accused's unlawful system of forced labour. Until the illegal Advances were declared by the Accused to be repaid, the Victims were forced to live with their families at the Salt Works, and they were not free to work elsewhere or travel freely throughout India. When the Victims attempted to escape, they were hunted down by the Accused and forced to return to the Salt Works. They were paid far below the minimum wage and much of this meagre amount was deducted purportedly towards repayment of the illegal advances.

#### Physical Abuse

Moreover, the Accused enforced their illegal forced labour system through physical abuse. They beat the Victims into subjugation on numerous occasions, striking them on the face, neck and back. On one occasion, an escaped victim [insert name of Victim] was hunted down, brought back to the Salt Works and beaten by the Accused, C, with a plastic pipe. Accordingly, the Accused have violated Sections 114, 115, 130, 131 of the BNS

[BACK](#)

relating to assault and voluntarily causing hurt..

## **Sexual Abuse**

The Accused also raped and sexually exploited one or more of the female victims in the facility. We have received information that C forced victim T to have sex with him by threatening to kill her husband if she did not comply with his demand. C, therefore, has violated Section 63 and 64 of the Bhartiya Nyaya Sanhita.

We have also received information that the Accused routinely subjected the female victims to sexual harassment by touching them, grabbing their hands and trying to compel them to have sex with them. This use of force against the female victims has been carried out with intent to outrage their modesty, in violation of Section 74, 75, 76, 77 of the BNS.

We have received information that the sexual abuse, including rape, may have been more widespread than is presently known. Great care should be taken immediately to investigate the extent of such crimes against the female victims.

## **Verbal Abuse**

The Accused also frequently and knowingly degraded and demeaned the Victims by calling them "Theyvidiya" (prostitute) or "Thevidiya payya" (son of a prostitute), "Poolu" (penis), "Pei" (monster), "Kudhi" (pussy), and "Otha" (fucker). In short, all of the Accused actions were calculated to control and dominate the Victims as perpetual slaves of the Accused in violation of the BLA, the Bharatiya Nyaya Sanhita and Article 23 of the Constitution.

## **Scheduled Caste & Scheduled Tribe**

The Accused also frequently and knowingly degraded and demeaned the Victims by calling them "Theyvidiya" (prostitute) or "Thevidiya payya" (son of a prostitute), "Poolu" (penis), "Pei" (monster), "Kudhi" (pussy), and "Otha" (fucker). In short, all of the Accused actions were calculated to control and dominate the Victims as perpetual slaves of the Accused in violation of the BLA, the Bharatiya Nyaya Sanhita and Article 23 of the Constitution.

We respectfully request, therefore, that an FIR be filed immediately against X Salt Works, and all those responsible for the conduct of the business, including but not limited to, A, B, C and D and other co-conspirators of the Accused. We further request a prompt investigation be undertaken consistent with Section 173 of the Bharatiya Nagarik Suraksha Sanhita BNSS. In our view, the FIR against the Accused should include at least the following criminal offences:

1. Violations under the Bonded Labour System (Abolition) Act
  - ◇ Section 9: Accepting Payments Against a Bonded Debt
  - ◇ Section 16: Compelling People to Work in a Bonded Labour System
  - ◇ Section 17: Advancing Money in a Bonded Labour System
  - ◇ Section 18: Enforcing a Bonded Labour System
  - ◇ Section 18: Enforcing a Bonded Labour System
2. Violations under the Bhartiya Nyaya Sanhita
  - ◇ Section 61: Criminal Conspiracy
  - ◇ Section 114,115: Voluntarily Causing Hurt
  - ◇ Section 130: Assault

- ◇ Section 74: Assault or Criminal Force to a Woman with Intent to Outrage her Modesty.
- ◇ Section 144: Accepting, Receiving or Detaining against his will any Person as a Slave
- ◇ Section 145: Habitually violating Section 370
- ◇ Section 126: Unlawful Compulsory Labour
- ◇ Section 63,64: Rape

3. Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act

- ◇ Section 3(1)(vi): Enticing or Compelling Scheduled Tribe Members into Forced Labour
- ◇ Section 3(1)(xi): Sexual Assault or Dishonour of a Woman
- ◇ Section 3(1)(xii): Sexual Exploitation to which a Woman Would Not Otherwise Have Agreed
- ◇ Section 3(1)(xv): Displacing members of a Scheduled Tribe

It may become apparent after the filing of the FIR and your investigation that additional criminal violations have occurred. If you need any additional information from us as you move this matter forward, please do not hesitate to call.

Please contact me if I or any of my colleagues can be of any further assistance to you in your investigation.

Respectfully submitted,

[SIGN COMPLAINT]

[TYPE DESIGNATION OF COMPLAINANT]

Enclosures: Release Certificates issued to forced labourers

cc: Superintendent of Police, Kancheepuram District  
Revenue Divisional Officer, X  
Deputy Superintendent of Police, X, Kancheepuram District

## APPENDIX 9: FORMAT OF LIST OF MATERIAL EVIDENCE AND RELEVANCE FOR INVESTIGATION

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Format of list of Material Evidence and Relevance for Investigation<sup>172</sup>

### WHAT TO COLLECT FOR INVESTIGATION

- ◇ Diaries, notebooks, account books, registers in the place of work and work orders
- ◇ Material being produced, in case the victims being rescued are working at a factory/production unit/ sweatshop etc.
- ◇ Travel documents, bus/ train/ air tickets, papers of travel agents, visiting cards of travel agents, etc.
- ◇ Rent agreement, rent receipts, house tax receipts, ration cards, passports, electricity/ telephone/ water/ mobile phone bills, voter identity cards, driving licences, registration papers of vehicles, insurance policies, investment details, bank books, money order receipts, etc.
- ◇ Photographs, albums, videos, letters, pornographic material, computers, hard discs, Compact Discs (CDs), brochures, advertisements in media.

### RELEVANCE FOR INVESTIGATION

- ◇ To prove existence of workplace; name of victims (already trafficked, likely to be trafficked); number of victims; details of payments, wages; earnings; accomplice; conspirators; abettors; traffickers and others; to prove hazardous employment, bonded labour, age of victims, etc.
- ◇ To prove movement of persons during trafficking; to link source, transit, destination areas; to link the offenders in the process of the crime.
- ◇ To prove the existence and address of the workplace and people who are managing it.
- ◇ To prove the existence of an organized network of criminals and possible sexual abuse.

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<sup>172</sup> SOP on investigation of Crime on Trafficking for Forced Labour, UNODC

## APPENDIX 10: SAMPLE FORMAT OF HARASSMENT PROTECTION LETTER

### HARASSMENT PROTECTION LETTER

Sub-Inspector:

Police Station:

District:

Date:

Subject: Provision to Protect Released Bonded Labourers

Sir,

On the basis of the complaint given by ....., it was found that the following persons were treated as bonded labourers by ....., the operators/owners of the ..... are released from the bonded labour system by .....and are going to stay in their native village at .....

We apprehend that there may be threat and harassment from either ..... or their associates. We request you to provide the victims with appropriate protection, enabling them to live in their village without any fear.

Yours faithfully,

.....

COPIES OF RELEASE CERTIFICATES ATTACHED

## APPENDIX 11: SAMPLE WRITTEN SUBMISSIONS FOR FILING OF CHARGESHEET

### WRITTEN SUBMISSION FOR FILING OF CHARGESHEET

To,

Date:

The ACP:

PS: .....,

Subject: Meeting for discussion on concrete progress in FIR No :

Respected Sir,

I am writing on behalf of .....

We humbly bring to your notice that despite the fact that the above mentioned FIR was registered on....., however there is no charge-sheet filed yet. Further, the statutory period of 90 days for filing a charge-sheet in the present case has passed. Therefore, we kindly request you to look into the matter so that the process under the present matter is expedited at the earliest.

Yours Sincerely,

.....

**BACK**

## APPENDIX 12: SAMPLE FORMAT FOR FILING AN APPLICATION UNDER SECTION 338 BNSS

### APPLICATION UNDER SECTION 338 OF THE BNSS

IN THE HON'BLE COURT OF ..... LD, ASJ, COURT NO: .....

SESSION CASE NO ..... /20.....

BETWEEN

..... Complainant

AND

..... Accused

FIR No: .....

U/S 370/374/342/34 Police Station: .....

### APPLICATION U/S 338 READ WITH SEC.18 (8) OF THE BNSS

| S. No. | Particulars                                                                                                   | Page No |
|--------|---------------------------------------------------------------------------------------------------------------|---------|
| 1      | Application under section 301 read with Sec.18 (8) of the BNSS seeking leave to assist the Public Prosecution |         |
| 2      | Vakalatnama                                                                                                   |         |

Dated: .....

Place: .....

Through: ..... (De-facto complainant/witness)  
..... Lawyer (Counsel for the applicant)

IN THE HON'BLE COURT OF ..... LD, ASJ, COURT NO: .....

SESSION CASE NO ..... /20.....

BETWEEN

..... Complainant

AND

..... Accused

FIR No: .....

U/S 143/144/127/3(5)

Police Station: .....

**APPLICATION ON BEHALF OF ....., U/S 301 READ WITH SEC. 18 (8) OF THE BNSS  
SEEKING LEAVE OF THIS HON'BLE COURT TO ASSIST THE PROSECUTION.**

MOST RESPECTFULLY SHEWETH

1. That the above-mentioned applicant has engaged and instructed the under signed counsel to represent him before this Hon'ble court on his behalf. In this regard Vakalatnama duly signed by the above-mentioned applicant is also attached herewith.
2. That the under-signed counsel for the applicant wishes to assist the Public Prosecution. He/she shall act under the instruction of the learned AAP/P.P.. Therefore, permission to assist to Public Prosecution may kindly be given.
3. That the instant petition is without prejudice and is bona-fide and in the interest of justice.

**PRAYER**

Keeping in view the afore-referred facts and circumstances and also in the interest of justice, it is most humbly prayed that this Hon'ble court may be pleased to:

- a. Allow this petition and consequently
- b. Allow the under-signed counsel for applicant to assist the Public Prosecution.
- c. Pass any other order/s or direction/s to which this Hon'ble court may deem fit and proper to the facts of the case and also in the interest of justice.

Dated: .....  
Place: .....  
Through: ..... (De-fato complainant/witness)  
.....

## APPENDIX 13: SAMPLE FORMAT FOR FILING AN APPLICATION UNDER SECTION 192 OF THE BNSS.

### APPLICATION 192 (4)

IN THE COURT OF HON'BLE METROPOLITAN MAGISTRATE,

CASE NO ..... /20.....

In the matter of:

BETWEEN

..... Complainant

AND

..... Accused

FIR No: .....

Date: .....

U/S 143/144/127/3(5) BNS; Sec.

23/26 Juvenile Justice Act,

Sec. 4/16/17/18/19 Bonded Labour Act,

Sec 3/14 Child Labour Act,

P.S: .....

### APPLICATION U/S 192(4) OF THE BNSS SEEKING APPROPRIATE ORDERS

MOST RESPECTFULLY SHEWETH

1. That the instant case is pending for adjudication before this Hon'ble Court and is scheduled today. That on ..... a rescue operation was jointly conducted by a raid team which consisted of the SDM of ..... Police, Labour Department, Govt of ..... and two NGOs namely .....
2. During the said rescue operation ..... victims of the ages between ..... were found working as bonded labourers and ..... accused persons were also arrested but all are on bail. That it was on the behest of the above two mentioned NGO's that the rescue took place with the support and co-ordination of the police at P.S....., Labour Department and SDM of .....
3. These victims were forced to live and ..... were forced to work for less than minimum wages.
4. That the FIR was registered on ..... and till date a chargesheet has not been filed. It is humbly submitted that the mandatory time period of 60 days for filing chargesheet as per sec. 187 of the BNSS has been exceeded.
5. It has been more than ..... since the FIR was registered and the Investigation officer has failed to file any kind of report- be it a Police Report or Final Report or Closure Report as envisaged under sec. 193 of the BNSS. Despite the fact that the sec. 193 (1) BNSS specifically begins with-

*Sec. 193 (1) – Every investigation under this Chapter shall be completed without unnecessary delay."*

6. That under sec.192 (4) BNSS this Hon'ble Court has ample power and jurisdiction to call for the police diary of a case under inquiry or trial in such court to aid such inquiry or trial. Hence it is humbly submitted

that on reading Section 192(4) from the BNSS that this Hon'ble Court has the power to call for the police diary to aid the inquiry of the undue delay for completing the investigation by the Investigation officer.

7. It is humbly submitted that the offence committed by the accused on these ..... victims is most heinous and these minor victims have been made to suffer while working in inhospitable conditions that were detrimental to their health and well being
8. That the instant application is a bonafide application and is without any prejudice. That it is in the best interest for justice and for the children.

#### **PRAYER**

It is humbly prayed that the Hon'ble Court calls for record the police diary as per law and pass any other order which the court may deem fit and proper in the facts and circumstances of the case may be also passed in favor of the victims.

**AND FOR WHICH ACT OF KINDNESS THE HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

Dated: .....

Place: .....

Through: ..... (Applicant/Complainant)

## APPENDIX 14: SAMPLE FORMAT FOR FILING AN APPLICATION FOR OPPOSING BAIL

### NOTE

- ◇ If the bail hearing is for one accused only, change all the uses of the word “they” referring to the accused with the find and replace function.
- ◇ The inclusion of statements in red depends on the facts of the case and should be deleted if not applicable.
- ◇ The passages highlighted in green are “overkill” and can be deleted in most cases unless the issue they specifically deal with comes up.

In the Court of the  
Case Number

In the matter of:

State of West Bengal through:

..... Complainant

V.

Names of accused

..... Accused

### APPLICATION OPPOSING BAIL

MOST RESPECTFULLY SHEWETH

1. That on date, the police authority conducted a rescue operation at address of operation location under police station in jurisdiction area and rescued number, names and ages of minors, and number, names and ages of any majors, who had been procured for the purpose of commercial sexual exploitation by the accused persons named below.
2. That the relevant police authority, arrested names, gender and age of perpetrators from the said brothel at the time of raid by the police.

Factual Background:

3. That the police received information from reliable sources that the names and content of information (delivering and/or selling minor victim girls for the purpose of prostitution. Include relevant address and police station with jurisdiction)
4. That number of perpetrators were arrested from the said premises where the victim girls were rescued. If any perpetrators are arrested subsequently, include this information here. They are charged under relevant sections of ITPA and BNS
5. That the accused have applied for bail under section 480 of the BNSS/483 of the BNSS Bharatiya Nagarik Suraksha Sanhita, 1973 (hereinafter C.R.Pc). That the offences alleged are non-bailable.

Legal Submissions:

6. That there are well-established principles governing the court’s exercise of discretion under section 483 of the BNSS. That the power to exercise bail is a discretionary power to be exercised “in a judicious

manner and not as a matter of course" (Kalyan Chandra Sarkar AIR 2004 SC 1866, paragraph 11), and that in considering an application for bail, "justice to both sides governs the judicious exercise of the court's judicial discretion" (Gurcharan Singh and Ors. v. State (Delhi Administration) 1978 CriLJ 129 (SC), para. 25). That there are many judicial decisions confirming this rule. In the interest of brevity the Public Prosecution will not list all of these but will instead refer the Ld. Court to three extracts from three cases. Paragraphs 24 and 30 of Gurcharan Singh and Ors. v. State (Delhi Administration) 1978 CriLJ 129, paragraph 8 of Prahlad Singh Bhat v. NCT, Delhi & Anr AIR 2001 (SC) 1444 and paragraph 11 of Kalyan Chandra Sarkar AIR 2004 SC 1866 are sufficient to supply an authoritative (if not exhaustive) list of the most important of the factors a court must take into consideration when deciding whether or not to grant bail.

7. From these passages, it is evident that the courts must take into account the following:
  - a. the nature and gravity of the offence;
  - ◊ the severity of the punishment;
  - ◊ whether there are reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat to the complainant;
  - ◊ the danger that the accused might abscond if granted bail
  - ◊ the existence of a prima facie case against the accused

Seriousness of the Offence:

8. The first consideration that the Supreme Court has held to be relevant to the Court's exercise of its discretion to award bail is the nature and gravity of the offence – the more heinous the crime, the more readily bail should be refused (Kalyan Chandra Sarkar AIR 2004 SC 1866, paragraph 11(a)). This is the most important consideration. The Supreme has confirmed that this is the overriding factor the court should consider in hearing bail applications in Satish Jaggi v. State of Chhatisgarh & Ors, 2007 Cri.L.J. 2766, in which the Supreme Court stated (at para.5 and para.12) that "It is settled law that in granting or non- granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence".
9. In the recent case of Shaikh Jaffar Shaikh Ahmed v. State of Maharashtra and Others ("Jaffar"), 2008 (1) Cr.L.J. 216, a case under the Immoral Trafficking Act, the Bombay High Court followed this reasoning when it denied bail to ITPA. offenders. In Jaffar at para. 21 the Bombay High Court held that the offences in the Immoral Trafficking Act are grave, serious and heinous, stating that "The accused involved in offences, which are grave, serious and heinous do not have moral right to seek benefit of the discretionary relief".
10. The Supreme Court in Vishal Jeet v. Union of India 1990 Cr. L.J. 1469, 1472-73 in addressing the malady of child prostitution stated:
 

"It is highly deplorable and heart-rending to note that many poverty stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed into the 'flesh trade' which is being carried on in utter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinions - indeed there is none - that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps....This devastating malady [of prostitution] can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers"
11. In the present case, the accused are alleged to have committed some of the most despicable and heinous

crimes prohibited by law. The crimes they are accused of threaten the very fabric of society and public morality. The Supreme Court has recognised this consistently and repeatedly emphasising the gravity of sexually motivated crimes. In *State of Punjab v. Ramdev Singh*, 2004 AIR (SC) 1290 (at paragraph 1), the court held that the failure to give heightened sensitivity to cases involving sexual abuse against women, especially children, risks danger to the collective interests of society. In similar vein, the Supreme Court held in *State of Punjab v. Gurmit Singh*, 1996 AIR (SC) 1393 (at para 22) that “of late, crime against women in general and rape in particular is on the increase” and that such offences were serious and should be treated with the “utmost sensitivity”. A further judicial statement showing that sexually-motivated crimes must be treated with the seriousness appropriate to their heinous nature can be found in

12. *State of Maharashtra v. Chandraprakash Kewalchand Jain*, 1990 AIR (SC) 658, where the Supreme Court, at paragraph 17, held that “decency and morality in public life can be promoted and protected only if we deal sternly with those who violate societal norms” by committing sexually-motivated crimes. Finally, in I 1993 CriLJ 2025, at paragraph 29, the High Court of Delhi stated that “crime against women is on increase and courts have to be circumspect in granting bail to the accused persons accused of having committed heinous offences against the women.”
13. The accused is in the present case alleged to have committed heinous offences against women. Insert details of offences committed. Focus on rape if s375/6 has been alleged, citing *Gurmit Singh* 1996 AIR (SC) 1393 paragraph 22 “Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim; a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape.” Can also cite *State of Rajasthan v. Om Prakesh*, AIR 2002 SC 2235 (at para. 18). “Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of the sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of social stigma attached thereto... Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children.”
14. The seriousness of the offence is compounded by the fact that in the present case, the accused have violated the constitutional rights accorded to his victims by Article 23 and Article 21 of the Indian constitution. The accused have made their living selling the hope, innocence and dignity of the children. Their release on bail would therefore not only be inconsistent with the established case law but would amount to openly tolerating abuse of fundamental rights enshrined in the Constitutions, as well as sending a signal of judicial apathy towards crimes of sexual exploitation.

#### Severity of Punishment:

15. The severity of the punishment that commission of the offence in question attracts is also relevant when deciding whether or not to grant or cancel bail – the more severe the punishment, the more willing the court should be to reject bail (*Kalyan Chandra Sarkar* AIR 2004 SC 1866, paragraph 11(a)). In the present case the accused are alleged to have committed various offences which attract severe punishments. All the offences they are charged with carry prison sentences and some carry heavy mandatory minimum prison sentences. Detail accusations and punishments.
16. The accused face the prospect of rigorous imprisonment for life as punishment for their crimes, which according to established case law indicates that the Ld. Court should refuse bail in the present case

## Strong Possibility of Accused Tampering with Evidence and Intimidating or Harming Key Witnesses

17. The Hon'ble Apex Court (see Kalyan Chandra Sarkar AIR 2004 SC 1866, paragraph 11 (b)) emphasises that reasonable apprehensions of the witnesses and evidence being tampered with or the apprehension of there being a threat for the complainant should incline the court to refuse bail. Insert facts, describing abuse and threats to VGs.
18. The petitioner emphasises that the court need only find a risk (as opposed to a clear probability) of the accused tampering with evidence in order to refuse bail. In Shahzad Hasan Khan v. Ishtiaq Hasan Khan Anr, 1987 AIR 1613, at paragraph 6, the Hon'ble Supreme Court held that in deciding whether or not to refuse bail, the court need not insist on concrete evidence of an immediate threat to the victim, stating that

"One of the salutary principles in granting bail is that the court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence ." Shahzad Hasan Khan v. Ishtiaq Hasan Khan Anr, 1987 AIR 1613, paragraph 6 (emphasis supplied).
19. The Supreme Court's choice of language, and in particular the insistence that the accused should not be "in a position to tamper with the evidence", demonstrates that concrete evidence of past attempts to tamper with evidence are not necessary. The passage establishes that the judge need only be satisfied that the allegations have some factual basis, i. e. that they are not entirely fabricated, in order to refuse bail. This is further emphasised at paragraph 6, where the Supreme Court stated that:

"It is the duty of the court to satisfy itself whether those allegations have basis (they can seldom be proved by concrete evidence ) and if the allegations are not found to be concocted it would not be a proper exercise of jurisdiction in enlarging the accused on bail." Shahzad Hasan Khan v. Ishtiaq Hasan Khan Anr, 1987 AIR 1613, paragraph 6

(emphasis supplied).
20. From paragraph 24 of Gurcharan Singh and Ors. v. State (Delhi Administration) 1978 CriLJ 129 (SC) we know that the "position and the status of the accused with reference to the victim and the witnesses" are relevant considerations when considering whether or not to grant bail. Similarly, the "means and standing" of the accused are also relevant (Prahlaad Singh Bhati v N.C.T.Delhi, AIR 2001 (SC) 1444, paragraph 8) in deciding whether or not the accused is in a position to tamper with evidence or witnesses.
21. There is a clear evidentiary basis for the allegations that the accused are in a position to exercise influence over the victims and witnesses. From the statement of the victim girls it is clear that the accused have held a position of power and authority over the victim girls. They have for all practical purposes been the de facto guardians of the victim girls, and are the principal authority figures in the victim girls' social lives. Moreover, they have exercised coercion over their young victims for a prolonged period, have confined them in a brothel against their will and have violently intimidated them in order to bend them to their will. They therefore have both the means and the standing to inspire terror and exercise influence over the young and emotionally fragile victim girls.
22. The "character and behaviour" of the accused is also a relevant consideration that the court may take into account (Prahlaad Singh Bhati v. N.C.T.Delhi AIR 2001 (SC) 1444, paragraph 8). The character of those who participate in the pimping profession increases the probability that the pimps will not only tamper with both victim girls, but cause them physical harm or even kill them to silence them.

23. If accused has any past criminal convictions, say so here.
24. Experience has shown that in cases such as the instant case before this Ld. Court, there is a high likelihood that the accused would seek to return the child victims to a life of prostitution if the accused are released on bail at this stage. This possibility is also explicitly recognised as a reason to refuse bail in paragraph 24 of *Gurcharan Singh Ors. v. State (Delhi Administration)* 1978 CriLJ 129, in which the Hon'ble Supreme Court stated that a court hearing a bail application must consider "the likelihood of the accused... repeating the offence". These concerns extend to all of the accused because of their connections with underworld elements of sex trafficking, which initially allowed them to obtain the minor girl.
25. The petitioner further states that all the accused have a strong incentive to tamper with the witnesses and evidence because of the severity of the offences charged against them, the severe punishment possible against them, and the large amount of evidence pointing towards their guilt. As the Hon'ble Supreme Court has stated in *Panchanan Mishra v. Digambar Mishra* 2005 CriLJ 1721 (paragraph 22), "it hardly requires to be stated that once a person released on bail in serious criminal cases where the punishment is quite stringent and deterrent the accused in order to get away from the clutches of the same indulge in various activities like tampering with the Public Prosecution witnesses."
26. Paragraph 29 of *Gurcharan Singh and Ors. v. State (Delhi Administration)* 1978 CriLJ 129 (SC) establishes that the danger of an accused fleeing from justice is a "paramount consideration" when deciding whether or not to award bail. If accused has absconded in the past, include here. This fact by itself amply demonstrates that there is a serious risk that they will do so again. Discuss also whether co-accused have absconded.
27. In the present matter, there is a strong likelihood that the accused will abscond because of the severity of the crimes charged against them, the severity of punishment in the event of their conviction, and the abundance of material evidence pointing towards the guilt of the accused. The pimp and/or caretaker of the victim girls can demonstrate no ties to the community, making it highly likely that they would abscond if released on bail. Additionally, the brothel owners involved in this crime may easily abscond after making arrangements for a manager to receive rental income in absentia and manage the property.
28. The court must also consider whether evidence in support of the charge establishes a prima facie case against the accused (*Kalyan Chandra Sarkar* AIR 2004 SC 1866, paragraph 11(c)). If it does, the court should favour refusing bail. There is clearly a prima facie case against the accused in the present case. The accusations against them have been brought by the State, which is the custodian of society's interests, after a police investigation and a raid on the premises upon which they operated their brothel. The victims in this case have made statements to the police under Section 183/ Section 180 of the BNSS 1973 clearly confirming their recollection that the accused committed the offences he is charged with.
29. Statements alleging sexual offences or exploitation are not to be taken lightly or viewed with undue suspicion. As held by the Supreme Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* 1983 CriLJ (SC) 1096, "in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society."(paragraph9)
30. The evidence gathered at the scene of the raid also clearly establishes a prima facie case against the

accused. Insert details of seizure list. The evidence gathered, in particular the condoms found on the premises at which the raid took place and on the persons of the victim girls (delete if appropriate), clearly indicates that there is a strong case for the allegations of criminal sexual exploitation made.

31. The accused have been confined for ... and have therefore been deprived of their liberty. They might therefore argue that his right to liberty under Article 21 has been infringed. However, the courts have made it clear that length of detention is not a relevant consideration in granting or refusing bail.

32. In paragraph 2 of *Ram Govind Upadhyay v. Sudarshan Singh and Ors* AIR 2002 SC 1475, the Supreme Court stated that:

“While liberty of an individual is precious and there should always be an all round effort on the part of Law Courts to protect such liberties of individuals - but this protection can be made available to the deserving ones only since the term protection cannot by itself be termed to be absolute in any and every situation but stand qualified depending upon the exigencies of the situation. It is on his perspective that in the event of there being committal of a heinous crime it is the society that needs a protection from these elements since the latter are having the capability of spreading a reign of terror so as to disrupt the life and the tranquility of the people in the society.” (Emphasis added)

33. In *Shahzad Hasan Khan v Ishtiaq Hasan Khan* AIR 1987 SC 1613 (at paragraph 5) the accused was granted bail on the ground that there was delay in trial and a citizen's liberty was involved. The Supreme Court set aside the order granting bail, holding that the mere fact that the trial was delayed was not an adequate reason for the grant of bail. The Court observed that the High Court proceeded to grant bail simply on the ground that the liberty of a citizen was involved. The Court observed as under (Para 5): “Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.”

34. Further case law supports the proposition that the liberty of the accused is not the overriding factor the court must consider when hearing bail applications. In *Amar Singh v State*, 1985 Cri 550, the Delhi High Court cancelled the bail of the accused, stating in paragraph 7 that:

“Indeed personal liberty is a very valuable asset but the liberty of those who are law abiding is perhaps more valuable than the liberty of those who are out to break law as they themselves are responsible for its forfeiture.”

35. It is thus clear that the considerations set out by the courts to decide take precedence over the protection of the liberty of the accused. As the Hon'ble Apex Court has stated in *Panchanan Mishra v. Digambar Mishra* 2005 CriLJ 1721 that the object of Section 483 of the BNSS. is “to protect the fair trial and secure justice being done to the society” (paragraph 13). It is only if the court is not satisfied that the principles of a fair trial and the wider public interest have no application does the fact that accused's right to liberty has been compromised enter the equation.

36. The accused may argue that as insert number of their co-accused have been released on bail, they should be accorded the same treatment. This argument is incorrect as a matter of authority. In *State v. Captain Jagjit Singh*, AIR 1962 SC 252 : (1962 (1) Cri LJ 215) an argument had been advanced before the Supreme Court that as two accused had been enlarged on bail the respondent should also be released.

The Supreme Court rejected the argument that Jagjit Singh should be granted bail on the basis that his that his co-accused were. The Court held at page 217 that the positions of each accused had to be considered independently from one another, and that the mere fact that one had been granted or refused bail did not entitle the other to the same treatment on the grounds of parity. Applying this principle to the present case, it is clear that the mere fact that some of ...’s associates have been released on bail does not entitle him to bail. On the contrary, his case must be considered independently and on its own merits, and as the arguments above demonstrate, the settled legal principles at work demand that he be refused bail

It is submitted that the accused should not be released on bail but kept in police custody as the investigation has not yet begun. Based on the facts and circumstances of the case, if the accused are released on bail, there is a high likelihood that the accused will tamper with evidence and witnesses and are likely to abscond. In addition, the serious nature of the offence requires the Court to act sternly and with heightened sensitivity to the victims in this matter.

### **PRAYER**

It is therefore humbly prayed that:

1. The bail application filed by the accused persons be rejected and the accused persons be remanded to police custody for investigation.
2. And pass such other order or orders and such other and further relief as this Learned Court may deem fit and proper in the facts and circumstance of the case.

**AND FOR THIS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.**

Place

Date

Advocate

**BAIL OPPOSITION QUICK REFERENCE SHEET<sup>173</sup>**

| Issue                            | Applicable Principles                                                                                                                                                                   | Case Law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| General Bail Considerations      | <p>Court bound to consider certain factors</p> <p>Seriousness of the offence the dominant factor</p> <p>Background of accused and relationship with victim a relevant consideration</p> | <p><b>KALYAN CHANDRA SARKAR</b> , AIR 2004 SC 1866</p> <ul style="list-style-type: none"> <li>- Para 11: "It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are: (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence ; ;(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;;(c) Prima facie satisfaction of the Court in support of the charge."</li> </ul> <p><b>SATISH JAGGI V. STATE OF CHATISGARH &amp; ORS</b>, 2007 CR.L.J. SC 2766</p> <ul style="list-style-type: none"> <li>- Para 5: "It is settled law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence".</li> </ul> <p><b>GURCHARAN SINGH AND ORS. V. STATE (DELHI ADMINISTRATION)</b>, 2007 SC CR.L.J. 2766</p> <ul style="list-style-type: none"> <li>- Para 24: "[Court should consider the] position and the status of the accused with reference to the victim and the witnesses</li> </ul> |
| Successive applications for bail | <p>Applicant must show change in circumstances</p> <p>Change in circumstances must be substantial</p>                                                                                   | <p><b>STATE OF MADHYA PRADESH V.KAJAD</b> AIR 2001 SC 3317</p> <ul style="list-style-type: none"> <li>- Para 11: "It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law..."</li> </ul> <p><b>STATE OF TAMIL NADU V. S.A. RAJA</b> , AIR 2005 SC 4462</p> <ul style="list-style-type: none"> <li>- Para 8: "When there was no change of circumstances, the learned Judge may not have granted bail to the respondent".</li> </ul> <p><b>STATE OF MAHARASHTRA V. CAPTAIN BUDDHIKOTA SUBHA RAO</b>, AIR 1989 SC 2292</p> <ul style="list-style-type: none"> <li>- Para. 7 "And, when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence."</li> </ul>                                                                                                                                                                           |

<sup>173</sup> The bail quick reference sheet has been compiled by International Justice Mission.

| Issue                                   | Applicable Principles                                                                                                                                                          | Case Law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Successive applications for bail</p> | <p>Lengthy detention does not constitute substantial change in circumstances</p> <p>Filing Chargesheet does not constitute change in circumstances</p>                         | <p><b>KALYAN CHANDRA SARKAR</b> , AIR 2004 SC 1866</p> <ul style="list-style-type: none"> <li>- Para 14: "While cancelling the said bail this Court specifically held that the fact that the present accused was in custody for more than one year (at that time) and the further fact that while rejecting an earlier application, the High Court had given liberty to renew the bail application in future, were not grounds envisaged under Section 437(1)(1) of the Code"</li> </ul> <p><b>KUMUD MAHAPATRA AND ANR. V. ABHINA MALICK AND ORS</b> , 1990 CRILJ 2646 (ORISSA)</p> <ul style="list-style-type: none"> <li>- Para. 9: "Filing of a charge-sheet is only a compliance with the procedure within the stipulated period and it has nothing to do with the relative merits in the case. It may be stated that filing of a chargesheet cannot be construed to be a substantial change in circumstance."</li> </ul> <p><b>PADAM CHAND JAIN V. STATE OF RAJASTHAN AND ANR, 1991 CRILJ 736</b>, 1990 (1) WLN 284 (RAJ)</p> <ul style="list-style-type: none"> <li>- Para 7. "...it may be stated that filing of charge-sheet cannot be considered to be a change of circumstance...."</li> </ul> |
| <p>Successive applications for bail</p> | <p>Where case of one accused distinguishable from the co- accused who were granted bail, court may refuse bail.</p> <p>Mere parity cannot be sole ground for grant of bail</p> | <p><b>STATE V. JAGJIT SINGH</b>, AIR 1962 SC 253</p> <ul style="list-style-type: none"> <li>- Rejecting bail, the court stated at Para 6: "It is true that two of the persons who were prosecuted along with the respondent were released on bail prior to the commitment order; but the case of the respondent is obviously distinguishable from their case"</li> </ul> <p><b>VISHNUMAHESHWARI V. STATE OF MADHYA PRADESH</b>, 1999 CRILJ 4403 (MADHYA PRADESH) (PARA 9)</p> <ul style="list-style-type: none"> <li>- Para 9: "Mere parity cannot be said to be sole ground to grant bail."</li> </ul> <p><b>AMIN KHAN AMANULLAH KHAN AND ANR. V. STATE OF MAHARASHTRA</b>, 2003 (2) ALD CRI 123, 2003 BOMCR CRI (BOMBAY)</p> <ul style="list-style-type: none"> <li>- Para 7: "...mere parity cannot be the sole ground for granting bail and each case of the accused has to be examined individually..."</li> </ul> <p><b>SUNDER LAL V. THE STATE</b> 1983 CRILJ 736 (ALL) (para 15 reiterates principle that mere parity cannot be sole ground for granting bail)</p>                                                                                                                               |

| Issue                          | Applicable Principles                                                                                                                                                                                                                                                                   | Case Law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Where accused claims infirmity | Sickness must involve serious risk and treatment in jail must be impossible.                                                                                                                                                                                                            | <p><b>STATE V. GADADHAR BARAL</b> , (65 (1988) CLT 664, 1989 CRILJ 627 (ORISSA)</p> <ul style="list-style-type: none"> <li>- Para 7: "However any nature of sickness would not entitle an accused for release on bail. It should be of such nature that unless the accused is released, he cannot get proper treatment for his cure from the ailment."</li> </ul> <p><b>SANGAPPA V. STATE OF KARNATAKA</b>, 1978 CRILJ 1367 (KARNATAKA)</p> <ul style="list-style-type: none"> <li>- The nature and seriousness of the sickness or infirmity,</li> <li>- the suitability or otherwise of the remand to jail custody and the availability of the necessary medical treatment and reasonable amenities have to be taken into consideration along with other circumstances before granting bail on the grounds of illness</li> </ul> <p><b>STATE V. SARDOOL SINGH AND ANR</b>, 1975 CRILJ 1348 (J&amp;K)</p> <ul style="list-style-type: none"> <li>- "It is not every sickness that entitles an accused person to the grant of bail. The sickness contemplated by the proviso is a sickness <b>which involves a risk or danger to the life of the accused person.</b>"</li> </ul> |
| Role of Statements             | <p>Court duty bound to consider statements given under Sections 161/164 CrP (now 180/183 BNSS).</p> <p>Statements by a victim alleging sexual assault do not require corroboration.</p> <p>Absence of Section 164 IPC (now Section 183 BNSS) statements no ground for grant of bail</p> | <p><b>SALIM KHAN V. SANJAI SINGH</b> , 2002 9 SCC 670</p> <ul style="list-style-type: none"> <li>- Para 1: "The High Court at this stage is duty-bound to consider all statements recorded under Section 161 CrPC (Now Section 180 BNSS)"</li> </ul> <p><b>GURIA, SWAYAM SEVI SANSTHAN V. STATE OF U.P. AND ORS</b> , 2010 CRILJ 1433 (SC)</p> <ul style="list-style-type: none"> <li>- Para 11: "The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged. The High Court, therefore, in our opinion, was not correct in dealing with the matter in such a cursory manner. The High Court has also gone wrong in recording that the statements of the girls have not been recorded under Section 164 of the Code of Criminal Procedure, as the same was not necessary."</li> </ul>                                                                                                                                                                                                                                                                                            |

| Issue                        | Applicable Principles                                                                               | Case Law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ad interim bail              | Grant of AI bail does not of itself justify confirmation (i.e. grant of regular bail)               | <p><b>HAJI PEER BUX AND ORS. V. STATE OF UP AND ORS</b>, 1993 CRILJ 3574 (ALL)</p> <ul style="list-style-type: none"> <li>- Para 19: "We, however, make it clear that the release of an accused on interim bail by itself is no ground for grant of bail. The final disposal of the bail application has to be made after considering the entire merits." <p><b>SATISH KUMAR V. STATE ON 14 FEBRUARY</b>, ILR 1989 (DELHI) 413</p> <ul style="list-style-type: none"> <li>- Para. 3: "The mere fact that the petitioner has been granted interim bail does not mean that he is entitled to have regular bail on merits on the ground that he had surrendered to the court after enjoying the interim bail. The petition is dismissed."</li> </ul> </li></ul>                                                                                                                                                                                                                                                                                          |
| Bail in Sexual Offence cases | <p>Not typically fit cases for bail</p> <p>Extremely serious offence justifying severe measures</p> | <p><b>COURT ON ITS OWN MOTION V.VISHNU PANDIT AND ANOTHER</b> , 1993 CRILJ DELHI 2025</p> <ul style="list-style-type: none"> <li>- Paragraph 29: "crime against women is on increase and courts have to be circumspect in granting bail to the accused persons accused of having committed heinous offences against the women."</li> </ul> <p><b>VISHAL JEET V. UNION OF INDIA</b> , 1990 CR. L.J. 1469 (SC) When discussing child prostitution the Apex Court stated:</p> <ul style="list-style-type: none"> <li>- Para 7: "It is highly deplorable and heart-rending to note that many poverty stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed into the 'flesh trade' which is being carried on in utter violation of all canons of morality, decency and dignity of humankind. There cannot be two opinions - indeed there is none - that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps."</li> </ul> |

APPENDIX 15: SAMPLE F ORMAT FOR FILING AN APPLICATION FOR ISSUING  
OF DIRECTIONS TO THE POLICE/C.W.C. FOR PRODUCING THE PROSECUTRIX  
BEFORE THE HON’BLE COURT AND HANDING OVER THE CUSTODY OF THE  
PROSECUTRIX TO APPLICANT/NATURAL GUARDIAN/MOTHER

---

IN THE COURT OF HON’BLE METROPOLITAN MAGISTRATE,

FIR No: .....  
P.S: .....

In the matter of:

..... Complainant  
  
V.  
..... Accused

FIR No: .....  
P.S: .....  
U/s. ....  
Date .....

REPLY TO THE APPLICATION FOR ISSUANCE OF NECESSARY DIRECTION TO THE POLICE OR C.W.C  
..... FOR PRODUCING THE PROSECUTRIX ..... BEFORE THE HON’BLE COURT AND HANDING  
OVER THE CUSTODY OF THE PROSECUTRIX TO THE APPLICANT/NATURAL GUARDIAN/MOTHER.

MOST RESPECTFULLY SHEWETH

That this case is pending adjudication before this Hon’ble Court and the date of hearing and production of the  
prosecutrix is fixed for today i.e. ....

That in the above mentioned case the true and correct facts of the case are the following:

That the prosecutrix being a minor was produced before the Child Welfare Committee (hereafter referred to  
as CWC) on ..... As per sec. 32 of the Juvenile Justice Act, 2000 (hereafter referred to as JJ Act, 2000) it  
specifically states that:

**“Sec. 32. Production before Committee**

1. Any child in need of care and protection may be produced before the Committee by one of the  
following persons-
  - i. any police officer or special juvenile police unit or a designated police officer;
  - ii. any public servant;
  - iii. Childline, a registered voluntary organisation or by such other voluntary organisation or an  
agency as may be recognised by the State Government;
  - iv. any social worker or a public spirited citizen authorised by the State Government; or
  - v. by the child himself.

2. The State Government may make rules consistent with this Act to provide for the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry."

That on the abovementioned date i.e. 10th Oct, 2013 the CWC on viewing the prosecutrix as a **child in need of care and protection** and being the appropriate authority as per Sec. 31 of the JJ Act, 2000 wherein it stipulates that:

**"Powers of Committee.**

The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human right.

Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection." - took the prosecutrix into its custody and placed the prosecutrix at ..... for care and protection.

It is humbly submitted that as per Sec. 31 of the JJ Act, 2000 the CWC is the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human right. This is further supported by the Hon'ble Bombay High Court decision in Prerna v. State of Maharashtra, 2003(2) Mah.L. J. 105 the Division Bench of this Court gave following guidelines to ensure that the child in need of care and protection must be dealt with bearing in mind the possibility of their reformation and rehabilitation

"37. We feel that the following directions may prevent recurrence of such events in future :

(A) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection..." The instant application on behalf of the applicant is bonafide and in the interest of justice.

**PRAYER**

Therefore, keeping in view afore stated facts and circumstances and also in the interest of justice, it is humbly prayed that this Hon'ble Court:

- a. To direct the Applicant to apply for custody before the appropriate authority i.e. the Child Welfare Committee and/or
- b. Pass any other order which the court may deem fit and proper in the facts and circumstances of the case.

Dated: .....

Place: .....

Applicant: .....

Through: **Lawyer**

## APPENDIX 16: SAMPLE FORMAT OF LETTER TO DM/SDM REQUESTING FOR RELEASE CERTIFICATES

---

Letter to DM/SDM requesting for Release Certificates

[Address of sender above]

Date:

[Address of receiver above]

### **Re: Request for Order of Bonded Labour Release Certificates**

I am a representative from the following social action group which assists with the rescue and rehabilitation of bonded labourers.

On ..... a rescue was carried out at the following address:

During the rescue, the following bonded labourers were rescued:

The following government officials were present at the rescue:

The labourers who were rescued are clearly bonded labourers. The Bonded Labour System (Abolition) Act states that a bonded labourer is any labourer who is working because of a written or oral agreement with their owner to provide forced labour (section 2g). The agreement can be:

- ◇ An advance / loan. For example: A labourer's daughter becomes sick so he borrows money from his employer for medical expenses but has to work for the employer to repay the loan
- ◇ Custom or social obligation: For example: In northeastern India, it is the social custom in that place that people from the Sullong tribe work as slaves even though they are not in debt to their masters.
- ◇ Succession. For example: Children must work for an employer who has lent money to their father
- ◇ Other economic consideration. For example: An employer gives a tractor to a labourer but the labourer is required to work for the employer to repay the employer for the cost of the tractor
- ◇ Caste or Community. For example: Traditionally, every person born in the Irular tribal community in Tamil Nadu is obligated to work as an agricultural labourer.

Forced labour means that the labourers are forced to work in the following circumstances:

- ◇ No freedom of employment. For example: An owner of a potato field does not allow his labourers to leave and find work for another owner.
- ◇ No freedom of movement. For example: A labourer is forced to live at the brick kiln owned by an employer who gave him the advance. The employer only allows the labourer to leave the kiln to purchase items at the market for a short period of time on Sundays or restricts the labourer from leaving the brick kiln outright.
- ◇ No freedom to sell goods and services at market value. For example: A silk weaver is not permitted by his owner to sell his silk to any other buyers
- ◇ No payment of legal minimum wage. For example: The legal minimum wage per day for an unskilled worker in Delhi is Rs.256. If a labourer is forced to provide labour for less than this then the Supreme Court has held that there is a presumption that he is a bonded labourer

The labourers who were recently rescued have given statements that they had an agreement to provide labour with the following people:

The labourers have also given statements that they worked in the following circumstances of forced labour.

The labourers are clearly bonded labourers in accordance with the Bonded Labour (Abolition) Act 1976.

Now that the bonded labourers have been rescued, they are entitled to receive Release Certificates. The State Government is responsible to provide these Release Certificates because in a 1987 case called Santhal Paragana Antyodaya Ashram v. State v Bihar the Supreme Court gave the following direction to all State Governments in India:

*"The concerned District Commissioner/ Sub Divisional Magistrate will issue forthwith a certificate to each bonded labourer certifying that he or she is a bonded labourer and has been released from bondage. These certificates shall be issued by the concerned District Commissioner/ Sub Divisional Magistrate and handed over to the bonded labourers simultaneously with their release".*

The Supreme Court says that Release Certificates should be made at the same time as the release or as soon as possible after the rescue. Every man, woman, and child who was released should receive their own Release Certificate.

Release Certificates should be given even if an FIR has not been filed, or if an FIR has been filed but Bonded Labour Act offences have not been charged.

According to section 10 of the Bonded Labour Act the District Magistrate is responsible to issue Release Certificates to rescued bonded labourers. Where the District Magistrate has conferred his/her powers to the Sub Divisional Magistrate, then the Sub Divisional Magistrate is responsible to issue Release Certificates to rescued bonded labourers.

**I therefore humbly request you to pass an Order for Release Certificates to be issued to all the rescued bonded labourers.**

Rescued bonded labourers are also entitled to Rs 1000 upon their release. The Supreme Court directed the State Government to give Rs 1000 to all rescued bonded labourers in the case of Public Union For Civil Liberties v. State of Tamilnadu & Others on 5th May 2004:

*"The State Government shall provide Rs. 1000/- as substance allowance to a bonded labour immediately on his/her identification"*

**I therefore humbly request you to pass an Order for Rs1000 to be given to all the rescued bonded labourers.**

Please contact me if you have any questions about the rescued bonded labourers or if I can be of any assistance to you.

Respectfully submitted,

[Signature of Sender]

Name of Sender:

## APPENDIX 17: FORMAT OF RELEASE CERTIFICATE<sup>174</sup>

Format for Release Certificate BL Case No ..... (Order of the JMFC/JMSC under Section 12 of the Bonded Labour System (Abolition) Act, 1976)

1. Name:
2. Caste Category (SC/ST/OBC)
3. Father/Mother's Name:
4. Age:
5. Male/Female/trans-gender:
6. Address of Bonded Labour
7. Aadhar Card No. of Bonded Labour (if available)
8. Contact Details of Bonded Labour (Mobile No., if available)
9. Address where bonded labour is identified/rescued
10. Name of the Captor/Bonder
11. Aadhar Card no. of Captor/Bonder
12. Address of Captor/Bonder

Given under my hand and seal on date .....

Signature

Name

District Magistrate/Sub-Divisional Magistrate

District ..... State .....

Seal

A color passport-sized photograph of the bonded labourer released should be attached.

<sup>174</sup> This is the format for Release Certificates as per the amended provisions in Para 4.2 of the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2021 dated 7th February 2022. Available here: [https://labour.gov.in/sites/default/files/20220208154105\\_compressed.pdf](https://labour.gov.in/sites/default/files/20220208154105_compressed.pdf) on page 6.

## APPENDIX 18: CHECKLIST OF AFTERCARE SERVICES TO BE PROVIDED IN BONDED LABOUR INTERVENTIONS<sup>175</sup>

### CHECKLIST OF AFTERCARE SERVICES (BONDED LABOUR)

#### Rescue / Emergency Assistance (0-2 weeks)

| Stage        | Task                                                                                                                           | Timeframe      | Documentation                                                                             | Tick if Completed |
|--------------|--------------------------------------------------------------------------------------------------------------------------------|----------------|-------------------------------------------------------------------------------------------|-------------------|
| Repatriation | Emergency medical care (including physical and mental care)                                                                    | Immediately    |                                                                                           |                   |
|              | Release Certificate                                                                                                            | Immediately    |                                                                                           |                   |
|              | Safety and security including protection/ harassment petition                                                                  | Immediately    |                                                                                           |                   |
|              | Emergency necessities – food and drink and immediate hygiene                                                                   | Immediately    |                                                                                           |                   |
|              | Temporary accommodation                                                                                                        | Immediately    |                                                                                           |                   |
|              | Information on bonded labour, enquiry process and give freedom speech – encouragement for victims to boldly tell their stories | Immediately    |                                                                                           |                   |
|              | Rehab Letter                                                                                                                   | Immediately    |                                                                                           |                   |
|              | Discussion about informed consent – medical care, counselling, media                                                           | Within 2 weeks |                                                                                           |                   |
| Intake       | Initial assessment                                                                                                             | Within 2 weeks | Aftercare Case File (for each family) – Family Details, Photographs, Emergency Assistance |                   |

<sup>175</sup> Please note that the Checklist is meant as a reference and can be modified to suit the requirements of the NGO carrying out the Aftercare process.

### Transitional Aftercare (1-2 months)

| Stage                           | Task                                                                                                                                                                                                                                                                                                                                                                                                             | Timeframe      | Documentation | Tick if Completed |
|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------------|-------------------|
| Repatriation                    | Transport families back to their native village or place of choice                                                                                                                                                                                                                                                                                                                                               | Within 1 month |               |                   |
|                                 | Plastic sheeting for tent, as needed                                                                                                                                                                                                                                                                                                                                                                             | Within 1 month |               |                   |
|                                 | Necessities Kit (rice, dal, raggi, oil, sugar, salt, etc.)                                                                                                                                                                                                                                                                                                                                                       | Within 1 month |               |                   |
|                                 | Family Kit (utensils, clothes, umbrella, toiletries, mosquito nets, etc.)                                                                                                                                                                                                                                                                                                                                        | Within 1 month |               |                   |
|                                 | Tool Kits, as needed                                                                                                                                                                                                                                                                                                                                                                                             | Within 1 month |               |                   |
|                                 | Mobilize local resources                                                                                                                                                                                                                                                                                                                                                                                         | Within 1 month |               |                   |
|                                 | Vocational training and livelihood options                                                                                                                                                                                                                                                                                                                                                                       | Within 1 month |               |                   |
|                                 | Medical checkup at local hospital                                                                                                                                                                                                                                                                                                                                                                                | Within 1 month |               |                   |
|                                 | Medical screening (TB, HIV etc.)                                                                                                                                                                                                                                                                                                                                                                                 | Within 1 month |               |                   |
| Mobilization of Local Resources | Freedom Training including: <ul style="list-style-type: none"> <li>• “Dealing with Fear” – managing harassment from facility owners</li> <li>• Identifying risky situations (advances, migration etc.)</li> <li>• Legal rights</li> <li>• Safety plans and monitoring threat levels</li> <li>• Importance of keeping aftercare provider informed about encounters with owners and potential migration</li> </ul> | Within 1 month |               |                   |
| Freedom Training                | Functional Assessment                                                                                                                                                                                                                                                                                                                                                                                            | Within 1 month |               |                   |
| Assessments                     | Treatment Plan                                                                                                                                                                                                                                                                                                                                                                                                   | Within 1 month |               |                   |

### Long Term Aftercare (2-12 months)

| Stage               | Task                                                           | Timeframe                        | Documentation | Tick if Completed |
|---------------------|----------------------------------------------------------------|----------------------------------|---------------|-------------------|
| Government Benefits | Monthly meetings                                               | Every month from 2 <sup>nd</sup> |               |                   |
|                     | Reunited with PVC / CWC                                        | Within 2 months                  |               |                   |
|                     | Bank account opened                                            | Apply Within 2 months            |               |                   |
|                     | Rs20000 BLA Compensation                                       | Apply Within 2 months            |               |                   |
|                     | Ration Card                                                    | Apply Within 2 months            |               |                   |
|                     | Pensions as relevant – widows pension, disability pension etc. | Apply Within 2 months            |               |                   |

|                                 |                                                                                                                                                                                                                                                                     |                                   |  |  |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--|--|
|                                 | Housing schemes and land pattav                                                                                                                                                                                                                                     | Apply Within 2 months             |  |  |
| Economic Empowerment/ Education | MGNREGA                                                                                                                                                                                                                                                             | Apply Within 2 months             |  |  |
|                                 | Voters ID                                                                                                                                                                                                                                                           | Apply Within 2 months             |  |  |
|                                 | Caste Certificate                                                                                                                                                                                                                                                   | Apply Within 2 months             |  |  |
|                                 | Facilitate school enrolment for all children age 14 and under                                                                                                                                                                                                       | Within 3 months                   |  |  |
|                                 | Facilitate school enrolment for all minor dependents of client (ages 15-17)                                                                                                                                                                                         | Within 3 months, if possible      |  |  |
|                                 | Monitor school attendance                                                                                                                                                                                                                                           | Within 3 months                   |  |  |
|                                 | Provide bicycles for transportation to employment, as needed                                                                                                                                                                                                        | Within 3 months                   |  |  |
|                                 | Ensure that any employed minor child is in a non-abusive work environment                                                                                                                                                                                           | Within 3 months                   |  |  |
|                                 | Ensure at least one adult member of each family is earning income                                                                                                                                                                                                   | Within 3 months                   |  |  |
|                                 | Monitor employment of adult client                                                                                                                                                                                                                                  | Within 3 months                   |  |  |
|                                 | On-going vocational training and livelihood options                                                                                                                                                                                                                 | Within 3 months                   |  |  |
| Community Empowerment           | Provide kitchen garden seeds, as needed                                                                                                                                                                                                                             | As appropriate per growing season |  |  |
|                                 | Facilitate enrolment in a Self- Help/Savings Group                                                                                                                                                                                                                  | Within 3 months                   |  |  |
|                                 | Introduce survivors to government officials (VAO's)                                                                                                                                                                                                                 | Within 3 months                   |  |  |
| Home Visits                     | Do community resource (assets) mapping                                                                                                                                                                                                                              | Within 3 months                   |  |  |
|                                 | Facilitate the provision of income generation programs                                                                                                                                                                                                              | Within 3 months                   |  |  |
|                                 | Home Visit 1: <ul style="list-style-type: none"> <li>Skills for managing harassment from facility owners</li> <li>Development of safety plans and monitoring threat levels</li> <li>General coping skills</li> </ul> *Women included in training                    | Within 3 months                   |  |  |
|                                 | Home Visit 1: <ul style="list-style-type: none"> <li>Domestic Violence Trauma (including recovery program if necessary)</li> <li>Sexual Trauma (including recovery program if necessary)</li> <li>Other trauma (including recovery program if necessary)</li> </ul> | Within 6 months                   |  |  |

|                  |                                                                                                                                                                                                                                                                                |                            |  |  |
|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--|--|
|                  | <ul style="list-style-type: none"> <li>Unhealthy coping strategies and addiction (including recovery program if necessary)</li> <li>Healthy relationships</li> </ul> *Women included in training                                                                               |                            |  |  |
| Legal Assistance | Home Visit 3: <ul style="list-style-type: none"> <li>Importance of education</li> <li>Family planning</li> <li>Health &amp; Hygiene –</li> <li>including nutrition, government health facilities and right to access public health care</li> </ul> *Women included in training | Within 9 months            |  |  |
|                  | Home Visit 4: <ul style="list-style-type: none"> <li>Employment</li> <li>Housing</li> <li>Savings and insurance</li> <li>General problem solving skills</li> </ul> *Women included in training                                                                                 | Within 12 months           |  |  |
|                  | Facilitate court preparation                                                                                                                                                                                                                                                   | Prior to court proceedings |  |  |
|                  | Facilitate support during legal proceedings                                                                                                                                                                                                                                    | During court proceedings   |  |  |
|                  | Facilitate post-trial de-briefing                                                                                                                                                                                                                                              | After court proceedings    |  |  |

### Graduation and Case Closing (after 12 months)

| Stage      | Task                                                                                                             | Timeframe                     | Documentation | Tick if Completed |
|------------|------------------------------------------------------------------------------------------------------------------|-------------------------------|---------------|-------------------|
| Graduation | Graduation Certificate                                                                                           | Within 1 year                 |               |                   |
|            | Graduation Ceremony                                                                                              | Within 1 year                 |               |                   |
|            | Ensure all Release Certificates obtained, all rehabilitation money released and all government benefits obtained | Before graduation             |               |                   |
|            | Final Functional Assessment                                                                                      |                               |               |                   |
|            | Final Location and Verification Check                                                                            | After 1 year                  |               |                   |
|            | Leadership Training                                                                                              | Within 1 month of Case Closed |               |                   |

**NATIONAL INTERVENTIONS REHABILITATION FAMILY FORM**

|                 |  |                             |  |
|-----------------|--|-----------------------------|--|
| NGO Partner     |  | Field Worker                |  |
| Case Name & No: |  | Initial Assessment Done On: |  |

**Family Details**

| Head of Family:<br>Address: |       | Mob:         |     |               |                      |
|-----------------------------|-------|--------------|-----|---------------|----------------------|
| SI No.                      | Names | Relationship | Age | Victim Status | Education/Employment |
|                             |       |              |     |               |                      |
|                             |       |              |     |               |                      |
|                             |       |              |     |               |                      |
|                             |       |              |     |               |                      |
|                             |       |              |     |               |                      |
|                             |       |              |     |               |                      |

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**Individual and Family Photograph**

|  |
|--|
|  |
|--|

**MEDICAL ASSISTANCE**

|                        |                          |                          |
|------------------------|--------------------------|--------------------------|
| Initial Check-Up Date: | Follow-Up Check-Up Date: | Follow-Up Check-Up Date: |
| Note:                  | Note:                    | Note:                    |

<sup>176</sup> This is a sample format to be used to when assisting bonded labourers with rehabilitation. NGOs are encouraged to use the format they are comfortable using or have been asked to use by the State Government/Court, as this is only a sample.

| KITS (If Given - List the Items) |  |
|----------------------------------|--|
|                                  |  |
|                                  |  |
|                                  |  |
|                                  |  |
|                                  |  |
|                                  |  |

| EMERGENCY ASSISTANCE                     |                                         |        |
|------------------------------------------|-----------------------------------------|--------|
| Harassment Protection (yes/no and date): | Contact Numbers (specify relationship): | Other: |
|                                          |                                         |        |

| TEMPORARY ACCOMMODATION AND TRAVEL ASSISTANCE |  |  |  |  |  |  |  |  |  |  |  |  |
|-----------------------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|
|                                               |  |  |  |  |  |  |  |  |  |  |  |  |

| Name         |              |               |                |              |               |                |              |                |               |              |               |                |
|--------------|--------------|---------------|----------------|--------------|---------------|----------------|--------------|----------------|---------------|--------------|---------------|----------------|
|              | Applied Date | Received Date | Already Exists | Applied Date | Received Date | Already Exists | Applied Date | Already Exists | Received Date | Applied Date | Received Date | Already Exists |
| Release Cert |              |               |                |              |               |                |              |                |               |              |               |                |
| Rehab Money  |              |               |                |              |               |                |              |                |               |              |               |                |
| Bank Account |              |               |                |              |               |                |              |                |               |              |               |                |
| Patta (H/L)  |              |               |                |              |               |                |              |                |               |              |               |                |
| Labour Card  |              |               |                |              |               |                |              |                |               |              |               |                |
| Voters ID    |              |               |                |              |               |                |              |                |               |              |               |                |
| Caste Cert   |              |               |                |              |               |                |              |                |               |              |               |                |
| Ration Card  |              |               |                |              |               |                |              |                |               |              |               |                |
| Pension      |              |               |                |              |               |                |              |                |               |              |               |                |
| Aadhar Card  |              |               |                |              |               |                |              |                |               |              |               |                |
| RSBY Card    |              |               |                |              |               |                |              |                |               |              |               |                |
| Housing      |              |               |                |              |               |                |              |                |               |              |               |                |

## FREEDOM TRAINING / EMPLOYMENT TRAINING

Attended on:

Significant things learnt:

Functional Assessment done on:

Treatment Plan done on:

## HOLISTIC DOMAIN BASED ASSESSMENT

### **Protection**

Strength

Assessed Need

Goal (ST & LT) Action

Outcome/Comments

### **Health**

Strength

Assessed Need

Goal (ST & LT) Action

Outcome/Comments

### **Housing**

Strength

Assessed Need

Goal (ST & LT) Action

Outcome/Comments

### **Education**

Strength

Assessed Need

Goal (ST & LT) Action

Outcome/Comments

### **Employment**

Strength

Assessed Need

Goal (ST & LT) Action

Outcome/Comments

### **Financial Information**

Strength

Assessed Need

Goal (ST & LT) Action

Outcome/Comments

|                                                                                                               |  |
|---------------------------------------------------------------------------------------------------------------|--|
| <b><u>Community Involvement</u></b><br>Strength<br>Assessed Need<br>Goal (ST & LT) Action<br>Outcome/Comments |  |
| <b><u>Trauma Recovery</u></b><br>Strength<br>Assessed Need<br>Goal (ST & LT) Action<br>Outcome/Comments       |  |
| <b><u>Family Relations</u></b><br>Strength<br>Assessed Need<br>Goal (ST & LT) Action<br>Outcome/Comments      |  |

|                       |  |               |  |
|-----------------------|--|---------------|--|
| Date:                 |  | Field Worker: |  |
| Home Visit<br>Number: |  |               |  |

## APPENDIX 20: SAMPLE FORMAT FOR APPLICATION UNDER SECTION 396(6) OF THE BNSS FOR VICTIM COMPENSATION

---

To

Date: .....

The Station House Officer (SHO),

P.S. ....

District .....

**Sub: APPLICATION U/S 396(6) of the BNSS ON BEHALF OF VICTIM ..... IN RELATION TO FIR NO ..... UNDER SECTION(s) 64 AND 351 OF THE BNS- P.S .....**

Respected Sir,

This is to bring to your kind attention that ..... An FIR bearing No ..... has been filed in your police station. A copy of the FIR is attached hereto as Annexure - .....

As your kind self would be aware that the abovementioned Scheme caters to the need of financial assistance for the victim and offers interim relief to the victim during the pendency of trial, irrespective of the outcome of the final judgment. We would like to submit that in the instant case, <Name of victim>, falls within the ambit of the definition of "victim" as stipulated under Sec 2(g) of BNSS.

*"victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir"*

Thanking you in anticipation for your prompt response.

Copy to: .....

Through .....

# APPENDIX 21: SAMPLE FORMAT FOR WRITTEN ARGUMENTS TO BE SUBMITTED IN TRIALS UNDER BONDED LABOUR INTERVENTIONS

---

## BEFORE THE HONOURABLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, MARAKADI

### SESSIONS CASE NO: 334 OF 2015

State of Tamil Nadu  
Represented by  
Deputy Superintendent of Police  
Marakadi Sub Division  
Marakadi

Complainant

Versus

Mr. Kumar Ramaswamy  
& Ors

Respondent/Accused

### WRITTEN ARGUMENT FILED UNDER SECTION 314 OF CRIMINAL PROCEDURE CODE

#### INTRODUCTION

1. This case is about eradicating Bonded Labour that took place in Marakadi on and before 28th November, 2014.
2. The bonded labour system is criminalized under the Bonded Labour System (Abolition) Act, 1976. The Indian Penal Code penalizes the crime of slavery, trafficking and forced labour. It is also prohibited under Article 23 of the Constitution. It is a serious abuse of Human Rights. The Supreme Court and the High Courts equate it to slavery.
3. This court has the opportunity and evidence before it, to punish both the Accused for the crimes they have committed, take a step in eradicating bonded labour and validate the faith of the victims in the Honourable Judiciary.

#### BACKGROUND FACTS:

##### The Complaint

4. On 28th November, 2014 Mr. Prabhu Shivankar registered a First Information Report ("FIR") with the Sarankudi Police Station. FIR No. 336/2014 against the following individuals for forced labour offences:
  - a. Kumar Ramaswamy
  - b. Veelam Thadi
  - c. Malaisukur
  - d. Kumarana
  - e. Deivara
  - f. Selarau
  - g. Thomil
  - h. Pandey Vary
  - i. Mohammed Jinha
  - j. Mayank

- k. Avadi
- l. Vedhamanickam

5. The FIR states that the above accused have been arrested for commission of offences under the following provisions:
  - a. Section 3(i)(vi) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989
  - b. Sections 143,145,146 of the Bharatiya Nyaya Sanhita, 2023
  - c. Sections 9, 16, 17, 18, 20 of the Bonded Labour System (Abolition) Act, 1976.
  - d. Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986.

#### RESCUE OF THE VICTIMS:

6. On 28.11.2014, 136 victims of bonded labour were rescued from a Brick Kiln in Thiragadam Village of Sarankudi Taluk, Marakadi District on a raid led by the police and Marakadi District Administration.
7. The bonded labourers released were all granted release certificates by the District Magistrate, Marakadi.

#### CHARGES FRAMED:

8. The Chargesheet was filed by the police on 17.02.2015. At the time of framing of the charges, all offences remained except for offences leveled under the provisions of the Prevention of Child Labour Act.

#### THE TRIAL

9. The case, which involved the trial of offences under the SC/ST (PoA) Act, 1989 was committed from the Munsiff-cum-Judicial Magistrate Court, Marakadi to the III Additional Sessions Judge, (PCR) Madurai and came to be numbered as S.C. No. 221 of 2015, pending trial.
10. Thereafter, the case was transferred to the Principal Sessions Court, Marakadi, when the provision of Special Courts under Section 14 of the SC/ST (PoA) Act was implemented, and the case number was re-designated as SC No. 336 of 2015.

#### THE LAW

Nine different offences are before this Court:

1. Section 3(1) (vi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ("the SC/ST Act") – enticing and compelling bonded labour from a Scheduled Caste or Tribe.
2. Section 143 and 144 of the BNS.
3. Section 145 of the BNS.
4. Section 146 of the BNS.
5. Section 9 of the Bonded Labour System (Abolition) Act, 1976 (Hereafter referred to as the "the B.L.A.") – Creditor not to accept payment against extinguished debt
6. Section 16 of the BLA – Enforcement of bonded labour
7. Section 17 of the BLA – Advancement of bonded debt
8. Section 18 of the BLA – Extracting bonded labour under the bonded labour system
9. Section 20 of the BLA – Abetment of bonded labour

#### THE ARGUMENT

##### PART I - Existence of Bonded Labour

1. Elements of Bonded Labour System as per the BLA The Accused are charged with offences under Sections 9,16,17,18 and 20 of the BLA. All these offences require the existence of a bonded labour system to be in place. ces:

- A. Section 2(g) of the BLA defines a bonded labour system as a system of forced, or partly forced, labour under which the debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that he would forfeit freedoms or rights in consideration of an advance, or debt, or obligation. The two ingredients of the offence of Bonded Labour are:
- a. A debtor enters into an agreement with a creditor
  - b. Forced Labour

a. Agreement

Section 2(g) (i) - (v) of the BLA lists the factors which would compel a debtor to enter into an agreement with a creditor as follows:

- i. An Advance ( in cash or kind), or
- ii. Customary or social obligation, or
- iii. Obligation through succession, or
- iv. Economic consideration, or
- v. By reason of birth in a particular community.

b. Forced Labour

Section 2 (g) of the BLA establishes what constitutes forced labour. Sections 2 (g) (1)(4) clarifies that "forced labour" is present in a bonded labour system when a labourer does any one of the following:

- i. Forfeit the right to receive minimum wage by rendering labour for nominal wages (wages less than minimum wages), or
- ii. Forfeit freedom of employment, or
- iii. Forfeit freedom of movement, or
- iv. Forfeit right to sell goods at market value.

The Supreme Court of India in the case of People's Union for Democratic Rights and

others v. Union of India and Others 228 further enlarged the scope of 'forced labour' reiterating the fact that "Forced Labour" would be constituted when remuneration to person providing labour is less than minimum wage, "We are, therefore, of the view

that when a person provides labour of service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 of the Constitution of India"

Also, in Bandhua Mukti Morcha v. Union of India and Others 229, the Supreme Court held, "Therefore, whenever it is shown that the labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is provided for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of provisions of the Act. The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that though the concerned labourers may be providing forced labour, the State Government does not owe any obligation to them unless and until they show in an appropriate legal proceeding conducted according to the rules of adversary system of justice, that they

are bonded labourers."

1. Existence of strong elements of Bonded Labour System in the present case: The facts of this case as evidenced in the statements of PW's 2, 3, 4, 6, 7, 9 to 31, the victims, clearly prove the existence of a bonded labour system in the Accused's Brick Kiln.

## A. Agreement

The first element required to be present to prove the existence of bonded labour is an agreement between the creditor and debtor. According to Section 2(g)(i) one example of such an agreement is when “in consideration of an advance obtained by him or by any of his lineal descendants (whether or not such advance is evidenced by the document) and in consideration of the interest, if any, due on such advance” the labourer would render himself into forced labour.

In the present case an agreement ‘in consideration of advance’ as per section 2(g) (i) of the Bonded Labour Act, 1976 is evident from the statements of the PW (2), (5), (6), (9) and (31) among others; which are stated below.

- A PW 2 stated that “out of Rs. 135/-(Rupees One Hundred and Thirty Five Only) for thousand bricks, Mohammad Jinah, used to give only Rs. 50/-(Rupees Fifty Only) after deducting Rs.85/-(Rupees Eighty Five Only) towards the advance of Rs. 10,000/- (Rupees Ten Thousand Only)”

**[INSERT HERE RELEVANT EXTRACT OF WITNESS PW 2 DEPOSITION IN TAMIL OR OFFICIAL LOCAL LANGUAGE OF COURT USING THE SAME LOCAL LANGUAGE SCRIPT --- SIMILARLY, INSERT SUCH EXTRACTS RELEVANT TO EVERY WITNESS DEPOSITION BEING QUOTED IN THE WRITTEN SUBMISSIONS, TO THE MAXIMUM EXTENT POSSIBLE<sup>177</sup>]**

- PW 5 states, “I was employed in brick making in Sarankudi Latti Chamber kiln. Then my daily payment was Rs. 130/-(Rupees One Thirty Only). Rs. 50/- (Rupees Fifty) would be given in hand. The balance money would be deducted. That amount was deducted for the amount taken as loan by me.”
- PW 6 stated that “we joined in the kiln as labour through an agent after receiving advance. For cutting 1,000 bricks, wage is Rs. 135/- (One Hundred and Thirty Five Only) Mohammad Jinah used to give only Rs. 50/-(Rupees Fifty Only) and Pandey deducted Rs.85/-(Rupees Eighty Five Only) towards the advance.”
- PW 7 stated that “..through an agent, myself, my wife and my father went to the kiln as labourers. My father only knew how much was received as an advance.”
- PW 9 deposed that “through an agent, I got Rs. 5,000/-(Five Thousand Only) as advance and joined Latti chambers. Wage for 1,000 bricks is Rs. 135/- (Rupees One Hundred and Thirty Five). But they gave only Rs. 50/-(Rupees Fifty Only) and Rs. 85/-(Rupees Eighty Five Only) would be taken by them towards advance”
- PW 10 stated that “We joined the kiln after getting Rs. 5,000/-(Rupees Five Thousand Only) as advance through an agent. For cutting 1,000 bricks, the wage is Rs. 135/-(One Hundred and Thirty Five). Out of that, they gave Rs. 50/- (Rupees Fifty Only) to us and Rs. 85/- (Rupees Eighty Five Only) will be taken by them towards the advance”
- PW 11 stated that “I have joined Latti Chambers in 2011. I got Rs. 10, 000/- (Rupees Ten Thousand Only) as an advance. For cutting 1,000 bricks, they used to give Rs. 50/-(Rupees Fifty Only).”
- PW 12 stated that “through an agent I got Rs. 5,000/- (Rupees Five Thousand Only) as advance and myself and my wife joined Latti chambers. For cutting 1,000 bricks, the wage is Rs. 135/-(Rupees One Hundred and Thirty Five Only). Out of that, Avadi and Mayank gave Rs. 50/- (Rupees Fifty Only) to us and Rs. 85/- (Rupees Eighty Five) will be taken by Mohammed Jinah and Pandey towards the advance”

<sup>177</sup> There is technology to insert such local language script for most Indian Languages. You could get it handwritten where such technology is absent.

- PW 13 stated that "When I joined Latti through an agent, they gave Rs. 10,000/- (Rupees Ten Thousand Only) as advance to our family. For thousand bricks, the wage is Rs. 135/-. From that the accused took Rs. 85/- towards the advance"
- PW 14 stated that "From the kiln, they gave Rs. 5,000/- as advance to our family."
- PW 15 stated that " through an agent, as a family we joined Latti in the year 2002 and received Rs. 5,000/- as advance"
- PW 16 stated that " through a supervisor, I joined work at Latti chamber after receiving Rs. 5,000/- as advance"
- PW 17 stated that "In 2011-2012, from the owner of the Latti Chamber, I received Rs. 5,000/- as advance. For cutting thousand bricks, the wage is Rs. 135/-. From that they took Rs. 85/- towards the advance and gave us only Rs. 50/-"
- PW 18 stated that "through supervisor Pitchai, we received Rs. 10,000/- as an advance, me, my wife and our son joined as labour at Latti chamber"
- PW 19 stated that "We joined Latti chamber through supervisor Marimuthu and they gave Rs. 5,000/- as advance. For cutting thousand bricks, the wage is Rs. 135/-. From that, they took Rs. 85/- towards the advance and gave us only Rs. 50/-"
- PW 20 stated that "Nine years back, I joined Latti chamber and received Rs. 5,000/- as an advance. The owner gave that advance through an agent. For cutting thousand bricks, the wage is Rs. 135/- From that they took Rs. 85/- towards the advance and gave us only Rs. 50/-"
- PW 21 stated that " I joined Latti chamber after receiving Rs. 5,000/- as an advance. For cutting thousand bricks, the wage is Rs. 135/- From that they took Rs.85/- towards the advance and gave us only Rs. 50/-"
- PW 22 stated that "through an agent, I received Rs. 10,000/- as an advance. For cutting 1,000 bricks, they gave Rs. 50/- and took Rs. 85/- towards the advance."
- PW 23 stated that "I joined Latti chamber as a labour directly. They gave Rs. 8,000/- as an advance. If we cut 1,000 bricks, after deducting Rs. 85/- towards the advance, the accused used to give only Rs. 50/- to us."
- PW 24 stated that "through an agent, I received Rs. 5,000/- as an advance and joined Latti chamber as a labour. For cutting thousand bricks, the wage is Rs. 135/- From that the accused took Rs. 85/- towards the advance and gave us only Rs. 50/-"
- PW 25 stated that "I joined Latti chamber after receiving Rs. 5,000/- as an advance. I stayed there in a hut. For cutting thousand bricks, the wage is Rs. 135/- From that the accused took Rs.85/- towards the advance and gave us only Rs. 50/-"
- PW 26 stated that "through supervisor Marathur Sekar, I received Rs. 10,000/- (Rupees Ten Thousand Only) as advance, staying in a hut within the chamber and worked. For cutting 1,000 bricks, wage is Rs. 135/-(Rupees One Thirty Five Only). Out of that the accused used to give us Rs. 50/-(Rupees Fifty Only) and remaining Rs. 85/-(Rupees Eighty Five Only) would be deducted towards the advance."
- PW 27 stated that "An agent took us to Latti chamber. He got and gave us Rs. 10,000/- (Rupees Ten Thousand Only) as an advance. Me and my wife can cut 1,000 bricks a day. The wage is Rs. 135/-(Rupees One Thirty Five Only) out of that, they used to give us only Rs. 50/- (Rupees Fifty Only) and they took Rs. 85/-(Rupees Eighty Five Only) towards the advance"
- PW 28 stated that "through , the accused gave us advance."
- PW 29 stated that " the agent got and gave us Rs. 5,000/-(Rupees Five Thousand Only)

as advance. The wage is Rs. 135/-(Rupees One Thirty Five Only) for cutting 1000 bricks. Out of that, they gave us Rs. 50/-(Rupees Fifty Only) and they took Rs. 85/-(Rupees Eighty Five Only) towards the advance”

- PW 30 stated that “ one person took us to Latti chamber and gave us Rs. 5,000/- (Rupees Five Thousand Only) as an advance. The wage is Rs. 135/- (Rupees One Thirty Five Only) out of that, they used to give us only Rs. 50/- (Rupees Fifty Only) and they took Rs. 85/-(Rupees Eighty Five Only) towards the advance”
- PW 31 stated that “through a person, as a family, we joined Latti chambers as labourers. I got Rs. 10,000/-(Rupees Ten Thousand Only) as advance.”

Therefore, from the depositions of the above Public Prosecution Witnesses, it can be deduced that an agreement ‘in consideration of an advance’ is present between the labourers and the above mentioned creditors. As stated above, the PWs after being presented with an advance of a certain amount, found themselves having to later submit themselves to the illegal practice of bonded labour. A fair reading into the deposition of the PW 2; for instance, state that an amount of Rs.10, 000/-(Rupees Ten Thousand Only) was advanced to him by the brick kiln. As such the method and mode of payment as is stated was only through the deduction of his total wages amount i.e. Rs.135/- (Rupees One Thirty Five Only) of which Rs.85/- (Rupees Eighty Five Only) was deducted leaving the labourer with an amount of Rs.50/-(Rupees Fifty Only).

#### B. Forced Labour

As stated in the Supreme Court cases cited above viz. i. ) People’s Union for Democratic Rights and others v. Union of India and others , ii) Bandhua Mukti Morcha v. Union of India and Others, the Apex Court has by the power granted to it under Article 141 of the Constitution of India, laid down the law with regard to ‘forced labour’ that:

- Where a person gets a remuneration which is less than the current notified minimum wage under the Minimum Wages Act, 1948 for the particular scheduled employment, the labour or service provided by that person clearly falls within the ambit of the term ‘forced labour under Article 23 of the Constitution, an
- Where a labourer is made to provide forced labour, he is presumed to be a bonded labourer in terms of the Bonded Labour System (Abolition) Act. 1976.

Therefore the second element required to prove the existence of a bonded labour system, - “forced labour” is made apparent by the depositions of PWs above. Through the deposition of PWs 2, 6, 9, 10, 11, 12, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30 it is clear that all labourers received a wage of Rs.135/-(Rupees One Thirty Five Only) for making 1000 bricks and as stated by PW 2 the brick kiln would then deduct an amount of Rs. 85/-(Rupees Eighty Five Only) for the advanced amount that they had received. This means a single labourer for a day’s work received Rs.50/- (Rupees Fifty Only). The minimum wage in the year 2011 according to the Minimum Wages Act, 1948 was Rs.80 (Rupees Eighty Only) however, with effect from April 1, 2011; the National Floor Level of Minimum Wage raised it to Rs.115/- (Rupees One Hundred and Fifteen Only). The labourers therefore were being paid Rs.50/- (Rupees Fifty Only) per day. This is significantly below the minimum wage. Thus, because of the illegal deductions all the victims had forfeited their right to receive minimum wage, as established in Section 2(g) (1) B.L.A, and thus the labourers fall under the ambit ‘forced labourers’ of Article 23 and ‘bonded labourer’ in terms of the Bonded Labour System (Abolition) Act. 1976.

In the instant case, it is already proven that there was an “agreement” in consideration to an “advance” which incurred the nature of a bonded debt. As a consequence of this bonded debt, these bonded labourers had forfeited several rights qualifying them to fall under the Bonded Labour System which are dealt with below and are to be read with Section 2 (g) (i) (1) (2) (3) of

the Bonded Labour Act, 1976:

1. Forfeit the right to receive minimum wage by rendering labour for nominal wages (wages less than minimum wages) It has already been established through the depositions of PWs stated in the above, that the labourers in the Brick kiln were receiving less than the minimum wage amount, as they were paid an amount of Rs.50/-(Rupees Fifty Rupees) each after deductions of Rs.85/-(Rupees Eighty Five Only) Illegal Deduction in the present case: (under the Minimum Wages (Central) Rules, 1950) Under the Minimum Wages (Central) Rules, 1950, Section 21 (2) (vi) "deductions for recovery of advances" should not "exceed an amount equal to wages for two calendar months of the employed person and, in no case, shall the monthly instalment of deduction exceed one-fourth of the wages earned in that month".

However, in the present case as per the depositions of the Public Prosecution Witnesses it is established that Rs.85/-(Rupees Eighty Five Only) was being illegally deducted from the amount of Rs.135/-(Rupees One Thirty Five Only) leaving the labourer with Rs.50/-(Rupees Fifty Only) of wages in hand.

This deduction by the creditor is illegal, as deduction for a recovery of an advance is only permissible if it does not exceed one-fourth of the wages earned in that month.

However, as pointed in the chart below, the present deduction by the creditors are almost three-fourth of their total wages amount.

| Total Wages<br>(without deduction)                           | Total Amount of Deductions                        | Total Wages in Hand<br>(with deductions)                                                                                                  |
|--------------------------------------------------------------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Rs.135/-(per day) x 26 (Working days)                        | Rs.85/-(per day) x 26 (Working days)              | [Total Wages – Deduction = Wages in Hand]x(Working Days)<br>Rs.50/-(135-85) x 26<br>= Rs.1,300/-(Rupees One Thousand, Three Hundred Only) |
| Rs. 3,510/-(Rupees Three Thousand Five Hundred and Ten Only) | Rs.2,210/- (Rupees Two Thousand One Hundred Only) | Rs.1,300/-(Rupees One Thousand, Three Hundred Only)                                                                                       |

That therefore under the Minimum wages (Central) Rules, 1950, Section 21 (2) (vi), the monthly installment of deduction of Rs. 85/- (Rupees Eighty Five Only) is illegal as it "exceeds one-fourth of the wages earned in that month."

That further, a pursuance of a bonded debt is any way an offence and punishable under the Bonded Labour Act, 1976 as there is no liability on the part of the bonded labourer to pay the bonded debt.

2. Forfeit freedom of employment

PW 2 stated that "while we were working there, they will not permit us to go out for work anywhere else. ... On Saturdays, when we go for weekly mandi, they will permit only one of us from our family."

PW 14 stated in his deposition that "we worked and stayed at Latti. In a family, to go to mandi, only the male member alone can go and woman folk have to stay in the chamber itself. To go to naive village, one member in a family can go and the another member

have to stay there. While we went to sandy, we met and give in writing to a philanthropic institution. We lived like a slave. We struggled for our food. We asked them to rescue us from there.”

PWs 3, 4, 6, 11 to 13, 15, 17 to 20, 24 to 28, 30, 31, also stated in their depositions that they were not allowed to go out as a family, they have to stay at the chamber itself. The victims in this case had forfeited their right to work anywhere other than the Accused’ Brick Kiln. They were therefore not provided the freedom to find any other mode of employment, even to pursue payment of the advance amount, except to labour under the Accused Brick Kiln. In such a case when the victims are not allowed to travel outside the Brick Kiln, it is impossible for the labourers to find any other mode of employment, even to pay the advance received. This curtail to find any other source of employment proves a forfeiture in their freedom of employment, as enumerated in Section 2(g) (2) of the Bonded Labour Act, 1976.

### 3. Forfeit freedom of movement, or

A further reading into PW 2’s deposition, make it apparent and obvious that the labourers had also completely forfeited their freedom of movement except for inside the brick kiln. As is clearly mentioned in PW 2’s deposition; “while we were residing and working inside the above brick kiln, they would not allow us to go anywhere outside and work. Besides, if we had to go outside, we had to go only after informing the brick kiln. Other than this, once in a week, only on a Saturday, only one person in the family was allowed to go to the mandi to purchase provisions. Thus we had to purchase provisions from the mandi and work inside the chamber.”

PW 14 has deposed, “While working we would stay only in Latti. If have to go to mandi, only the male person would go. The women would stay back. If have to go to the village, any one person had to stay, other could go and come.”

PW 12 stated that “ we used to stay there itself. One of us will go out to purchase groceries. To go our village, only one of us alone can go..”

PW 13 stated that “ myself and my wife stayed and work there in the chamber. To go to mandi to purchase goods, only one of us will be allowed.”

PW’s 2, 3, 4, 6, 15, 17 to 20, 24 to 28, 30, 31 clearly stated that the Accused would not permit them to leave the Brick Kiln when they wanted. Even if they did, they had to leave some one behind. This undoubtedly shows that the victims’ freedom of movement was restricted and they had forfeited their freedom as required by Section 2(g) (3) B.L.A..

The BLA requires only one of the four freedoms or rights to be forfeited. However, in this case, the victims’ statements prove that they had forfeited their right to receive minimum wage, their freedom of movement and their freedom of employment.

### C. Burden of Proof upon the Accused (Section 15 of B.L.A.)

According of Section 15 of B. L. A. , “Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.” In no point of the trial did the Accused proved that the debt of the bonded labourer is not a bonded debt. All the offences under Bonded Labour System (Abolition) Act hinges on the debt.

## PART II - Proof of Bonded Labour offences against the accused

1. FIRST OFFENCE: The accused accepted payment against an extinguished debt under Section 9 of the BLA.

Section 9 of the BLA states that, "(1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act. (2) Whoever contravenes sub – section (1), shall be punishable with imprisonment for a term which may extend to three years and also with fine. (3) The Court, convicting any person under sub – section (2) may, in addition to penalties which may be imposed under that sub – section, direct the person to deposit, in Court, the amount accepted in contravention of the provisions of sub – section (1), within such period as may be specified in the order for being refunded to the bonded labourer."

In order to prove that the Accused committed this offence, the Public Prosecution has to prove:

- a. The accused accepted payment against a bonded debt.
- b. The bonded debt had been extinguished or deemed to have been extinguished.

Based on the oral evidence of the witnesses, the Public Prosecution has been able to prove that:

- a. The accused accepted payment against a bonded debt.

A bonded debt has been defined in Section 2(d) of the B.L.A, 1976 as, "an advance obtained or presumed to have been obtained, by a bonded labourer under, or in pursuance of, the bonded labour system."

As shown in Part I, the victims were in a bonded labour system operated by the Accused.

The debt in question is without a doubt a 'bonded debt' as in the present case an 'advance' was obtained by the bonded labourers, who were incurred into a bonded debt and into a bonded labour system, as per the Section 2(g) of the B.L.A,1976; whereby the labourers worked without: (i) minimum wages, or (ii) forfeited the freedom of employment, or (iii) and also forfeited the right to move freely.

An advance has been defined under Section 2(a) of the BLA as, "an advance, whether in cash or in kind, partly in cash or partly in kind, made by one person (hereinafter referred to as the creditor) to another person (hereinafter referred to as the debtor)."

The depositions of the witnesses below make it clear that the Accused (the creditor) had advanced cash to the bonded labourers:

- PW 2 has stated that "out of Rs. 135 for thousand bricks, they used to give only Rs. 50 after deducting Rs.85/-towards the advance of Rs. 10,000/-"
- PW 17 stated that "In 2011-2012, from the owner of the Latti Chamber, I received Rs. 5,000/- as advance."
- PW 18 stated that "through supervisor Pitchai, we received Rs. 10,000/- as an advance"
- PW 19 stated that "We joined Latti chamber through supervisor Marimuthu and they gave Rs. 5,000/- as advance."
- PW 20 stated that "Nine years back, I joined Latti chamber and received Rs. 5,000/- as an advance. The owner gave that advance through an agent. "
- PW 28 has stated that, "We worked for 1 year. We made stones in the chamber. Would make from 1500 to 1700 stones in a day. Would give Rs.135/- as wage for 1000 stones. Would keep in total. On Saturday would give Rs. 100/- for mandi. Would begin at 12 in the night and finish at 10 in the morning. We stayed in the chamber and worked. I and my wife stayed in the chamber and both of us worked. Latti chamber belongs to one

Kumar Ramaswamy. If we made the stones and kept, they would tap and break them.”

Thus, from the above depositions and depositions of PWs 10 to 15, 20 to 31, it is clear that the Accused No.1, the owner of Latti Brick Kiln, had advanced cash to the bonded labourers along with his agents and their men in a bonded labour system.

b. The bonded debt had been extinguished or deemed to have been extinguished.

In the present case, the Accused had accepted payment against bonded debt that had been extinguished or deemed to have been extinguished.

The depositions of the following witnesses make it clear that the Accused had accepted payment for a bonded debt that was deemed to have been extinguished:

PW 20 stated that “Nine years back, I joined Latti chamber and received Rs. 5,000/- as an advance. The owner gave that advance through an agent. For cutting thousand bricks, the wage is Rs. 135/- From that they took Rs. 85/- towards the advance and gave us only Rs. 50/-”. Like him other Public Prosecution witnesses

PWs 2, 6, 7, 9 to 19, 21 to 31 also deposed to the effect that the management of the Latti Brick kiln deducted nearly 75% of their wage towards the loan advanced to them at the time of joining as a labourer there.

Under section 6 (1) of the Bonded Labour System (Abolition) Act, 1976, every obligation of a bonded labourer to repay any bonded debt is extinguished.. It reads as follows,

“Liability to repay bonded debt to stand extinguished – (1) On the commencement of this Act, every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.”

As such every bonded debt is extinguished and any contract to bonded labour under the bonded labour system is illegal and punishable under the Bonded Labour System (Abolition), Act, 1976.

A perusal into the above stated depositions made by the Public Prosecution Witnesses make it clear and precise that the labourers or debtors in the present case entered into an agreement in consideration of an advance incurring a bonded debt with the creditor and forfeiting their rights (i) for nominal wages (ii) freedom of employment (iii) right to move freely.

As such the bonded debt contracting the bonded labourers to the Bonded Labour System today stands extinguished under the Bonded Labour Act, 1976.

### **Burden of Proof Upon the Accused:**

According of Section 15 of B.L.A., “Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.”

In no point of the trial, the Accused proved that the debt of the bonded labourer is not a bonded debt.

Thus the Public Prosecution has proved a) the Accused received payment against a bonded debt and b) The Accused received payment against a bonded debt that was deemed to have been extinguished. Both the ingredients of the offence have been proved beyond reasonable doubt and therefore, this Honourable Court has to convict the Accused for the charge under Section 9 of the BLA.

2. SECOND OFFENCE: The accused compelled a person to render bonded labour under Section 16 of the BLA.

Section 16 of the BLA states that, "Whoever, after the commencement of this Act, compels any person to render any bonded labour shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees."

In order to prove that the Accused committed this offence, the Public Prosecution has to prove:

- a. The victims were rendering bonded labour.
- b. The Accused compelled them to do so.

The Public Prosecution has clearly proved both the ingredients based on the evidence on record as follows:

- a. The victims were rendering bonded labour:

Bonded labour has been defined in Section 2(e) of the BLA as, "any labour or service rendered under the bonded labour system." As shown in Part I, the victims in this case were in a bonded labour system operated by the Accused.

All the victims, PW's 2, 6, 7, 9 to 31 reiterate the fact that they were working to process bricks in a bonded labour system. This work of processing bricks is a labour or service as required in Section 2(e). Therefore, the victims were rendering bonded labour.

- b. The Accused compelled them to do so:

Under Section 16, the Accused has to compel a person to render bonded labour. This compulsion can be physical and verbal compulsion or compulsion by working for a wage less than minimum wage, a presumption recognised by the Supreme Court of India.<sup>178</sup>

- i. Compulsion:

PW [ 2 ] stated that, "while we were residing and working inside the above brick kiln, they would not allow us to go anywhere outside and work. Besides, if we had to go outside, we had to go only after informing the brick kiln. Other than this, once in week, only on Saturday, only one person in the family was allowed to go to the mandi to purchase provisions. Thus we had to purchase provisions from the mandi and work inside the chamber."

PW's through their depositions talk of how they were abused.

- PW 3 stated that "weekly once they permitted us to go for weekly mandi to purchase groceries. In a family, only one person will be permitted to go out for weekly market. Others have to continue work".
- PW 4 stated that "Only on Saturdays, they permit us to go Ilayankudi market. At that time also, I have to leave my wife in the brick chamber and only one employee alone permitted to go out".
- PW 5 states that, "Even when told that the wages are not sufficient the proprietor of the brick kiln would not pay anything additional. My son was sick and in bed. I had to pledge my wife's 'thaali' (mangala sutra) and treated him in hospital"
- PW 6 stated that " on Saturdays, to go to weekly mandi, among the family, we have to leave one of the family member in the brick chamber and only one of us will be permitted to go to the market".

<sup>178</sup> *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473, 1486, para. 14 : (1982) 3 SCC 235.

- PW 9 stated that, "The proprietors cannot take the brick that we made. The bricks made would lie on the ground. They would treat them as defective bricks and deduct and add to my loan. We were struggling without means for food."
- PW 10 states that, "If have to go out from the chamber, one person can go out, leaving behind one person."
- PW 12 stated that " we used to stay there itself. One of us will go out to purchase groceries. To go our village, only one of us alone can go.."
- PW 13 stated that " myself and my wife stayed and work there in the chamber. To go to mandi to purchase goods, only one of us will be allowed."
- PW 14 stated that "we worked and stayed at Latti. In a family, to go to mandi, only the male member alone can go and woman folk have to stay in the chamber itself. To go to native village, one member in a family can go and the another member have to stay there. "
- PW 15 stated that " they provided us a thatched shed for our stay in the chamber. There is a specific mark for each family. While taking out bricks after the heating process in the kiln, if any brick was broken, according to the mark in those bricks, they will deduct the wage for thousand bricks. The "kanakkup-pillai" (accountant) used to visit every place by morning 7 o'clock. If some one went to hospital for treatment, he would intimate their absence to the office of the owner. If so, Rs. 75/- will be deducted from their account."
- PW 17 stated that "they kept us to stay there in the chamber by put up sheds. ...they have to take the raw bricks withina week. But they may not take even for two weeks. If the bricks broken, they claim those are not good bricks. "
- PW 18 stated that "When they counted, they used to broke some bricks. Those will not be taken into account. We would be suffered. After the kiln process, they deducted 1,000 bricks. There is a mark in the brick. Since they broke the bricks, we have to do the work again and again. We cannot go to our village. They will not allow us to go out."
- PW 19 states that "We stayed in the chamber itself. If there are two persons in the family, one have to stay in the chamber and another one will be allowed to go to village."
- PW 24 stated that "Once in a week, one of us from our family can go to fetch groceries. They damaged the stones and added to our account. Not the owner, but the accountant tortured us."
- PW 25 stated that "We cannot go any where outside. To go to mandi, only one of us can go. At the chamber, they treated us like bonded labourers."
- PW 26 stated that "Weekly once one person per family is permitted to go to weekly mandi for purchase. We can go out with the permission of men in the chamber. "
- PW 27 stated that "There is a shed in the chamber. We stayed there and did our work. ...On Saturdays, I went to mandi after leaving one person in the chamber. After cutting the bricks "kanakkuppillai Kumar" used to damage it by saying it is udaikal (broken stone). For those broken stones, they deducted from our wage."
- PW 30 stated that "weekly once when we go for mandi, among husband and wife, one of us would be retained at the chamber. Supervisors used to damage the stones cutters. They tortured us much. They kept us like bonded labourers."

ii. Working below minimum wage = force of compulsion (Supreme Court presumption)  
The Supreme Court of India in *People's Union for Democratic Rights v. Union of India*<sup>179</sup> held, "It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive."

In the instant case, as discussed in Part I (2) - Existence of bonded labour system in Latti Brick Kiln, all the victims, PWs 2, 6, 7, 9 to 31 stated that they were paid well below the minimum wage. This, according to the Supreme Court should lead this Honourable Court to presume that the victims were working under the force of some compulsion. All the victims stated that they were working for the accused for a wage below the minimum wage and hence they were compelled by the Accused.

Thus the Public Prosecution has proved a) the victims were rendering bonded labour and b) The Accused compelled them to do so. Both the ingredients of the offence have been proved beyond reasonable doubt and therefore, this Honourable Court has to convict the Accused for the charge under Section 16 of the BLA.

### 3. THIRD OFFENCE: The accused advanced a bonded debt under Section 17 of the BLA.

Section 17 of BLA states that, "Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees."

In order to prove that the Accused committed this offence, the Public Prosecution has to prove:

- a. The existence of a bonded debt.
- b. The Accused advanced the debt.

The Public Prosecution, through the oral evidence of the victims has proved both the required ingredients of the offence as follows:

- a. The existence of a bonded debt:

The existence of bonded debt has been proved in Part II

- b. The Accused advanced the debt:

The statement of the witnesses PWs 2, 9, 13, 14, 17, 23, 27 establish that the Accused, the owner of the brick kiln along with his representatives/agents had advanced the bonded debt.

- PW 13 states that, "When I joined in the job through an agent, from Latti kiln, they gave Rs.10,000/- to my family as advance money."
- PW 14 states that, "Rs. 5000/- was given as advance money to our family from the kiln."
- PW 17 stated that "In 2011-2012, from the owner of the Latti Chamber, I received Rs. 5,000/- as advance."
- PW 20 stated that "I joined Latti chamber and received Rs. 5,000/- as an advance. The owner gave that advance through an agent. The statements of these and other witnesses establish that the Accused No.1 was the person who advanced the bonded debt through his agents. PW 25 stated that "We cannot go any where outside. To go to mandi, only one of us can go. At the chamber, they treated us like bonded labourers."

Thus the Public Prosecution has proved a) the existence of a bonded debt and b) The Accused

<sup>179</sup> AIR 1982 SC 1473, 1486, para. 14: (1982) 3 SCC 235.

advanced the bonded debt. Both the ingredients of the offence have been proved beyond reasonable doubt and therefore, this Honourable Court has to convict the Accused for the charge under Section 17 of the BLA.

4. FOURTH OFFENCE: The accused forced the family/dependent of the bonded labourer to render service under the Bonded Labour System to enforce the agreement between the debtor and creditor under Section 18 of the B.L.A.

Section 18 of BLA states that, "Whoever enforces, after the commencement of this Act, any custom, tradition, contract, agreement or other instrument, by virtue of which any person or any member of the family of such person or any dependant of such person is required to render any service under the bonded labour system, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees;..."

In order to prove that the Accused committed this offence, the Public Prosecution has to prove:

- a. The existence of any custom, tradition, contract, agreement or other instrument.
- b. By virtues of said (a), the Accused requires the labourers to render any service under the bonded labour system.

The Public Prosecution, through the oral evidence of the victims has proved both the required ingredients of the offence as follows:

- a. The existence of agreement.

According to section 2 (b) of B. L. A. , the agreement can be oral agreement. The Accused through oral agreement between the labourers and the Accused, advanced money to the labourers who in consideration for the advance rendered bonded labour.

- b. By virtue of said enforcement of the agreement, the Accused required the labourer to render service under a bonded labour system.

The deposition of witnesses to the effect that they received advances and the fact that they stayed in the chamber itself and rendered the labour without freedom to go out for employment anywhere else establishes the existence of both oral agreement and that the labourers rendered service under a bonded labour system.

Thus the Public Prosecution has proved beyond a reasonable doubt a) the existence of agreement; b) By virtue of said enforcement of agreement, the Accused required the labourer to render service under bonded labour system.

5. FIFTH OFFENCE: The accused (Accused/Respondent Nos. 2 – 11) aided and abetted in the committing of offences under Section 20 of BLA.

Section 20 of the BLA states that, "Whoever abets any offence punishable under this Act shall, whether or not the offence abetted is committed, be punishable with the same punishment as is provided for the offence, which has been abetted."

In order to prove the offence under this section, the Public Prosecution needs to establish the existence of 'abetment' on the part of the accused.

The explanation to section 20 states that the word 'abetment' for the purpose of this section shall have the same meaning in accordance with provisions of the Bharatiya Nyaya Sanhita, 1860.

Abetment as defined under section 45 of the BNS states that, "A person abets the doing of a thing, who

- First- Instigates any person to do that thing; or
- Secondly- Engages with one or more other person or persons in any conspiracy for

the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

- Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

The Public Prosecution has to establish either of the following to prove an offence of abetment: a) The accused instigated the commission of the offence, or

- a. The accused instigated the commission of the offence, or
- b. dThe accused was engaged with one or more person or persons in any conspiracy for commission of offence, or
- c. The accused intentionally aided the commission of an offence.

The evidence on record, established by the Public Prosecution, clearly proves that Accused/ Respondent Nos. 2 to 11 intentionally aided the commission.

The accused (Respondent Nos. 2 to 11) have aided, through their acts the commission of the offences as they were employed by the accused and were in charge of the brick kiln run by the accused. They equally participated in the exploitation of the victims at the brick kiln.

- The PW[1] states that, "According to the information received by us, 12 persons, including Kumar Ramaswamy, Mohammed Jinah, Malaichamy, Deiva, Selvam, Selvamani, Vedamanickam, Pandi – all connected with the brick kiln, have been employing Harijan people as bonded labourers in the above said brick kiln, by giving them an advance amount and employing them as bonded labourers in the brick kiln, and that they are kept inside the brick kiln and not allowing them to move out, that they are not allowed to go out without the permission of the owner and the superintendent, that they are paid very low wages, and also that even the wages are not paid properly."
- PW [2] stated that, "Defendants 2 to 12 are working with the above Defendant 1, in the above brick kiln as accountant and watchmen."
- PW [3] stated that, "That brick kiln belongs to 1st Defendant Kumar Ramaswamy. The other defendants are working as accountants with him..... In the above brick kiln, the accountants of Latti brick kiln would break the bricks kept unburnt which we had made. If asked why they were breaking the bricks, they would say they were broken stones and that they could not be taken for burning as bricks. If asked why, they would abuse us indecently."
- PW [11] stated that, "The chamber people would write down the details of bricks made. The chamber people would come and take the bricks we had made and dried to load in the kiln. Then they would break the brick and test. If it breaks, they would break all the bricks made."
- PW [17] stated that, "The accountant would come and break and see the stones we made. The stoned we made should be taken within a week."
- PW [18] stated that, "The accountant would come and take account. There were 6 accountants. Out of them, Malaichamy, Vedhamanikham and Thomil were employed as accountants. The names of the other 3 accountants are not known. While taking account, they would break the stones. That won't be added to the account. Because of that we would be affected. When the stones are burnt, they would deduct 1000 stones."
- PW [27] stated that, "Accountant Thomil would break the stones made by us as broken

stones. For the broken stones would deduct from the wage.”

The accused Nos. 2 to 11 have aided, through their acts the commission of the offences as they were employed by the accused and were in charge of the brick kiln run by the accused. They equally participated in the exploitation of the victims at the brick kiln.

Thus the Public Prosecution has proved that the accused intentionally aided the commission of offence. The offence has been proved beyond reasonable doubt. The Hon'ble Court has to convict the accused for the charge under Section 20 of B.L.A.

6. SIXTH OFFENCE: The accused has trafficked of persons for bonded labour as per the Section 370 I.P.C.:

Section 370 of I.P.C. states 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.”

The Public Prosecution has to establish the following in order to prove this charge:

1. That the accused imports, exports, removes, buys, sells or disposes of any person as slave, or
2. That the accused accepts, receives or detains against his will any person as slave. The evidence on record in the present case proves that that the accused accepted, received and detained persons as slaves against their will. The elements of the offence are made out below:

i. Detention

The oral evidence of the victims provides instances that prove that the victims were detained at kiln for work.

- PW [2] stated that, “while we were residing and working inside the above brick kiln, they would not allow us to go anywhere outside and work.”
- PW [6] stated that, “. At times, the bricks that we made during the week would not come for accounting. If a relative in the village had to be visited, if one person in the family was kept back in the brick kiln, they will allow others to go.”
- PW [12] stated that, “We will be there itself. Any one will go out and buy provisions. If have to go to village, any one person only would go.”
- PW [14] stated that, “If have to go to mandi, only the male person would go. The women would stay back. If have to go to the village, any one person had to stay, other could go and come.”
- PW [26] stated that, “Once a week, only one person per family would go to mandi and purchase. Only after asking the chamber people could go out .”
- PW 25 stated that “We cannot go any where outside. To go to sandy, only one of us can go. At the chamber, they treated us like bonded labourers.”

ii. Detention against the will of the person

The statements of victims prove that they were detained by the accused against their will

- PW 18 stated that “Since they broke the bricks, we have to do the work again and again. We cannot go to our village. They will not allow us to go out.”
- PW 19 states that “ We stayed in the chamber itself. If there are two persons in the family, one have to stay in the chamber and another one will be allowed to go to village.”

iii. The detention was for the purpose of slavery

The term 'slave' has not been defined in the Bharatiya Nyaya Sanhita. In the case of *Bandhua Mukti Morcha v. Union Of India*, it has been stated that, "Any person who is wrongfully and illegally employed as a labourer in violation of the provisions of the Bonded Labour System (Abolition) Act, 1976 is in essence deprived of his liberty. A bonded labourer truly becomes a slave and the freedom of a bonded labourer in the matter of his employment and movement is more or less completely taken away and forced labour is thrust upon him."

The existence of bonded labour has been proved by the Public Prosecution through the evidence on record in this case.

Hence the ingredients of the offence under Section 143 and 144 of the BNS have been proved beyond reasonable doubt and the Hon'ble Court has to convict the Accused for this offence.

7. SEVENTH OFFENCE: The accused has bought/sold/trafficked slaves as per Section 145 of BNS.

Section 145 of BNS states that that, "Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine."

In order to prove that the Accused committed an offence under this section, the Public Prosecution has to prove:

- a. The Accused trafficked slaves
- b. The Accused was in the habit of trafficking persons for slavery.

a. The Accused trafficked slaves

The statements of the witnesses PWs 2, 3, 4, 6, 7, 9 to 31 clearly prove that the Accused was in the dealing with persons from neighbouring villages with the purpose of using them as slaves in his Brick Kiln:

b. Habitually dealt with persons for slavery

The statements of the witnesses PWs 2, 3, 4, 6, 7, 9 to 31 clearly prove that the Accused was in the dealing with persons from neighbouring villages with the purpose of using them as slaves in his Brick Kiln:

- PW [1] states that "According to the information received by us, 12 persons, including Kumar Ramaswamy, Mohammed Jinah, Malaichamy, Deiva, Selvam, Selvamani, Vedamanickam, Pandey – all connected with the brick kiln, have been employing Harijan people as bonded labourers in the above said brick kiln."
- PW [9] states that, "I worked in Latti Brick kiln in Thirugadam. I joined the job after receiving an advance of Rs.5,000/- through an agent."
- PW [13] stated that, "When I joined in the job through an agent, from Latti kiln, they gave RS.10,000/- to my family as advance money."
- PW [27] stated that, "10 years ago, an agent took me to Latti chamber for work. He got for me an advance of Rs.10,000/- I and my wife worked there."

It has been proved from the evidence above that the accused had employed victims as bonded labours through agents by paying them advance. It has also been proved that the victims were employed as slaves. Hence the statements of witnesses above prove that the accused habitually dealt in slaves

From the above it is proved that the accused was in the habit of dealing with persons for the purpose of slavery. Thus the Public Prosecution has proved beyond a reasonable doubt that the accused has committed an offence under Section 145 of Bharatiya Nyaya Sanhita and ought to be sentenced accordingly.

8. EIGHTH OFFENCE: The accused has unlawfully compelled persons to render labour against their will under Section 146 of BNS.

Section 146 of the Bharatiya Nyaya Sanhita states that, "Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

In order to prove that the Accused committed an offence under this section, the Public Prosecution has to prove:

- a. The Accused unlawfully compelled any person to labour
- b. The labourers render labour against his will.

The Public Prosecution through the ingredient (b) of Section 16, the first offence, has proved that the Accused compelled the victims to render bonded labour which is a system of forced labour. This compulsion was through the exertion of physical force and by the fact that the Accused did not pay the victims the minimum wage (Presumption of the Supreme Court).

Thus the Public Prosecution has proved beyond a reasonable doubt that the accused has committed an offence under Section 146 of the BNS.

9. NINTH OFFENCE: The accused has enticed/compelled members of the S.C./S.T. community to provide bonded labour service under Section 3(i)(vi) of the SC/ST Act.

Section 3(1)(vi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act states, "Whoever, not being a member of a Scheduled Caste or Scheduled Tribe, compels or entices a member of Scheduled Caste or Scheduled Tribe to do 'beggar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

In order to prove that the Accused committed an offence under this section, the Public Prosecution has to prove:

- a. The Accused No.1 to 5, 7 to 10 were not members of a Scheduled Caste.
- b. The victims were members of a Scheduled Caste.
- c. The Accused compelled or enticed the victims.
- d. The compulsion/enticement was for forced or bonded labour.

The testimony of the witnesses and the documentary evidence at trial prove that the Accused did commit the offence under this section:

- a. The Accused No.1 to 5, 7 to 10 were not members of a Scheduled Caste.
- b. The victims were members of a Scheduled Caste.

All the victims in this case stated in their depositions that they belong to the Parayar Community which is a Scheduled Caste as notified in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976.

Both the oral testimony and the documentary evidence clearly indicate, without any doubt, the victims in this case belonged to the Parayar community which is a Scheduled Caste.

PW's 1[ ] all the victims in this case stated in their depositions that they belong to the [ Paraiyar ] Community which is a Scheduled Caste as notified in the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976.

PW [ 2] stated, "I belong to the Hindu-Paraiyar community."

Along with this PWs 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,

28 state in their depositions that they belong to Hindu Paraiyar community.

c. The Accused compelled or enticed the victims.

Compulsion:

The Public Prosecution through the ingredient (b) of Section 16, the first offence, has proved that the Accused compelled the victims to render bonded labour which is a system of forced labour. This compulsion was through the exertion of physical force and by the fact that the Accused did not pay the victims the minimum wage (Presumption of the Supreme Court).

Therefore this ingredient has been proved by the Public Prosecution.

d. Forced or bonded labour:

The final ingredient for the Public Prosecution to prove this offence is to show that the labourers were rendering forced or bonded labour. Forced labour through Bonded labour:

Section 2(g) of the BLA states, "bonded labour system means the system of forced or partly forced labour." Bonded labour is a type of forced labour.

The Public Prosecution in this argument in Section 2 and through the arguments with regard to the first and second offence have indubitably proved that there was a bonded labour system in the Accused's rice mill and that the victims were rendering bonded labour. No evidence has been presented to this court by the Accused to refute this.

Furthermore, the Supreme Court in *People's Union for Democratic Rights and others v. Union of India and Others*<sup>180</sup> otherwise referred to as the *Asiad Workers Case*, the Supreme Court said, "We are, therefore, of the view that when a person provides labour of service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23 (of the Constitution of India)."

In this case, as already proved in part 2 (existence of bonded labour system) the victims were paid significantly below the minimum wage for the work that they were doing and therefore were rendering forced labour.

Therefore, the Public Prosecution has proved that a) the Accused was not a member of a Scheduled caste or tribe b) the Victims belonged to the Scheduled Caste, c) the Accused compelled the victims and d) the victims were rendering bonded labour.

This the Public Prosecution has proved beyond a reasonable doubt that the accused has committed an offence under Section 3(1) (vi) of the SC ST act.

## PRAYER

In light of the above facts, circumstances and offences established under Part I and II of this Written Argument, it is clearly documented and recognised that there exists a bonded labour contract between the accused and the victims. Under the above arguments and submissions, it is therefore humbly prayed that this Hon'ble Court pass an order against the accused for offences set about and committed under:

- a. Sections 9, 16, 17, 18 and 20 of the Bonded Labour Act, 1976, which is deemed to be punishable with imprisonment for a term which may extend to three years and also a fine which may extend up to two thousand rupees.

<sup>180</sup> AIR1982SC1473, para. 20 : (1982)3SCC235.

- b. Section 3(1) (vi) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ("the SC/ST Act") – enticing and compelling bonded labour from a Scheduled Caste or Tribe, which is punishable with imprisonment for a term not less than 6 months and may extend to five years, with a fine.
- c. Section 143 of the Bharatiya Nyaya Sanhita, 2023 ("the BNS") – Trafficking of persons, which is punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- d. Section 145 of the Bharatiya Nyaya Sanhita, 2023 ("the BNS") – Habitual dealing in slaves, punishable with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.
- e. Section 146 of the BNS – Unlawful compulsory labour, punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
- f. Any other Order that this Hon'ble Court finds befitting in pursuing Justice.

Dated ..... day of 2016, Marakadi

Special Public Prosecutor

## APPENDIX 22: MYTHS AND REALITIES ON HUMAN TRAFFICKING FOR COMMERCIAL SEXUAL EXPLOITATION

**TABLE ON MYTH AND REALITY OF HUMAN TRAFFICKING FOR COMMERCIAL SEXUAL EXPLOITATION<sup>181</sup>**

| Myth                                                                                                   | Reality                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| In trafficking for prostitution, the brothel manager/madam is the main accused in a trafficking crime. | Brothel manager/madam is only the visible face of the exploiter and the trafficker is the main culprit.                                                                                                                                                                                                                                                                                 |
| Brothel is the only scene of crime in trafficking.                                                     | The scene of crime in trafficking involves all places of source, transit and destination. It includes places where exploitation takes place under the façade of other enterprises, such as beauty and massage parlours, friendship clubs, small hotels, exclusive clubs, under the guise of call centres etc.                                                                           |
| The law to address trafficking is only ITPA.                                                           | Trafficking for CSE has to be addressed by invoking not only ITPA but relevant provisions of IBNS (ex. 96,141,146,96,141,143,98,99,63. 64).)                                                                                                                                                                                                                                            |
| All women seen to be soliciting are accused persons under ITPA.                                        | Case Studies and research shows that most of these women are made to solicit by the exploiters; there is no mens-rea and these women are victims.                                                                                                                                                                                                                                       |
| Customer is not an accused under ITPA.                                                                 | Customer is culpable under Sections 5 (1) (d) and 7 (1) and related IPC offences.                                                                                                                                                                                                                                                                                                       |
| Only a Special Police Officer can arrest a trafficking accused.                                        | Any officer of the rank of SI and above can be authorized under ITPA by a Special police Officer, in writing (S. 14 (ii) or otherwise (S. 14(iii)). However, any person committing or likely to commit a cognizable offence can be arrested by any police officer, including a constable .( Section 35 of the BNSS)                                                                     |
| Without FIR no arrest or rescue is possible.                                                           | Trafficking being a cognizable offence, any police officer can cause arrest or rescue even without FIR to prevent crime (Section 35 of the BNSS). Moreover, a Magistrate can authorize any police officer of the rank of SI and above for carrying out rescue (Section 16 (1) of ITPA).                                                                                                 |
| A PO can register a case of trafficking only after rescue.                                             | Rescue normally takes place at the point of final destination, whereas trafficking offences commence at the source itself and continues through transit to the destination point and even thereafter. If PO gets information about any person having been transferred through transit place, the PO of those areas should register FIR for the offence of trafficking u/S 5(3) of ITPA. |

<sup>181</sup> SOP on investigation of Crime on Trafficking for commercial sexual exploitation, UNODC.

LIST OF MATERIAL EVIDENCE AND RELEVANCE FOR INVESTIGATION<sup>182</sup>

WHAT TO COLLECT FOR INVESTIGATION

- ◇ Diaries, notebooks, account books, registers, etc. in the brothel.
- ◇ Travel documents including bus/train/air tickets, papers of travel agents, visiting cards of travel agents, etc.
- ◇ Rent agreements , rent receipts , house tax receipts , ration cards, passports, electricity / telephone/water/mobile phone bills, voter IDs, driving licences, registration papers of vehicles , insurance policies, investment details, bank pass books, money order receipts etc.
- ◇ Receipts and registers reflecting expenditure on medicines (including contraceptives, doctor’s prescriptions, hospital records indicating termination of pregnancy of victims), cosmetics, pornography etc.
- ◇ Photographs, albums, video cassettes, DVDs, CDs, letters, pornographic material , computers, hard discs, brochures, advertisements in media.
- ◇ Vehicles used for transporting victims.
- ◇ Visitor’s list , ‘tokens’ issued to visitors/clients, documents regarding clients, their classifications (as ‘regulars’, ‘newcomers’ etc.)
- ◇ Documents relating to the income/ expenditure /assets of inmates of the place, including the personal belongings of the victims concealed by the exploiters /abusers.

RELEVANCE FOR INVESTIGATION

- ◇ To prove existence of brothel, name of victims in the brothel. (already trafficked, likely to be trafficked), number of victims, details of payments, earnings, names of ‘customers’, accomplices, conspirators, abettors, traffickers and others.
- ◇ To prove movement of persons during trafficking, to link source-transit- destination areas and to link the offenders in the process of the crime.
- ◇ To prove the existence and address of the brothel, the people who are managing it and their income and earnings.
- ◇ To prove sexual exploitation of victims.
- ◇ To prove the sexual exploitation of victims and the existence of an organized network of criminals.
- ◇ To prove the transportation of victims from one place to another, linking up places of exploitation and thereby the exploiter’s networks.
- ◇ To investigate the ‘demand’ aspect and level of exploitation.
- ◇ To establish aspects of illegal detention, level of exploitation of the victims, debt bondage of the victims and also to assess the illegal assets acquired by the exploiters.

APPENDIX 23A: SAMPLE APPLICATION TO MAGISTRATE UNDER  
SECTION 223, BNSS TO TAKE COGNIZANCE OF A COMPLAINT ALONG  
WITH APPLICATION UNDER SECTION 175(3)(4) BNSS DIRECTING  
CONCERNED SHO FOR LODGING OF FIR.

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**IN THE COURT OF ..... at .....**

**COMPLAINT CASE NO. .... OF 2015**

IN THE MATTER OF:

XYZ

COMPLAINANT

**VERSUS**

1. ABC S/o .....

2. ABCD S/O .....

ALL THE RESIDENCE OF:

R/o

RESPONDENTS

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Mr. ....

Complainant .....

Through

Date .....

Counsel .....

**IN THE COURT OF ..... at .....**

**COMPLAINT CASE NO. .... OF 2015**

IN THE MATTER OF:

XYZ

COMPLAINANT

**VERSUS**

1. ABC S/o .....

2. ABCD S/O .....

ALL THE RESIDENCE OF:

R/o

RESPONDENTS

**BACK**

## MEMO OF PARTIES

Sh. XYZ S/o abc

R/o .....

COMPLAINANT .....

### VERSUS

ABC S/o

BCD S/o

ZDC S/o

ALL THE RESIDENCE OF:

R/o

RESPONDENTS

## POLICE STATION

Mr. ....

Complainant .....

Through

Date .....

Counsel .....

IN THE COURT OF ..... at .....

COMPLAINT CASE NO. .... OF 2015

IN THE MATTER OF:

XYZ

COMPLAINANT

### VERSUS

1. ABC S/o .....

2. ABCD S/O .....

ALL THE RESIDENCE OF:

R/o

RESPONDENTS

## POLICE STATION

**COMPLAINT CASE UNDER SECTION 223 OF THE BNSS. FOR SUMMONING OF THE ACCUSED PERSONS  
TO FACE THE TRIAL UNDER SECTION ..... OF I.P.C.**

MOST RESPECTFULLY SHOWETH:-

1. That the Complainant is the peace loving and law abiding citizen of India and having ..... residence at .....Complainantisresdiingattheabovementionedaddresssince .....
2. That the respondent no.1,2,3 etc. are/is (brief the role of the respondents).
3. That the Complainant is (brief the status of the complainant). Brief the background of the matter and annexed the documents as per the story of the case. Annexure-A/B/C etc.
4. That .....
5. That .....

6. That .....
7. That the complainant has already made several representations to higher police officials as well as SHO police station ..... but to no effect.
8. That, now the respondent and his associates are still threatening the complainant on regular basis not to approach any authority in respect of the said offences.
9. That the aforesaid offences have been committed by the respondent and his associates under the jurisdiction of police station ..... hence this Hon'ble Court has jurisdiction to try and entertain the present complaint.

In view of the aforesaid circumstances, it is therefore prayed that this Hon'ble Court may be pleased to summon the aforesaid accused persons and punish them under section ..... of the I.P.C. in the interest of justice.

Any other or further relief which this Hon'ble Court may deem fit and proper be passed in favour of complainant and against the respondent in the interest and furtherance of justice.

Mr. ....

Complainant .....

Through

Date .....

Counsel .....

**IN THE COURT OF ..... at .....**

**COMPLAINT CASE NO. .... OF .....**

IN THE MATTER OF:

XYZ

COMPLAINANT

**VERSUS**

ABC

RESPONDENTS

### **POLICE STATION**

APPLICATION UNDER SECTION 175 (3) AND (4) OF THE BNSS FOR DIRECTION TO THE CONCERNED S.H.O. FOR LODGING OF FIR AGAINST THE AFORESAID PERSON AND CALL THE REPORT FROM THE POLICE STATION: ....., AT .....

MOST RESPECTFULLY SHEWETH:

1. That, the applicant/complainant has filed the accompanying complaint before this Hon'ble Court and the same is pending disposal before this Hon'ble Court. The contents of the same may be treated here-in as part and parcel of this application.
2. That, the applicant/complainant has given a complaint to the S.H.O. .... on ..... which clearly discloses cognizable offences committed by the named accused persons.
3. That, it is pertinent to mention here that the lodging of FIR in respect of commission of a cognizable offence is mandatory and police is left with no option except to lodge the FIR against the respondent /accused person and his associates and after that to investigate the matter. The law in this regard has already been settled by the Hon'ble High Court of Delhi as well as Supreme Court of India through its various judgments.

4. That the Hon'ble Supreme Court has observed that:

***"Special Leave Petition before the Hon'ble Supreme Court of India reported in 1997 J.C.C. 532 (S.C.) in which the Hon'ble Supreme Court has held that the police can only investigate a cognizable offences if a formal FIR case has been registered."***

5. That, there are several judgments passed by the Hon'ble Supreme Court of India as well as various Hon'ble High Courts has categorically held:

***"When an information relating to commission of cognizable offences is filed in a police station, he has statutory duty to register the case and the police before registration of the case can not embark upon inquiry to find out whether the information is reliable, genuine or otherwise and refuse to register the case on that ground."***

## PRAYER

In view of the aforesaid circumstances, it is, therefore, prayed that this Hon'ble Court may be pleased to direct the concerned S.H.O. to lodge the FIR/Case of the complainant in the aforesaid matter and call the report from the police in the said matter immediately, in the interest and furtherance of justice.

Any other order which this Hon'ble Court may deem fit and proper be passed in favour of the complainant and against the respondent and his associates, in the interest and furtherance of justice.

Mr. ....

Complainant .....

Through

Date .....

Counsel .....

**IN THE COURT OF ..... at .....**

**COMPLAINT CASE NO. .... OF 2015**

IN THE MATTER OF:

XYZ

COMPLAINANT

**VERSUS**

1. ABC S/o .....

2. ABCD S/O .....

ALL THE RESIDENCE OF:

R/o

RESPONDENTS

LIST OF WITNESSES:

1. Complainant himself/herself

2. Sh. .... S/o

3.

4. Any other witnesses whom the Hon'ble Court deems necessary.

Mr. ....

Complainant .....

Through

Date .....

Counsel .....

## APPENDIX 24: SAMPLE WRITTEN SUBMISSIONS FOR FILING OF CHARGESHEET (CSE INTERVENTIONS)

---

To,  
The ACP,  
PS: .....

Date: .....

**Subject: Meeting for discussion on concrete progress in FIR No: .....**

Respected Sir,

I am writing on behalf of .....

We humbly bring to your notice that despite the fact that the above mentioned FIR was registered on ..... however there is no charge-sheet filed yet. Further, the statutory period of 90 days for filing a charge-sheet in the present case has passed. Therefore, we kindly request you to look into the matter so that the process under the present matter is expedited at the earliest.

Yours Sincerely, .....

APPENDIX 25: SAMPLE FORMAT FOR APPLICATION UNDER SECTION 338 OF THE BNSS. [CSE INTERVENTIONS]

IN THE HON'BLE COURT OF ..... LD, ASJ, COURT NO: .....

.....

SESSION CASE NO ...../20 .....

BETWEEN

..... Complainant

V.

AND

..... Accused

FIR No: .....

U/s. ....

Police Station: .....

APPLICATION U/S 301 READ WITH SEC.18(8) OF BNSS

| S. NO | PARTICULARS                                                                                           | PAGE NO |
|-------|-------------------------------------------------------------------------------------------------------|---------|
| 1     | Application under Sec. 301 read with Sec. 18(8) of BNS seeking leave to assist the Public Prosecution |         |
| 2     | Vakalatnama                                                                                           |         |

Dated: .....

Place: .....

..... (De-facto complainant/witness)

Through ..... Lawyer (Counsel for the applicant)

IN THE HON'BLE COURT OF ..... LD, ASJ, COURT NO: .....

.....

SESSION CASE NO ...../20 .....

BETWEEN

..... Complainant

V.

AND

..... Accused

FIR No: .....  
U/S 143/144/127/3(5) BNS  
Police Station: .....

APPLICATION ON BEHALF OF....., U/S 301 READ WITH Sec. 18(8) OF THE BNSS SEEKING LEAVE OF THIS HON'BLE COURT TO ASSIST THE PROSECUTION.

MOST RESPECTFULLY SHEWETH:-

That the above mentioned applicant has engaged and instructed the under signed counsel to represent him before this Hon'ble court on his behalf. In this regard Vakalatnama duly signed by the above mentioned applicant is also attached herewith.

That the under signed counsel for the applicant wish to assist the Public Prosecution. He/she shall act under the instruction of the learned AAP/PP. Therefore, permission to assist to Public Prosecution may kindly be given.

That the instant petition is without prejudice and is bona-fide and in the interest of justice.

### PRAYER

Keeping in view the afore-referred facts and circumstances and also in the interest of justice, it is most humbly prayed that this Hon'ble court may be pleased to:-

- a. Allow this petition and consequently
- b. Allow the undersigned counsel for applicant to assist the Public Prosecution.
- c. Pass any other order/s or direction/s to which this Hon'ble court may deem fit and proper to the facts of the case and also in the interest of justice.

Dated: .....

Place: .....

..... (De-facto complainant/witness)

Through ..... Lawyer (Counsel for the applicant)

## APPENDIX 26: SAMPLE FORMAT FOR APPLICATION UNDER SECTION 192(4) BNSS [CSE INTERVENTIONS]

---

**IN THE COURT OF HON'BLE METROPOLITAN MAGISTRATE, .....**

CASE NO ...../20 .....

In the matter of:

BETWEEN

..... Complainant

V.

AND

..... Accused

FIR No: .....

Dt .....

U/s. ....

Police Station: .....

### **Application U/S 192(4) BNSS seeking appropriate orders**

MOST RESPECTFULLY SHEWETH:-

That the instant case is pending for adjudication before this Hon'ble Court and is scheduled today. That on ..... a rescue operation was jointly conducted by a raid team which consisted of .....

During the said rescue operation ..... victims of the ages between ..... were rescued from ..... and ..... accused persons were also arrested who are out on bail.

That the FIR was registered on ..... and till date a chargesheet has not been filed. It is humbly submitted that the mandatory time period of ..... days for filing chargesheet as per Sec. 187 BNSS has been exceeded.

It has been more than ..... since the FIR was registered and the Investigation officer has failed to file any report. Sec. BNSS 193(1) states-

"BNSS 193(1) – Every investigation under this Chapter shall be completed without unnecessary delay."

That under sec.192(4) of the BNSS this Hon'ble Court has ample power and jurisdiction to call for the police diary of a case under inquiry or trial in such court to aid such inquiry or trial. Hence it is humbly submitted that on reading sec.192(4) of the BNSS that this Hon'ble Court has the power to call for the police diary to aid the inquiry of the undue delay for completing the investigation by the Investigation officer.

That the instant application is a bonafide application and is without any prejudice. That it is in the best interest for justice.

### **PRAYER**

It is humbly prayed that the Hon'ble Court calls for record the police diary as per law and

Pass any other order which the court may deem fit and proper in the facts and circumstances of the case may

be also passed in favour of the victims.

AND FOR WHICH ACT OF KINDNESS THE HUMBLE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Dated: .....

Place: .....

Through ..... (Applicant/Complainant)

**IN THE HON'BLE COURT OF ..... LD, ASJ, COURT NO: .....**

.....

SESSION CASE NO ...../20 .....

BETWEEN

..... Complainant

V.

AND

..... Accused

FIR No: .....

U/s. ....

Police Station: .....

## APPENDIX 27 : SAMPLE FORMAT FOR APPLICATION FOR OPPOSING BAIL [SEX TRAFFICKING]

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**(For a More Detailed Format Refer to Appendix 14)**

**IN THE COURT OF HON'BLE..... LD, ASJ, COURT NO: .....**

Criminal Case No .....

In the matter of:

..... Complainant

V.

..... Accused

FIR No: .....

Dt .....

Police Station: .....

**Application for Bail opposition as applied by ..... before this Hon'ble Court in Criminal Case**

**No. .... FIR ..... U/S .....**

MOST RESPECTFULLY SHEWETH:-

That this case is pending adjudication before this Hon'ble Court and the date of hearing and production of the prosecutrix is fixed for today i.e. .... That in the above mentioned case the true and correct facts of the case are the following:

It is a settled law that this Hon'ble Court has the discretionary powers to either grant or reject bail to the accused. The Hon'ble Supreme Court has in various judgments held that the following tests though not exhaustive are to be taken into account while granting bail:

1. the nature and gravity of the offence;
2. the severity of the punishment;
3. whether there are reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat to the complainant;
4. the danger that the accused might abscond if granted bail;
5. the existence of a prima facie strong case against the accused.

It is further submitted there is a reasonable apprehension that the accused might abscond if enlarged on bail.

It is further submitted that mere parity cannot be sole ground for grant of bail as held by the Hon'ble High Court in Siddhartha Behura v. Cbi; Amin Khan Amanullah Khan And Anr. v. State Of Maharashtra 2003 (2) ALD Cri 123, 2003 BomCR Cri (Bombay).

The Petition of the accused seeking bail deserves to be dismissed on the above cited grounds. By dismissing the bail petition of the accused, this Hon'ble Court would send a strong message to society that such dubious elements of society dealt with the iron hands of the law.

**PRAYER**

It is humbly prayed that the Hon'ble Court rejects the application for bail of the accused and

Pass any other order in favor of the victims which the court may deem fit and proper in the facts and circumstances of the case.

And for which act of kindness the Humble Petitioner as in duty bound shall ever pray.

Dated: .....

Place: .....

Through ..... (Applicant/Complainant)

## APPENDIX 28 : SAMPLE FORMAT FOR REQUESTING THE COURT TO REFER CUSTODY APPLICATION TO THE C.W.C.

---

**IN THE COURT OF HON'BLE METROPOLITAN MAGISTRATE..... C. NO. ....**

FIR No: .....

Dt .....

Police Station: .....

In the matter of:

..... Complainant

V.

..... Accused

MOST RESPECTFULLY SHEWETH:-

That this case is pending adjudication before this Hon'ble Court and the date of hearing and production of the prosecutrix is fixed for today i.e. ....

That in the above mentioned case the true and correct facts of the case are the following: That the prosecutrix being a minor was produced before the Child Welfare Committee (hereafter referred to as CWC) on ..... As per sec. 32 of the Juvenile Justice Act, 2000 (hereafter referred to as JJ Act, 2000) it specifically states that:

"Sec. 32. Production before Committee.-

1. Any child in need of care and protection may be produced before the Committee by one of the following persons-
  - i. any police officer or special juvenile police unit or a designated police officer;
  - ii. any public servant;
  - iii. Childline, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the State Government;
2. The State Government may make rules consistent with this Act to provide for the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children's home pending the inquiry."

That on the abovementioned date i.e. 10th Oct, 2013 the CWC took the prosecutrix into its custody and placed the prosecutrix at ..... for care and protection, having viewed prosecutrix as a child in need of care and protection and being the appropriate authority as per Sec. 31 of the JJ Act, 2000:

"Powers of Committee.-

The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human right.

Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection."

It is humbly submitted that as per Sec. 31 of the JJ Act, 2000 the CWC is the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human right. This is further supported by the Hon'ble Bombay High Court decision in Prerna v. State of Maharashtra, 2003(2) Mah.L. J. 105 the Division Bench of this Court gave following guidelines to ensure that the child in need of care and protection must be dealt with bearing in mind the possibility of their reformation and rehabilitation

"37. We feel that the following directions may prevent recurrence of such events in future:

(A) No Magistrate can exercise jurisdiction over any person under 18 years

of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Sections 2(1) and 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrates must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection..."

The instant application on behalf of the applicant is bona-fide and in the interest of justice.

### PRAYER

Therefore, keeping in view aforementioned facts and circumstances and also in the interest of justice, it is humbly prayed that this Hon'ble Court:-

- a. To direct the Applicant to apply for custody before the appropriate authority i.e. the Child Welfare Committee and/or
- b. Pass any other order which the court may deem fit and proper in the facts and circumstances of the case.

Dated: .....

Place: .....

..... (Applicant/Complainant)

Through

..... Lawyer

### Check list for CSE Intervention Rescue

1. Have you secured the victim in a dignified manner?
2. Have you separated the victim and the accused?
3. Have you conveyed to the victim that the operation is to rescue her and not to convict her?
4. Have you ensured that no intimidating questions are asked by the police and that statement is recorded by a woman police officer in the presence of a female social worker?
5. Have you ensured that the victim has collected all her property/belongings before leaving the brothel?
6. Have you ensured that the victim is provided with immediate assistance like clothing, food medical needs etc.?
7. Have you produced the victim before Judicial Magistrate / CWC?
8. Have you ensured that the victim is sent to the safe custody of shelter home?
9. Have you ensured that victim receives counselling from a trained professional counsellor?
10. Have you noted down the family details of the victim to initiate tracing of family?
11. Have you shared all relevant facts with regards to trafficking and abuse as disclosed by the victim to the concerned Investigation Officer?
12. Have you shared all facts and details with regards to court proceedings with the victim?
13. Have you identified the risk factors before repatriating / re - integrating victim back to family?
14. Have you taken necessary steps to re-integrate the victim into society and make her self-reliant through education, vocational training or employment options?

**HOME INQUIRY REPORT****IMPORTANT NOTE:**

HIR will be conducted on the basis of a written order passed by the competent authority. Such an order by the competent authority maybe issued to NGOs, institutions, social worker, government task force, or any other professional who has been assigned the task of conducting the home inquiry.

The HIR should be submitted in the prescribed format along with the supportive documents; the HIR must be duly signed by the authorized representative of the agency ordered to do the Home Inquiry.

If the HIR is not the final one and another visit is required, please put the heading of the document as "INTERIM HOME INQUIRY REPORT" instead of "HOME INQUIRY REPORT." Make the HIR as detailed as possible. If the investigator has interviewed someone for whom a contact number is available, please mention it in the report.

The person conducting the HIR should be sensitive about sharing confidential information about the victim to victim's family or community members while conducting the HIR. Social worker must carry valid identification papers while conducting the HIR.

**INTERIM/FINAL - HOME INQUIRY REPORT**

Report to be Submitted to \_\_\_\_\_

Case No. \_\_\_\_\_

In the Matter of \_\_\_\_\_

TraffickingConcern Police Station/Institute/Agency (Rescued) \_\_\_\_\_

Profile No. \_\_\_\_\_

Date of Admission: \_\_\_\_\_

Rescued/Charged U/s. \_\_\_\_\_ of ITPA/JJ Act or other Act.

<sup>183</sup> This is a sample format. NGOs are encouraged to follow the format that is used in their respective states. Further, if a different format is being followed by an NGO or as directed by the Court/CWC, please follow that said format.

## DETAILS OF AGENCY/NGO/POLICE STATION/INDIVIDUAL DOING THE HIR:

|                       |  |                         |  |
|-----------------------|--|-------------------------|--|
| <b>HIR Team:</b>      |  |                         |  |
| <b>HIR Date/Time:</b> |  | <b>HIR Date/Time:</b>   |  |
| <b>Rescue Date:</b>   |  | <b>Rescue Location:</b> |  |

|                                                                                               |                                            |                        |  |
|-----------------------------------------------------------------------------------------------|--------------------------------------------|------------------------|--|
| <b>Victim Name:<br/>(include alias)</b>                                                       |                                            | <b>Age:</b>            |  |
| <b>Languages<br/>Known:</b>                                                                   |                                            | <b>Religion/Caste:</b> |  |
| <b>Address and<br/>Information:</b><br>Contact Person<br>Address<br>Landmarks<br>Phone Number | Current address:<br><br>Permanent address: |                        |  |

| Family Information         | Name | Occupation | Salary | Contact Details | Any Other Details |
|----------------------------|------|------------|--------|-----------------|-------------------|
| v                          |      |            |        |                 |                   |
| Mother                     |      |            |        |                 |                   |
| Husband                    |      |            |        |                 |                   |
| Brother                    |      |            |        |                 |                   |
| Sister                     |      |            |        |                 |                   |
| Others<br>(Please Specify) |      |            |        |                 |                   |

|                                                                                                                          |                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Protective Factors:</b><br>-Relationships<br>-Family Strengths<br>-Family income<br>-Parents/Relatives                | (Investigator to assess and fill in the section. Questions are for the investigator). Do you think the family is capable of taking care of the victim? Is the family willing to accept victim? What plans does the family have for the victim? Any statements made by family members. |
| <b>Risk Factors:</b><br>-Domestic Violence<br>-Substance Abuse<br>-Family Illnesses<br>-Current Stressors<br>-Any others | What is the current situation at the home that would put the girl at risk if she is returned home? Do you foresee particular problems for the victim? Any statements made by family members.                                                                                          |
| <b>Dependence on prostitution:</b>                                                                                       | (If applicable) Is the family dependent on the girl's income? Please include instances of money sent home, proportion to family income of amount sent home:                                                                                                                           |

|                                                           |                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Circumstances of victim leaving/ being trafficked:</b> | (As applicable) Describe the circumstances under which the girl left home, include date of departure, contact made by victim or any other persons regarding the victim, any phone numbers/ Efforts taken by the family to locate the girl. (search, contact, missing complaint, FIR): |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                     |                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Home Information:</b>            | Are they land/home owners? Tenants? If tenants, then what is the rent per month? Do they live in a permanent or temporary structure?                                                                                                                                                                                                                              |
|                                     | Describe conditions surrounding home (attach any photographs): brief about the neighborhood, main sources of income, general observation regarding the neighborhood.                                                                                                                                                                                              |
|                                     | Describe in detail what you saw at the house (Attach any photographs): List number of rooms in the house, general condition of the house. List out the assets that the family owns like TV, refrigerator, A.C., washing machine etc. Does the family own two wheeler or car?                                                                                      |
| <b>Observation of Investigator:</b> | Do you think the family is suitable or fit to take custody of the girl? If so, state reason. Will they be able to provide for the needs of the girl? Will she be in a safe protective space when returned home?                                                                                                                                                   |
| <b>Document Verification</b>        | List any available school records, village panchayat certificates, ration card, voter ID cards, leave and licensing document, birth certificates, pan cards, photographs of the victim and family. Important to ascertain the accurate name, address, age and family details of the victims from the documents. Attach copies of any documents to the end of HIR. |

|                                        |                                                              |
|----------------------------------------|--------------------------------------------------------------|
| <b>Information from other sources:</b> | - Panchayat (Is the community willing to accept the victim?) |
|                                        | - Police                                                     |
|                                        | - School                                                     |
|                                        | - Neighbors                                                  |
|                                        | - Friends                                                    |

|                                     |                                                                                                                                                                                                                         |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Information about Trafficker</b> | <p>Describe family's knowledge of traffickers' identity, residence, occupation, interaction(s) with parents/victim, and any notable matters:</p> <p>Describe frequency and duration of traffickers' visits to area:</p> |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                     |                                                                                        |
|-------------------------------------|----------------------------------------------------------------------------------------|
| <b>Analysis by the investigator</b> | <p>(Circle) Is family fit for custody of the victim?</p> <p>Yes/No / Unsure</p>        |
|                                     | Describe and explain reasons for fitness/unfitness:                                    |
|                                     | List and explain any factors affecting likelihood of victim returning to prostitution: |
|                                     | If needed, include any other notes:                                                    |

|                         |                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Follow up agency</b> | <p>Is there any NGO, agency, shelter home, etc. who can assist in doing regular follow up of the client. Please give full address and contact numbers. (If Applicable) In your assessment does the victim have suitable employment opportunities in the village; this can be identified by discussions with the DWCD, SWO, CDPO, NGO's etc.</p> |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                            |  |             |  |
|--------------------------------------------|--|-------------|--|
| <b>HIR Prepared by: Name and Signature</b> |  | <b>Date</b> |  |
|--------------------------------------------|--|-------------|--|

## APPENDIX 31: SAMPLE FORMAT FOR REQUESTING VICTIM COMPENSATION [CSE INTERVENTIONS]

---

To,  
The Station House Officer,  
PS: .....  
District .....

Date: .....

**Subject: APPLICATION U/S. SECTION 396(6) OF BNSS ON BEHALF OF VICTIM ..... IN RELATION TO  
FIR NO ..... UNDER SECTION(s) 64 AND 351 OF THE BNS- P.S .....**

Respected Sir,

This is to bring to your kind attention that ..... An FIR bearing No ..... has been filed in your police station. A copy of the FIR is attached hereto as Annexure .....

As your kind self would be aware that the abovementioned Scheme caters to the need of financial assistance for the victim and offers interim relief to the victim during the pendency of trial, irrespective of the outcome of the final judgment. We would like to submit that in the instant case, <Name of victim>, falls within the ambit of the definition of "victim" as stipulated under sec. 2(y) of the BNSS.

*"victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal their"*

Thanking you in anticipation for your prompt response.

Copy to: .....

Through  
.....

## APPENDIX 32: SAMPLE FORMAT FOR SUBMISSION OF WRITTEN ARGUMENTS IN TRIALS UNDER CSE INTERVENTIONS

### IN THE HON'BLE COURT OF FTC-6, AT BANGALORE S.C. No. 0000/2011

BETWEEN

State of Karnataka

Through Viveknagar Police

.....

Complainant

AND

XYZ & Others

.....

Accused

FIR No: 0000/2011

U/s. 4, 5, & 9 of ITPA

Police Station: Viveknagar

| S. NO | PARTICULARS                                                                                                 | PAGE |
|-------|-------------------------------------------------------------------------------------------------------------|------|
| 1     | Written arguments on behalf of Counsel for Informat                                                         |      |
| 2     | ANNEXURE-P/1 – “Gaurav Jain v. U.O.I. & Ors” AIR 1997 S.C. 3021                                             |      |
| 3     | ANNEXURE-P/2-Naseem Bano @ Naseem v. State of NCT of Delhi Criminal Appeal No. 121 of 2004 dated 17.01.2011 |      |
| 4     | ANNEXURE-P/3– Shri Narayan Saha and Anr V. State of Tripura 2004 (7) SCC 775,                               |      |
| 5     | ANNEXURE-P/4– Budhadev Karmaskar v. State of West Bengal (2011) 11 SCC 538                                  |      |
| 6     | (ANNEXURE P/5) Nilofar and Nilam Usman Shaik v. State of Gujrat (2004)3GLR2630                              |      |
| 7     | ANNEXURE-P/6– Shivaji Sahebrao Bobade v. State of Maharashtra, 1973 CriLJ 1783                              |      |
| 8     | ANNEXURE-P/7– Vishal Jeet v. the Union of India, 1990 (96) Cri. L. J. 1469                                  |      |
| 9     | ANNEXURE-P/8– State of Punjab v. Ramdev Singh”, 2004 AIR (SC) 1290.                                         |      |
| 10    | ANNEXURE-P/10 Rafiq v.State Of U.P 1981 SCR (1) 402                                                         |      |

**IN THE HON'BLE COURT OF FTC-6, AT BANGALORE**  
**S.C. No. 0000/2011**

BETWEEN

State of Karnataka

Through Viveknagar Police

.....

Complainant

AND

XYZ & Others

.....

Accused

FIR No: 0000/2011

U/s. 4, 5, & 9 of ITPA

Police Station: Viveknagar

**WRITTEN SUBMISSIONS ON BEHALF OF COUNSEL FOR THE VICTIM ASSISTING PROSECUTION**

MOST RESPECTFULLY SHEWETH:-

1. Have you The accused in this case have been charged with violations of Sections, 4, 5, & 9 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as "ITPA").

The accused in this case are:

A1 – Anju Singh @ Maria,

A2 – Muskan Roy,

A3 – Devagan Roy, A4 – Krishna, A5-Rakesh B.

2. (a) In order to prove its case, the Public Prosecution brought on record the following evidence of:

- |             |                                       |
|-------------|---------------------------------------|
| 1. P.W.1    | Ms. Badrama K.R. (P.I. CCB),          |
| 2. P.W.2    | A(victim),                            |
| 3. P.W.3    | Mr. Sidaramappa (Asst. Com. CCB),     |
| 4. P.W.4    | B (Victim),                           |
| 5. P.W.5    | C (Victim),                           |
| 6. P.W.6    | D (Victim)                            |
| 7. P.W.7    | E (Victim),                           |
| 8. P.W.8    | F (Victim),                           |
| 9. P.W.9    | G (The Victim).                       |
| 10. P.W. 10 | Dr. CHandrashekhar                    |
| 11. P.W.11  | H Tiriruamp R                         |
| 12. P.W.12  | W (Landlord )                         |
| 13. P.W.13  | NGO (Original Informant)              |
| 14. P.W.14  | Amitha (Independent Female Pancha)    |
| 15. P.W.15  | Mr. Malikarjun (P.I. Viveknagar P.S.) |
| 16. P.W.16  | H (Victim)                            |
| 17. P.W. 17 | Mr. Anand Kabori ( Inspector CCB)     |

- (b) The following items were also introduced into evidence:

- |                |                                                    |
|----------------|----------------------------------------------------|
| Exhibit P1     | Mahazar                                            |
| Exhibit P1(a)  | Signature of PW1                                   |
| Exhibit P1(b)  | Ex. P1 (a)- Signature of PW3 Exhibit P2- Complaint |
| Exhibit. P2(a) | Signature of PW2                                   |
| Exhibit P3     | Signature of PW2                                   |
| Exhibit P4     | Notification PW3                                   |
| Exhibit P5     | Record u/s 15 of ITP Act                           |

|                 |                             |
|-----------------|-----------------------------|
| Exhibit. P5(a)  | Signature                   |
| Exhibit P6      | Statement before Police PW4 |
| Exhibit P7      | Statement before Police PW5 |
| Exhibit P8      | Statement before Police PW6 |
| Exhibit P8      | Statement before Police PW7 |
| Exhibit P10     | Statement before Police PW8 |
| Exhibit P11     | Statement before Police PW9 |
| Exhibit P12     | Report PW10                 |
| Exhibit P12(a)  | Signature of PW10           |
| Exhibit P12 (b) | Counter Signature           |
| Exhibit P13     | Seal                        |

(c) Evidence Sealed

M.O. 1 to 5 Mobile Phones

The evidence brought on record during the trial. The summary of the facts and arguments proving the guilt of the accused are stated as under.

### 3. FACTS ESTABLISHED BY WAY OF EVIDENCE

- a. That Mr. .... the original Informant(P.W.13), is a representative of a voluntary organization namely "NGO". NGO is a voluntary organization which assists Police in cases of Human Trafficking by providing credible information to the Police about any on-going forced prostitution of young girls and women.
- b. That on 00.00.11, the original Informant provided credible information to the Police about the on-going trafficking of young girls for prostitution (PW 13). On the basis of this reliable information the Viveknagar Police along with the CCB police arranged for the independent witnesses, which is mandatory as per section 15 of Immoral traffic (Prevention) Act, 1956 (herein-after referred as ITPA), and subsequently a rescue operation was carried out (PW 13 & 14) .
- c. The Panchnama Mahzar was prepared at the spot. After due inquiry all the above mentioned accused were found involved in the crime. An FIR bearing Crime No. 0000 dated 01.07.11 was registered in the police station and the accused were arrested (PW 1, 2, 13, 14). Thereafter the arrested accused and the victim, as per Section 15 (5) of I.T.P.A., were produced before the Hon'ble MMTC-1, Bangalore. The accused were remanded to judicial custody. Subsequently, due verification and inquiries were made by the Hon'ble MMTC-1 of the victims, there-after the traumatized victims were sent to a place of safety.
- d. The Police of Viveknagar filed Charge-sheet and on the basis of Charge-sheet Hon'ble MMTC-1 found substantial material and evidence on record to proceed against the accused and framed charges. The matter then was committed to Sessions Court; as it is triable by the Sessions Court. The accused pleaded not guilty and sought trial. The Public Prosecution led its evidence. The statements of accused were recorded u/s. 351 of BNSS., wherein they have denied all the charges.

### 4. SUBMISSIONS

It is submitted that the Public Prosecution has proved its case beyond all reasonable doubts. The Public Prosecution has successfully established the guilt against the accused persons through the depositions adduced by the evidence of the Public Prosecution witnesses. Apart from corroborated testimonies of the witnesses the evidence has been strengthened with marked Exhibits and the Seizure

Memos, which itself substantially proves that all the accused are guilty of the charges as enshrined under Sections 4, 5 and 9 of the ITPA.

- a. The depositions of the Independent witness Ms. .... (PW 14) have fully established that they were asked by the Inspector to participate in raid and rescue operation and also witnessed the search and seizure which took place at the flat of A-1. The independent witness has also identified and proved all the material which was seized and sealed in their presence. Moreover, the Panchnama mahazar is proved by this witness and she has verified her signatures also. In the cross, the Defence Counsels were not able to shake the creditability of such witness. Even the accused totally failed to disprove the charges established against them. The reliance is placed on a Judgment delivered by Hon'ble Supreme Court in (ANNEXURE-P/1) Gaurav Jain v. Union of India and Ors AIR 1997 S.C. 3021 (para 16) as under:

*"In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove is that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of prostitution would be drawn from diverse circumstances established in a case."*

The statement adduced of PW16 which is corroborated by the evidence of PW11, PW13, PW14, PW16, and PW17 establishes that the women were being used for the sake of prostitution by all the Accused.

- b. That the accused persons are guilty of knowingly living on the earnings of prostitution of victim and thus, guilty under Section 4 of ITPA, 1956. An accused is presumed to be living on the earnings of prostitution in violation of Section 4 if he/she: (1) lived with or was habitually in the company of a prostitute; (2) exercised control, direction or influence over the movements of a prostitute in such a manner to show that such person aided, abetted or compelled prostitution; or (3) acted as a tout or pimp on behalf of a prostitute. The evidence establishes that the all the accused knowingly exercised control over the victim (PW16). The evidence adduced by the PWs 13, 14 & especially PW 16 (Victim's Statement) establishes that the Accused were living on the earnings of prostitution by selling the victim (PW16) and other victims to customers for commercial sex. Reliance has been placed on (ANNEXURE P/2) Naseem Bano @ Naseem v. State of NCT of Delhi Criminal Appeal No. 121 of 2004 dated 17.01.2011, wherein the Delhi High Court has upheld the conviction of accused u/s 4 and 5 of ITPA.
- c. That the accused persons are guilty of procuring, inducing and taking the girl for the sake of prostitution and thus are guilty under Section 5 of I.T.P.A. The evidence given by P.W.16 establishes that the accused contacted an agent through whom the victim was brought to Bangalore on the pretext of procuring a job while her certificates and valuables were taken and she was made to prostitute herself. The Victim has clearly stated this in the beginning of examination in chief and this point has not been refuted even in the cross examination. In the cross-examination the victim (PW16) has clearly stated that she was under threat of violence and fear of losing her certificates which were with A1. The victim in her evidence has stated that A3 and A4 were in-charge of collecting money from Customers and senior women. In para 3 and 5 of her examination in chief PW16 has deposed as below respectively;

*"... (A3) was collecting the money from girls which were earned from the prostitution of the girls. A4 was the cook in the house and coordinator for all the accused. A5 was getting the customers and contactin A1..."*

*"A1 and A4 were taking girls in the cab to Ramamurhtynagar, ..... and ..... for prostitution."*

She has clearly deposed before the court the systematic organization of the money transactions and the escort of these girls from destination to destination (PW 16). Reliance is placed on (ANNEXURE-P/3) Shri Narayan Saha and Anr V. State of Tripura 2004 (7) SCC 775, (para 6) where the Apex Court held that;

*"The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her same is shown to be infirm and not trustworthy."*

The defence has been unable to shake the credibility of the testimony given by the victim (PW16) during Cross Examination. The victim has been abused and exploited and severely suffered as a consequence of the actions of the accused, all this she has deposed before this Hon'ble Court. Hence the accused are guilty of Section 5 of ITPA, 1956. Reliance maybe placed on (ANNEXUREP/2) NaseemBano@Naseemv.Stateof NCT of Delhi (Supra)

- d. The accused are guilty of seducing the victim into prostitution under Section 9 of the Immoral Traffic Prevention Act. Section 9 of ITPA punishes 'any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution.' In (ANNEXURE P/4) Nilofar and Nilam Usman Shaik v. State of Gujrat (2004)3GLR2630 the High Court of Gujarat has relied on the Supreme Court judgment of Ramesh v. State of Maharashtra AIR 1962 SC 1908 in its interpretation of the term 'seduction' has stated the following

*"The verb 'seduce' is used in two senses. It is used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time, it is also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or on any occasion."*

It is further observed in this case that;

*"...even this sole statement is sufficient to invite sec. 9 of the Immoral Traffic (Prevention) Act, 1956, even as per the term interpreted by the Supreme Court" 20. Nowhere in the said judgment, did the Supreme Court observe that for seduction there should be an element of compulsion. In para-8, the Supreme Court observed that seduction implies surrender of her body by a woman who is otherwise reluctant or unwilling to submit herself to illicit intercourse in consequence of persuasion, flattery, blandishment or importunity, whether such surrender is for the first time or is preceded by similar surrender on earlier occasions. This observation of the Supreme court covers the facts of the present case even considering a single statement of above witness ... for prima-facie application of sec. 9 and ...The network which is prima-facie disclosing from the police papers, it is clear that not directly but through other persons, females having dire need of money were searched and were brought to Ahmedabad and kept at Vanshri Bunglow by the present applicant. **True, it is that their all movements might not have been restricted but that would not take out the case at present from the phrase as used in sec. 9 of "having the custody, charge or care of, or a position of authority over any person."***

The Victim (PW16) has deposed before the Court that A1 had lured and seduced her into the trade. The victim left her place of birth and came to Bangalore, deceived with the promise of getting

a better job. She came under the charge of A1, and in faith gave her valuables to A1. A1 with the help of A2, A3 A4 and A5 violated her trust and faith and thereby aided and abetted in the prostitution of the victim. Till date the victim has not received any money due to her. The Supreme Court in (ANNEXURE-P/5) Budhadev Karmaskar v. State of West Bengal, (2011) 11 SCC 538 has sympathized with the plight of the women who enter into prostitution as a consequence of poverty and the need of survival. Women are compelled into prostitution due to their circumstances. The instant accused had taken charge of the Victim by bringing her from her place of birth and forced her into prostitution and controlling her actions on a fear generated in her in a city which is new speaking a language she does not understand. The victim is an educated girl and hence, accordingly she also had dreams and aspirations of an honourable job in the country's IT hub. As stated by the victim (PW16), "accused" took her documents relating to her education qualifications and therefore, she was indirectly forced by the accused to prostitute against her own will as they were in charge of her documents. the victim was completely alone and therefore the accused were in complete control of the victim. According to Supreme Court case.....(indirect charge).

- e. The following observations of the Supreme Court in the case of (ANNEXURE-P/6) Shivaji Sahebrao Bobade v. State of Maharashtra, 1973 CriLJ 1783 (para 19) are worth keeping in mind while appreciating evidence in criminal trials:

*"Even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given on sterling testimony of a competent, honest man..." (page 10).*

Hence the clear, concise and convincing deposition of the victim in the instant case is sufficient as she witnessed the crimes first hand and there is no doubt as to her credibility.

- f. Many unfortunate young girls and women are lured and procured for prostitution. They are indulged into the vicious circle of prostitution and are constantly abused sexually. This is a serious and grave offence. The reliance is placed on a citation (ANNEXURE-P/7) of Hon'ble Supreme Court in "Vishal Jeet v. the Union of India, 1990 (96) Cri. L. J.1469, para.7 & 15, the Hon'ble Supreme Court termed the crime of forcibly pushing children and girls into "flesh trade" as "obnoxious and abominable" and called for severe and speedy legal action:

*"It is highly deplorable and heart-rending to note that many poverty stricken children and girls in the prime of youth are taken to 'flesh market' and forcibly pushed into the 'flesh trade' which is being carried on in utter violation of canons of morality, decency and dignity of humankind. There cannot be two opinions – indeed there is none – that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps. (para. 7) This devastating malady of prostitution can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pimps, brokers and brothel keepers". (para 15).*

- g. That the instant offences are heinous and grave in nature, having adverse impact on society. There is a need to protect the vulnerable women in the society. Therefore failure to give heightened sensitivity to cases involving sexual abuse against women, especially young girls risks danger to the collective interests of the society. The reliance is placed on where in the Supreme Court in (ANNEXURE-P/8) State of Punjab v. Ramdev Singh, 2004 AIR (SC) 1290, (para 16):

*"An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children. The courts have*

*to display a greater sense of responsibility & be more sensitive while dealing with charges of sexual assault on women, particularly of tender age & children”.*

The victim (PW16) had become one such ‘easy prey’ at the exploitative hands of the accused and their organized system of functioning.

- h. That the evidence of the victim (P.W. 16) who has suffered emotionally and physically due to the injustice done to her is sufficient to secure a conviction in the instant case. Reliance is placed on (ANNEXURE-P/9) State Of Maharashtra v. Chandraprakash Kewal Chand Jain, 1990 SCR (1) 115 (para 17); where the Apex Court has held that

*“To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime.... The standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by leveling a false charge concerning her chastity”*

Further reliance may be placed on (ANNEXURE-P/10) Rafiq v. State Of UP, 1981 SCR (1) 402 (para 5 & 6); where Apex court again held that;

*“Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances..... When rapists are revelling in their promiscuous pursuits and half of humankind-womankind- is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable.”*

Similar to rape, no woman would falsely accuse another human being for pimping or sexually exploiting her unless she has gravely suffered in that regard, in the same way; it is the honour of the victim which is at stake.

## **PRAYER**

Keeping in view the afore-proved facts and circumstances and also the evidence adduced and proved for the cause of justice to be served & to prevent the abuse of law, it is most humbly prayed that this Hon’ble Court may be;

- a. Pleased to find A1 to A6 guilty of crimes under Section 4, 5, and 9 of ITPA, 1956.
- b. Pleased to award the maximum term of imprisonment with fines to A1 - A5, u/s 4 of ITPA, 1956.
- c. Pleased to convict and award the maximum term of imprisonment with fines to A1 – A5 u/s 5 of ITPA, 1956.
- d. Pleased to convict and award maximum term of imprisonment with fines to A1 – A5 u/s 9 of ITPA, 1956.
- e. Pleased to pass any other order or direction/s to which this Hon’ble Court may deem fit and proper to the facts of the case and also in the interest of justice.

Dated  
Bangalore

**AMITABH RAJ**  
(Counsel for Informant NGO)

## Frequently Raised Closing Argument Topics<sup>184</sup>

1. Single instance of prostitution sufficient to prove brothel.
2. Public Place definition
3. CSX is heinous crime
4. Consent by fraud
5. Abetment
6. Special Officers for ITPA
7. Local witnesses
8. Procedural irregularities—lack of local witness
9. Procedural irregularities—failure to record grounds for search without warrant
10. Evidence from illegal search—can still be used if relevant
11. IO present on the raid
12. IO present on the raid
13. Lapses in investigation – negligence of IO could not affect the credibility of the prosecutrix
14. Impossible to conduct a completely flawless investigation
15. Lapses in investigation – Defence cannot gain advantage unless IO was asked about it
16. Missing details from FIR – lack of accused name
17. Missing details from FIR – lack of accused name and delay in lodging FIR
18. Victim age – determined at the time the offence occurred, not at the time of rescue
19. Victim age—No rule that additional years must be added for margin of error
20. Victim's testimony alone – without corroboration, can be enough for a rape conviction
21. Victim's testimony alone – sufficient for trafficking case conviction
22. Victim's Statement – delays
23. Victim's Statement – minor discrepancy because victim opens up after trauma counselling
24. Victim's Statement – Some discrepancy is bound to be there in each and every case
25. Victim's Credibility – reliable because girls reluctant to admit to rape in conservative Indian society
26. Victim's Character
27. NGO witnesses can corroborate witness testimonies
28. Police testimony is reliable
29. Discrepancies in witness testimonies—Public Prosecution case need not be perfect
30. Minor inconsistencies in witness testimony are the hallmark of truth
31. Discrepancies in witness testimonies – bound to occur because of lapse of time
32. Discrepancies in witness testimonies – reasons courts should not place weight on minor discrepancies
33. Failure to examine some witnesses
34. Failure to examine some witnesses—okay to save time and avoid repetitive testimony
35. Sentencing– should be consistent with brutality of crime

<sup>184</sup> This chart was created on April 10, 2013 as an aid for those preparing closing arguments. It contains the commonly raised issues and the relevant case citations. This chart is organized according to the sequence of a closing argument—first proof of violation of statute, then common defence arguments on procedural defects and flaws in witness testimonies, then sentencing and victim compensation.

36. Sentencing- young age of victim is an aggravating factor
37. Sentencing - Brutal manner of crime is an aggravating factor
38. Sexual abuse is heinous crime
39. Rape causes severe physical and psychological harm
40. Victim compensation

|                                                                                 |                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Single instance of prostitution sufficient to prove brothel.</b>             | <i>Gaurav Jain v. Union of India, AIR 1997 SC 3021, para. 16 (Supreme Court 1997).</i>                                         | "A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel and the person alleged was so keeping it. The Public Prosecution has to prove only that in a premises a female indulges in the act of offering her body for promiscuous sexual intercourse for hire."                            |
| <b>Public Place definition</b>                                                  | <i>Gaurav Jain v. Union of India, AIR 1997 SC 3021, para. 18 (Supreme Court 1997).</i>                                         | Supreme Court has defined "public place" as "any place intended for use by, or accessible to the public and includes any public conveyance. It is not necessary that it must be public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It must be a place to which the public, in fact, resorts or frequents." |
| <b>CSX is heinous crime</b>                                                     | <i>Vishal Jeet v. India, 1990 (96) CriLJ 1469, para. 7, 15</i>                                                                 | Supreme Court stated commercial sexual exploitation of children is an "obnoxious and abominable crime" committed with "unthinkable vulgarity" that can be eradicated only if courts take "very severe and speedy legal action against all the erring powers."                                                                                                           |
| <b>Consent by fraud</b> is not valid                                            | <i>Deelip Singh @ Dilip Kumar v. State of Bihar, AIR 2005 SC 203, para. 27 (Supreme Court 2005).</i>                           | "If the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person."                                                                                                                                                                                                              |
| <b>"custody" and "authority over"</b> VG, even if VG's movements not restricted | <i>Nilofar and Nilam Usman Shaikh v. State of Gujarat, (2004) 3 GLR 2630, para. 21 (Gujarat High Court at Ahmedabad 2004).</i> | While the girls' movements might not have been restricted but that would not take out the case at present from the phrase as used in sec. 9 of ITPA, 'having the custody, charge or care of, or a position of authority over any person.'                                                                                                                               |
| <b>Abetment</b> - allowed even if main accused has been acquitted.              | <i>Jamuna Singh v. State of Bihar, AIR 1967 SC 553 (Supreme Court 1966) para. 6.</i>                                           | "It cannot be held in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made."                                   |

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| <b>Special Officers for ITPA:</b><br><br>All officers having the rank of Inspector or above are appointed as special police officers | <i>Kolkata Police Gazette on 5 November, 1996 and 16 September 2008.</i>                 | <p>"In exercise of the power conferred by Sub-section (1) of Section 13 of the Immoral Traffic (Prevention) Act, 1956, the Governor is pleased hereby to appoint all officers not below the rank of Inspector of Police under West Bengal Police and Calcutta Police Authority, to act as Special Police Officers in their respective local jurisdiction for dealing with offences under the Immoral Traffic (Prevention) Act, 1956 with immediate effect."</p>                                                                                                                                                                                                 |
| <b>Local witnesses</b>                                                                                                               | <i>Section 15(2).</i>                                                                    | <p>Two "respectable local inhabitants," including at least one woman, must be present during the warrantless search under Section 15. Female independent witnesses need not be local inhabitants.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Procedural irregularities</b> — lack of local witness                                                                             | <i>Bai Radha v. State of Gujarat, AIR 1970 SC 1396, para. 6 (Supreme Court 1968).</i>    | <p>Failure to fully comply with the requirements of Section 15(2) regarding local witnesses is "not an illegality but is a mere irregularity."</p> <p>There, the police took an independent witness Prem Singh on the raid, but he was not an inhabitant of the locality where the search took place. The other independent witness was a woman who also was not an inhabitant of the locality. The Court found the evidence from the search to be reliable despite the irregularity. Such irregularities will not vitiate the Public Prosecution's case unless it causes prejudice to the defendant.</p>                                                       |
| <b>Procedural irregularities</b> — failure to record grounds for search without warrant                                              | <i>ai Radha v. State of Gujarat, AIR 1970 SC 1396, para. 6 (Supreme Court 1970).</i>     | <p>"Jurisdiction or power to make a search was conferred by the statute and not derived from the recording of reasons."</p> <p>In Bai Radha, the police failed to record their grounds for a search without warrant and also did not have two local witnesses, but the Court held that these errors in procedure did not prejudice the defendant and did not vitiate the entire proceedings. "A search which is to be conducted under the Act must comply with the provisions contained in Section 15; but it cannot be held that if a search is not carried out strictly in accordance with the provisions of that section the trial is rendered illegal."</p> |
| <b>Evidence from illegal search</b> — can still be used if relevant                                                                  | <i>State of Himachal Pradesh v. Shri Pirthi Chand and Anr., AIR 1996 SC 977, para. 5</i> | <p>"It is settled law that illegality committed in investigation does not render the evidence obtained during that investigation inadmissible. In spite of illegal search, property seized, on the basis of said search, still would form basis for further investigation and Public Prosecution against the accused."</p>                                                                                                                                                                                                                                                                                                                                      |

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| <b>IO present on the raid</b>                                                                                              | <i>Bhaskar Ramappa Madar v. State of Karnataka, 2009 CriLJ 2422, para. 5-6.</i>                                                              | <p>“[M]erely because the complainant conducted the investigation, that would not be sufficient to cast doubt on the Public Prosecution version... The matter has to be decided on case to case basis without any universal generalization.”</p> <p>In Bhaskar, the trial court had found the investigation to be tainted because the complainant was also the investigating officer. However, the Apex Court noted that the husband of the deceased had lodged the report, and the S.I. had registered the case, and the D.S.P. had filed the chargesheet; therefore, the Supreme Court did not find tainting of the investigation to be an issue.</p>                                                                                       |
| <b>IO present on the raid</b>                                                                                              | <i>Manmit Saggu v. State of Maharashtra, Criminal Appeal No. 222 of 2004, decided on 17 October 2008 (Bombay High Court 2008), para. 11.</i> | <p>In <i>Manmit Saggu v. State of Maharashtra</i>, Criminal Appeal No. 222 of 2004, decided on 17 October 2008 (Bombay High Court 2008), the Bombay High Court upheld a conviction for counterfeiting government stamps, and the investigating officer was present on the raid. There, the IO received information about counterfeit stamps being printed, verified the information, then recorded the FIR and raided the premises. The Court did not find anything “unnatural” about the I.O.’s investigation and noted that the IO had “taken extreme care to ensure that he was not conducting the raid on any incorrect information” and that the raid witnesses corroborated the I.O.’s evidence.</p> <p>Manmit Saggu, at para. 11.</p> |
| <b>Lapses in investigation</b><br>— negligence of IO could not affect the credibility of the statement of the prosecutrix. | <i>State of Punjab v. Gurmit Singh and Ors., 1996 CriLJ 1728 (SC), para. 9.</i>                                                              | <p>“Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. Trial Court fell in error for discrediting the testimony of the prosecutrix on that account.”</p>                                                                                                                                                                                                                    |
| <b>Impossible to conduct a completely flawless investigation.</b>                                                          | <i>State of West Bengal v. Mir Mohammad Omar &amp; Ors. etc., AIR 2000 SC 2988, para. 41.</i>                                                | <p>“Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case.”</p>                                                                                                                                                                                                                                            |

|                                                                                                 |                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <b>Lapses in investigation –</b><br>Defence cannot gain advantage unless IO was asked about it  | <i>State of U.P. v. Satish, AIR 2005 SC 1000, para. 19 (Supreme Court 2005)</i>                                                                      | Unless the Investigating Officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. . . . If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion.                                                                                                                                                                                                     |
| <b>Missing details from FIR –</b><br>lack of accused name                                       | <i>State of U.P. v. Naresh &amp; Ors., 2011 CriLJ 2162, para. 26.</i>                                                                                | “FIR is not an encyclopedia of the entire case.” “The Supreme Court has held that the failure to name the accused in FIR “may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy.” Id. It explained that details may be lacking because the informant may lack the skill or ability to narrate the incident without anything missing a detail. Id. The court must evaluate the FIR and presented evidence as a whole to determine if the accused committed a crime or has been falsely implicated. Id. |
| <b>Missing details from FIR –</b><br>lack of accused name and delay in lodging FIR.             | <i>Jitender Kumar v. State of Haryana, AIR 2012 SC 2488, para. 11.</i>                                                                               | Supreme Court explained that “the main purpose of the FIR is to satisfy the police officer as to the commission of a cognizable offence for him to conduct further investigation in accordance with law... The FIR itself is not the proof of a case, but is a piece of evidence which could be used for corroborating the case of the Public Prosecution.”                                                                                                                                                                                                       |
| <b>Victim age</b> - determined at the time the offense occurred, not at the time of rescue.     | <i>Smt. Narmada Govind Kamble v. State of Maharashtra, 2010 CriLJ 1220 (Bom.), para. 11 (Bombay High Court 2009).</i>                                | “Even if it is presumed that she was 18 years of age at that time, she was brought in the prostitution about 5 to 6 months before that and therefore it can be held that she was minor at the time when she was first put in the prostitution.”                                                                                                                                                                                                                                                                                                                   |
| <b>Victim age</b> - No rule that additional years must be added for margin of error             | <i>State of U.P. v. Chhoteylal, AIR 2011 SC 697, para. 11.</i>                                                                                       | “There is no such rule much less an absolute one that two years have to be added to the age determined by a doctor.”                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Victim’s testimony alone</b><br>– without corroboration, can be enough for a rape conviction | <i>State of Punjab v. Gurmit Singh and Ors., 1996 CrLJ 1728 (SC), para. 22.</i><br><br><i>State of U.P. v. Chhoteylal, AIR 2011 SC 697, para. 19</i> | “The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable Public Prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.”                                                                                                                                    |

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| <b>Victim's testimony alone</b> – sufficient for trafficking case conviction                                   | <i>Pinky Das @ Rehana Khatoon @ Rina Mitra v. State of West Bengal (not reported. Judgment in CRA 401/10 passed by Calcutta High Court on 2/8/12). PAGE 13</i> | Victim's testimony sufficient. No corroboration required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Victim's Statement</b> – delays                                                                             | <i>Smt. Narmada Govind Kamble and etc. v. State of Maharashtra, 2010 CriLJ 1220 (Bom.), para. 10 (Bombay High Court 2009</i>                                   | Victim's 75-day delay in making a statement against the accused was not grounds to discard the evidence.<br><br>"This is not a rape case in strict sense. She was put in the profession of prostitution and she was totally dependent on the accused No. 1 when she was rescued by the police. It appears that her parents also did not bother about her after she had left the house. Therefore she could not believe that she would get shelter back at her parents' house. Therefore, in such circumstances, merely because of the delay, her evidence cannot be discarded." |
| <b>Victim's Statement</b> – minor discrepancy because victim opens up after trauma counselling                 | <i>Smt. Narmada Govind Kamble and etc. v. State of Maharashtra, 2010 CriLJ 1220 (Bom.), para. 10 (Bombay High Court 2009),</i>                                 | "from [the day she was brought to Mumbai] till she was rescued by police, she was working as prostitute. During that period, she must have been well washed not to disclose the true facts to Police." The Court further noted that when Renuka, the victim, was brought to the shelter home, she was in a traumatic condition, and she opened up and disclosed the facts after she had settled due to counselling.                                                                                                                                                             |
| <b>Victim's Statement</b> – Some discrepancy is bound to be there                                              | <i>Krishna Mochi and Ors. v. State of Bihar, AIR 2002 SC 1965, para. 76-77 (Supreme Court 2002).</i>                                                           | when "a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored."<br><br>"Some discrepancy is bound to be there in each and every case which should not weigh with the Court so long it does not materially affect the Public Prosecution case... courts have been compelled to accept that "society suffers by wrong convictions and it equally suffers by wrong acquittals."                                                                                                               |
| <b>Victim's Credibility</b> – reliable because girls reluctant to admit to rape in conservative Indian society | <i>Bharwada Bhoginibhai Hirjibhai v. State of Gujarat, 1983 Cri. L.J. 1096, 10-11</i>                                                                          | Supreme Court noted that Indian girls are extremely reluctant to admit that crimes against their chastity have occurred because of the strong likelihood of becoming social and family outcasts and the difficulty of finding a suitable marriage partner after admitting these crimes took place. When victim girls testify despite these factors, there is "a built-in assurance that the charge is genuine rather than fabricated."                                                                                                                                          |

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| <b>Victim's Character</b>                                                                 | <i>Pinky Das @ Rehana Khatoon @ Rina Mitra v. State of West Bengal (not reported. Judgment in CRA 401/10 passed by Calcutta High Court on 2/8/12).</i> | Character of victim is irrelevant.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>NGO witnesses can corroborate witness testimonies.</b>                                 | <i>Smt. Narmada Govind Kamble v. State of Maharashtra, 2010 CriLJ 1220 (Bom.), para. 13 (Bombay High Court 2009).</i>                                  | "If some NGO takes interest in rescue of the women involved in such profession, there is no reason to doubt the intention of the same. Therefore, merely because P.W.5 Simon pursued the matter, it cannot be held that he had any personal interest in the matter and that he had falsely implicated any body in this case."                                                                                                                                                                                                                                                                                                                                             |
| <b>Police testimony</b> is reliable                                                       | <i>Asha Tamang v. State of West Bengal, 2012 (1) CHN 465, para. 48 (Calcutta H.C. 2011).</i>                                                           | "There is no hard and fast rule that the evidence of Police witnesses is to be viewed with suspicion. Rather it is to be taken into account that these Police Officers of the Immoral Traffic section, Detective Department, Lalbazar, Kolkata conducted raid and prepared the seizure list and other relevant documents in discharge of their official duties."                                                                                                                                                                                                                                                                                                          |
| <b>Discrepancies in witness testimonies</b> — Public Prosecution case need not be perfect | <i>Inder Singh and Anr v. the State (Delhi Administration), AIR 1978 SC 1091, para. 2- 3.</i>                                                          | "Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect." There, the Court looked at the broad features of the case, the general trend of the testimony and the convincing array of facts to draw the conclusion that the accused are guilty. |
| <b>Minor inconsistencies in witness testimony are the hallmark of truth</b>               | <i>State of Himachal Pradesh v. Lekh Raj, A.I.R. 1999 S.C. 3916, 7.</i>                                                                                | Minor inconsistencies are part of the normal course of human conduct and these variations are often the hallmark of truth in a witness's testimony.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Discrepancies in witness testimonies</b> — bound to occur because of lapse of time     | <i>State of U.P. v. Santosh Kumar, (2009) 9 SCC 626, para. 28.</i>                                                                                     | "In any criminal case where statements are recorded after a considerable lapse of time, some inconsistencies are bound to occur. But it is the duty of the court to ensure that the truth prevails. If on material particulars, the statements of Public Prosecution witnesses are consistent, then they cannot be discarded only because of minor inconsistencies." See also Jagdish v. Madhya Pradesh, A.I.R. 1981 S.C. 1167, 5 (holding inconsistencies in eye witness accounts were insufficient to reverse a murder conviction).                                                                                                                                     |

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| <p><b>Discrepancies in witness testimonies</b> – reasons courts should not place weight on minor discrepancies</p> | <p><i>Bhoginbhai Hirjibhai v. State of Gujarat, 1983 Cri.L.J. 1096, 5</i></p>                                          | <p>Supreme Court listed seven reasons why courts should not place too much weight on minor discrepancies. These reasons include the fact that witnesses cannot be expected to possess photographic memories, that powers of observation differ from person to person, and that even wholly truthful witnesses can make mistakes in their testimonies out of nervousness and unfamiliarity with the court atmosphere.</p>                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Failure to examine some witnesses</b></p>                                                                    | <p><i>Raj Narain Singh v. State of U.P. and Ors., (2009) 10 SCC 362, para. 20</i></p>                                  | <p>“It is not necessary that all those persons who were present at the spot must be examined by the Public Prosecution in order to prove the guilt of the accused.”</p> <p>The Apex Court listed the following considerations when a witness is not examined: “[W]hether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses.”</p> |
| <p><b>Failure to examine some witnesses</b> – okay to save time and avoid repetitive testimony</p>                 | <p><i>Harpal Singh v. Devinder Singh, 1997 Cr. L.J. 3561, 22.</i></p>                                                  | <p>In this case, many of the Public Prosecution witnesses who were not examined would not have provided new information. Thus, examining every witness would have prolonged the trial’s length without adding crucial information to prove the guilt of the accused.</p> <p>Public Prosecutor may drop material witnesses during trial to avoid repetitive testimony that is unnecessary to establish the guilt of the accused. This saves the Court’s time without compromising the strength of the Public Prosecution’s case.</p> <p>Bharatiya Sakshya Adhiniyam. 2023 Section 139 states, “No particular number of witnesses shall in any case be required for the proof of any fact.”</p>                                                                                             |
| <p><b>Sentencing</b> – should be consistent with brutality of crime</p>                                            | <p><i>State of Madhya Pradesh v. Kashiram and Ors., 2009 Cri. L.J. 1530 (S.C.), para. 17 (Supreme Court 2009).</i></p> | <p>The accused’s sentences should “be consistent with the brutality” that they inflicted on victim girl because “[t]he Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong.”</p>                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| <b>Sentencing</b> - young age of victim is an aggravating factor | <i>S. Krishna v. State of Karnataka, 1998 CriLJ 785, para. 10 (Karnataka High Court, 1996).</i>                                    | Karnataka High Court took into account the victim's tender years as an aggravating circumstance for upholding the accused's conviction for attempted rape and increasing the sentence to 5 years imprisonment.                                                                                                                                                                                                                   |
| <b>Sentencing - Brutal manner of crime is aggravating factor</b> | <i>Bantu v. State of U. P., (2008) 11 SCC 113, MANU/SC/7863/2008, para. 23 (Supreme Court, 2008).</i>                              | Courts have a duty to award proper sentence according to "the nature of the offence and the manner in which it was executed or committed etc."                                                                                                                                                                                                                                                                                   |
| <b>Sexual abuse is heinous crime</b>                             | <i>Childline India Foundation and Anr. v. Allan John Waters and Ors., 2011 Cri.L.J. 2305 (S.C.), para. 24 (Supreme Court 2011)</i> | Our judicial system recognizes that "the sexual abuse of children is one of the most heinous crimes."                                                                                                                                                                                                                                                                                                                            |
| <b>Rape causes severe physical and psychological harm</b>        | <i>State of Punjab v. Gurmit Singh and Ors. 1996 Cri.L.J. 1728 (S.C.), para. 22 (Supreme Court 1996)</i>                           | The Courts have a great responsibility to hold accountable those who take part in a trade that subjects young girls to perpetual rape, which "inevitably causes serious psychological as well as physical harm" and is "destructive of the whole personality of the victim."                                                                                                                                                     |
| <b>Victim compensation</b>                                       | <i>Hari Kishan v. Sukhbir Singh, AIR 1988 SC 2127, para. 10 (Supreme Court 1988).</i>                                              | <p>"[T]he Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused.... This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system." Id.</p> <p>The Supreme Court has "recommend[ed] to all Courts to exercise their [section 395(3) of the BNSS] power liberally" to compensate victims.</p> |

**LIST OF SHELTER HOMES IN UTTAR PRADESH AND BIHAR****UTTAR PRADESH**

| S. NO | NAME OF SHELTER HOME                                                          | ADDRESS OF SHELTER HOME                                                  |
|-------|-------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1     | Asian Sahyogi Sanstha India                                                   | 42 Jail Road, Gita Vatika<br>Gorakhpur - 273004<br>Uttar Pradesh - India |
| 2     | Motilal Memorial Shikshan Sansthan                                            | Kanpur                                                                   |
| 3     | Bhartiya Adimjati Sevak Sangh                                                 | Station Road, Near Shri Ganesh Talkies<br>Shikohabad District -Ferozabad |
| 4     | Gram Seva Niketan                                                             | 295/23, Asharfa Lucknow                                                  |
| 5     | Mahila Kalyan Nigam, Government of Uttar Pradesh Ashray Sadan ( Swadhar Home) | Chaitanya Vihar , Phase- I , Vrindavan,<br>Mathura, Uttar Pradesh.       |
| 6     | Madhu Gram Vikas Sansthan                                                     | Village- Deghata Gaharwar, Tehsil-<br>Lalganj, Mirzapur, U.P             |
| 7     | Jyoti Vidya Mandir                                                            | Civil Line, Near P.C.F, Godam, Gonda, U.P                                |
| 8     | Shanti Samaj Sevi Samiti                                                      | Bhawan No. A-104 , Barhpur, Farrukabad,<br>U.P                           |

**BIHAR**

| S. NO | NAME OF SHELTER HOME                                                                        | ADDRESS OF SHELTER HOME                                                         |
|-------|---------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 1     | Self Employed Women's Association (SEWA) Mithila                                            | Mangrauni Road Madhubaniu (Bihar)                                               |
| 2     | Sister Nivedita Memorial Trust                                                              | Jakkanpur Patna S.S.H. at Hajipur District<br>Vaishali.                         |
| 3     | Bihar Rehabilitation & Welfare Institute                                                    | P-84/HIG Flat Block-7, Flat No. 8, Bahadur<br>Pore, Patna.                      |
| 4     | Sewa Sankalp evam Vikas Samiti                                                              | Sahu Road, Muzzarfarpur, Bihar                                                  |
| 5     | National Institute of Rural development , Education, Social Upliftment and Health (NIRDESH) | Vill- Bhagwanpur, P.S. Sadar,<br>Registration Office,<br>District- Muzzarfarpur |
| 6     | B. Chand Foundation                                                                         | Mahananda Colony, Katihar, Bihar                                                |

**LIST OF PUBLICATIONS ON HUMAN TRAFFICKING**

| Topic                                                                                                                                                                                                                                                                                                                       | Author's Name | Publisher's Name                                  | Year |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------------------------------------------|------|
| The Role of Recruitment fees and abusive and fraudulent recruitment practices of recruitment agencies in trafficking in persons                                                                                                                                                                                             |               | UNODC, Vienna                                     | 2015 |
| Standard Operating Procedures on Investigating Crimes of Trafficking for Commercial Sexual Exploitation                                                                                                                                                                                                                     |               | UNODC, India                                      | 2007 |
| Standard Operating Procedures on Investigation of Crimes of Trafficking for Forced Labour                                                                                                                                                                                                                                   |               | UNODC, India                                      | 2008 |
| SOP for Public Prosecutors to Combat Human Trafficking                                                                                                                                                                                                                                                                      |               | UNODC, India                                      | 2009 |
| Ministry of Home Affairs Advisory on Trafficking and Combating Human Trafficking in India <a href="http://bba.org.in/sites/default/files/CS_TraffickingOfChild_14%20Aug%202013.pdf">http://bba.org.in/sites/default/files/CS_TraffickingOfChild_14%20Aug%202013.pdf</a>                                                     |               | Ministry of Home Affairs                          | 2009 |
| Human Trafficking- SOP Raid And Rescue <a href="http://socialwelfare.icdsbih.gov.in/upload/LatestUpdates/LatestUpdates_135356207344.pdf">http://socialwelfare.icdsbih.gov.in/upload/LatestUpdates/LatestUpdates_135356207344.pdf</a>                                                                                        |               | Department of Social Welfare, Government of Bihar |      |
| Manual for Training Police on Anti Human Trafficking <a href="https://www.unodc.org/documents/human-trafficking/India_Training_material/Training_Manual_-_Police.pdf">https://www.unodc.org/documents/human-trafficking/India_Training_material/Training_Manual_-_Police.pdf</a>                                            |               | UNODC, India                                      | 2008 |
| Training Manual for Public Prosecutors on confronting Human Trafficking <a href="https://www.unodc.org/documents/human-trafficking/India_Training_material/Training_Manual_-_Public_Prosecutors.pdf">https://www.unodc.org/documents/human-trafficking/India_Training_material/Training_Manual_-_Public_Prosecutors.pdf</a> |               | UNODC                                             | 2008 |

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| Model SOP for Police for Investigation of cases of Human Trafficking                                   |                                       | ION International Organisation for Migration      |               |
| Manual for Social Workers- Dealing with child victim of Trafficking and Commercial Sexual Exploitation |                                       | Ministry of Human Resource Development and UNICEF |               |
| The Concept of 'Exploitation' in the Trafficking in Persons Protocol                                   |                                       | UNDOC, Vienna                                     | 2015          |
| Anti-human trafficking manual for criminal justice Practitioners                                       |                                       | UNODC                                             |               |
| Towards protection of Children Against Sexual Abuse: No Child's Play                                   | Pallavi Nautiyal and Arun Mal         | NUJS Law Review                                   | 2010          |
| Seeing Victims as Victims                                                                              | Adv. Michelle Mendonca                | Manupatra                                         |               |
| Anti-Trafficking Laws in India- Issues and Perspectives                                                | Tasnim Kundan Patel                   | Manupatra                                         |               |
| Child Pornography- National and Global Perspective, A Menace                                           | Mr Ankush-Bhadoriya                   | Manupatra                                         |               |
| Genocide of Daughters                                                                                  | Vandhana Varughese                    | Manupatra                                         |               |
| Pornography- Victimisation of Women and Children                                                       | Ms Roopali Sharma and Shruthi S Menon | Manupatra                                         | 08/13/2012    |
| Girl Child in Prostitution                                                                             | Akriti                                | Manupatra                                         |               |
| India Still stuck in the trafficking                                                                   | Shreya Ganguly Raunak Sathpathy       | Manupatra                                         |               |
| Standard Operating Procedures (SOP) for Public Prosecutors to Combat Human Trafficking                 |                                       | UNODC, Regional Office for South Asia             | 2009          |
| SOP for treatment of victims of Trafficking in Human Beings                                            |                                       | Government of the Republic of Macedonia           | October 2010  |
| BRICS ready to check human trafficking, migrant smuggling                                              |                                       | Economic times                                    | 9 Oct 2015    |
| Obama administration politicised trafficking report on India: US lawmaker                              |                                       | Economic Times                                    | 7 August 2015 |

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| Modi Government to set up national body to combat Human Trafficking                    |                                   | Economic Times                             | 30 March 2015   |
| Indian gangs found trafficking women from earthquake-hit Nepal                         | Jason Burke in Dehi               | The Guardian                               | 30 July 2015    |
| What is the crime of Human Trafficking?                                                | Annie Kelly and Felicity Lawrence | The Guardian                               | 2 November 2015 |
| Child Trafficking in India: 'It was only after a few years I realised I had been sold' | Sutrittha Sahariah                | The Guardian                               | 28 April 2015   |
| India's tea firms urged to act on slave trafficking after girls freed                  | Gethin Chamberlain                | The Guardian                               | 1 March 2014    |
| Bonded Labour System still a reality                                                   | Umi A Goswami                     | Economic Times                             | 12 August 2013  |
| The Removal of Bonded Labour System in India                                           | Ajay Bishnoi                      | Legal Service India                        | 28 October 2007 |
| Human Rights Violation and Trafficking                                                 |                                   | lawteacher.net                             |                 |
| Bonded Labour: Concept, Causes and Other Details                                       | Puja Mondal                       | Indian Society                             |                 |
| Bonded Labour in India                                                                 | Devin Finn                        |                                            |                 |
| Bonded Labour                                                                          | Ms Gunjan Chauhan                 | Manupatra                                  |                 |
| Sex Trafficking: Inside the business of Modern Slavery                                 | KARA, Siddharth                   | C o l u m b i a University Press, New York |                 |
| Bonded labour: Tackling the system of slavery in South Asia                            | KARA, Siddharth                   | C o l u m b i a University Press, New York |                 |
| Disposable people: New slavery in the global economy                                   | BALES, KEVIN                      | University of California Press, Berkeley   |                 |

**LIST OF RELEVANT INTERNATIONAL INSTRUMENTS**

| Name                                                                                                                         | Relevant Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Status of Ratification                            |
|------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| The International Bill of Human Rights <sup>185</sup>                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                   |
| Universal Declaration of Human Rights <sup>186</sup>                                                                         | Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                   |
| International Covenant on Civil and Political Rights <sup>187</sup>                                                          | Article 8: No one shall be held in slavery and slavery and slave trade in all forms shall be prohibited. No one shall be required to perform forced or compulsory labour.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | India acceded to the Convention on 10 April 1979. |
| International Covenant on Economic, Social and Cultural Rights <sup>188</sup>                                                | Article 6: Right to work, which includes right to freely choose one's employment.<br>Article 7: Right to enjoyment of just and favourable conditions of work.<br>Article 12: Right to attain highest standard of physical and mental wellbeing.                                                                                                                                                                                                                                                                                                                                                                                                                                                  | India acceded to the Convention on 10 April 1979. |
| United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children <sup>189</sup> | Article 3: Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. | India ratified the Convention on May 2011         |

<sup>185</sup> The International Bill of Human Rights consists of the UDHR, ICCPR, ICESCR and its two Optional Protocols, See 'Fact Sheet No.2 (Rev.1)'; The International Bill of Human Rights. Available at: <<http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>>.

<sup>186</sup> The Universal Declaration of Human Rights, 1948, Available at: <<http://www.un.org/en/documents/udhr/index.shtml>>

<sup>187</sup> International Covenant on Civil and Political Rights. Available at: <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.

<sup>188</sup> International Covenant on Economic, Social and Cultural Rights. Available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>.

<sup>189</sup> The Convention against the Transnational Organized Crime came into force in 2003. It is the primary international instrument that enshrines the fight against transnational organized crime. The Convention recognizes the need for international cooperation to tackle problems and places on states the commitment to take measures against organized crime. The Convention is accompanied by three protocols: (1) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; (2) The Protocol against the Smuggling of Migrants by Land, Sea and Air; and (3) The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. See United Nations Convention against Transnational Organized Crime and the Protocols Thereto, UNODC. Available at: <<http://www.unodc.org/unodc/treaties/CTOC/>>.

| Name                                                                                                                                             | Relevant Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Status of Ratification                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
|                                                                                                                                                  | Article 5: Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                          |
| Convention on the Elimination of All Forms of Discrimination Against Women <sup>190</sup>                                                        | Article 6: State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.<br>Article 11: State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment.                                                                                                                                                                                                                                                                                                                              | India ratified the Convention on 30 July 1993            |
| Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others <sup>191</sup>                    | Article 1: The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person. Article 2: The Parties to the present Convention further agree to punish any person who: (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel; (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of prostitution of others.   | India ratified the Convention on 9 January 1953          |
| Convention on the Rights of the Child <sup>192</sup>                                                                                             | Article 32: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.<br>Article 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse<br>Article 35: States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. | India acceded to the Convention on 11 December 1992.     |
| Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. <sup>193</sup> | Article 1: States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | India ratified the Optional Protocol on 30 November 2005 |

<sup>190</sup> Convention on Elimination of All forms of Discrimination against Women. Available at: <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article6>>.

<sup>191</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Available at: <[http://portal.unesco.org/culture/en/files/38444/12815479071Convention\\_for\\_the\\_Suppression\\_of\\_the\\_Traffic\\_in\\_Persons\\_and\\_of\\_the\\_Exploitation\\_of\\_Others.pdf/Convention%2Bfor%2Bthe%2BSuppression%2Bof%2Bthe%2BTraffic%2Bin%2BPersons%2Band%2Bof%2Bthe%2BExploitation%2Bof%2BOthers.pdf](http://portal.unesco.org/culture/en/files/38444/12815479071Convention_for_the_Suppression_of_the_Traffic_in_Persons_and_of_the_Exploitation_of_Others.pdf/Convention%2Bfor%2Bthe%2BSuppression%2Bof%2Bthe%2BTraffic%2Bin%2BPersons%2Band%2Bof%2Bthe%2BExploitation%2Bof%2BOthers.pdf)>.

<sup>192</sup> Convention on the Rights of the Child. Available at: <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

<sup>193</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>>.

| Name                                                                 | Relevant Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                      | Status of Ratification                            |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|
| Forced Labour Convention (No. 29) <sup>194</sup>                     | Article 1: Each Member of the International Labour Organisation, which ratifies this Convention, undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.                                                                                                                                                                                                                                     | India ratified the Convention on 30 November 1954 |
| Convention on the Worst Form of Child Labour (No 182) <sup>195</sup> | Article 1: Each member who ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.<br>Article 2: For the purposes of this Convention, the term child shall apply to all persons under the age of 18.                                                                                                                                   | India has so far not ratified this Convention     |
| Abolition of Forced Labour Convention, (No. 105) <sup>196</sup>      | Article 1: Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour.<br>Article 2: Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in article 1 of this Convention | India ratified the Convention on 18 May 2000      |

<sup>194</sup> Co 29 Forced Labour Conventions(No. 29). Available at: <[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C029)>.

<sup>195</sup> Convention on the Worst Form of Child Labour (No 182). Available at: <<http://www.internationaldemocracywatch.org/index.php/international-labour-organization-declarations/281-no-182-worst-forms-of-child-labour-convention>>.

<sup>196</sup> Abolition of Forced Labour Convention, 1957 (No. 105). Available at: <<http://www.ohchr.org/Documents/ProfessionalInterest/abolition.pdf>>.

APPENDIX 36: SAMPLE FORMAT FOR APPLICATION UNDER BNSS 175(3)  
(4)

IN THE HON'BLE COURT OF .....

IN THE MATTER OF STATE:

..... PETITIONER

V.

..... Accused

FIR No: .....

Date of FIR .....

U/S: .....

Police Station: .....

APPLICATION UNDER SECTION 175 (3) (4) OF THE BHARATIYA NAGARIK SURAKSHA SANHITA  
REQUESTING FOR MONITORING THE INVESTIGATION

MOST RESPECTFULLY SHEWETH:-

1. That on ....., a joint raid & rescue operation was conducted in the presence of .....
2. During the said rescue operation, ....., victims were rescued working in factories at property number .....
3. That after the rescue operation, the bonded labourers were brought to the SDM office where the statements of the victims were recorded by the Labour department. The statements disclosed that they were paid way less than the minimum wages as prescribed by the NCT of Delhi and were forced to work in unhygienic conditions without proper rest. They were also exploited and their freedom of movement and employment was restricted. The facility didn't have proper ventilation and they were forced to work for 10-16 hours per day.
4. That on the basis of the statements of the victims and the initial inquiry conducted by the SDM, the SDM was pleased to issue directions to the police to lodge the FIR against the perpetrators. Subsequently, FIR bearing number ..... dated ..... was registered at ..... P.S. under sections ..... Bharatiya Nyaya Sanhita and 16 of the Bonded Labour System (Abolition) Act. The FIR bearing no ..... dated ..... is attached herewith as "Annexure I".
5. That the SDM ..... after conducting a thorough preliminary enquiry was pleased to order on [date] ..... that all the victims were rescued bonded labourers and issued "Release Certificate" against them. A copy of the order by the SDM bearing case no. ..... dated ..... is attached herewith as "Annexure II".
6. That it is also apposite to mention that the complainant with the help of his counsel also filed an application under Section 192(2) BNSS. and the police in their status report dated ..... submitted that they haven't been able to trace the accused and the investigation is still pending. The copy of the status report dated ..... is attached herewith as "Annexure III".
7. That this Hon'ble Court was pleased to order the IO to expedite the investigation and file the final report in the matter as soon as possible. The copy of the certified copy of the order dated ..... is attached herewith as "Annexure IV".
8. That it is apposite to mention here that, despite more than ..... months having passed post order on 192(2) application, the police has failed to file the final report yet and the trial has not commenced.
9. That the complainant submits that the IO may kindly provide an update as to whether any newspaper publication has been made by the IO in order to trace the absconding accused.

10. That there has already been a delay of almost ..... years now in filing of the Final Report in a heinous and diabolic crime of human trafficking along with bonded labour. The victims are from very poor backgrounds and the only hope they have lies with the judiciary, which is the guardian of their fundamental and legal rights.
11. That the petitioner is approaching this Hon'ble Court under Section 156(3) of Cr.P.C. which gives power to this Hon'ble Court to issue directions to properly hold an investigation and monitor the same.
12. That the Hon'ble Supreme Court in *Sikiri Vasu V. State of UP and Others* have elaborately discussed the power of the Court with respect to his control over the investigation of any particular case. The Court has all such powers which are incidental for ensuring a proper investigation. This power also includes power to monitor the investigation.
13. That the relevant paragraph of the judgment is hereinafter reproduced for the consideration of this Hon'ble Court.

*"we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision."*

14. That the non-filing of the Final Report by the police authorities in cases of bonded labour has resulted in denial of the rehabilitative benefits which the victims of bonded labour are supposed to get under the Central Sector Scheme for the Rehabilitation of Bonded Labourers, 2022.

## PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

1. Pass an order directing the Police to update on what steps they took to find the absconding accused.
2. Pass an order directing the Police Authorities to complete the investigation properly and in a time bound manner.
3. Pass an order directing police authorities to submit investigation report regularly with the Court showing progress in the investigation.
4. Pass any other order which this Hon'ble Court may deem fit and proper in the interest of justice, equity and good-conscience.

Place

Date

Through

.....

Counsel for the Complainant



Prepared in collaboration with  
the Human Liberty Network  
and Geneva Global with  
support from Freedom Fund.

