



**anti-
slavery**

today's fight for tomorrow's freedom

LEGAL GUIDE

IDENTIFICATION, RESCUE, REHABILITATION
AND PROSECUTION OF BONDED LABOUR
IN THE BRICK KILN INDUSTRY

A COMPILATION OF LEGAL TOOLS AND STRATEGIES FOR ACTIVISTS DEVELOPED IN IMPLEMENTING
THE PROJECT TO ERADICATE BONDED LABOUR IN INDIA'S BRICK KILN INDUSTRY.

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PREFACE

This guide is for identification, rescue, rehabilitation and prosecution in cases of bonded labour in the brick kiln industry is a compilation intended to equip activists working to eradicate the bonded labour system in the brick kiln industry of India with legal knowledge and suggest strategies that may be useful for dealing with the tough challenges faced in the process. While local circumstances, including the nature of the brick kiln industry, differ from state to state, labour laws and the Bonded Labour Act are central with minor variations in state rules.

Although the Bonded Labour System (Abolition) Act, 1976 is primarily the law defining and penalising the practice, other laws such as IPC, SCs/STs Prevention of Atrocities Act, Child Labour Act and Juvenile Justice Act may also apply simultaneously depending on the facts and circumstances of each case.

These tools attempt to focus mainly on the implementation of the Bonded Labour Act with an overview of other applicable laws and procedures.

With the law on bonded labour gaining ground with the district administrations and the NHRC, the strategies will have to be evolved. The tools may be used to maintain momentum until the implementation becomes systematic and sustained by proactive State machinery as envisioned in the Act.



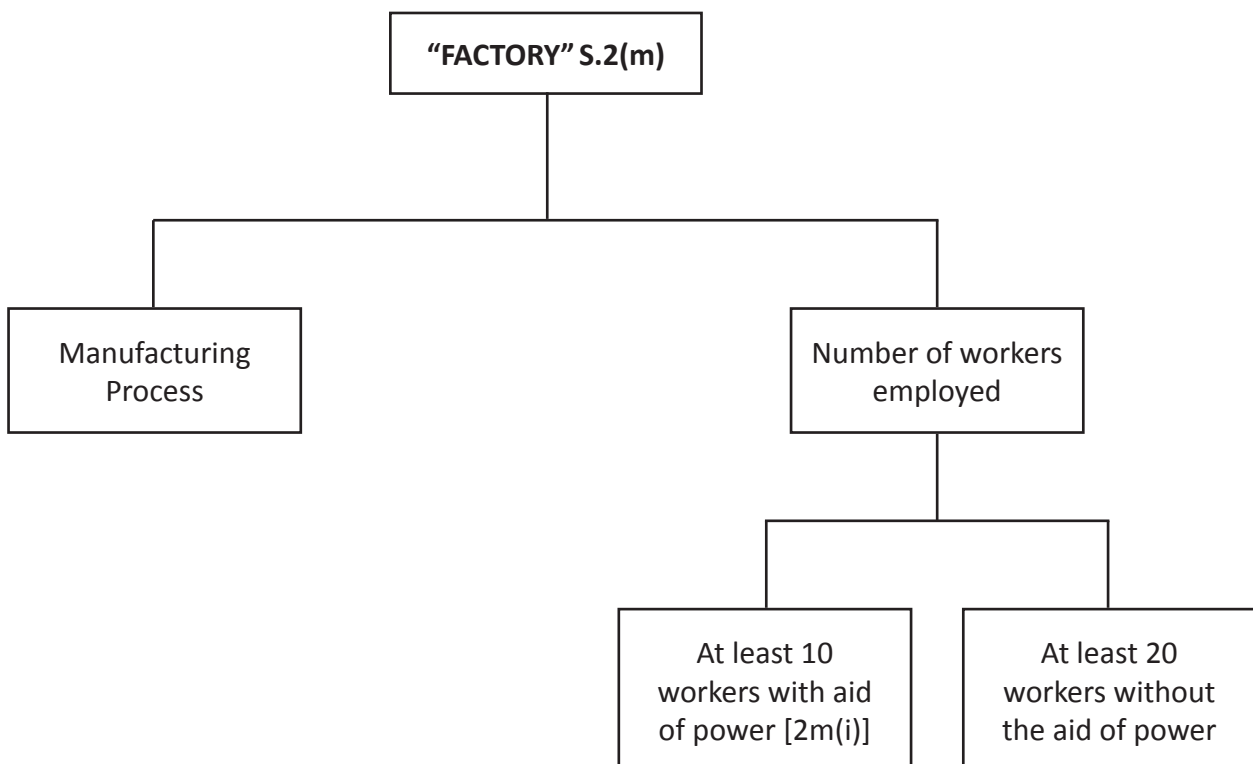
PART I: INTRODUCTION - BRICK KILN INDUSTRY

The brick kiln industry employs more than 10 million workers. The Supreme Court in PUCL vs State of Tamil Nadu (2012) observed that it is one of the bonded labour prone industries in India. Modern slavery at the brick kilns goes beyond debt bondage. Workers pawn their health, safety, social security, their children's health and education - apart from their freedom - in exchange for a bare sustenance. The law, including case law, clearly classifies the brick manufacturing process within the Factories Act framework, thereby giving workers safeguards from these very violations. Some states have notified the brick kilns under the Factories Act but many have not. This is a serious lapse. In this toolkit, the brick kilns are understood from the legal perspective – that is, as factories – whether a State Government has notified it as such or not.

Is a brick kiln a factory?

1.1. Brick kilns and the Factories Act

Brick kiln are 'Factories' within the definition of the Factories Act, 1948.



Section 2(m) of the FACTORIES ACT

S.2(m) "FACTORY" means any premises including the precincts thereof -

(i) where 10 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) where 20 or more workers are working, or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)] or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place].

Explanation (i): For computing the number of workers for the purposes of this clause all the workers in [different groups and relays] in a day shall be taken into account.

Explanation (ii): For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

S.2(k) "manufacturing process" means any process for

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage

S.2(g) "power" means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

1.2. Case Law – Is a brick kiln a factory?

There is to date only one judgement of the higher judiciary dealing with this question. The Orissa High Court in 1965 held that a brick kiln is indeed a factory as defined under S.2(m) of the Factories Act, 1948.

PRABHULAL PATODIA vs. STATE [1966 CriLJ 228 | Date of Judgement 3 August 1965 | Orissa High Court]

It was held by the High Court of Orissa that a brick kiln is a factory on account of the manufacturing process of bricks taking place. The diesel engine being used to draw water for the moulding section of bricks is manufacturing with the aid of “power” as defined under the Factories Act. A brick moulder employed through an agent is also a factory “worker” and in any case, a worker found on the premises of the factory during working hours is presumed to be a worker of that factory.

The High Court of Orissa considered two issues in this case:

i. Whether a brick kiln is a factory within the meaning in S.2(m) of Factories Act, 1948?

It was held that the brick kiln in question is a factory as it fulfils the conditions under S.2(m), namely;

- There was a manufacturing process i.e., manufacturing of bricks.
- There was use of power. A 5 horse power diesel engine was used to supply water to the moulding section. In any case there were over 20 workers working at the time of inspection.

ii. Whether workers hired by contractors/Jamadarsto mould bricks at the brick kiln are also factory workers?

A worker is a factory worker, even if employed through an agent, as clearly defined under S.2(l) of the Factories Act, 1948. Also, once a worker is found on the premises of the factory within the working hours of the factory, a presumption of employment is drawn as per S.103 of the Factories Act.

S.2(l) “Worker” means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union].

S. 103. Presumption as to employment: If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory.

Relevant paragraphs of the Judgement of the Orissa High Court in PRABHULAL PATODIA vs. STATE is reproduced hereunder;

“3. The plea of the accused was that the kiln in question does not come within the meaning of ‘factory’ as defined in Section 2(m) of the said Act and the labourers engaged in the kiln were not in his employment, but were engaged by a contractor and were working under him independently, as per an agreement....

7. It is the evidence of P. Ws. 1 and 2 that they found about fifty persons actually working in the kiln when the process of manufacturing of bricks was going on. They also found a 5 H. P. diesel engine pump engaged for supplying water to the manufacturing process of bricks. Learned Counsel for the petitioner contended that the pump was being used for supplying water for the use of the workers engaged in the kiln and that it was not used in aid of any manufacturing process of bricks. This, however, is difficult to accept in view of the evidence in this case. It is the evidence of P. W. 1 that the pump was being used for pumping water to the moulding section. It is admitted that the use of the water forms an important part in the moulding of bricks out of clay. Thus, it cannot be doubted that the aid of power was taken in supplying water to the manufacturing process of bricks.

8. "Power" has been defined in Section 2(g) to mean electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal energy. Thus, it cannot be disputed that the 5 H. P. diesel engine which was operating to supply water to the moulding section of the kiln for the manufacture of bricks was mechanically transmitting the energy which was not generated by human or animal energy. But this question becomes irrelevant to some extent as we find the evidence in this case that more than twenty workers were engaged in the process of manufacture of the bricks so as to bring it within the meaning under Section 2(m) (ii) of the Act, and whether the manufacturing process was being carried on with or without the aid of power is of little significance.

Thus, the prosecution has established a *prima facie* case that the kiln in question was a 'factory' within the meaning of the Act and once it is established that the kiln in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted and the onus to prove the contrary shifts to the accused. Section 103 runs thus: If a person is found in a factory at any time except during intervals for meals or rest, when work is going on, or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the Sections made thereunder to have been at that time employed in the Factory.

12. In the present case nothing has been brought out to show that the labourers were engaged by an independent contractor and there was no relationship of employer and employee between the petitioner and the workers in the kiln. The evidence of the defence may at best show that the petitioner engaged some Sardars for collection of labourers at different places for the purpose of employment in his kiln, but in the absence of anything more it cannot be said that those labourers were in the different employment of those Sardars and were not the employees of the petitioner in whose kiln they were working. The definition of the 'worker' as stated above clearly includes not only persons employed directly by the employer but also those who are employed through any agency. It may at best be that through the agency of Sardars the labourers were procured to work in the kiln of the petitioner."

PART II: IDENTIFICATION OF BONDED LABOUR

2.1. Guidelines: Determining bonded labour

2.1.1. Facts of the case must fulfil the criteria under S.2(g) of the Bonded Labour System (Abolition) Act, 1976. That is:

Where there is an employer – employee relationship, any one of the causes leading to any one of the consequences is bonded labour. Also, any one of the consequences alone is also “bonded labour system” within the meaning of the Act.

<u>Causes</u>	<u>Consequences</u>
a) Advance obtained	1) No wages or payment of nominal wages
b) Customary or social obligation	2) Forfeit freedom of employment
c) Obligation devolving by succession	3) Forfeit freedom of movement
d) For any economic consideration	4) Forfeit right to sell at market value any products of their labour
e) Birth in any particular caste	

2.1.2. The scope of S.2(g) widened by the Honourable Supreme Court of India in several judgements must be kept in mind, including;

- Advance is not a necessary component to constitute bonded labour
- Advance or other economic consideration is presumed
- “Force” in forced labour includes payment of wages below minimum wages even where there are none of the causes of bonded labour under S.2(g)

2.1.3. Determine whether the wages of the worker is in accordance with the Minimum Wages Act, 1948.

The wages, whether piece rates or time rated must not be less than the prescribed minimum wage fixed by respective State Governments.

2.2. Bonded Labour System Defined in Section 2(g) of the Bonded Labour System (Abolition) Act, 1976

(g) ‘bonded labour system’ means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,

- (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any due on such advance, or
- (ii) in pursuance of any customary or social obligation, or
- (iii) in pursuance of an obligation devolving on him by succession, or
- (iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

S.2(b) “agreement” means an agreement (whether written or oral, partly written and partly oral) between a debtor and creditor and includes an agreement providing for forced labour, the existence of which is presumed under any social custom prevailing in the concerned locality.

S. 2 a) “advance” means an advance, whether in cash or in kind, or 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);

(v) by reason of his birth in any particular caste or community,

he would --

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

[Explanation: For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labour as defined in clause (b) of sub-section (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is **required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is “bonded labour system” within the meaning of this clause.**]

S.2(i) “nominal wages”, in relation to any labour, means a wage which is less than,

(a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force, and

(b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour, to the labourers in the same locality;

Bandhua Mukti Morcha vs. Union of India.

Date of Judgement: 16 December 1983.

“It is now statistically established that most of bonded labourers are members of Scheduled Castes and Scheduled Tribes or Other Backward Classes and ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage, unless he has received some advance of other economic consideration from the employer and under the consideration from the employer and under the pretext of not having returned such advance or other economic condition, he is required to render service to the employer or is deprived of his freedom of employment or of the right to move freely wherever he wants. **Therefore, whenever it is shown that a 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 labourer.**”

Debt Advance and Bonded Labour System

Payment of Advance is presumed else NOT a necessary component of Bonded Labour System Payment of Advance is presumed: *See Judgement of the Supreme Court of India.*

- Advance is not a necessary component to Bonded Labour System as per the Amendment to the Bonded Labour System (Abolition) Act, 1976
- Payment of wages below minimum wages, loss of freedom of employment or movement is sufficient to prove bonded labour as defined under S.2(g). *See Above [2.1.1]: Section 2 (g) "Explanation".*

2.3. Minimum wages and bonded labour system

Nominal wage or minimum wages – How to determine?

<p>Minimum Wage has been defined in Section 4 of the Act.</p> <ul style="list-style-type: none">▪ Current minimum wage as notified by the state government either piece rated wage or time rated wage▪ Paid weekly with rest of one day in every seven days.▪ Overtime wage for work done over eight hours. <p>Minimum Wage MUST NOT include:</p> <ul style="list-style-type: none">▪ any house-accommodation▪ supply of light▪ water▪ medical attendance▪ Employers contribution for EPF or Pension Fund▪ any travelling allowance or the value of any travelling concession▪ any other amenity or any service excluded by general or special order of the appropriate Government;▪ any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or▪ any gratuity payable on discharge	<p>Minimum Wages Act, 1948</p> <p>2(h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, [and includes house rent allowance], but does not include</p> <p>(i) the value of —</p> <ul style="list-style-type: none">(a) any house-accommodation, supply of light, water, medical attendance, or(b) any other amenity or any service excluded by general or special order of the appropriate Government; <p>(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;</p> <p>(iii) any travelling allowance or the value of any travelling concession;</p> <p>(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or</p> <p>(v) any gratuity payable on discharge</p>
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Components of minimum wages have been defined in section 4 of the Act, which is reproduced below.

<u>Minimum Wage</u>	<u>Paid Weekly Rest</u>	<u>Overtime Wage</u>
<p>Minimum Wages Act</p> <p>12. Payment of minimum rates of wages - (1) Where in respect of any scheduled employment a notification under section 5 is enforced, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed.</p>	<p>Minimum Wages Act</p> <p>13. Fixing hours for a normal working day, etc - (1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may-</p> <p>(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;</p> <p>(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest.</p>	<p>Minimum Wages Act</p> <p>14. Overtime - (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.</p> <p>Factories Act, 1948.</p> <p>59. Extra wages for overtime - (1) Where a worker works in factory for more than nine hours in any day or for more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.</p> <p>(3) Where any workers in a factory are paid on a piece-rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers</p>

Additional Guidelines to Determine Payment of Minimum Wages

<p>▪ Wages should be paid in full without any deductions (except those authorised under the Minimum Wages Act and the Payment of Wages Act).</p> <p>Common illegal deductions undertaken without the consent of the workers:</p> <ul style="list-style-type: none"> • housing • electricity • medical expenses paid • trade union membership fees 	<p>Minimum Wages Act S.12. Payment of minimum rates of wages - (1) Where in respect of any scheduled employment a notification under section 5 is enforced, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed.</p> <p>Payment of Wages Act S.7. Deductions which may be made from wages - (1) Notwithstanding the provisions of sub-section (2) of section 47 of the Indian Railways Act, 1890 (9 of 1890), the wages of an employed person shall be paid to him without deductions of any kind except those authorised by or under this Act.</p>
<p>▪ Wage period cannot exceed one month.</p> <p>For example: Wage period – settlement of wages - in the brick kilns is usually at the end of the “season” of 6 - 9 months.</p>	<p>Payment of Wages Act S.4(2) No wage-period shall exceed one month.</p>
<p>▪ Wage is to be paid within 7 days of expiry of wage period and within 2 days on termination of employment.</p> <p>For example: Wages for the month of January to be paid latest by 7th February if terminated from employment – then by 2nd of February</p>	<p>Payment of Wages Act S.5: Time of Payment of Wages: (1)(a) any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day...after the last day of the wage-period in respect of which the wages are payable (2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated</p>
<p>▪ Wage is to be paid to each individual worker, including for women workers, not to a group of workers or family.</p>	<p>12. Payment of minimum rates of wages - (1) Where in respect of any scheduled employment a notification under section 5 is enforced, the employer shall pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages...</p>
<p>▪ Wages paid to the head of the family or the woman’s wages paid to her husband is illegal.</p>	<p>Equal Remuneration Act, 1976 S 4. Duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.</p>

Supreme Court directions on non-payment of minimum wages amounting to bonded labour:

- Payment of wages below minimum wages is “forced labour” and a violation of Article 23 of the Constitution of India which prohibits forced labour.

Peoples Union for Democratic Rights and Ors vs. Union of India and Ors. Judgement dated 18th September, 1983:

“5:8. Where a person provides labour or services 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.....

5:9. Ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. Therefore, 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. What Article 23 prohibits is “forced labour” that is labour or service which a person is forced to provide.”

- The test to be applied to determine forced labour- whether minimum wages are being paid or not. If not, presumption that the worker is a bonded labourer unless employer or state government proves otherwise.

Neeraja Chaudhary vs State of Madhya Pradesh. Judgement dated 8th May, 1984:

“..This is the test which has to be applied for the purpose of determining whether a workman is a bonded labourer or not and we would therefore direct the State Government to apply this test throughout its territory for the purpose of ascertaining whether there are any bonded labourers or not and if so how large is their number. 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 unless the employer or the State Government is in a position to prove otherwise by rebutting such presumption...

Questions to determine bonded labour as defined under S.2(g) of the Bonded Labour System Abolition Act:

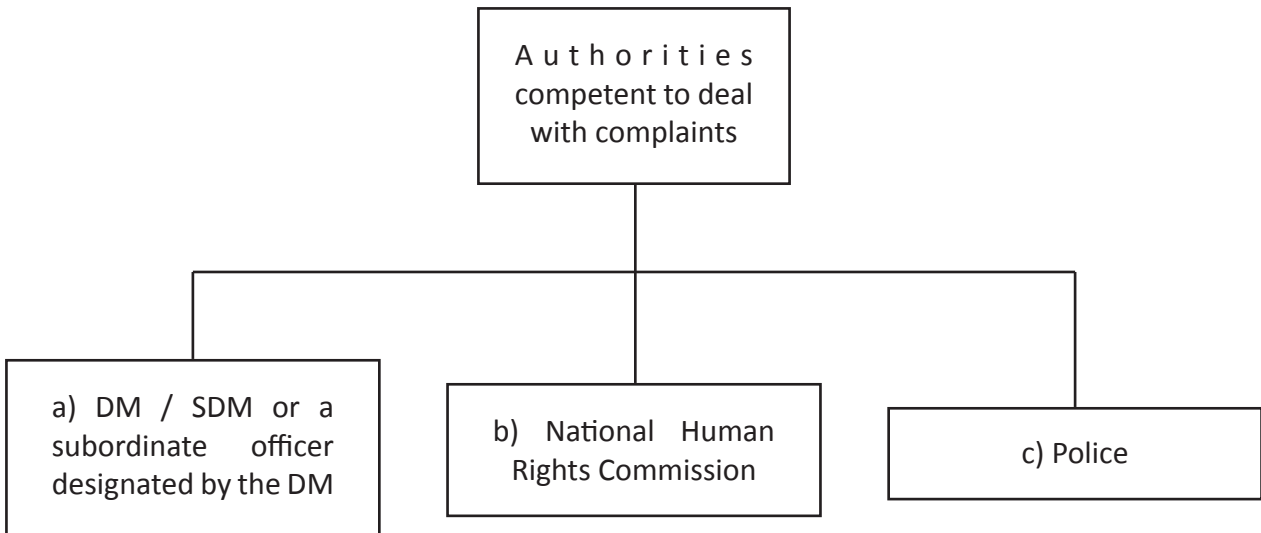
a) Advance	<ul style="list-style-type: none"> ▪ Was a debt advance given? ▪ How much? ▪ Who gave the advance? ▪ When and where was it given? Before or after migration? ▪ Mode of travel to the brick kiln: Who arranged for the transport? How much did it cost? Who paid for it? What is the mode of repayment of the travel fare? ▪ Any expenses during travel given? How much? When and where was it given? Who paid? What is the mode of repayment?
b) Other economic considerations	<ul style="list-style-type: none"> ▪ Anything else received from the employer or the Contractor instead of an advance to be repaid by labour/work? ▪ Was there a promise by the employer to give/transfer anything in the future – land, vehicle, work tools/implements, house, cattle or anything else?

<p>c) Question of Freedom</p> <p>Right to choose alternative employment of one's choice</p> <p>Right to move freely throughout the territory of India</p>	<ul style="list-style-type: none"> ▪ What were the working conditions? If they were poor, what was the compulsion to continue working there? ▪ Was earned wages paid from time to time? If not, why could the worker not choose any alternative employment? ▪ When any member of the family is ill who treats the illness? Do some come to the brick kiln for treatment? Who pays for it? Why not go to the nearby hospital/clinic? ▪ Any special permission required to leave the kiln? Is it easily given? If not, why not? ▪ Are there CCTV cameras at the work site and/or near the labour camps? ▪ Does anyone keep a watch on the movement of workers in and out of the kiln? Who?
<p>d) Payment of Minimum Wages</p>	<ul style="list-style-type: none"> ▪ When and under what conditions the worker was told that they will receive the full earned wages? ▪ Describe the mode of payment of wages. ▪ How much was agreed upon as the wage before migration? Is it the same or lower? ▪ Any conditions to be fulfilled to earn the minimum wage? (Such as – if the worker leaves before a certain month, wages are settled at a lower rate) ▪ Describe the subsistence allowance given. How much? What duration? Is it sufficient for food, nutrition, healthcare, education of children? If not, how does the worker manage? ▪ Hours of work: How many hours worked per day? What time does work begin in the morning and what time does it end? Duration of rest hours allowed?

PART III: COMPLAINT FOR RELEASE OF BONDED LABOUR UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

3.1. Authorities competent to deal with complaints of bonded labour

Under the Bonded Labour Act, you can make a complaint either to the District Magistrate or a subordinate officer designated by the District Magistrate OR the National Human Rights Commission.



However, some community organisations and lawyers decide to file cases of trafficking for labour exploitation or a case of atrocity of forced labour under the SC/ST Act with the police immediately, rather than file a case under the BLSAA. This is usually when the community organisation has reason to believe the police will act, rather than the District Magistrate or NHRC. Otherwise, many NGOs file a FIR with the police *after* the rescue of workers from the kiln, using the release certificate (if there is one) as evidence of bonded labour. For advice on when and how to file a FIR with the police see Section 6.

How to choose which body to file a complaint with?

You can choose to file a claim with the District Magistrate in the area that the person is held in bonded labour, or you can choose to file a complaint with the NHRC first. What you decide to do will depend on the circumstances of the case. The benefits and negatives of filing claims with each of these authorities are set out below:

District Magistrate		
Benefits	Negatives	Recommended using where
<ul style="list-style-type: none"> ▪ Usually faster than the NHRC ▪ Can result in immediate release and release certificate in good circumstances. 	<ul style="list-style-type: none"> ▪ May refuse to act ▪ May “tip-off” owner and then labourers are at safety risk 	<ul style="list-style-type: none"> ▪ There is a civil society body that exists in the area/national expert body that you can use (e.g National Campaign Committee for Eradication of Bonded Labour) that has proven approach in going to District Magistrate ▪ The results needed quickly
Things to note when filing a complaint with the District Magistrate and undertaking a rescue: <ul style="list-style-type: none"> ▪ If it is an interstate case, please work with another respected organisation/person to file a complaint 		

- If possible, do not tell the DM which brick kiln you are referring to until the day of the inspection
- Please ensure you take “respected” figures with you for a rescue to try to pressurise the DM to act in accordance with the law:
 - Senior lawyer
 - State Human Rights/Child Rights Commission
- Ensure labour officials there for the rescue in order to claim back payment of wages

NHRC		
Benefits	Negatives	Recommended using where
<ul style="list-style-type: none"> ▪ NHRC oversee the case from the beginning, placing additional pressure on DM, from undertaking the inquiry to prosecution ▪ Can quicken NHRC process by visiting NHRC office in Delhi directly 	<ul style="list-style-type: none"> ▪ Can take awhile before the NHRC acts 	<ul style="list-style-type: none"> ▪ Do not know the DM in the area, and do not have knowledge of any civil society/national expert body that can assist in case ▪ OR, your organisation does know the DM and knows that he/she will not act – even with senior figures present –so require oversight of the NHRC ▪ Do not require immediate intervention or can assist workers to stay in kiln/field for a short while longer, whilst pressuring NHRC to act

3.2 Role and Responsibilities of the District Magistrate under the BLSAA

- The district magistrate or the specified subordinate officer to the DM is empowered and duty bound under chapter 4 of the Bonded Labour System (Abolition) Act, 1976 to release bonded labourer or to delegate this power to an officer subordinate to the DM, such as the SDM.

Chapter IV Implementing Authorities

S.10. Authorities who may be specified for implementing the provisions of this Act.- The State Government may confer such powers and impose such duties on a District Magistrate as may be necessary to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer specified.

S.11. Duty of District Magistrate and other officers to ensure credit. -The District Magistrate authorizes by the State Government under section 10 and the officer specified by the District Magistrate under that section shall, as far as practicable, try to promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer so that he may not have any occasion or reason to contract any further bonded debt.

S.12. Duty of District Magistrate and officers authorizes by him.- It shall be the duty of every District Magistrate and every officer specified by him under section 10 to inquire whether, after the commencement of this Act, any bonded labour system or any other form of forced labour is being enforced by, or on behalf of, any person resident within the local limits of his jurisdiction and if, as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour, he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour.

▪ **STANDARD OPERATING PROCEDURES, Ministry of Labour and Employment, Govt. of India Notification No S-11012/01/2015-BL Dated 17 August 2017**

- DM, SDM or police must write down the complaint, signed, dated and timed.
- Copy of receipt of the complaint to be given to the complainant
- Duty to ensure information of complaint is not leaked

See full SOP on complaints below

Complaint

1.1 The DM, SDM, or the police on receipt of a complaint, whether oral or written, by any person with facts constituting the commission of an offence under the Act, shall record, in writing, the time and date of receipt of such a complaint.

1.2 The DM, SDM, or the police shall issue a receipt to the complainant acknowledging that the complaint has been recorded.

1.3 The DM, SDM, or the police shall ensure that there is no tip-off or leak of information regarding the rescue, informant or complainant at any stage.

3.3. National Human Rights Commission and its role in release of bonded labour

The Hon'ble Supreme Court of India has authorised the National Human Rights Commission to implement the Bonded Labour System (Abolition) Act 1976 in the judgements below:

3.3.1 PUBLIC UNION FOR CIVIL LIBERTIES vs. STATE OF TAMIL NADU & ORS. Date of Judgement: 5 May 2004

Para 1. "The Hon'ble Court vide Order dated 11-5-1997 asked the National Human Rights Commission (NHRC) to take over the monitoring of the implementation of the directions of this Hon'ble Court and that of the provisions of the Bonded Labour System (Abolition) Act, 1976"

3.3.2. PUBLIC UNION FOR CIVIL LIBERTIES vs. STATE OF TAMIL NADU & ORS. Date of Judgement: 15 October 2012

Para 17. "The Hon'ble Court has already given various directions in its order dated 5.5.2004 passed in Public Union for Civil Liberties vs. State of Tamil Nadu and Others (2004) 12 SCC 381, authorizes the NHRC to monitor the implementation of the provisions of the 1976 Act which we re-iterate and direct NHRC to effectively monitor and implement the provisions of the Act. The orders passed by this Court, time to time, in writ petitions are to be duly complied with the NHRC, Union of India, States and UTs."

3.4. Who can make a complaint – provide information of bonded labour?

- i. The bonded labourer themselves
- ii. Members of the Bonded Labour Vigilance Committee

Bonded Labour System (Abolition) Act 1976:

S.14. Functions of Vigilance Committees: (1) The functions of each Vigilance Committee shall be, (e) to make a survey as to whether there is any offence of which cognisance ought to be taken under this Act;

- iii. Social Action Groups or any person having knowledge of the matter

NEERAJA CHAUDHARY vs. STATE OF Madhya Pradesh. Date of Judgement: 8 May 1984

“What is really necessary is to involve social action groups operating at the grass root level in the task of identification and release of bonded labourers. We do not think much useful purpose will be served by asking petty officials of the Revenue Department to go from house to house with a view to ascertaining whether there are any bonded labourers or not”

iv. Member of Gram Panchayat

PUBLIC UNION FOR CIVIL LIBERTIES Vs. STATE OF TAMIL NADU ORS. Date of Judgement: 15 October 2012

Para 16(9) Directions are issued to all Gram Panchayats, local bodies to report, in case they come across any case of bonded labour, to the District Magistrate who will take appropriate follow up action under the Act.

3.5. Process of making a complaint to the District Magistrate OR the NHRC

Making a complaint to the DM

STEP 1: Complain to the District Magistrate:

- Make the complaint using the NHRC criteria listed below:
 - By hand, fax or post.
 - Make the complaint similar to the NHRC complaint format as below.
 - Make sure to include: annexure with list of workers and their details
- Do not include the details of the workers and full address of brick kiln if there is imminent threat to the life or liberty of the bonded labourer. Withhold the details until a team is constituted for the rescue of bonded labourers by the DM/SDM.

STEP 2: Follow Up:

- Make sure to send reminders until the date of rescue of bonded labourer is fixed.
- Send follow-up letter or reminders by fax, telephone or post. Use email only if you are sure that the DM's office frequently checks and respond to emails.
- Make sure to take a receiving copy by hand with the date and signature of the DM | preserve Registered post acknowledgement for every complaint and follow up letter sent.

Making a complaint to the NHRC:

STEP 1: Filing a complaint:

- Complaint can be made by:
 - Registered post: National Human Rights Commission, Manav Adhikar Bhawan Block-C, GPO Complex, INA, New Delhi – 110023
 - Fax: Fax No. 2465132 (STD Code 011)
 - Email: cr.nhrc@nic.incovdnhrc@nic.in (Coordination)
dydir.media.nhrc@nic.in (Media and Communication)
- Complaint must contain brief details of case. See Guidelines issued by NHRC in this regard.
 - **OPERATIVE GUIDELINES OF NHRC:** Details to be included in a complaint.

YOUR DETAILS:

1. Name[complete name]
2. Sex
3. Address [complete address for correspondence]
4. State
5. District
6. PIN CODE of your locality, if available

VICTIM'S DETAILS:

7. Name[complete name of the victim]
8. Address[complete address of the victim]
9. State victim belongs to:
10. District victim belongs to
11. Sex
12. No. of victims
13. Disability[disability status of the victim]
14. Age
15. Religion
16. Caste

INCIDENT DETAILS:

17. Place[exact place of incident i.e. locality, village, town, city]
18. State[name of state from the list, where incident occurred]
19. District
20. Incident Date[day/month/year]
21. Write complaint[brief summary of facts/allegations of the incident /complaint]
22. Is it filed before any Court/State: whether the complaint is filed before any Court OR State Human Rights Commission.

RELIEF DETAILS:

23. Name, designation and address of the Public Servant Authority against whom the complaint is being made: Mention full details of Public Servant
24. Relief sought for: Mention full details of relief, which is sought against the human rights violation.

• NHRC GUIDELINES ON FILING A COMPLAINT

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 set of the complaint needs to be submitted to the Commission.
3. Complaint may be sent either by post, or faxed to 91-11-23382911/23382734, or emailed to covdnhrc@nic.in
4. No fee is chargeable on such complaints.
5. The complaint shall disclose
 - Violation of human rights or abetment thereof or;
 - 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 receipt of the 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. The following types of complaint(s) are not ordinarily entertainable:
 - Illegible
 - Vague, anonymous or pseudonymous;
 - Trivial or frivolous in nature;
 - Matters which are pending before a State Human Rights Commission or any other Commission;
 - 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;
 - Allegation against any public servant;
 - The issue raised relates to civil dispute, such property rights, contractual obligations, etc;

- The issue raised relates to service matters;
 - The issue raised relates to labour/industrial disputes;
 - Allegations do not make out any specific violation of human rights;
 - The matter is sub-judice before a Court/ Tribunal;
 - 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.

STEP 2: Registration of Complaint:

Case Number and Dairy Number are assigned for tracking of the case.

TIP: If case is not registered within one week – or if the case is urgent – email or telephone reminders can be made for polite requests to register the case and passing on urgent orders for release.

STEP 3: Order For Inquiry:

In the case of bonded labour in a brick kiln, NHRC usually issues 17-point directions for the compliance of the concerned District Magistrate and calls for report within 4-6 weeks.

TIP: Regularly check the NHRC website for latest Orders

As soon as an Order appears on the website a letter petition can be given to the District Magistrate requesting the involvement of the complainant social action group as directed by the Hon'ble Supreme Court of India in NeerajaChoudhary Vs Union of India. This way, it can be ensured that the complainant NGO/social action group is kept in the loop regarding the spot inquiry and ensures the participation of the complainant in the inquiry.

STEP 4: Spot Inquiry And Release:

As per the orders of the NHRC or on a complaint filed before the District Magistrate, a spot inquiry is conducted by the team constituted by the DM for this purpose. In a spot inquiry, the workers' statements are recorded and relevant proof from the employer is called for. On determination of bonded labour, the workers are to be released physically from the facility, given immediate rehabilitation cash assistance and a FIR filed against the employer.

TIP: Ensure presence during spot inquiry as mentioned above

If this is not possible, ensure workers are given support and the complainant is in touch with the District Administration via telephone/email/SMS/fax.

STEP 5: Comments On The Report Of The District Magistrate:

Once the DM conducts the spot inquiry, the report is sent directly to the NHRC for further Orders. The report is then sent by NHRC to the complainant/social action group for filing comments.

TIP: Ensure timely filing of comments otherwise the case is liable to be dismissed by the NHRC.

STEP 6: Interim Orders:

- In case the NHRC finds the Comments filed by the social action group satisfactory – Orders are passed to the DM for issuance of release certificates, rehabilitation and prosecution if not already initiated by the District Administration.
- If the NHRC deems the inquiry was conducted in violation of its guidelines, the DM may be ordered to re-inquire into the matter and file a fresh report – in this case the spot inquiry followed by the comments/rejoinder step may repeat.

STEP 7: Final Order:

The NHRC may close the case on account of:

- Completion of the release process by the DM.
- Failure of complainant in filing the Comments.

PART IV: SPOT INQUIRY FOR RELEASE OF BONDED LABOUR BY DISTRICT ADMINISTRATION

4.1. Tips and guidelines for social action group to ensure a fair spot inquiry by the District Administration:

- 4.1.1. Involvement of complainant in the spot inquiry: ensure presence during the spot inquiry and involve a senior lawyer if possible who can put forward legal requirements.
- 4.1.2. Proper recording of statement of bonded labourers without threats or pressure from the employer/bonded labour keeper.
- 4.1.3. Ensure the proper methodology is used in identifying bonded labour and recording of statement of the bonded labourer and the employer.
- 4.1.4. Physical release of bonded labourers from the facility along with their belongings:
- 4.1.5. Ensure travel fare is paid by the employer and settlement of wages before departure from the brick kiln.
- 4.1.6. Records and registers to be maintained at the work site to be brought on record.
- 4.1.7. Licences and permits to be obtained by employer for running a brick kiln.

4.1.1. Role of complainant in the spot inquiry:

Presence during the spot inquiry:

As per the directions of the Supreme Court of India given below it is mandatory to involve the complainant social action group in the spot inquiry and to provide a copy of the spot inquiry report.

Neeraja Chaudhary vs State Of M.P.

Judgement Dated: 8 May 1984

Bench: Honable Mr. A.N.Sen and Mr. Justice P. N Bhagwati J.

Citation: AIR 1984 SC 1099

“...The Commissioners and Collectors have multifarious duties to attend and even if they are anxious to help in eradication of the vice of bonded labour system, which we are sure they are, they would not find time to make any personal inquiry or investigation but they would have to rely on their subordinate officers such as tehsildars and patwaris and at many places, the patwaris and tehsildars being either in sympathy with the exploiting class or lacking in social commitment or indifferent to the misery and suffering of the poor and the down-trodden, the task of identification, release and rehabilitation of bonded labour through the official machinery would be very difficult of achievement. What is really necessary is to involve social action groups operating at the grass root level in the task of identification and release of bonded labourers. We do not think much useful purpose will be served by asking petty officials of the Revenue Department to go from house to house with a view to ascertaining whether there are any bonded labourers or not...”

“We would also direct the State Government to take immediate action for identification and release of bonded labourers, whenever any representative of these social action groups, whether on the vigilance committee or not, points out to the Collector District Magistrate or the Deputy Collector that there is existence of bonded labour at a particular place and whenever any officer of the District Administration goes to such place for identification and release of bonded labour on the basis of the information given by such representative of the social action group, he shall take such representative with him and a copy of the report made by him shall be handed over immediately to such representative of the social action group.”

4.1.2. Recording of statement of bonded labourer:

There should be proper recording of statements of bonded labourers without threats or pressure from the employer/bonded labour keeper.

4.1.3. Ensure statement is not taken in the presence of the employer:

The Supreme Court of India has discussed the involvement of petty officers such as Tehsildars and Patwaris in the spot inquiry who are often found to have sympathy with the powerful employer. It is observed that questioning the bonded labourer in front of the employer adversely affects the identification process.

Neeraja Chaudhary vs State Of M.P.

“..We had some time back a case before us where pursuant to a direction given by the Collector as a result of an order made by this Court, the tehsildar went to the villages in question and sitting on a dais with the landlords by his side, he started enquiring of the labourers whether they were bonded or not and when the labourers, obviously inhibited and terrified by the presence of the landlords, said that they were not bonded but they were working freely and voluntarily, he made a report to the Collector that there were no bonded labourers. It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour and we shall be able to identify and release them. There are fortunately in our country a large number of such dedicated social action groups- young men and women inspired by idealism and moved by a passionate and burning zeal to help their fellow beings-whose services can be utilised for identification, release and rehabilitation of bonded labourers. We would strongly urge upon the State Government to include the representatives of such social action groups in the vigilance committees and to give them full support and cooperation.”

4.1.4. Methodology of inquiry:

If a complaint is made before the National Human Rights Commission, the inquiry should be in accordance with the specific orders in the case. The methodology developed by Sh. S.R. Sankaran, with suitable modification as per local conditions, is recognised as the appropriate methodology for identification of bonded labour by the Hon’ble Supreme Court of India in the case below. Sankaran methodology was developed for identification of bonded labour mainly in the agriculture sector and may not suit the identification of bonded labour in the brick kiln sector, unless appropriate modifications are made considering a brick kiln as a factory. The methodology adopted by Sankaran is attached as Annexure “C”.

Peoples Union for Civil Liberties vs. Union of India Date of Judgement: 11 October 2012

Para 16

(5) Many of the States/UTs reporting NIL status with respect to existence of bonded labourers. This might be due to the faulty methodology adopted by them for conducting such surveys. Guidelines on the methodology of identification of bonded labourers, formulated by Shri S.R.Shankaran, Chairman of the Expert Group constituted by the NHRC, should follow and be implemented by all the States/UTs with suitable modifications to suit local conditions.

4.1.5. Release of bonded labourers’ provisions of the facility along with their belongings:

Ensure travel fare by the employer and payment of wages before departure from the brick kiln.

If the workers are inter-state migrant workmen, the employer is liable to pay the return travel fare and settle the wages prior to departure:

Inter-State Migrant Workman (Regulation of Employment and Conditions of Service) Act, 1979

15. Journey allowance etc: A journey allowance of a sum not less than the fare from the place of residence of the inter-state migrant workman in his State to the place of work in the other State shall be payable by the contractor to the workman both for the outward and return journeys and such workman shall be entitled to payment of wages during the period of such journeys as if he were on duty.

17. Responsibility for payment of wages: (1) A contractor shall be responsible for payment of wages to each inter-State migrant workman employed by him and such wages shall be paid before expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner and may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes a short payment, then the principal employer shall be liable to make payment of the wages in full or the unpaid balance due, as the case may be, to the inter-state migrant workman employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

18. Liability of principal employer in certain cases: (1) If any allowance required to be paid under Sec. 14 or Sec. 15 to an inter-State migrant workman employed in an establishment to which this Act applies is not paid by the contractor or if any facility specified in Sec. 16 is not provided for the benefit of such workman, such allowance shall be paid, or as the case may be, the facility shall be provided, by the principal employer within such time as may be prescribed.

(2) All the allowance paid by the principal employer or all the expenses incurred by him in providing the facility referred to in sub-section (1) may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as debt payable by the contractor.

4.1.6. Records and registers to be maintained at the work place to be brought on record

Ensure that the spot inquiry officers check the records and registers to be maintained at the brick kiln. See Annexure A for a full list of registers and records to be maintained at the work site.

If the records and registers are not maintained, it must be reflected in the statement of the employer, the complainant and the inquiry report of the spot inquiry officer.

4.1.7. Licences and permits to be obtained by employer for running a brick kiln.

Ensure that the licences are obtained under labour laws – mainly the Factories Act, 1948; Inter-State Migrant Workman (Regulation of Employment and Conditions of Service) Act, 1979 and the Contract Labour (Regulation and Abolition) Act, 1970. If the brick kiln is unlicensed, ensure that this is reflected in the spot inquiry report.

Factories Act, 1948

6. Approval, licensing and registration of factories. (1) The State Government may make rules-

2*[(a) requiring, for the purposes of this Act, the submission of plans of any class or description of factories to the Chief Inspector or the State Government;] 3*[(aa)] requiring the previous permission in writing of the State Government or the Chief Inspector to be obtained for the site on which the factory is to be situated and for the construction or extension of any factory or class or description of factories;

(b) requiring for the purpose of considering application for such permission the submission of plans and specifications;

(c) prescribing the nature of such plans and specifications and by whom they shall be certified;

(d) requiring the registration and licensing of factories or any class or description of factories, and prescribing the fees payable for such registration and licensing and for the renewal of licences;

(e) Requiring that no licence shall be granted or renewed unless the notice specified in section 7 has been given.

Inter-State Migrant Workman (Regulation of Employment and Conditions of Service) Act, 1979

S.6. Prohibition against employment of inter-state migrant workmen without registration. -- No principal employer of an establishment to which this Act applies shall employ inter-state migrant workmen in the establishment unless a certificate of registration in respect of such establishment issued under this Act is in force.

Contract Labour (Regulation and Abolition) Act, 1970

S.8. Licensing of contractors: (1) With effect from such date as the appropriate Government may, by notification in the official Gazette, appoint, no contractor to whom this Act applies shall:

- recruit any person in State for the purpose of employing him in any establishment situated in another State, except under and in accordance with a licence issued on that behalf —
 - i. if such establishment is an establishment referred to in sub-clause (i) of Cl. (a) of sub-section (1) of Sec. 2, by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the recruitment is made;
 - ii. if such establishment is an establishment referred to in sub-clause (ii) of Cl. (a) of sub-section (1) of Sec. 2, by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the recruitment is made;
- employ as workmen for the execution of any work in any establishment in any State, persons from another State (whether or not in addition to other workmen) except under and in accordance with a licence issued on that behalf —
 - i. if such establishment is an establishment referred to in sub-clause (i) of Cl. (a) of sub-section (1) of Sec. 2 by the licensing officer appointed by the Central Government who has jurisdiction in relation to the area wherein the establishment is situated;
 - ii. if such establishment is an establishment referred to in sub-clause (ii) of Cl. (a) of sub-section (1) of Sec. 2 by the licensing officer appointed by the State Government who has jurisdiction in relation to the area wherein the establishment is situated.

Standard Operating Procedures on Rescue [Ministry of Labour and Employment, Govt. of India Notification No S-11012/01/2015-BL Dated 17 August 2017]

Rescue

- Within 24 hours of complaint
- Multi-stakeholders in rescue team
- Police protection from employer interference
- Seizure of evidence like labour records, registers and licence
- Civil society/social workers to be present
- Brief questions to bonded labourers on advance, wages, freedom only
- Rescue memo with full details of bonded labourer
- Protection and relocation to safety after rescue

Inquiry

- Assistance such as food, shelter, protection
- Proceedings under Minimum Wages Act and Payment of Wages by Labour Officer
- Employer not to be present during inquiry of bonded labour case
- No need to question offender or their associates
- Questions to ask bonded labourers like advance, wages, freedom of employment and movement
- Release certificates within 24 hours of rescue

- Children also to be given release certificates
- Cash assistance to all bonded labourers
- Medical examination in case of occupational injuries and hazards

See for full SOP on Inquiry and Rescue below:

2. Rescue:

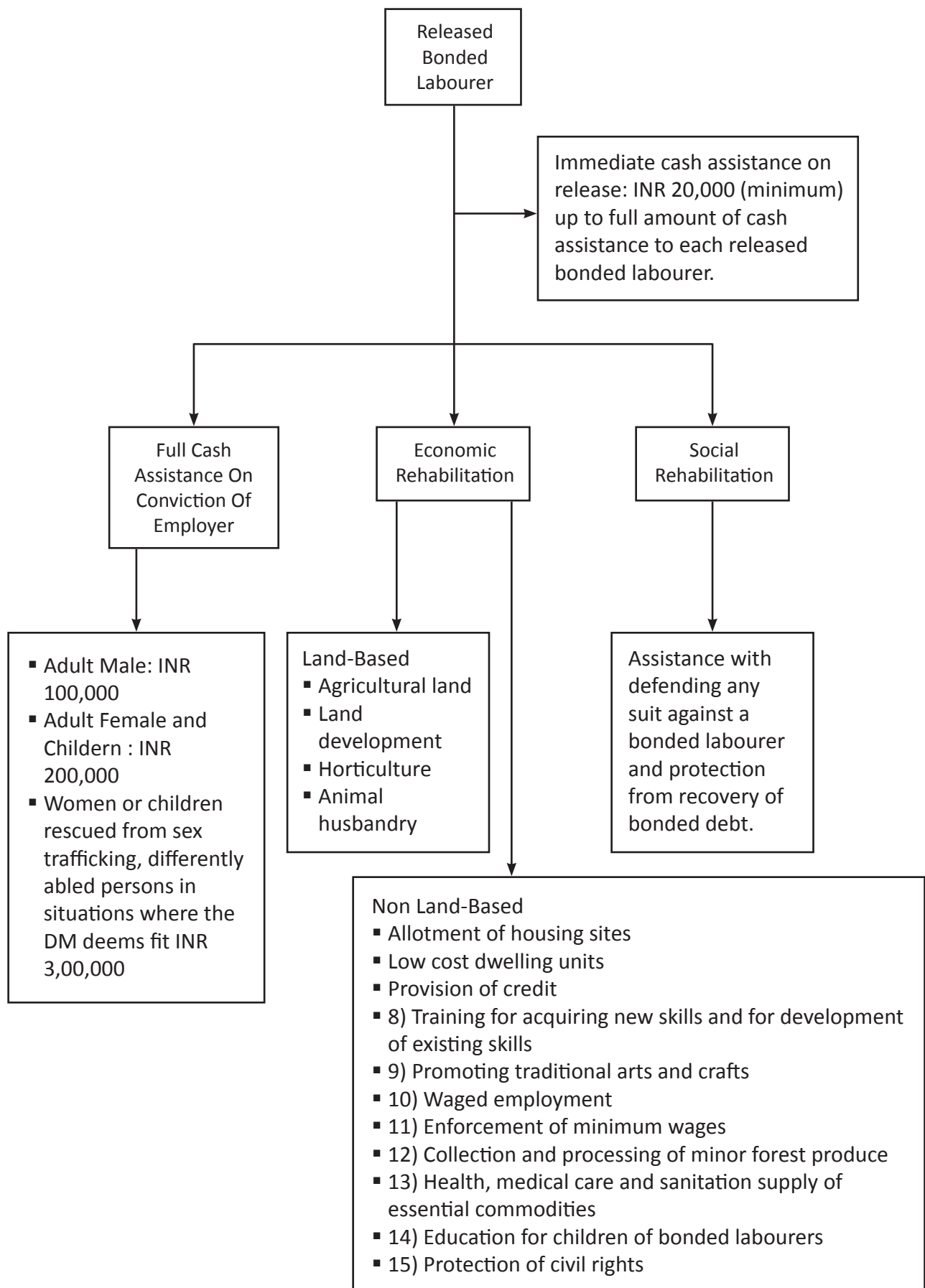
- 2.1. The DM, SDM, or the police shall rescue the labourer as soon as possible within 24 hours from the time of complaint received.
- 2.2. The DM, SDM, or the police shall ensure that the rescue team shall be multi-disciplinary and shall comprise the following members:
 - a) one representative of the district magistrate (DM) having jurisdiction not below the rank of Tehsildar to enable such representative to fulfil such duties as provided under the BLSA and Central Sector Scheme for Rehabilitation of Bonded Labour - 2016;
 - b) one police officer nominated by the Superintendent of Police;
 - c) the Labour Officer (LO) having jurisdiction to inquire into, enforce and compensate under various labour laws including Minimum Wages;
 - d) an adequate number of police officers to secure the premises;
 - e) two or more women officers;
 - f) one police photographer;
 - g) two independent witnesses, at least one of whom should be a woman;
 - i) members of a civil society organisation or social workers for rescued labourer support including counselling and other roles; and
 - j) any other necessary person.
- 2.3. If the DM, SDM or police has reason to believe that it is necessary to conduct the search and rescue operation without delay for any reason, including danger to the rescued labourer and likelihood of interference with potential evidence, notwithstanding any member of the rescue team may be unavailable, the DM or SDM shall carry out the search and rescue operation, and inform any missing member without delay.
- 2.4. The DM or SDM in coordination with the police shall ensure that the rescue location is secured, separate and protected from the offender and his or her associates.
- 2.5. The DM or SDM shall ask brief questions to the labourer in the absence of the offender and in the presence of a member of a civil society organisation or a social worker to determine whether there are indications of bonded labour. Search brief questions should include questions regarding the nature of the advance or other obligation, wage payments and ability of the labourer to leave or work elsewhere.
- 2.6. The DM or SDM shall ensure that all relevant evidence, such as phone books (directories with numbers of other traffickers or accomplices), mobile phones, travel tickets and documents, accommodation receipts, bank statements, wage receipts slips and registers, muster rolls, ledger books, bond agreements, notebooks, cash, weapons, locks, ownership documents, lease, licences are photographed and seized by the police, and the offender is arrested as per the Code of Criminal Procedure, 1973 ("CrPC").
- 2.7. The DM or SDM shall ensure that the police prepare a seizure list and rescue memo detailing the identities of the rescued bonded labourer and his contact details and cause it to be signed by independent and local witnesses.
- 2.8. All police officers and Executive Magistrates shall be competent to make arrest without warrant in accordance with Section 41 and 44 of the Code of Criminal Procedure, 1973 ("CrPC").
- 2.9. The DM or SDM shall ensure that the labourer is removed from the rescue location, separated and given adequate protection from the offender and his associates and brought to a safe location. The DM or SDM shall also ensure that no bonded labourer is left behind.

3. Inquiry:

- 3.1. The DM or SDM shall provide the labourer with immediate assistance, including food, shelter and protection;
- 3.2. The DM or SDM shall ensure that the labour officer initiates proceedings under the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 where applicable.
- 3.3. In order to issue a release certificate, the DM or SDM shall conduct an inquiry in a free and fair environment, in respect of each labourer separately or with his family, in the absence of the offender and in the presence of a member of a civil society organisation or a social worker as soon as possible but definitely within 24 hours of the rescue. The questions to be asked to the labourer should include questions regarding advance or other obligations, wage payments, freedom to travel, seek alternative employment, and sell or purchase goods at market value and questions regarding other offences against scheduled castes or tribes, offences against children, etc. It shall not be necessary to question the offender or any of his associates. Such an inquiry is not an adversarial inquiry, and the procedures for criminal trials do not apply to such an inquiry.
- 3.4. The DM or SDM shall issue immediately and definitely within 24 hours, a release certificate to each rescued labourer, including children, found to be a bonded labourer even if they are accompanied by families.
- 3.5. The DM or SDM shall provide each rescued labourer, including children, found to be a bonded labourer even if they are accompanied by families, with immediate cash assistance.
- 3.6. The DM or SDM shall take necessary action for the medical examination of the victim by a registered medical practitioner for the purpose of determination of age, injury or disease incidental to the exploitation and occupational health hazards.

PART V: REHABILITATION OF RELEASED BONDED LABOUR

5.1. Rehabilitation entitlements as per the Bonded Labour Act and the revised scheme



5.2. Rehabilitation framework under Bonded Labour Act

Bonded Labour System (Abolition) Act, 1976

11. Duty of District Magistrate and other officers to ensure credit: The District Magistrate authorized by the State Government under section 10 and the officer specified by the District Magistrate under that section shall, as far as practicable, try to promote the welfare of the freed bonded labourer by securing and protecting the economic interests of such bonded labourer so that he may not have any occasion or reason to contract any further bonded debt.

14. Functions of Vigilance Committees: (1) The functions of each Vigilance Committee shall be:

(a) to advise the District Magistrate or any officer authorized by him as to the efforts made, and action taken, to ensure that the provisions of this Act or of any rule made thereunder are properly implemented;

(b) to provide for the economic and social rehabilitation of the freed bonded labourers;

(c) to co-ordinate the functions of rural banks and co-operative societies with a view to channelling adequate credit to the freed bonded labourer;

(d) to keep an eye on the number of offences of which cognisance has been taken under this Act;

(e) to make a survey as to whether there is any offence of which cognisance ought to be taken under this Act;

(f) to defend any suit instituted against a freed bonded labourer or a member of his family or any other person dependent on him for the recovery of the whole or part of any bonded debt or any other debt which is claimed by such person to be bonded debt.

5.3. Centrally sponsored rehabilitation scheme - 17 May 2016

REVISED SCHEME AND GUIDELINES ISSUED BY THE MINISTRY OF LABOUR, GOVERNMENT OF INDIA VIDE NOTIFICATION F. No.S-11012/01/2015-BL DATED 18 MAY 2016.

- i. The revised Scheme shall be a Central Sector Scheme and shall come into effect from 17 May 2016. The State Governments shall not be required to pay any matching contribution for the purpose of cash rehabilitation assistance.
- ii. The Rehabilitation package shall be INR 100,000 per adult male beneficiary. Beneficiary shall have the option to either deposit it in an annuity scheme or receive cash grant. The District Administration will assess the cash requirement of the beneficiary and exercise its best judgement in the matter and put the money under annuity scheme with the consent of the said adult male.
- iii. For special category beneficiaries, such as children including orphans or those rescued from organised and forced begging rings or other forms of forced child labour, and women, the amount of rehabilitation assistance shall be INR 2 lakhs out of which at least INR 25,000/- shall be deposited in an annuity scheme in the name of each beneficiary and the balance amount shall be transferred to the beneficiary account through ECS.
- iv. In cases of bonded or forced labour involving extreme cases of deprivation or marginalisation such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc., or trafficking, or in cases of differently abled persons, or in situations where the District Magistrate deems fit, the rehabilitation assistance shall be INR 3 lakhs, out of which at least INR 2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and INR 1 lakh shall be transferred to the beneficiary account through ECS.

- v. The above benefits would be additional to other land and housing elements, etc. of the original scheme as mentioned below:
- (a) Allotment of house-site and agricultural land;
 - (b) Land development;
 - (c) Provision of low cost dwelling units;
 - (d) Animal husbandry, dairy, poultry, piggery etc.;
 - (e) Wage employment, enforcement of minimum wages etc.;
 - (f) Collection and processing of minor forest products;
 - (g) Supply of essential commodities under targeted public distribution system; and
 - (h) Education for children.
- vi. In cases where, on the conclusion of the summary trial, the District Magistrate (DM)/Sub-Divisional Magistrate (SDM) concludes that the alleged bonded labourer is, in fact, not in a condition of bondage, but requires socio-economic assistance, the DM/SDM may provide state assistance under any other scheme administered by them.
- vii. In cases where the DM/SDM finds that immediate assistance is necessary for the care and protection of the rescued persons during the pendency of the summary trial, such assistance including food, lodging, medical assistance, legal aid, provisions for victim's or witness protection, etc., shall be provided under any other law or scheme forthwith, notwithstanding the entitlements prescribed under this scheme.
- viii. State Governments/UTAs shall be required to concentrate their efforts on the following activities:
- (a) The District Administration in a convergence approach shall undertake measures for providing a safe and secure environment for the capacity building of child bonded labourers in coordination with all relevant Government departments. Accordingly, facilities for ensuring their proper education, psycho-social counselling, and short stay home till education upto class 12th, skill development shall be an integral component of the rehabilitation package.
 - (b) For addressing the special needs of female freed bonded labourers, the State Government shall also provide financial and other assistance for marriage, apart from other capacity building measures mentioned at sub para (a).
 - (c) For addressing the needs of the disabled persons, special care should be made available by the State as per national policy for disabled people apart from other capacity building measures mentioned at sub para (a) and (b).
 - (d) For adult bonded labourers who do not come under any of the above categories, employable skill development training shall be a compulsory element of rehabilitation.
- ix. The benefits prescribed hereinbefore shall be, in addition to, other cash or non-cash benefits which a beneficiary under this scheme is entitled to, by or under any other scheme or law applicable for the time being in force.
- x. The amount of assistance for survey of bonded labourers shall be INR 4.50 lakh per district. This amount can be utilised to finance the NGO efforts for identification of bonded labour as per State Government norms. Central Government will reimburse this amount upon satisfactory performance in each identification project.

The component of assistance shall be as per the following table:

Sr. No.	Cost involved in Survey	Funds Permissible
1.	Cost of printing of questionnaire (average 2000 questionnaires @ INR 5 each)	INR 10,000
2.	Costing of imparting training to investigators/field staff for collecting information (payment to 10 investigator/field staff @ {500^ per day to each for 5 days (INR 5000 x 5)	INR 25,000
3.	Cost of collecting primary data from field (payment to 10 investigators/field staff @ {500/- per day to each for 2 months (INR 5000 x 60 days)	INR 300,000
4.	Cost of editing, tabulation and analysis of primary data (payment to 2 Research Assistant @ INR 20000 per month to each for 2 months (INR 40000 x 2 months)	INR 80,000
5.	Cost of computerisation of data/information	INR 35,000
Total		INR 450,000

xi. The expenditure on awareness generation shall be reimbursed on a case by case basis subject to maximum limit of 10 lakh per State per annum, as per the following components:

Sr. No.	Cost Component	Funds Permissible
1.	Cost of campaigning and telecast of various audio-visual inputs through AIR, Doordarshan, Song and Drama, Division. etc.	INR 7 Lakh
2.	Campaigns through local newspapers	INR 1 Lakh
3.	Cost of performance by folk cultural troupes including cost of travelling	INR 2 Lakh
Total		INR 10 Lakh

xii. The existing norms of grants of INR one lakh for evaluatory studies shall be maintained as such:

Sr. No.	Cost Component	Funds Permissible
1.	Formulation and printing of questionnaire for collecting information from various departments & who are providing grants/loans for the purpose of effective rehabilitation of bonded labourers including cost of mailing of questionnaire	INR 8,000
2.	Analysis of data by 2 Research Assistants-cum-computer operator (payment @ INR 9,000/- per month for 2 months) (18,000 x 2 months)	INR 36,000
3.	Writing of reports by 1 Research Officer (payment @ INR 18,000/- per month for 2 months) (18,000 x 2 months)	INR 36,000
4.	Printing and binding of the report (20 original copies)	INR 10,000
5.	Misc. expenses including travelling expenses	INR 10,000
Total		INR 100,000

- xiii. A Bonded Labour Rehabilitation Fund shall be created at the District level by each State with a permanent corpus of at least INR10 lakhs at the disposal of the District Magistrate which should be renewable. This fund will be utilised for extending immediate help to the released bonded labourers. The entire penalties recovered from the perpetrators of the bonded labour upon conviction may be deposited in this special fund.
- xiv. Immediate assistance of at least INR 5,000/- shall be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund at the disposal of the District Magistrate. Where the DM is satisfied that a particular rescued person requires more than INR 5,000, he or she may disburse such higher amount as deemed fit, but limited to the maximum entitlement prescribed under this scheme. Any such advance amount shall be deducted from the Central cash assistance amount.

5.4. Comparative Table: Rehabilitation Scheme of 1-4-99 To 17-05-2016 and Rehabilitation Scheme 17 May 2016

Amended Notification for Revised Immediate Assistance – 17 January 2017

F.No.S-11012/01/2015-BL

Government of India, Ministry of Labour and Employment

Dated: 17 January 2017

“Kind reference is drawn to Para 5 (xiv) of the Central Sector Scheme for Rehabilitation of Bonded Labourer 2016 forwarded by this Ministry vide its OM of even no. dated 18 May 2016 wherein it has been stipulated that immediate assistance of INR 5,000/- shall be provided by the District Administration to the rescued person out of the District Bonded Labour Rehabilitation Fund at the disposal of the District Magistrate.

In this regard, it is conveyed that the Central Government has decided to enhance the immediate financial assistance from INR 5,000/- to INR 20,000/- with immediate effect. Copy of order dated 23/6/2017 for amendment in central sector scheme for rehabilitation of Bonded Labour Act 2016 is reproduced below.

F.N. S-11012/01/2015-BL (PL.)

GOVERNMENT OF INDIA

MINISTRY OF LABOUR AND EMPLOYMENT

Director General Labour Welfare

Jaisalmer House, 26, Mansingh Road

NEW DELHI

Dated June 23, 2017

To

The Chief Secretary (all State Governments)

The Administrator (all UT Administrations)

The District Magistrate / the Collector (All)

Subject: Modification in the Central Sector Scheme for the Rehabilitation of Bonded Labour, 2016 - regarding.

On the basis of feedback received from various stakeholders and with the approval of the Competent Authority, certain modifications have been made in the Central Sector Scheme for the rehabilitation of bonded labour.

Sr. No.	List of existing provisions	Amended provision
1.	Central Government will reimburse the expenditure made by the stated on Survey, Awareness Generation and Evaluatory Studies up to the financial limits prescribed in the Scheme [Para 5(x, xi, xii) of the 2016 Scheme] .	Central Government will give 50% of the amount required for conducting Survey, Awareness Generation and Evaluatory Studies in advance. A State may conduct survey once every three years per sensitive district. A state may conduct five Evaluatory Studies per year.
2.	District Magistrate will submit financial claim to the district NCLP Society which in turn will submit the demand to the Central Government. The Central Government will release funds to the District NCLP Society for onward release to the District Administration. [Para 6 & 7 of the 2016 Scheme]	The fund release architecture in operation prior to 2016 Scheme will be followed and the existing NCLP route has been done away with in view of the fact that many of the districts of a state do not have NCLP Society. The District Administration will send the financial demand to the state's concerned Ministry/ Department dealing with the BLR scheme and the state Ministry/ Department will send the proposal to the Central Government. Routing of the proposal and release of fund through the state's Ministry/ Department will be helpful both for the Centre and the state in monitoring the implementation of the Scheme.
3.	Immediate assistance of INR 20,000/- (increased from 5,000 to 20,000 w.e.f. 17.01.2017) to be provided by the District Administration to the reduced person out of the district Bonded Labour Rehabilitation Fund linked to conviction of the accused. [Para 5(xiv)]	Immediate assistance up to INR 20,000/- may be provided to the rescued bonded labourer by the District Administration irrespective of the status of conviction proceedings.
4(i). 4(ii).	The Format for Release Certificate appended to the 2016 Scheme does not capture the caste category of the rescued bonded labourer. The Release Certificate requires date of conviction and release order (meaning thereby that a Release Certificate is to be issued after the conviction proceeding).	The entry at S. No. 1 of the Format for Release Certificate shall be substituted with the following expression: "1. Name and Caste Category of the rescued bonded labourer:" (It is necessary as the budget has separate provision for SC and ST) So as to enable issuance of Release Certificate at the time of Release of rescued bonded labourer prior to conclusion of conviction proceedings, it has been decided to do away with/replace the existing entries at S.no. 16 to 19 in the Format for Release Certificate .

It is requested to ensure that the modification in the 2016 scheme as mentioned above are circulated among all concerned.

5.5 Supreme Court Directions and Guidelines on Rehabilitation

- States must ensure required amounts of funds available for freed bonded labourers.
- District Magistrate must ensure rehabilitation with diligence, empathy and sensitivity, taking note that the Bonded Labour Act is welfare legislation.
- Rehabilitation is equally important as identification and release otherwise released bonded labourers may be forced back into bondage due to poverty. Every effort must be made by the State for proper and suitable rehabilitation after release.
- Failure to rehabilitate is a violation of the Directive Principles of State Policy and a violation of the said fundamental rights. Articles 21 and 23 of the Constitution of India require that released bonded labourers must be suitably rehabilitated.
- There is no justice in freedom with starvation. Released bonded labourers would face more exploitation after release if not rehabilitated.
- Rehabilitation as per the letter dated 2 September 1982 addressed by the Secretary, Ministry of Labour, Government of India to the various States Governments, includes;
 - Psychological rehabilitation
 - Physical and economic rehabilitation, which has 15 major components;
 1. Allotment of housing sites
 2. Agricultural land
 3. Land development
 4. Low cost dwelling units
 5. Provision of credit
 6. Horticulture
 7. Animal husbandry
 8. Training for acquiring new skills and for development of existing skills
 9. Promoting traditional arts and crafts
 10. Waged employment
 11. Enforcement of minimum wages
 12. Collection and processing of minor forest produce
 13. Health, medical care and sanitation supply of essential commodities
 14. Education for children of bonded labourers
 15. Protection of civil rights
- There is scope for bringing about integration among the various central and centrally sponsored schemes and the ongoing schemes of the State Governments for a more qualitative rehabilitation.
- While drawing up any scheme/programme of rehabilitation of freed bonded labour, the latter must necessarily be given the choice between the various alternatives for their rehabilitation and such programme should be finally selected for execution as needed by the families of freed bonded labourers.
- All States must submit status of rehabilitation of released bonded labourers to the NHRC every six months. Vigilance committees being entrusted with rehabilitation under the Bonded Labour Act must be constituted.
- If States are not able to make proper arrangements for rehabilitation, it shall identify two philanthropic organisations or NGOs with proven track record and good reputation with basic facilities for rehabilitating released bonded labourers.
- The State Governments and Union Territories shall make arrangements to sensitise the District Magistrate and other statutory authorities/committees in respect of their duties under the Act.

Peoples Union for Civil Liberties vs. Union of India. Date of Judgement: 11 October 2012

Para 16. "After hearing the amicus curiae and other learned counsel appearing in these proceedings and also taking note of the previous orders passed by this Court, we are inclined to give the following directions, apart from the directions already issued:

(6) All the States/UTs should calculate firm requirements of fund for rehabilitation of freed bonded labourers and steps that have to be taken to enhance the rehabilitation package from the present limit of INR 20,000.

(7) The District Magistrates are directed to effectively implement Sections 10, 11 and 12 of the Act and we expect them to discharge their functions with due diligence, with empathy and sensitivity, taking note of the fact that the Act is a welfare legislation."

Neeraja Chaudhary vs. State Of M.P. Date of Judgement: 8 May 1984

Para 1: "This is yet another case which illustrates forcibly what we have said on many an occasion that it is not enough merely to identify and release bonded labourers, but it is equally, perhaps more, important that after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again. Poverty and destitution are almost perennial features of Indian rural life for large numbers of unfortunate ill-starred humans in this country and it would be nothing short of cruelty and heartlessness to identify and release bonded labourers merely to throw them at the mercy of the existing social and economic system which denies to them even the basic necessities of life such as food, shelter and clothing . . . It is therefore imperative that neither the Government nor the Court should be content with merely securing identification and release of bonded labourers, but every effort must be made by them to see that the freed bonded labourers are properly and suitably rehabilitated after identification and release."

Para 5: "It is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and, on release, they must be suitably rehabilitated. The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution."

Bandhua Mukti Morcha vs. Union Of India. Date of Judgment: 16 December 1983

The other question arising out of the implementation of the Bonded Labour System (Abolition) Act, 1976 is that of rehabilitation of the released bonded labourers and that is also a question of the greatest importance, because if the bonded labourers who are identified and freed, are not rehabilitated, their condition would be much worse than what it was before during the period of their serfdom and they would become more exposed to exploitation and slide back once again into serfdom even in the absence of any coercion. The bonded labourer who is released would prefer slavery to hunger, a world of 'bondage and (illusory) security' as against a world of freedom and starvation. The State Governments must therefore concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Indeed, they are under an obligation to do so under the provisions of the Bonded Labour System (Abolition) Act, 1976. It may be pointed out that the concept of rehabilitation has the following four main features as admirably set out in the letter dated 2 September 1982 addressed by the Secretary, Ministry of Labour, Government of India to the various State Governments:

- i. Psychological rehabilitation must go side by side with physical and economic rehabilitation;
- ii. The physical and economic rehabilitation has 15 major components namely allotment of house-sites and agricultural land, land development, provision of low cost dwelling units, agriculture, provision of credit, horticulture, animal husbandry, training for acquiring new skills and developing existing skills, promoting traditional arts and crafts, provision of wage employment and enforcement of minimum wages, collection and processing of minor forest produce, medical care and sanitation supply of essential commodities, education of children of bonded labourers and protection civil rights;

- iii. There is scope for bringing about integration among the various central and centrally sponsored schemes and the ongoing schemes of the State Governments for a more qualitative rehabilitation. The essence of such integration is to avoid duplication i.e. pooling resources from different sources for the same purpose. It should be ensured that funds are not drawn from different sources for the same purpose but drawn from different sectors for different components of the rehabilitation scheme so are integrated skillfully; and
- iv. While drawing up any scheme/programme of rehabilitation of freed bonded labour, the latter must necessarily be given the choice between the various alternatives for their rehabilitation and such programme should be finally selected for execution as would need the total requirements of the families of freed bonded labourers to enable them to cross the poverty line on the one hand and to prevent them from sliding back to debt bondage on the other.

Haryana to draw up a scheme on programme for “a better and more meaningful rehabilitation of the freed bonded labourers” in the light of the above guidelines set out by the Secretary to the Government of India, Ministry of Labour in his letter dated 2 September 1982. The other State Governments are not parties before us and hence we cannot give any direction to them, but we hope and trust that they will also take suitable steps for the purpose of securing identification, release and rehabilitation of bonded labourers on the lines indicated by us in this Judgment.

**Public Union for Civil Liberties vs. State of Tamil Nadu & Others [Writ Petition (civil) 3922 of 1985]
Date of Judgement: 5 May 2004**

“Considering the vitality of rehabilitation issue in the endeavours to abolish bonded labours, at this stage, we are issuing the following directions.

1. All States and Union Territories must submit their status report in the form prescribed by NHRC every six months.
2. All the State Governments and Union Territories shall constitute Vigilance Committees at the District and Sub-Divisional levels in accordance with Section 13 of the Act, within a period of six months from today.
3. All the State Governments and Union Territories shall make proper arrangements for rehabilitating released bonded labourers. Such rehabilitation could be on land-based basis or non-land basis or skilled/craft-based basis depending upon the choice of the bonded labourer and his/her inclination and past experience. If the States are not in a position to make arrangements for such rehabilitation, then it shall identify two philanthropic organisations or NGOs with proven track record and good reputation with basic facilities for rehabilitating released bonded labourers within a period of six months.
4. The State Governments and Union Territories shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of such organisations or NGOs within a period of six months.
5. The Union and State Governments shall submit a plan within a period of six months for sharing the money under the modified Centrally Sponsored Scheme, in the case where the States wish to involve such organisations or NGOs.
6. The State Governments and Union Territories shall make arrangements to sensitise the District Magistrate and other statutory authorities/committees in respect of their duties under the Act.”

P. Sivaswamy Vs State of Andhra Pradesh. Date of Judgment:10 August 1988

“It is the obligation of the State Government under the Bonded Labour Act, 1976 to rehabilitate the freed bonded labourers. We would also suggest to the States of Tamil Nadu, Karnataka and Orissa that in constituting the vigilance committees which are also to be associated in the work of rehabilitation of the freed bonded labourers, they should involve the representatives of social action groups and voluntary agencies operating in these areas and whatever rehabilitation is provided to the freed bonded labourers, must be provided in the presence of a representative of such social action groups or voluntary agencies so as to ensure that rehabilitation provisions actually reach the hands of such labourers.

Unless there is effective rehabilitation the purpose of this Act would not be fulfilled. Up-rooted from one place of bonded labour conditions the person’s arc is likely to be subjected to the same mischief at another place. The netresult would be that the steps taken by this Court would be rendered ineffective and there would be mounting frustration because the persons who were uprooted from a place where they were working under bonded labour situations.”

Standard Operating Procedures [Ministry of Labour and Employment, Govt. of India Notification No S-11012/01/2015-BL Dated 17 August 2017]

Benefits to Labourer

- Rehabilitation benefits to be given to BL
- Access to government schemes and identification documents
- Release certificates to be considered as identity proof
- Medical assistance through PHC at rehabilitation location

Repatriation

- Repatriation shall be subject to the consent of the labourers
- Repatriation must be done no later than 24 hours from the date of rescue
- DM/SDM to coordinate with police and district administration of destination location for protection from harassment intimidation by employer and rehabilitation
- Police to accompany bonded labourers during repatriation
- Incomplete trial proceedings not to stop repatriation
- If bonded labourers or witnesses required to appear before Magistrate after repatriation, expenses to be paid along with protection
- All requirements under law for prosecution to be completed before repatriation

See full SOP on Rehabilitation and Repatriation below:

10. Benefits to Labourer

10.1. The DM or SDM shall coordinate with relevant authorities to expedite provision of existing benefits due to the labourer, such as benefits under central or state schemes including issuance of the following to the labourer:

- Aadhaar card
- Ration card
- Caste certificate
- Voter ID
- MNREGA card
- Land patta
- Government Health Insurance and
- Any other relevant or required document.

- 10.2. Release Certificates shall be considered as Identity Proof for the labourer.
- 10.3. The DM or SDM shall provide the labourer or their representatives with receipt of any application for provision of any benefits that are specific to the bonded labourer.
- 10.4. The DM or SDM shall ensure that the local primary health centre of the rehabilitation location medically screens the labourer.

11. Repatriation:

- 11.1. Repatriation shall be subject to the consent of the labourer. The rescuing DM or SDM shall be responsible for repatriation, which must be done at the earliest possible time and, in any case, no later than 24 hours from the date of rescue.
- 11.2. The DM or SDM shall coordinate with both rehabilitation and rescue location's police and District Administration ("DA") for quick and safe transfer, protection and rehabilitation, including:
 - Food, shelter, transport and protection
 - Sending a written request to the local police of the rehabilitation location for protection of the rescued labourer against possible harassment and intimidation by the offender or his associates, and
 - Sending a written request for rehabilitation of the rescued labourer to the relevant officials of the DA, including the DM, of the rehabilitation location, including,
 - Name(s), final address(s), contact details of the labourer(s)
 - Name(s) of the offender(s), if available
 - Certified copies of the identification form(s) and release certificate(s)
 - Identity card(s) of the labourer(s) and
 - receipt(s) of any rehabilitation given to the labourer(s)
- 11.3. The DM or SDM shall ensure that his representative along with the police accompanies the labourer during such repatriation. At all times, the DM or SDM shall ensure that the offender is not allowed to come into contact with the labourer.
- 11.4. The pendency of investigation or trial in relation to the commission of offences under the BLSA shall not stand in the way of repatriation of the labourer and/or his family at any stage.
- 11.5. Where a labourer has been repatriated but, in the opinion of the Designated Magistrate, is later required to be summoned for evidence, the Designated Magistrate should ensure that any expenses incurred by the labourer or witness in this regard are met and that such labourer or witness is given adequate protection during and post trial.
- 11.6. For offences under laws other than BLSA, where statements under Section 161 CrPC are required to be recorded, the DM or SDM shall ensure that the same is done at the earliest, prior to repatriation.

PART VI: PROSECUTION

Your organisation can also pursue a prosecution under other Acts – this is probably better to do after the rescue of bonded labourers under the Bonded Labour System (Abolition) Act, but you can do this right at the beginning if you have a good relationship with the police and believe they will act quickly. The police can also carry out a rescue of those in bonded labour (trafficked for labour exploitation), however, you would want to ensure that labour officials are also present to ensure workers receive their wages.

In most cases, NGOs file First Information Reports (FIRs) with the police after a rescue. These cases can run simultaneously; which means that you can file complaints for several breaches of laws at once. This will not affect the chances of a prosecution under the Bonded Labour System (Abolition) Act. It is useful to do this, as in reality; there have been extremely low numbers of District Magistrates that actually prosecute bonded labour cases. Also, prosecutions under the Bonded Labour System (Abolition) Act usually occur in district courts – and many NGOs have reported that these courts are not run as efficiently or professionally as judicial courts.

The chance of success and the treatment of your clients might be better in a judicial court.

Therefore, it is good to also file FIRs with the police after a rescue under other laws, particularly those with high penalties that will proceed through the judicial courts.

A FIR can be lodged in relation to many offences at the same time. Some that might be relevant include those listed below:

What can I do if the police do not file my FIR?

The police must file your FIR, otherwise you can proceed to the Magistrates Court or call a Senior Superintendent of Police.

Please see section 6.6 below.

6.1. Central acts and rules on bonded labour – offences and punishment (please see below).

Law	Violation	Classification of Offence
Constitution of India	<p>Article 23. Prohibition of traffic in human beings and forced labour –</p> <p>(1) 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.</p> <p>(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.</p>	<p>32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.</p> <p>(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of quo warranto, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.</p> <p>226. (1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories' directions, orders or writs, including 1[writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]</p>

Law	Violation	Classification of Offence	
		Offence	Punishment
Bonded Labour System (Abolition) Act, 1976 (No. 19 of 1976).	<p>4. Abolition of bonded labour system. - (1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall, on such commencement, stand freed and discharged from any obligation to render any bonded labour. (2) After the commencement of this Act, no person shall— (a) make any advance under, or in pursuance of, the bonded labour system, or (b) Compel any person to render any bonded labour or other form of forced labour.</p> <p>5. Agreement, custom, etc., to be void. - On the commencement of this Act, any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act), by virtue of which any person, or any member of the family or dependant of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.</p>	<p>Offence</p> <p>S.9. Creditor not to accept payment against extinguished debt S.16. Punishment for enforcement of bonded labour S.17. Punishment for advancement of bonded debt. S.18. Punishment for extracting bonded labour under the bonded labour system. S.19. Punishment for omission or failure to restore possession of property to bonded labourers. S.20. Abetment to be an offence.</p>	<p>Punishment</p> <p>Imprisonment up to 3 years and fine Imprisonment up to 3 years and fine up to INR 2,000.</p>
		<ul style="list-style-type: none"> ▪ Trial by an executive magistrate ▪ Summary trial ▪ Cognisable ▪ Bailable ▪ Jurisdiction of civil courts barred for recovery of bonded debt ▪ Non compoundable 	
Indian Penal Code, 1860	<p>Section 370 – Trafficking of Persons (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports (c) harbours, (d) transfers, or (e) receives, a person or persons, by – Firstly – by using threats Secondly – by using force, or any other form of coercion, or Thirdly – by abduction, or Fourthly – by practising fraud, or deception, or Fifthly – by abuse of power, or</p>	<p>Offence</p> <ul style="list-style-type: none"> ▪ Trafficking of person ▪ Trafficking of more than one person ▪ Trafficking of minor ▪ Trafficking of more than one minor ▪ Person convicted of offence of trafficking of minor on more than one occasion ▪ Public servant or a police officer involved in trafficking of minor 	<p>Punishment</p> <ul style="list-style-type: none"> ▪ 7 to 10 years + Fine ▪ 10 years to Life + Fine ▪ 10 years to Life + Fine ▪ 14 Years to Life + Fine ▪ Imprisonment for Natural Life + Fine ▪ 7 Imprisonment for Natural Life + Fine

Law	Violation	Classification of Offence
	<p>Sixthly – by inducement, including the giving or receiving of payments or benefits in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, Commits an 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, or the forced removal of organs. Explanation 2 The consent of the victim is immaterial in determination of the offence of trafficking.</p> <p>Section 374 Unlawful Compulsory Labour – 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.</p>	<ul style="list-style-type: none"> ▪ Cognizable ▪ Non-bailable ▪ Triable by Court of Session ▪ Non-compoundable <ul style="list-style-type: none"> ▪ Punishment: Imprisonment upto 1 Year or Fine or Both ▪ Cognizable ▪ Bailable ▪ Triable by any Magistrate ▪ Non-compoundable.
<p>Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989</p>	<p>S.3 (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, – (h) makes a member of a Scheduled Caste or a Scheduled Tribe to do “beggar” or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the 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.</p>	<p>Punishment:</p> <ul style="list-style-type: none"> ▪ Imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine ▪ No Anticipatory Bail ▪ Cognizable ▪ Bailable ▪ Trial by a Court of Session designated as “Special Court” under the Act ▪ Inquiry by an officer of a rank not below DySP (Deputy Superintendent of Police)
<p>Child and Adolescent Labour (Prohibition and Regulation) Act, 1986</p>	<p>S.3 Prohibition of employment of children in any occupation and process – (1) No child shall be employed or permitted to work in any occupation or process</p>	<ul style="list-style-type: none"> ▪ Violation of S.3 – Imprisonment for a term not less than 6 months up to 2 years or with fine not less than INR 20,000 upto INR 50,000 or both ▪ Violation of S.3A - Imprisonment for a term not less than 6 months up to 2 years or with fine not less than INR 20,000 up to INR 50,000 or both

Law	Violation	Classification of Offence
	<p>S.3-A. Prohibition of employment of adolescents in certain hazardous occupations and processes No adolescent shall be employed or permitted to work on any of the hazardous occupations or processes set forth in the Schedule.</p>	<ul style="list-style-type: none"> ▪ First offence compoundable ▪ Second offence punishable for a term not be less than 1 year but which may extend to 3 years ▪ First offence Parents/guardians of such child/adolescent shall not be punishable unless they permit such child for commercial purposes and adolescent to work in contravention of section 3A. ▪ Second offence by parents/guardians punishable with fine up to INR 10,000. ▪ Cognisable ▪ Triable by a Metropolitan Magistrate or Magistrate of First Class
<p>The Juvenile Justice (Care and Protection) Act, 2015</p>	<p>S.79. Exploitation of a child employee – Notwithstanding anything contained in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earnings for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of INR 100,000.</p> <p>Explanation – For the purposes of this section, the term “employment” shall also include selling goods and services, and entertainment in public places for economic gains.</p>	<p>Punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of INR 100,000.</p> <ul style="list-style-type: none"> ▪ Cognisable ▪ Non-Bailable ▪ Triable by a Magistrate of First Class

6.2. Offences and Procedure for Trial

6.2.1. Procedure for trial under the Bonded Labour System (Abolition) Act, 1976

Section 16. Punishment for enforcement of bonded labour.

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 INR 2,000.

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 INR 2,000.

17. Punishment for advancement of bonded debt.

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 INR 2,000; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of INR 5 for each day for which the bonded labour was extracted from him.

18. Punishment for extracting bonded labour under the bonded labour system.

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 INR 2,000; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of INR 5 for each day for which the bonded labour was extracted from him.

19. Punishment for omission or failure to restore possession of property to bonded labourers.

Whoever, being required by this Act to restore any property to the possession of any bonded labourer, omits or fails to do so, within a period of 30 days from the commencement of this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to INR 1,000, or with both; and, out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of INR 5 for each day during which possession of the property was not restored to him.

20. Abetment to be an offence.

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.

Explanation: For the purpose of this Act, "abetment" has the meaning assigned to it in the Indian Penal Code (46 of 1860).

21. Offences to be tried by Executive Magistrates.

(1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be.

(2) An offence under this Act may be tried summarily by a Magistrate.

22. Cognisance of offences.

Every offence under this Act shall be cognisable and bailable.

23. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the Company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,

- (a) “company” means anybody corporate and includes a firm or other association of individuals; and
- (b) “Director” in relation to a firm, means a partner in the firm.

6.2.2. Summary trial under Bonded Labour System (Abolition) Act:

21. Offences to be tried by Executive Magistrates: (1) The State Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be.

(2) An offence under this Act may be tried summarily by a Magistrate.

22. Cognisance of offences: Every offence under this Act shall be cognisable and bailable.

Code of Criminal Procedure, 1973 (2 of 1974)

Chapter 21 – Summary Trials

SECTION 260 – POWER TO TRY SUMMARILY:

Notwithstanding anything contained in this Code any Chief Judicial Magistrate; any Metropolitan Magistrate; any Magistrate of the first class specially empowered on this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences: Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

When, in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Code.

SECTION 261 – SUMMARY TRIAL BY MAGISTRATE OF THE SECOND CLASS:

The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second-class power to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

SECTION 262 – PROCEDURE FOR SUMMARY TRIALS:

In trial under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned. No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

SECTION 263 – RECORD IN SUMMARY TRIALS:

In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:

1. The serial number of the case;
2. The date of the commission of the offence;
3. The date of the report of complaint;
4. The name of the complainant (if any);
5. The name, parentage and residence of the accused;
6. The offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of Sub-Section (1) of section 260, the value of the property in respect of which the offence has been committed;
7. The plea of the accused and his examination (if any);
8. The finding;

9. The sentence or other final order;
10. The date on which proceedings terminated.

SECTION 264 – JUDGMENT IN CASES TRIED SUMMARILY:

In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

SECTION 265 – LANGUAGE OF RECORD AND JUDGMENT:

Every such record and judgment shall be written in the language of the Court.

The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed on this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

Supreme Court of India on summary trials: Recording of full evidence not required in a summary trial. A brief statement on reasons for the findings and not an elaborate reasoning required.

Nitinbhai Saevantilal Shah and another v. Manubhai Manjibhai Panchal and another (2011) 9 SCC 638

Para 13. “The manner in which the record in summary trials is to be maintained is provided in Section 263 of the Code. Section 264 mentions that in every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Thus, the Magistrate is not expected to record full evidence which he would have been otherwise required to record in a regular trial and his judgment should also contain a brief statement of the reasons for the finding and not elaborate reasons which otherwise he would have been required to record in regular trials.”

6.3. Guidelines and steps in prosecution and summary trial under the Bonded Labour System (Abolition) Act

A Manual on Identification Release and Rehabilitation of Bonded Labour Government of India, Ministry of Labour – New Delhi – February 2004

Published by: V.V.Giri National Labour Institute, NOIDA on behalf of Ministry of Labour

Chapter V of the Manual:

Prosecution of Offences

5.5. The procedure involved in prosecution of offences is briefly explained as follows:

5.5.1. Receipt of complaint and filing of FIR: Under the Bonded Labour System (Abolition) Act, 1976, the power of Judicial Magistrate of the First Class or of the Second Class for trial of the offences under the Act are Magistrate/Sub-Divisional Magistrate/Sub-Collector. Accordingly, these officials are empowered to issue release certificates and arrange for rehabilitation of bonded labour. Therefore, the revenue department officials at all levels should submit the complaint received by them to the above-mentioned officers. After the bonded labourer is released and given immediate relief, the FIR must be filed.

5.5.2. Power of arresting the offender and releasing on bail: Every offence under the Bonded Labour System (Abolition) Act is cognisable and bailable. Therefore, for arresting an offender, the police authorities are not required to have an arrest warrant from the Court. The offender, after arrest should be brought before the Magistrate. If the accused person submits a bail application, as per Section 436 of the Code of Criminal Procedure, the same may be allowed.

5.5.3. Course of action when the charge has been admitted by the accused:

If the accused refuses to accept the charges and prefers to contest the accusations, he must be arrested and remanded to the judicial custody after fixing the date of enquiry. In case the accused submits an application, he should be released on bail after following the due procedures.

1. Burden of Proof: The burden of proving that a particular debt is not a bonded debt is on the creditor.
2. Documentary evidences: Documentary evidences to prove existence of bonded debt are not necessary. Documents regarding receiving of loan or advances are generally not available with bonded labourers. Therefore, even if there is no documentary proof of having received the bonded debt and that the enquiry has shown that a labourer was made to provide forced labour, the existence of bonded debt may be presumed, and action must be initiated.
3. Procedure to be followed under summary trial: In summary trials, the following details must be entered in the format prepared by the State Government (Section 263 of CrPC):
 - (a) Serial number of the case
 - (b) Date on which the crime was committed
 - (c) Date of report/complaint
 - (d) Name of the complainant
 - (e) Name of the accused, father's name, residential address
 - (f) Charge as contained in the complaint and the proved charge (if proved)
 - (g) If the case is connected with any property, the value of the property
 - (h) Details about the acceptance/denial by the accused
 - (i) The findings of the inquiry
 - (j) The date on which the enquiry was completed

If the accused does not accept the charges at the time of the summary trial, the essence of the statement made by the witnesses, the judgement and the reasons for giving such a judgement must clearly be written (Sec. 264 CrPC).

The documents and the judgement mentioned above should be in the language of the Court. This may be prepared by an official appointed by the Judicial Magistrate and must be signed by the Judicial Magistrate who conducts the enquiry.

4. Procedure to be followed in cases involving detailed prosecution:
 - (a) The copies of the documents mentioned in Sec. 207 CrPC, i.e. police report, FIR, statements of the witnesses, the confessional statements, recorded as per Sec. 264 CrPC should be given to the accused (Sec. 238 CrPC).
 - (b) After studying the police report and other documents and after both the prosecution and the accused have been given an opportunity to explain their case, if the Judicial Magistrate considers that there is no substantive evidence for the charge, he may release the accused, setting forth the reasons clearly.
 - (c) During the investigation, if it is considered that the accused could have committed the offence, he must be chargesheeted.
 - (d) The charge sheet must be read out to the accused and he must be questioned on whether he accepts the charge or wishes to contest the case (Sec. 240 CrPC).
 - (e) If the accused accepts the charge laid against him, the Magistrate may give the accused a punishment that he deems fit (Sec. 241 CrPC).

Prosecution Witness

- (a) If the accused does not accept the charge laid against him, the Magistrate must fix a date to examine the witnesses.
- (b) Summons may be issued to the witnesses to attend the enquiry or to bring documents and anything connected with the case.
- (c) At the enquiry the prosecution witnesses must be examined. Government staff involved in the enquiry may also be examined.

(d) The Judicial Magistrate has the power to defer the cross-examination and recall the witness again for further cross-examination (Sec. 242 CrPC).

Defence Witnesses (on the side of the accused):

(a) The accused must be permitted to produce witnesses in support of his case.

(b) If an accused submits a written statement, it is sufficient to file it after due perusal (Sec. 243 CrPC).

Release or punishment:

(a) After examining the witnesses, if the Magistrate concludes that the accused is not guilty, he should issue orders releasing him.

(b) If he is found guilty, appropriate punishment must be given (Sec. 248 CrPC).

5. Follow-up action after judgement is passed:

(a) If in the mind of the Magistrate, he would prefer to give symbolic punishment, then punishment can be levied upto the rising of the Court together with an appropriate fine subject to Secs 16 to 19 of the Act. In this situation, the accused is released after he has paid the fine and after the Magistrate has adjourned Court for the day.

(b) Any imprisonment beyond this period will require for the accused to be lodged in judicial custody.

(c) A copy of the judgement/order passed by the Magistrate should be handed to the accused after receiving an acknowledgement from him. If he is sentenced to judicial custody, the copy of the judgement would also have to be sent to the Superintendent of Police.

6.4. Presence of bonded labourer at the time of enquiry:

The presence of the bonded labourer at the time of enquiry is not required. The bonded labourer normally fears his/her masters. Such a fear is inevitable when prosecution has been launched. Besides, the burden of proof lies on the creditor to prove that a particular debt is not a bonded debt.

6.5. Burden of proof:

Bonded Labour System (Abolition) Act, 1976

15. Burden of proof: 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.

Supreme Court of India on burden of proof in a case of bonded labour

▪ Bonded labourers must not be subjected to a formal process of trial and recording of evidence. A presumption must be drawn when a bonded labourer makes a statement. This presumption may be rebutted by producing evidence from the employer or the State, otherwise, the bonded labourer must be deprived of the benefits of the Act.

BANDHUA MUKTI MORCHA vs. UNION OF INDIA. DATE OF JUDGMENT: 16 December 1983

BENCH: HON'BLE MR. JUSTICE BHAGWATI, P.N.; PATHAK, R.S.; SEN, AMARENDRA NATH (J) CITATION: 1984 AIR 802

“The contention of the State of Haryana that the burden of proof under the Bonded Labour System (Abolition) Act, 1976 is upon the bonded labourers is misconceived. To insist that the bonded labourers must first prove that they are providing forced labour in consideration of an advance or other economic consideration received by them and then only they would be eligible for the benefits provided under the Act, is nothing but asking them to do a task which is extremely difficult, if not impossible.

The labourers would have no evidence at all to prove so and since employment of bonded labour is a penal offence under the Act, the employer would immediately without any hesitation disown having given any advance or economic consideration to the bonded labourers. The insistence of proof from two labourers by the State Government, which is constitutionally mandated to bring about change in the life conditions of the poor and downtrodden and to ensure social justice to them, is reprehensible. It would be cruel to insist that a bonded labourer, in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book..... Therefore, whenever it is shown that a 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 labourer. 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 produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the 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.”

6.6. FIR and trial of bonded labour offences under different laws

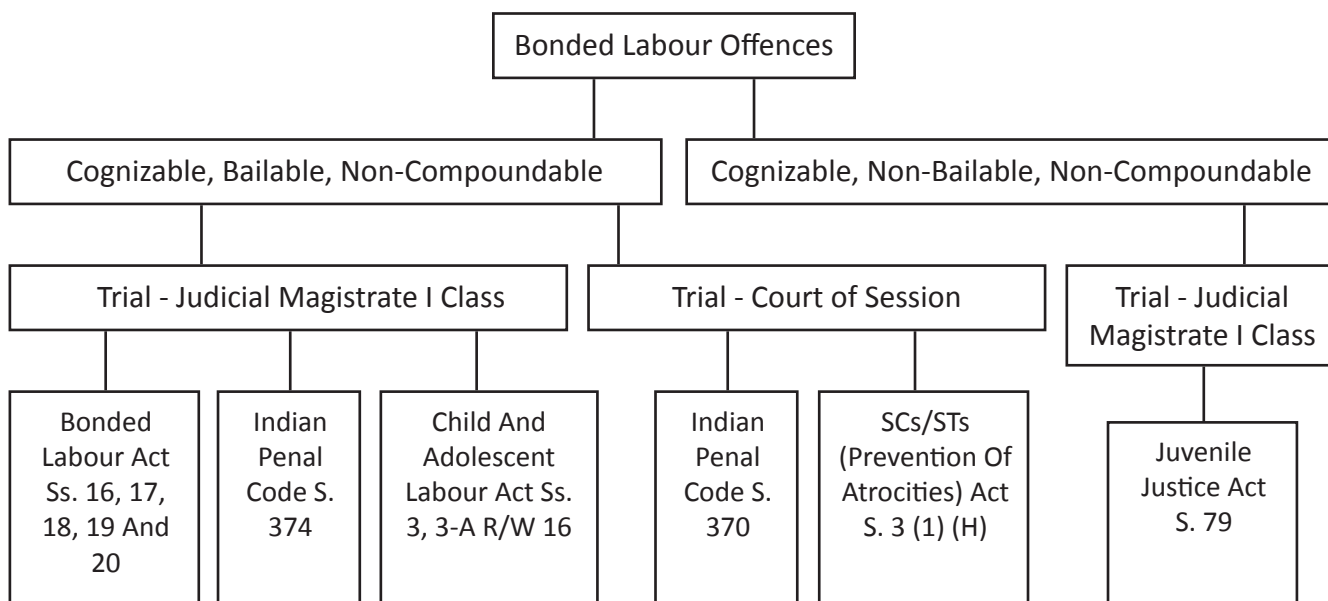
- It is mandatory for the police to file a FIR as all bonded labour offences are cognisable.

LalitaKumarivs. Govt. of UP and Others[WRIT PETITION (CRIMINAL) NO. 68 OF 2008]

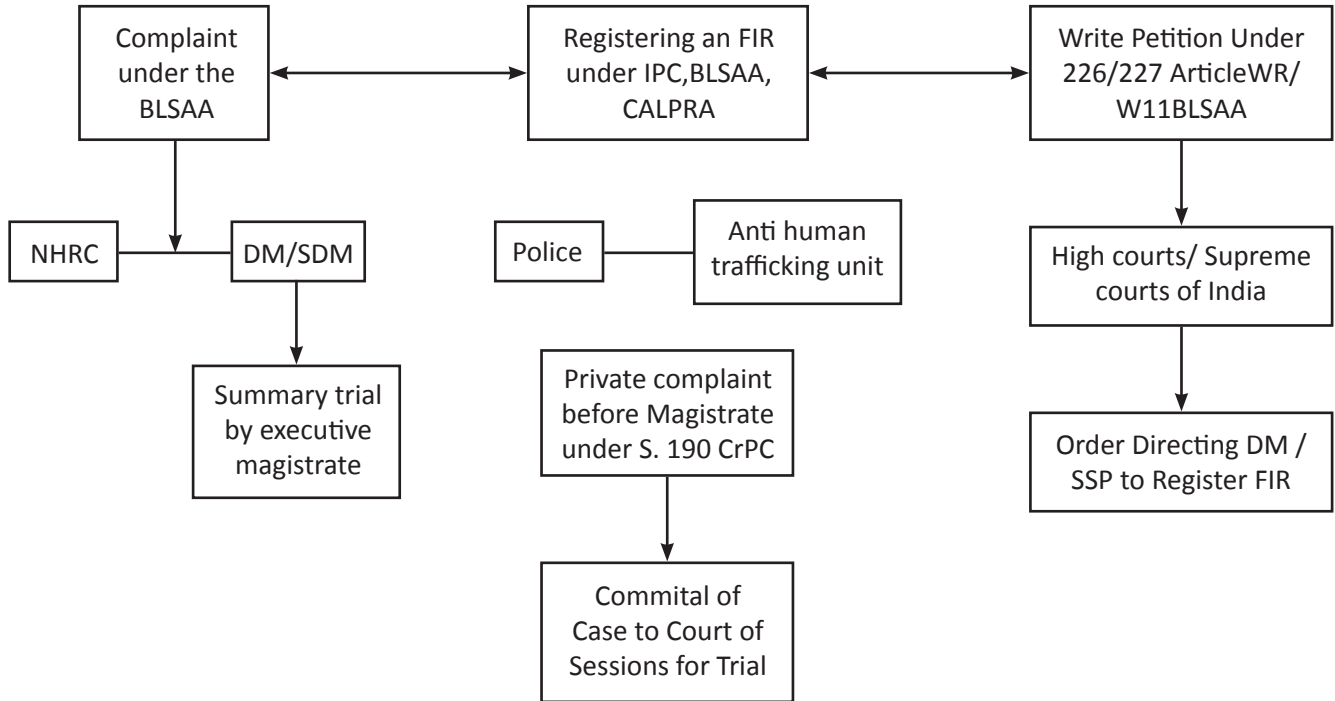
(Para 111) In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

- An offence of bonded labour may also be an offence under other laws depending on the facts of the case. Once the FIR is filed – and the charges are updated to include offences other than under the BLSA Act - the case may have to be committed to another appropriate court for trial. *See Chart Below.*



- Bonded labour offences (other than under the BLSAA) must be included at the time of filing the FIR. (Other avenues for registering a FIR are also listed in the chart below.) If the FIR does include other relevant offences, the chargesheet can also be later updated to include other offences by the Judicial Magistrate. The case will have to be committed to the Court of Session for trial if Section 370 of the IPC or the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is included.



STANDARD OPERATING PROCEDURES [Ministry of Labour and Employment, Govt. of India Notification No S-11012/01/2015-BL Dated 17 August 2017]

FIR

- FIR within 24 hours of rescue under all relevant law
- Complaint under BLSA by anyone
- Legal procedures and statements to be completed before labourers return to their place of origin

Summary Trial

- Summary trial of offences under BLSA by Executive Magistrates
- Summary trial to commence within 24 hours of rescue/identification of BL
- FIR not necessary for summary trial
- If offence is also punishable under other laws, case to be transferred by Executive Magistrate to competent Court
- Criminal Procedure Court to be applied in trial unless BLSA provides otherwise
- Summary trial to be completed within three months

Trial Proceedings

- Bonded labourers and witness to be given protection during trial
- DM to act on any harassment by employer including by cancelling bail
- Attachment of property of employer in case of absence during trial
- Case documents to be available on application

Evidence

- Substance of the evidence (documents and oral) to be recorded by the Magistrate
- Case record to maintained as per the Criminal Procedure Code

Judgement and Sentence in a Summary Trial

- Magistrate to record brief reasons with judgement
- Punishment as per the BLSA
- Trial under the BLSA in addition to cases under labour laws

See full SOP on FIR, Summary Trial, Evidence and Trial Proceedings below:

4. First Information Report

4.1 If the DM or SDM prima facie finds that offences under laws other than the BLSA have also been committed, he shall ensure that a complaint is made to the police for the registration of a First Information Report (FIR), under all relevant sections and laws for the time being in force, including relevant sections under the BLSA, within 24 hours of the date of rescue.

4.2 A complaint to the police alleging offences under the BLSA and other laws for the time being in force may be made by any person, including but not limited to the DM or SDM, the victim, family of the victim, NGO or any other person. Further, on receipt of such a complaint, section 154, CrPC to apply.

4.3 Upon a complaint being made to the police, the DM or SDM shall ensure that all relevant documents in his custody, including the Inquiry Form, Release Certificate and Medical Examination Reports are supplied to the police at the earliest FIR effective investigation.

4.4 The DM or SDM shall ensure that the police complete all the necessary procedure under the CrPC, the BLSA and herein relation to the labourer, such as taking of statements under Section 161 CrPC, if applicable, as soon as possible, and before the labourer is repatriated/moved beyond the jurisdiction of said police.

5. Prosecution of Offences

5.1 The DM or SDM shall communicate any judgement and sentence along with certified copies of the same to the relevant officials of the DA, including the DM, of the rescue location and rehabilitation location.

6. Summary Trial

6.1. The procedure for the Summary Trial of Offences under the BLSA is clarified as under:

(a) Executive Magistrates conferred by the State Government with the powers of a Judicial Magistrate of the first class to try offences under the BLSA under Section 21 (1) of the BLSA (“Designated Magistrate”) are empowered to try offences under the BLSA summarily [S. 21(2)].

(b) The commencement of Summary Trial of offences under the BLSA shall be not later than 24 hours from the date of identification or rescue, whichever is later. In neither case shall the commencement of Summary Trial be delayed for want of resignation of a FIR.

(c) If at any stage during the summary proceedings, it appears to the Designated Magistrate that the accused is also chargeable for offences under some other law for the time being in force, other than the BLSA, the Designated Magistrate shall proceed in accordance with the provisions of Section 322 or 323 CrPC, as the case may be.

(d) If upon police report, it appears to the Designated Magistrate that the accused is also chargeable for offences under some other law for the time being in force, other than the BLSA, the Designated Magistrate shall commit the entire case along with the case records to the competent court.

The procedure specified in CrPC shall be followed except as stated otherwise in the BLSA.

6.2. The Designated Magistrate should conclude the Summary Trial within three months.

7. Trial Proceedings

7.1. The Designated Magistrate shall ensure that the victim, labourer or any witness to the commission of any offence under the BLSA shall be provided with protection during the pendency of the trial.

7.2. Any complaints raised by the labourer, victim or witness in relation to harassment by the accused or his associates shall be acted upon urgently and the Designated Magistrate shall make orders for the protection of the labourer, victim or witness, such as cancellation of bail, or other appropriate orders.

7.3. In case the accused is absconding from trial, proclamation and attachment of property may be initiated.

7.4. Copies of case documents shall be made available on application.

8. Evidence

8.1. In all proceedings herein, the Designated Magistrate shall record the substance of evidence and particulars as per Section 262 (1) CrPC. Such evidence may include documentary evidence, and when necessary, oral evidence.

8.2. The Designated Magistrate must make the record of the case in the appropriate form as per Section 263 CrPC.

9. Judgement and Sentence in Summary Trial

9.1. The Designated Magistrate shall record a judgement including a brief statement of the reasons for the finding.

9.2. Punishment under the procedure shall be as per S.9, 16-20 of the BLSA.

9.3. Essential elements of a judgement upon Summary Trial under the BLSA shall be the following:

- (a) Serial number of the case;
- (b) Date of the commission of the offence;
- (c) Date of the report or complaint;
- (d) Name of the complainant (if any);
- (e) Name, parentage and residence of the accused;
- (f) The offence complained of and the offence (if any) proved;
- (g) Plea of the accused and his/her examination (if any);
- (h) The finding with reasoning;
- (i) Sentence or other final order with reason (Sec 9, 16-20 of the BLSA);
- (j) Amount of debt extinguished (if any) (Sec. 6 of the BLSA);
- (k) Extent of mortgage freed (if any) (Sec. 7 of the BLSA)
- (l) Date on which proceedings concluded/terminated
- (m) Order of committal (if any);

9.4. Proceedings shall be in addition to other civil and criminal proceedings, such as, but not limited to, proceedings under the Minimum Wages Act.

9.5. In addition, the DM or SDM shall ensure that the rescued labourers are provided with other benefits and are repatriated.

ANNEXURE A: RECORDS AND REGISTERS TO BE MAINTAINED AT BRICK KILNS UNDER LABOUR LAWS

MINIMUM WAGES ACT, 1948

Section 18: Maintenance of registers and records

18. Maintenance of registers and records:

(1) Every employer shall maintain such registers and records giving such particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of outworkers, in such factory, workshop or place as may be used for giving outwork to them, notices in the prescribed form containing prescribed particulars.

(3) The appropriate Government may, by rules made under this Act, provide for the issue of wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

THE PUNJAB MINIMUM WAGES RULES, 1950

Rule 25: Register of Overtime

25. Extra Wages for overtime.

(1) Where an employee in an employment is governed by the provision of the Factories Act 1948 or any other enactment prescribing extra wages for overtime, he shall receive overtime wages at the rates so prescribed.

(2) In cases not covered by sub-rule (1) when a worker works in an employment for more than the number of hours of work constituting a normal working day prescribed in rule 24, or for more than 48 hours a week, he shall in respect of overtime work be entitled to wages at double the ordinary rate of wages:

Provided that the Government on receipt of representations in respect of any scheduled employment or classes of employees in such employment may, after inviting public comments, notify any other rate of payment of extra wages for overtime in respect of any scheduled employment or class or classes of employees in such employment.

Explanation — The expression 'ordinary rate of wages' means the basic wage plus such allowances including the cash equivalent of the advantage accruing through the concessional sale to the person employed of food-grains and other articles as the person employed is for the time being entitled to but does not include a bonus.

(3) A register of overtime shall be maintained by every employer in Form IV in which entries under the columns specified therein shall be made as and when overtime is worked in any establishment. The register shall be kept at the work-spot and maintained up-to-date. Where no overtime has been worked in any wage period, a 'nil' entry shall be made across the body of the register at the end of the wages period indicating also in precise terms the wage period to which the 'nil' entry relates.

(4) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948.

26-A. Form of registers and records.

(1) A register of wages shall be maintained by every employer at the work-spot and kept in such form as may be notified by the State Government and shall include the following particulars:

- (a) the minimum rates of wages payable to each person employed;
- (b) the number of days for which each employed person worked overtime for each wage period;
- (c) the gross wages of each person employed for each wage period;
- (d) all deductions made from wages with an indication in each case of the kinds of deductions mentioned in sub-rule (2) of rule 21;
- (e) the wages actually paid to each person employed for each wage period and the date of payment.

(2) Wages slips containing the aforesaid particulars and such other particulars as may be notified by the State Government shall be issued by every employer to every person employed by him at least a day prior to the disbursement of wages.

(3) Every employer shall get the signature, or the thumb-impression of every person employed on the wage book and wage slip.

(4) Entries in the wage books and wage slips shall be authenticated by the employer or any person authorised by him on his behalf.

(5) A muster roll shall be maintained by every employer at the work-spot and kept in form V.

(6) Notwithstanding anything contained in this rule where a combined form is sought to be used by the employer to avoid duplication of work for compliance with the provisions of any other Act or rules framed thereunder, an alternative suitable form in lieu of any of the forms prescribed under this rule may be used with the previous approval of the Labour Commissioner, Punjab: Provided that the Government on sufficient cause being shown may, by notification in the Official Gazette, exempt any scheduled employment and any units of such employment conditionally or otherwise, from the observance of any of the requirements under this rule, or may vary those requirements in respect of the employees or a class or classes of employees in such employment.

26-B. Preservation of registers.

A register required to be maintained under rule 21(4), 25 (3) and 26(1) and the muster roll required to be maintained under rule 26(5) shall be preserved for a period of three years after the date of the last entry made therein.

26-C. Production of registers and other records.

All registers and records required to be maintained by an employer under these rules shall be produced on demand before the Inspector: Provided that where an establishment has been closed, the Inspector may demand the registers and records in his office or such other public place as may be nearer to the employer.

THE PAYMENT OF WAGES ACT, 1936

S. 13A. Maintenance of registers and records:

13A. Maintenance of registers and records.

(1) Every employer shall maintain such registers and records giving such particulars of persons employed by him, the work performed by them, the wages paid to them, the deductions made from their wages, the receipts given by them and such other particulars and in such form as may be prescribed.

(2) Every register and record required to be maintained under this section shall, for the purposes of this Act, be preserved for a period of three years after the date of the last entry made therein.

MATERNITY BENEFIT ACT, 1961

S. 20 – Muster Rolls

20. Registers, etc.

Every employer shall prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

PUNJAB MATERNITY BENEFIT RULES, 1967

Rule 3 – Muster Roll of Women Employees

3. Muster roll. Sections 20 and 28(2)(a).

(1) The employer of every establishment, including an establishment belonging to Government, in which women are employed shall prepare and maintain a muster roll in form 'A' [-].

(2) All entries in the muster roll shall be made in ink and maintained up to date and it shall always be available for inspection by the Inspector during working hours.

(3) The employer may enter in the muster roll such other particulars as may be required for any other purpose of the Act.

THE PUNJAB INDUSTRIAL ESTABLISHMENT (NATIONAL AND FESTIVAL HOLIDAYS AND CASUAL AND SICK LEAVE) ACT, 1965

15. Power to make rules

(1) The Government may, by notification and after previous publication, make rules for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the foregoing power, such rules may provide for—

(a) the manner in which, and the conditions on which, national and other holidays shall be allowed to the workers under section 3;

(b) the number of days for which, the manner in which and the conditions in which, casual and sick leave shall be allowed to workers under section 4; and

(c) the form and manner in which an account of festival holidays, casual leave and sick leave of workers shall be maintained by employers under section 6.

THE PUNJAB INDUSTRIAL ESTABLISHMENT (NATIONAL AND FESTIVAL HOLIDAYS AND CASUAL AND SICK LEAVE) RULES, 1966

Rule 7

Maintenance of Records. Section 15(2)(O)

(1) Every employer shall submit to the Inspector of the area a statement of Festival Holidays to be allowed to the workers during the calendar year before the 31 December of the preceding year in Form 'A'. A copy of this statement will be exhibited on a notice board to be kept in the industrial establishment in a conspicuous place and shall be available for inspection at all times.

(2) The amount of festival holidays, casual leave and sick leave shall be maintained in Form 'D'.

THE FACTORIES ACT, 1948

Section 62. Register of adult workers.

62. Register of adult workers.

(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried out in the factory, showing--

- (a) the name of each adult worker in the factory;
- (b) the nature of his work;
- (c) the group, if any, in which he is included;
- (d) where his group works on shifts, the relay to which he is allotted;
- (e) such other particulars as may be prescribed:

Provided that, if the Inspector is of the opinion that any musterroll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

1*[(1A) No adult worker shall be required or allowed to work in any factory unless his name and other particulars have been entered in the register of adult workers.]

(2) The State Government may prescribe the form of the register of adult workers, the manner in which it shall be maintained and the period for which it shall be preserved.

63. Hours of work to correspond with notice under section 61 and register under section 62.

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory.

EQUAL REMUNERATION ACT, 1976:

8. Duty of employers to maintain registers.

On and from the commencement of this Act, every employer shall maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

THE EQUAL REMUNERATION RULES, 1976:

6. Registers to be maintained by the employer.

Every employer shall maintain a register in relation to the workers employed by him in Form 'D'.

THE PAYMENT OF BONUS ACT, 1965:

38. Power to make rules.

(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for

- (a) the authority for granting permission under the proviso to sub-clause (iii) of clause (1) of section 2;
- (b) the preparation of registers, records and other documents and the form and manner in which such registers, records and documents may be maintained under section 26;
- (c) the powers which may be exercised by an inspector under clause (e) of sub-section (2) of section 27;
- (d) Any other matter which is to be, or may be, prescribed.

THE PAYMENT OF BONUS RULES, 1965:

4. Maintenance of registers.

Every employer shall prepare and maintain the following registers, namely: -

- (1) a register showing the computation of the allocable surplus referred to in clause (4) of section 2, in form A:
- (2) A register showing the set-on and set-off of the allocable surplus, under section 15, in form B.
- (3) a register showing the details of the amount of bonus due to each of the employees, the deductions under sections 17 and 18 and the amount actually disbursed, in Form C.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946:

[See Sections 2 (g) and 3(2)]

MATTERS TO BE PROVIDED IN STANDING ORDERS UNDER THIS ACT

- (1) Classification of workmen, e.g., whether permanent, temporary, apprentices, Probationers or badlis.
- (2) Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
- (3) Shift working.
- (4) Attendance and late arrival.
- (5) Conditions of procedure in applying for, and the authority which may grant leave and holidays.
- (6) Requirement to enter premises by certain gates, and liability to search.
- (7) Closing and reporting of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising there from.
- (8) Termination of employment, and the notice thereof to be given by employer and workmen.
- (9) Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
- (10) Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
- (11) Any other matter which may be prescribed.

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) CENTRAL RULES, 1946:

3. Tickets

- (1) Every workman shall be given a permanent ticket unless he is a probationer, badli, temporary worker or apprentice.
- (2) Every permanent workman shall be provided with a departmental ticket showing his number, and shall, on being required to do so, show it to any person authorised by the manager to inspect it.
- (3) Every badli shall be provided with the badlicard on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.
- (4) Every temporary workman shall be provided with a 'temporary' ticket which he shall surrender on his discharge.
- (5) Every casual worker shall be provided with a "casual" card, on which shall be entered the days on which he has worked in the establishment.
- (6) Every apprentice shall be provided with an 'apprentice' card, which shall be surrendered if he obtains permanent employment.

4. Publication of working time

The periods and hours of work for all classes of workers in each shift shall be exhibited in English and in the principal languages of workmen employed in the establishment on noticeboards maintained at or near the main entrance of the establishment and at the time-keeper's office, if any.

5. Publication of holidays and pay-days

Notices specifying (a) the days observed by the establishment as holidays, and (b) pay-days shall be pasted on the said noticeboards.

6. Publication of wage rates

Notices specifying the rates of wages payable to all classes of workman and for all classes of work shall be displayed on the said noticeboards.

7. Shift working

More than one shift may be worked in a department or departments or any section of a department of the establishment at the discretion of the employer. If more than one shift is worked, the workmen shall be liable to be transferred from one shift to another. No shift working shall be discontinued without two months' notice being given in writing to the workmen prior to such discontinuance; provided that no such notice shall be necessary if the closing of the shift is under agreement with the workmen affected. If as a result of the discontinuance of the shift working, any workmen are to be retrenched, such retrenchment shall be effected, in accordance with the Provisions of the Industrial Disputes Act, 1947 (14 of 1947), and the rules made thereunder. If shift working is restarted, the workmen shall be given notice and re-employed in accordance with the provisions of the said Act and its rules.

7-A. Notice of changes in shift working: Any notice of discontinuance or of re-starting of a shift working required by Standing Order 7 shall be in the form appended to these orders and shall be served in the following manner, namely:

The notice shall be displayed conspicuously by the employer on a noticeboard at the main entrance to the establishment. Provided that where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post to the Secretary of such union.

ANNEXURE B: SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) (AMENDMENT) RULES, 2011

Ministry: Ministry of Social Justice and Empowerment

Notification No.: GSR 424 (E) Dt. 14.04.16

Date of Notification: 14.04.2016 and 27.06.2018

SCHEDULE ANNEXURE-I (see rule 12 (4))

Beggar or forced or bonded labour [Section 3 (1) (h)]	At least INR ,100,000/- to each victim, payment of 25% at FIR stage and 50% on charge sheet sent to court and 25% on conviction.
Committing offences under the Indian Penal Code punishable with imprisonment for a term of 10 years or more [Section 3 (2) 3]	At least INR 400,000/- depending upon the nature and gravity of the offence to each victim and/or his dependents. The amount would vary if specifically otherwise provided in the Schedule.
Victimisation at the hands of a public servant [Section 3 (2) (vii)]	Compensation INR 200,000/-for damages or loss or harm sustained. 25% at the stage of FIR,50% to be paid when charge-sheet is sent to the Court and 25% on conviction by lower court.

ANNEXURE C: METHODOLOGY FOR IDENTIFICATION OF BONDED LABOUR APPLICABLE TO TELANGANA DISTRICTS THEN STATE ANDHRA PRADESH

By Shri S.R. Sankaran

Introduction:

After reaching the village, the investigating team of officers or any officer or other person entrusted with the work should proceed to the Harijanwada and not to the so-called main village. The agricultural labourers in the village will be mostly be Scheduled Castes. Scheduled Tribes or backward classes may be assembled together in the Harijanwada. They may be asked to say how many of them are doing Roju Coolie (daily labour) and how many of them are doing Jeetham (bonded labour). For the purposes of convenience, they can be asked to fall into two groups accordingly or raise their hands.

A few questions can then be put to the Roju Coolie group:

- Do you actually go and work with anybody who calls you for work?
- In the last week or 10 days, where did you work, with whom, on particular days?
- What is the rate of wages for men/women?

The answers will normally be that they go and work with whoever “calls them”. In the course of a week or 10 days, they would have worked with two, three or more different persons and places. The rates of wages will, of course, be low and different for men and women. The rates will be daily rates (not monthly or annual) normally around INR 2.50 to 3 for men and INR 1.50 to 2 for women. These rates may vary from place to place and from busy season to lean season. We should thus first satisfy ourselves about the nature of Roju Coolie.

Jeetham:

Those who are not Roju Coolie are prima facie Jeetham or bonded labour. The term Jeetham (or jeethagadu—gadu is a term of contempt and should not be used) in Telangana districts invariably connotes bonded labour. In the areas adjoining Rayalseema, the term ‘grasam’ is also used. The following series of questions must now be put to the Jeetham group:

1. Who are you working with and how long have you been working?
2. What is the amount of loan you had taken, when did you take the loan and for what purpose?
3. What is the rate of interest on the loan?
4. What is your monthly wage and what are the prerequisites?
5. You have worked for a few years with the landlord (which most of them would have done). Has the loan been reduced to some extent or has the interest been paid up?
6. How long will you have to work with the same landlord? Can you not go and work with someone else?
7. When do you think the loan will get repaid?

Further Leading Questions:

Certain questions can finally be put to them to find out what their own understanding and awareness of this situation is:

1. The bonded labourer can be told that we will give him a job straightaway in Hyderabad as a peon in our office and this will give him a salary of INR 400 every month. Would he immediately come to Hyderabad?
2. It can then be put to him that as the present Jeetham is only INR 40 per month (for example) will he not go and work with another landlord who will pay, say INR 100 per month? For eliciting a proper response, he can be told that we have met such a landlord in an adjoining village. Is it not more beneficial to him?
3. It can next be put to him that he can runaway to Nagarjunasagar, Pochampad, or such projects where there is heavy demand for labour and where he can easily get a daily wage of as much as INR 10. His answer will be that he cannot go because he has a loan to repay and again, even if he runs away, the landlord will send his jawans to bring him back and beat him.

Conclusion

The conclusion will thus be, so long as there exists a loan, he has no freedom to move in the labour market. He has to work until the loan is repaid. He is bonded. The loan can never be repaid by him. He is thus bonded for life; after his life, his son too will become bonded.

There are clear written documents in Telangana districts where it is set out that for the sake of a loan, a particular person binds himself to work for a number of years, at a particular monthly wage, etc.

These are documentary evidences of pledging of a human being for the sake of a loan and they should be seized from the landlords. The documents are normally written or at least attested by village officers, i.e., Mali Patel and Police Patel and the information can be elicited from them, though they themselves are the largest group of keepers of bonded labour.

Notes

1. This will clearly indicate the perception of the bonded labourer about his own position. He will be very clear in his mind that he is obliged to work with the landlord 'until the loan is fully paid back' "AppuThirevarakuCheyli" (Telugu). This sentence is clearly understood and uttered by all of them, as a covenant which he cannot break, except at the cost of a severe penalty that the landlord will be entitled to inflict on him.
2. The answer is in the nature of exclamation or rhetoric. More or less equivalent to 'God knows when it will ever be repaid'. It is just impossible to visualise when it will get repaid at all. Picture a person shrugging his shoulders and saying "yeppuduTirutundi, yeppadu" denoting not a definite but an indefinite time dimension.
3. The emphasis is on the involuntary nature i.e., he will not be "allowed to go", which is vividly expressed by the Telugu word "ponnivvaru".
4. This is a typical answer which should be clearly understood. Even in the process of moving from the present landlord by taking a loan from him to pay up the dues of the previous landlord, without doing which they will not be allowed to go. In Telugu it is expressively put across as "AkkadaTekchilkkadaitchiadapotanu". This is a refrain which is repeated in almost all the villages and the language is similar if not identical in every village.

General Note

The following excerpts from the union labour ministry's papers will be relevant to understanding the significance of the bonded labour system.

"A poor peasant or an agricultural worker takes a small loan, his dues accumulate very fast under exorbitantly high rates of interest, soon he finds it impossible to extinguish his debts he is dispossessed of his property but still he continues in debts. He then begins to work for his creditor under absurdly low wages and hopes to repay the debts by the fruits of his labours; but the cruel logic of usury defeats him; his children and grandchildren also begin to work for nominal wages to liquidate the debt. Generations after generations virtually become slaves to the creditors. The entire future of the family becomes mortgaged to a small loan taken in the remote past; the debt becomes the destiny."

The bonded labourer ceases to be a free economic agent; he is reduced to an appendage of feudal property. The debt dehumanises him; he lives like a subhuman; indeed, he lives like a thing.

Methodology adopted by L.D. Mishra in determining bonded labour:

Methodology adopted by L.D. Mishra in determining bonded labour as the socio-legal investigating Commissioner appointed by the Supreme Court of India in Writ Petition No 2182 – Bandhua Mukti Morcha Vs Union of India in the matter of stone quarry workers and stone crushers in Faridabad, Haryana

Name: _____

Father's Name: _____

Age: _____

Sex: _____

Permanent Address: Block: _____ Sub Division _____

District: _____ State _____

1. With whom do you work?
2. How do you come to know of him? Did you come to work here on your own? If not, how did you come?
3. For how long are you working here?
4. How much debt/advance did you take? When and for what purpose?
5. What is the rate of interest on the debt?
6. What is your monthly income? Are you paid in cash or in kind? Do you get accommodation and medical facilities?
7. For how many years/months have you worked with the quarry mine owner? Has the debt/advance been reduced to some extent? Have you paid the interest?
8. How long will you work with the quarry mine owner? Do you have freedom to go and work elsewhere without paying the earlier advance/debt?



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