



एक एव आरंभः - पचास वर्षा-करोडों आशाएं  
NhrC : Twenty Five Years-billion Hopes

# HANDBOOK ON BONDED LABOUR



**NATIONAL HUMAN RIGHTS COMMISSION  
INDIA**

**25**  
Years *Ensuring*  
Human Rights For All



# HANDBOOK ON BONDED LABOUR

(For District Magistrates, Subordinate Executive Magistrates, Police Officers, Labour Officers, Social Welfare/panchayati Raj Department Officers, Vigilance Committee Members, Civil Society, Employees, Employers, Academicians, Judges, Advocates, Law And Social Science Students.)

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**O.P. Vyas**

**NATIONAL HUMAN RIGHTS COMMISSION**  
**INDIA**

# **HANDBOOK ON BONDED LABOUR**

**Authored by Justice D. Murugesan**

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## FOREWORD



The Bonded Labour System is an evil and wherever it exists, it reminds of the dark ages in the history of human kind. The Indian Society has been developing with the gradual effort to fight with this social menace. The Parliament of India enacted the Bonded Labour System (Abolition) Act in 1976. The impetus was aided by the Supreme Court of India with dynamic landmark judgments. The Act together with the judgments of the Supreme

Court has laid the framework for eliminating and eradicating the Bonded Labour System in India. The National Human Rights Commission was asked by the Supreme Court of India in 1997 to get involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act. The Courts directions came, while hearing a Writ Petition (No.3922/1985) Peoples Union for Civil Liberties Vs State of Tamil Nadu & Others and since then the Commission has been overseeing implementation of the Act in different parts of the country.

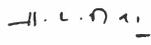
The Commission as a part of its mandate has made recommendations from time to time to the Government and is also creating awareness and sensitization programmes in different parts of the country.

The Commission, while dealing with this menace has come to know that despite enactment of the Social Welfare Legislation, i.e., the Bonded Labour System (Abolition) Act 1976, judgments of the Supreme Court and guidelines issued by the Commission, the problem persists and has even taken new shapes and dimensions in different industries.

The Commission in order to strengthen the stakeholders with desired

resource material has decided to publish this manual in order to sensitize all the stakeholders. My esteemed colleague Justice Shri D. Murugesan, Hon'ble Member of the Commission has got the work of compilation of all the laws related to the Bonded Labour System (Abolition) Act and also the process for holding the Summary Trial executed under his close supervision and guidance through his Assistant Registrar (Law) Shri O.P. Vyas. I feel that all the laws and procedures as -ready reckoner will help not only the District Magistrates, their subordinate officers but also the civil society, employers, researchers and all other stakeholders.

Dr. Ranjit Singh, Joint Secretary, NHRC, Dr. Sanjay Dubey, Director, Shri S.K. Gauba, Section Officer, Bonded Labour Cell, Smt. Usha Nair, PPS, Shri Ramesh Chander, PS and other officers have also contributed their valuable inputs in this work. I am sure that all the stakeholders working for eradication of the Bonded Labour System will find this publication as an important tool to deal with the subject and the excellent work executed by my Esteemed Brother and his Assistant Registrar (Law) would sensitize minds of the officers and others by adequately exposing them to the issue and ultimately help the readers to join the battle for elimination of Bonded Labour System in a meaningful manner.

  
Justice H.L. Dattu  
Chairperson

**Justice D. Murugesan**

Member

(Former Chief Justice of Delhi High Court)



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## PREFACE



The Bonded Labour System is modern day slavery and an ill product of dreaded poverty and destiny. The system is inhuman and an affront to the human dignity apart from serious violation of Human Rights. The system of bondage in various forms is an outcome of certain categories of indebtedness, which have been prevailing since ancient time involving certain economically exploited hapless, helpless weaker sections of the Society. The system had originated from the uneven social structure, characterized by feudal condition based on the inter-relatedness between rituals and compulsions. The bonded labour, or debt bondage or forced labour continued till it was legally abolished by an Act of Parliament in the year 1976. The Bonded Labour System is known by different names, different types in different manifestations across the country and spread extensively in the Indian sub- continent. The problem of bonded labour in the present era of globalization has direct co-relation to the socio economic problems, unemployment and unequitable distribution of lands and assets, non-payment of minimum wages, distress migration, social customs, etc. The Bonded Labour System (Abolition) Act 1976 abolished this social menace and was further strengthened by the Supreme Court of India with several landmark judgments which laid the illuminating path to combat with this menace. The National Human Rights Commission was asked by the Supreme Court of India, while hearing a Writ Petition (No.3922/1985) Peoples Union for Civil Liberties Vs State of Tamil Nadu & Others to monitor implementation of the Bonded Labour System (Abolition) Act and to oversee the implementation of the Act across the country. The Commission apart from dealing with individual bonded labour cases in hand raised its concern on the continuance of Bonded

Labour System and has, therefore, taken several initiatives to combat with this social menace in an effective and meaningful manner. The Commission, while dealing with the subject could find that the officers dealing with the subject are not either aware of or familiar with the provisions of the Act and the procedures to be followed. The identification, release and rescue of the victims from bondage, the backbones of the 'Act' can be Meaningful only if the released bonded labourers and their families can climb social and economical ladder by way of effective, complete and time bound rehabilitation. They should also feel empowered to become independent and free from any socio-economic encumbrances. The Welfare Schemes meant for the victims are often ignored and the perpetrators are never prosecuted. The Bonded Labour System, Abolition, Act is the only Legislation where an Executive Magistrate has been empowered with the powers of a Judicial Magistrate First Class to hold the Summary Trial but the country has seen very few Summary Trials conducted by the District Magistrates or their subordinate officers since they are not aware of the procedure to conduct the Summary Trial.

Therefore, the Commission based on its experience decided to hold Workshops by visiting the States, calling the officers at a place for training and making them aware of the provisions of the Act. The Commission has conducted 48 Workshops including 6 Regional Workshops and 2 National Workshops in Delhi to till date and in different States. The Commission besides conducting the Workshops continued to work with different stakeholders. At the same time, the Commission, while working together with the Ministry of Labour, Government of India was instrumental in formulation of guidelines and the close coordination has resulted in the form of the New Central Sector Scheme with complete financial burden on the Central Government for rehabilitation of the released bonded labourers almost on permanent basis by the respective State Governments. The Commission in order to fill the gaps and to sensitize all the stakeholders felt that there is an urgent need to compile all the related laws, procedures at a single place and, therefore, it was decided to come out

with this publication on the subject. The task was assigned to my Assistant Registrar (Law) Shri O.P. Vyas who has successfully executed it under my close supervision and guidance. I hope that all the stakeholders working in the field of human rights including State Functionaries will find this Publication useful while dealing with the subject in discharge of their duties in an effective and meaningful manner to make India free of bonded labourers once for all.



(Justice D. Murugesan)  
Member





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## CHAPTER - I

# BACKGROUND ON BONDED LABOUR

**B**onded labour, also known as debt bondage or debt slavery is a person's pledge of labour or services as security for the repayment for a debt or other obligation. The services required to repay the debt may be undefined, and the services' duration may be undefined. Debt bondage can be passed on from generation to generation.

Currently, the United Nations estimates that roughly 27 to 30 million individuals are currently caught in the slave trade industry. Debt bondage has been described by the United Nations as a form of "modern day slavery" and the Supplementary Convention on the Abolition of Slavery seeks to abolish the practice. Though most countries in South Asia and Sub-Saharan Africa are parties to the Convention, the practice is still prevalent primarily in these regions. It is predicted that 84 to 88% of the bonded labourers in the world are in South Asia. Lack of prosecution or insufficient punishment to this crime is the leading causes as to why this practice exists at this scale today.

It is specifically dealt with by Article 1(a) of the United Nations 1956 Supplementary Convention on the Abolition of Slavery. It persists nonetheless especially in developing nations, which have few mechanisms for credit security or bankruptcy, and where fewer people hold formal title to land or possessions. According to some economists this is a major barrier to development in those countries – entrepreneurs do not dare to take risks and cannot get credit because they hold no collateral and may burden families for generations to come. Where children are forced to work because of debt bondage of the family, this is considered not only child labor, but a worst form of child labour in terms of



the Worst Forms of Child Labour Convention, 1999 of the International Labour Organization.

The practice of bonded labour violates the following International Human Rights Conventions where India is a party to all of them and such is legally bound to comply with their terms. They are:

- Convention on the Suppression of Slave Trade and Slavery, 1926;
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery Trade, 1956;
- Forced Labour Convention, 1930;
- International Covenant on Civil and Political Rights (ICCPR), 1966;
- International Covenant on Economic, Social and Cultural Rights (ECOSOC), 1966;
- Convention on the Rights of the Child (CRC), 1989.

### **Bonded Labour in India**

Bonded labour is widely prevalent in many regions in India. Bonded labour, is embedded intricately in India's socio-economic culture – a culture that is a product of class relations, a colonial history, and persistent poverty among many citizens. Also known as debt bondage, bonded labour is a specific form of forced labor in which compulsion into servitude is derived from debt. The main feature of the system is that the debtor pledges his person or that a member of his family for a loan and is released on the repayment of the debt. In the beginning of the twentieth century the system combined the elements of exploitation, patronage and protection at least in some regions. But with increasing trend towards the money-economy and changes in the types of use, to which agricultural land is put, the element of patronage disappeared and that of exploitation persisted. The 'bonded labour system' thus refers to the relationship between a creditor and a debtor who obtains loan owing to economic compulsions confronting his day-to-day life, and agrees to abide by the terms dictated by the creditor.

Characterized by a creditor-debtor relationship that a labourer often passes on to his family members, bonded labour is typically of an indefinite duration and involves illegal contractual stipulations. Contracts deny an individual the basic right to choose his or her employer, or to negotiate the terms of his or her contract. Bonded labour contracts are not purely economic; in India, they are reinforced by custom or coercion in many sectors such as the agricultural, silk, carpet, mining, match production, brick kiln and glass/bangle industries,

among others.

### Legal Context of Bonded Labour in India

The reading text has been divided into various parts. It also gives a brief overview about the bonded labour situation in India. It also includes the role of vigilance committee, release certificate, scheme for the rehabilitation of bonded labours, Supreme Court's directive and the initiatives taken by the NHRC.

The problems of contract and migrant bonded labour are one of the most complex and sensitive. As a matter of fact, it is this problem which has become the subject matter of large number of public interest litigations before the Hon'ble Supreme Court and High Courts. The Bonded Labour System (Abolition) Act was amended in April, 1985 by adding an explanation to Section 2 and bringing contract and migrant labour within the purview of the Act if such labourers meet the ingredients of bonded labour system as defined in Section 2(g) of the Act. The modus operandi of recruitment of contract/migrant labour is as under:-

- on the eve of the season (say brick kilns) recruiting agents are deputed by the principal employer to recruit contract/migrant labour from one part of the territory of India to another;
- the recruiting agents pay paltry advances to the labourers and bring them to the worksite usually with family members with promises and allurements of good wages and better conditions of work; the documentary evidence in support of payment of advances remains with the recruiting agents; the contents are never shared with the workmen;
- the promises are never kept;
- no sooner the workmen arrive at the worksite they are subjected to ruthless exploitation;
- the working hours are unduly long;
- there is no weekly off; no payment of any OT for work in excess of the stipulated working hours i.e. 8 hours a day and 48 hours a week;
- no wages are paid and the workmen continue to incur advances for their day to day biological survival;
- advances paid are adjusted against wages due in a unilateral, arbitrary and unjust manner;
- statutory entitlements like journey allowance, displacement allowance and wages during journey period are never paid;



- the workmen will all along be told, 'you cannot leave the worksite until and unless the advances paid to you are fully liquidated';
- the workmen have no clue as to when the advances will be fully liquidated since they have no access to the documentary evidence in support of payment of advance which is with the recruiting agents only;
- thus the contract/migrant workmen come fully within the purview of bonded labour system as it occurs within the meaning of Section 2(g) of BLS(A) Act.





## CHAPTER - 2

### LEGAL PROVISIONS / RULES / LAWS/ACTS APPLICABLE IN THE MATTERS PERTAINING TO BONDED LABOUR LIST OF ACTS APPLICABLE TO BONDED LABOUR ABOLITION ACT

#### **N**ame of the Act/Legislation

- The Constitution of India.
- The Bonded Labour System (Abolition) Act, 1976; Bonded Labour(Abolition)Rules, 1976.
- The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (As amended by Act 35 of 2016).
- Contract Labour (Regulation & Abolition) Act, 1970.
- Indian Penal Code, 1860.
- Criminal Procedure Code, 1973.
- The Protection of Children from Sexual Offences Act, 2012.
- The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- Employee Compensation Act, 1923 (As amended through EC (Amendment) Act, 2017.
- The Juvenile Justice (Care and Protection of Children) Act, 2015.
- The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- Maternity Benefit Act,1961.
- Weekly Holidays Act, 1942.
- Equal Remuneration Act, 1976(Rule 6).
- Minimum Wages Rules, 1950 (Rules 25 & 26).
- Employee's Provident Funds Miscellaneous Provisions Act, 1952.
- Payment of Wages Act, 1936.Factories Act, 1948.



## A. THE CONSTITUTION OF INDIA

### **i) Article. 14 – Right to Equality**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

### **ii) Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
  - (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
  - (B) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

### iii) **Article 16 – Equality of opportunity in matters of public employment**

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes in the services under the State.
- (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

### iv) **Article 19- Freedom of Speech and Expression.**



**v) Article 19(1)(b)- All citizens shall have the right to assemble peaceably and without arms**

**vi) Article 21 - Right to Life and Personal Liberty**

No person shall be deprived of his life or personal liberty except according to a procedure established by law.

**Vii) Article 23 - Prohibition of traffic in human beings and forced labour-**

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, 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.

**viii) Article 24 - Prohibition of employment of children in factories, etc.-**

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

**ix) Article 42 - Provision for just and humane conditions of work and maternity relief-**

The State shall make provision for securing just and humane conditions of work and for maternity relief.

**x) Article 43 - Living wage, etc, for workers-**

The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas.

**xi) Article 46- Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections-**

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.





## CHAPTER - 3

# THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

**OBJECTIVE:** The object of the Act is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

### KEY DEFINITIONS:

In this Act, unless the context otherwise requires,-

(a) "advance" means an advance, whether in cash or 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);

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

**Explanation :** The existence of an agreement between the debtor and creditor is ordinarily presumed, under the social customs, in relation to the following forms of forced labor, name: Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, GaruGalu, Hali, Hari, Harwail, Holya, Jana, Jeetha, Kamiya, Khundit- Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, NitMajoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti;

(c) **"ascendant"** or "descendant", in relation to a person belonging to a matriarchal society, means the person who corresponds to such expression in accordance with the law of succession in force in such society;

(d) **"bonded debt"** means an advance obtained, or presumed to have been obtained, by a bonded laborer under, or in pursuance of, the bonded labor system;

(e) **"bonded labour"** means any labour or service rendered under the bonded labor system;

(f) **"bonded labourer"** means a labourer who incurs, or has, or is presumed to have, incurred, a bonded debt;

(g) **"bonded labour system"** means the system of forced, or partly forced, labor 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 the 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 any 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

(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, labor or service, to the creditor, or for the benefit of the creditor, for a specific 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 an



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, labor 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 labor 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 Labor (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 labor system' within the meaning of this clause.

**(h) "family"**, in relation to a person, includes the ascendant and descendant of such person;

**(l) "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 labor, 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 laborers working in the same locality;

**(j) "prescribed"** means prescribed by rules made under this Act.

## **PENALIZING SECTIONS:**

## **SECTION 9 CREDITOR NOT TO ACCEPT PAYMENT AGAINST EXTINGUISHED DEBT –**

(1) No creditor shall accept any payment against any bonded debt which has been extinguished or deemed to have been extinguished or fully satisfied by virtue of the provisions of this Act.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years and also with fine.

(3) The court, convicting any person under sub-section (2) may, in addition to the penalties which may be imposed under that sub-section, direct the person to deposit, in court, the amount accepted in contravention of the provisions of sub-section (1), within such period as may be specified in the order for being refunded to the bonded laborer.

## **SECTION 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 so specified.

## **SECTION 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 laborer by securing and protecting the economic interests of such bonded laborer so that he may not have any occasion or reason to contract any further bonded debt.

## **SECTION 12 DUTY OF DISTRICT MAGISTRATE AND OFFICERS AUTHORISED 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 labor system or any other form of forced labor 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 labor system or any other system of forced labor, he shall forthwith take such action as may be necessary to eradicate of such forced labor.

### **SECTION 15 BURDEN OF PROOF–**

Whenever any debt is claimed by a bonded laborer, 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.

### **(PUNISHMENT FOR ENFORCEMENT OF BONDED LABOUR)-**

#### **SECTION 16 (COMPELLING A PERSON TO WORK IN BONDED LABOUR SYSTEM)**

Whoever, after the commencement of this Act, compels any person to render any bonded labor shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.”

### **PUNISHMENT FOR ADVANCEMENT OF BONDED DEBT**

#### **SECTION 17 (ADVANCING MONEY IN A BONDED LABOUR SYSTEM)-**

Whoever advances, after the commencement of this Act, any bonded debt shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees.

### **SECTION 18 ENFORCING A BONDED LABOUR SYSTEM**

#### **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 dependent of such person is required to render any service under the bonded labor system, shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees; and, out of the fine, if recovered, payment shall be made to the bonded laborer at the rate of rupees five for each day for which the bonded labor was extracted from him.”

## SECTION 19 PUNISHMENT FOR OMISSION OR FAILURE TO RESTORE POSSESSION OF PROPERTY TO BONDED LABOURERS

### 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 laborer, omits or fails to do so, within a period of thirty 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 one thousand rupees, or with both; and, out of the fine, if recovered, payment shall be made to the bonded laborer at the rate of rupees five for each day during which possession of the property was not restored to him.”

### SECTION 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 (45 of 1860).

### SECTION 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.

**Note:** The DM and its subordinate authorities are the implementing authorities and are responsible for the Identification, Rescue, Release and Rehabilitation of the victims of the bonded labour.

### SECTION 23 OFFENCES BY COMPANIES-

“Where any 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 the 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 any body corporate and includes a firm or other association of individual; and

(b) "director", in relation to a firm, means a partner in the firm

**WHOM TO APPROACH IN CASE OF BONDAGE:**

The aggrieved person or any person on his behalf can approach to the District Magistrate who is chairman of the Vigilance Committee constitute under the Act and has been entrusted with certain duties and responsibilities for implementing the provisions of the Act. Matter can also be brought to the notice of the Sub Divisional Magistrate of the area or any other person who is a member of the Vigilance Committee of District or Sub-division.

The offence under the Act is cognizable and bailable Any person who contravenes provisions of the act is Liable for punishment with imprisonment for a term which may extend to three years and also with a fine which may extend to two thousand rupees.





## CHAPTER - 4

# BONDED LABOUR SYSTEM (ABOLITION) RULES, 1976

### RULE 5-

**P**rescribed authority under Sub-section (6) of Section An application under subsection (6) of section 6 for restoration of possession of any property referred to in subsection (4) or sub-section (5) of that section shall be made to the Executive Magistrate, on whom the powers of a Judicial Magistrate of the first class or of the second class have been conferred under sub-section (1) of Section 21, and within the local limits of whose jurisdiction the said property is, or the applicant has reason to believe is, situated at the time of making the application.

Provided that where there are two Executive Magistrates, on one of whom the powers of a Judicial Magistrate of the first class and on the other the powers of a Judicial Magistrate of the second class have been conferred under sub-section (1), of section 21 having jurisdiction to entertain the applicant for restoration of possession of property referred to in sub-rule (1), the application shall be made to the Executive Magistrate on whom the powers of a Judicial Magistrate of the second class have been conferred.

### RULE 6-

Records to be maintained by District Vigilance Committees to ensure the implementation of Provisions of the Act and Rules. -- In order to ensure the implementation of the Act and the Rules, every District Vigilance Committee shall maintain the following registers in respect of freed bonded labour within the local limits, of its jurisdiction, namely:-



- (a) a register containing the names and addresses of freed bonded labour;
- (b) a register containing statistics relating to the vocation, occupation and income of every freed bonded labour;
- (c) a register containing details of benefits which the freed bonded labour are receiving, including benefits in the form of land, inputs for agriculture, training in handicrafts and allied occupations, loans at differential rates of interest or employment in urban or non-urban areas;
- (d) a register containing details of cases under sub-section (6) of section 6, subsection (2) of section 8, sub-section (2) of section 9, section 16, section 17, section 18, section 19 and section 20.





## CHAPTER - 5

# THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(As amended by Amendment Act 2016)  
(Act 35 of 2016)

### PREAMBLE

**A**n Act to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

### *Part I - Preliminary*

### SECTION-1-SHORT TITLE, EXTENT AND COMMENCEMENT-

(1) This Act may be called the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

(2) It extends to the whole of India.

(3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.



### SECTION 2- DEFINITIONS-



**In this Act, unless the context otherwise requires,—**

**(i) "adolescent"** means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

**(ia) "appropriate Government"** means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;

**(ii) "child"** means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), whichever is more;

**(iii) "Day"** means a period of twenty-four hours beginning at midnight;

**(iv) "Establishment"** includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

**(v) "Family"**, in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;

**(vi) "Occupier"**, in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;

**(vii) "Port authority"** means any authority administering a port;

**(viii) "Prescribed"** means prescribed by rules made under Sec. 18;

**(ix) "Week"** means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;

**(x) "Workshop"** means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which

the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

### 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.

(2) Nothing in sub-section (1) shall apply where the child,--

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

#### Explanation- For the purposes of this section, the expression,

(a) "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;

(b) "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

(c) "artist" means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).

### SECTION 3A PROHIBITION OF EMPLOYMENT OF ADOLESCENTS IN CERTAIN HAZARDOUS OCCUPATIONS AND PROCESSES-

No adolescent shall be employed or permitted to work in any of the hazardous



occupations or processes set forth in the Schedule: Provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.

## **SECTION 7 HOURS AND PERIOD OF WORK-**

(1) No adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a adolescent shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.

(5) No adolescent shall be required or permitted to work overtime.

(6) No adolescent shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

## **SECTION 8 WEEKLY HOLIDAYS-**

Every adolescent employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

## **SECTION 10 DISPUTES AS TO AGE-**

If any question arises between an Inspector and an occupier as to the age of any adolescent who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such adolescent granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

## **SECTION 11 MAINTENANCE OF REGISTER-**

There shall be maintained by every occupier in respect of adolescent employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing—

- (a) the name and date of birth of every adolescent so employed or permitted to work;
- (b) hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;
- (c) the nature of work of any such adolescent; and
- (d) such other particulars as may be prescribed.

#### **SECTION 14 PENALTIES-**

(1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:

Provided that the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

(1A) Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both:

Provided that the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

(1B) Notwithstanding anything contained in sub-sections (1) and (1A) the parents or guardians of any child or adolescent referred to in section 3 or section 3A, shall not be liable for punishment, in case of the first offence.

(2) Whoever, having been convicted of an offence under section 3 or section 3A



commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

(2A) Notwithstanding anything contained in sub-section (2), the parents or guardian having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

(3) Whoever—

\*\*\*

(d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder,

shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

#### **SECTION 14-A OFFENCES TO BE COGNIZABLE-**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence committed by an employer and punishable under section 3 or section 3A shall be cognizable.

#### **SECTION 14-B CHILD AND ADOLESCENT LABOUR REHABILITATION FUND-**

(1) The appropriate Government shall constitute a Fund in every district or for two or more districts to be called the Child and Adolescent Labour Rehabilitation Fund to which the amount of the fine realized from the employer of the child and adolescent, within the jurisdiction of such district or districts, shall be credited.

(2) The appropriate Government shall credit an amount of fifteen thousand rupees to the Fund for each child or adolescent for whom the fine amount has been credited under sub-section (1).

(3) The amount credited to the Fund under sub-sections (1) and (2) shall be deposited in such banks or invested in such manner, as the appropriate Government may decide.

(4) The amount deposited or invested, as the case may be under sub-section (3), and the interest accrued on it, shall be paid to the child or adolescent in whose favour such amount is credited, in such manner as may be prescribed.

Explanation:-- For the purposes of appropriate Government, the Central Government shall include the Administrator or the Lieutenant Governor of a

Union territory under article 239A of the Constitution.

### **SECTION 14-C REHABILITATION OF RESCUED CHILD OR ADOLESCENT-**

The child or adolescent, who is employed in contravention of the provisions of this Act and rescued, shall be rehabilitated in accordance with the laws for the time being in force.

### **SECTION 14-D COMPOUNDING OF OFFENCES-**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Magistrate may, on the application of the accused person, compound any offence committed for the first time by him, under sub-section (3) of section 14 or any offence committed by an accused person being parent or a guardian, in such manner and on payment of such amount to the appropriate Government, as may be prescribed.

(2) If the accused fails to pay such amount for composition of the offence, then, the proceedings shall be continued against such person in accordance with the provisions of this Act.

(3) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

(4) Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought in writing, to the notice of the Court in which the prosecution is pending and on the approval of the composition of the offence being given, the person against whom the offence is so compounded, shall be discharged.

### **SECTION 15 MODIFIED APPLICATION OF CERTAIN LAWS IN RELATION TO PENALTIES-**

(1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section (2), he shall be liable to penalties as provided in sub-sections (1) and (2) of section 14 of this Act and not under the Acts in which those provisions are contained.

(2) The provisions referred to in sub-section (1) are the provision mentioned below :



- (a) Section 67 of the Factories Act, 1948 (63 of 1948);
- (b) Section 40 of the Mines Act, 1952 (35 of 1952);
- (c) Section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and
- (d) Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).





## CHAPTER - 6

# CONTRACT LABOUR (REGULATION & ABOLITION) ACT, 1970

**OBJECT:** The object of the Act is to regulate the employment of contract labour in certain establishments and provide for its abolition in certain circumstances and for matters connected therewith.

**APPLICABILITY:** It is applicable to every establishment (Principal Employer) in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour. It is also applicable to every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen (As defined in Sec-1 itself).

### SECTION 2 KEY DEFINITIONS-

(1) In this Act, unless the context otherwise requires,-

(a) **"appropriate government"** means-

(i) in relation to an establishment in respect of which the appropriate government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;]

(b) a workman shall be deemed to be employed as **"contract labor"** in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or



without the knowledge of the principal employer;

(c) **"contractor"**, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labor or who supplies contract labor for any work of the establishment and includes a sub-contractor;

(d) **"controlled industry"** means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(e) **"establishment" means-**

(i) any office or department of the government or a local authority, or

(ii) any place where any industry, trade, business, manufacture or occupation is carried on;

(f) **"prescribed"** means prescribed by rules made under this Act;

(g) **"principal employer"** means-

(i) in relation to any office or department of the government or a local authority, the head of that office or department or such other officer as the government or the local authority, as the case may be, may specify in this behalf,

(ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named.

(iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,

(iv) in any other establishment, any person responsible for the supervision and control of the establishment.

**Explanation :** For the purpose of sub-clause (iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause (j) clause (l) and clause (c) of sub-section (1) of section 2 of the Mine Act, 1952 (35 of 1952);

**(h) "wages"** shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);

**(l) "workman"** means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-

(A) who is employed mainly in a managerial or administrative capacity; or

(B) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or

© who is an out-worker, that is to say, a person to whom any article and materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

## **SECTION 21 RESPONSIBILITY FOR PAYMENT OF WAGES-**

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labor and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorized 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 as may be prescribed.

(3) It shall be the duty of the contractor or ensure the disbursement of wages in



the presence of the authorized representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labor 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.

### **SECTION 23 CONTRAVENTION OF PROVISIONS REGARDING EMPLOYMENT OF CONTRACT LABOR-**

Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labor, or contravenes any condition of a license granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

### **SECTION 24 OTHER OFFENCES-**

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

### **SECTION 25 OFFENCES BY COMPANIES-**

(1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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

**Explanation :** For the purpose of this section-

(a) **"company"** means any body corporate and includes a firm or other association of individuals; and

(b) **"director"**, in relation to a firm, means a partner in the firm.

### In Layman's term

**Who is the Principal Employer:** In the case of an office or the department of government or the local authority - the head thereof or the specified person; in the case of a factory, the owner or occupier or the person named as manager thereof; in the case of other establishments, the person responsible for the supervision and control of the establishment, is the principal employer under the Act {As defined u/s 2(g)}.

**Responsibility of contractor for payment of wages:** A contract is responsible to pay timely payment of wages and to ensure the disbursement of wages in the presence of the authorised representatives of the principal employer. The rates of wages are not to be less than the prescribed rates of minimum wages by the State Government.

**Maintenance of records and submission of returns by Principal Employer:-** Register of contractors in respect of every establishment in Form XII and annual return in Form XXV in duplicate before 15th February.

**Maintenance of records and submission of returns by Contractor:-** Register of workers for each registered establishment in Form XIII, muster roll and register of wages in form XVI and Form XVII when combined; register of wage-cum-muster roll in form XVII where the wage period is fortnightly or less; register of deductions for damages or loss in Form XX, register of fines in Form XXI; register of advances in Form XXII, register of overtime in Form XXIII, wage slip in Form



XIX; and half-yearly return in Form XXIV in duplicate within 30 days from the close of half year (calendar).

**Penalties:** For obstructing the inspector or failing to produce registers etc. – three months imprisonment or fine up to Rs. 500/- or both and for violation of the provisions of the act or the rules, imprisonment of three months or fine up to Rs. 1000/- and in the case of continuing contravention, additional fine upto Rs. 100/- per day.





## CHAPTER - 7

# INDIAN PENAL CODE, 1860.

### **S**ECTION 166 A:- PUBLIC SERVANT DISOBEYING UNDER LAW-

© fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509

### **SECTION 321:- VOLUNTARILY CAUSING HURT-**

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt"

### **SECTION 322:- VOLUNTARILY CAUSING GRIEVOUS HURT-**

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes grievous hurt, is said "voluntarily to cause grievous hurt."

**Explanation-** A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.



### **SECTION 323:- PUNISHMENT FOR VOLUNTARILY**



## **CAUSING HURT-**

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both

## **SECTION 339:- WRONGFUL RESTRAINT-**

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

**Exception-** The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

## **SECTION 340:-WRONGFUL CONFINEMENT-**

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said "wrongfully to confine" that person.

## **SECTION 341:- PUNISHMENT FOR WRONGFUL RESTRAINT-**

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

## **SECTION 342:- PUNISHMENT FOR WRONGFUL CONFINEMENT-**

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

## **SECTION 343:- WRONGFUL CONFINEMENT FOR THREE OR MORE DAYS-**

Whoever wrongfully confines any person for three days, or more, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

## **SECTION 344:- WRONGFUL CONFINEMENT FOR TEN OR MORE DAYS-**

Whoever wrongfully confines any person for ten days, or more, shall be punished

with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**SECTION 354:- ASSAULT OR CRIMINAL FORCE TO WOMAN WITH INTENT TO OUTRAGE HER MODESTY-**

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, 1 [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].

**SECTION 354:- A SEXUAL HARASSMENT AND PUNISHMENT FOR SEXUAL HARASSMENT.—(1) A MAN COMMITTING ANY OF THE FOLLOWING ACTS-**

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause

(i) or clause

(ii) or clause

(iii) of sub-section

(1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

**354-B:- ASSAULT OR USE OF CRIMINAL FORCE TO WOMAN WITH INTENT TO DISROBE:-**

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with



imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

### **SECTION 354-C:- VOYEURISM-**

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1.—For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

### **SECTION 354-D:- STALKING (1) ANY MAN WHO-**

(I) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking. Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

(I) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement

imposed by any person under any law; \or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

### SECTION 370:- TRAFFICKING OF PERSON-

1. Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by-

**First.-** using threats, or

**Secondly. -** 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

**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 the offence of trafficking.

**Explanation-**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.

2. Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which

may extend to ten years, and shall also be liable to fine.

3. Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
4. Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
5. Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.
6. If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
7. When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

### **SECTION 370-A:- EXPLOITATION OF A TRAFFICKED PERSON-**

1. Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.
2. Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished With rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.!

## SECTION 374:- UNLAWFUL COMPULSORY LABOUR-

Whoever unlawfully compels any person to labor 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.

## SECTION 376:- PUNISHMENT FOR RAPE-

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

### (2) Whoever,-

(a) being a police officer commits rape—

(b) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or



(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. Explanation 1.—Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section. Explanation 2.—“Women’s or children’s institution” means an institution, whether called an orphanage or a home for neglected woman or children or a widows’ home or by any other name, which is established and maintained for the reception and care of woman or children. Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.





## CHAPTER - 8

# THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

## SEXUAL OFFENCES AGAINST CHILDREN

### PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR.

**SECTION 2. (d)** “child” means any person below the age of (eighteen) years;

**SECTION 3. PENETRATIVE SEXUAL ASSAULT - A** person is said to commit "penetrative sexual assault" if—

(a) He penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

© he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

**B. AGGRAVATED PENETRATIVE SEXUAL ASSAULT AND PUNISHMENT THEREFOR.**



## **SECTION 5. AGGRAVATED PENETRATIVE SEXUAL ASSAULT-**

(a) Whoever, being a police officer, commits penetrative sexual assault on a child -

(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child-

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(g) whoever commits gang penetrative sexual assault on a child.

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(l) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits penetrative sexual assault on a child, which-

(l) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or 14 of 1987 (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child,



commits penetrative sexual assault on such child;

**or**

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or

(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or

(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

**6. Punishment for aggravated penetrative sexual assault:** Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

## **C. SEXUAL ASSAULT AND PUNISHMENT THEREFOR.**

### **SECTION 7. SEXUAL ASSAULT -**

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

### **SECTION 8. PUNISHMENT FOR SEXUAL ASSAULT -**

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

## **D.-AGGRAVATED SEXUAL ASSAULT AND PUNISHMENT THEREFOR.**

### **SECTION 9. AGGRAVATED SEXUAL ASSAULT -**

(a) Whoever, being a police officer, commits sexual assault on a child-

(i) within the limits of the police station or premises where he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child-

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether



Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child. Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

**(j) whoever commits sexual assault on a child, which—**

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or 14 of 1987

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such

institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of communal or sectarian violence; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.

## **E.-SEXUAL HARASSMENT AND PUNISHMENT THEREFOR**

### **SECTION 11. SEXUAL HARASSMENT -**

A person is said to commit sexual harassment upon a child when such person with sexual intent,-

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or



(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

## **SECTION 12. PUNISHMENT FOR SEXUAL HARASSMENT -**

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be .

**Explanation.-** Any question which involves “sexual intent” shall be a question of fact all also be liable to fine.

## **ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE**

### **SECTION 15. PUNISHMENT FOR STORAGE OF PORNOGRAPHIC MATERIAL INVOLVING CHILD -**

Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

### **SECTION 16. ABETMENT OF AN OFFENCE:**

A person abets an offence, who-

**First.—** Instigates any person to do that offence; or

**Secondly.-** Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

**Thirdly.-** Intentionally aids, by any act or illegal omission, the doing of that offence. Explanation I.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

**Explanation II.—**Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby

facilitates the commission thereof, is said to aid the doing of that act.

**Explanation III.**—Whoever employs, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

### **SECTION 17. PUNISHMENT FOR ABETMENT -**

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

**Explanation.** — An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

### **SECTION 18. PUNISHMENT FOR ATTEMPT TO COMMIT AN OFFENCE -**

Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

## **PROCEDURE FOR REPORTING OF CASES**

**SECTION 19. REPORTING OF OFFENCES : (1)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to.-

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

**(2) Every report given under sub-section (1) shall be—**

- (a) ascribed an entry number and recorded in writing;



- (b) be read over to the informant;
- (c) shall be entered in a book to be kept by the Police Unit.

### **(3) Where the report under sub-section is given by a child, the same shall be recorded under sub-section**

(1) in a simple language so that the child understands contents being recorded.

(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.

(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty four hours of the report, as may be prescribed.

(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.

(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1)

### **SECTION 20. OBLIGATION OF MEDIA, STUDIO AND PHOTOGRAPHIC FACILITIES TO REPORT CASES -**

Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child including pornographic, sexually-related or making obscene representation of a child or children through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be.

## **SECTION 21. PUNISHMENT FOR FAILURE TO REPORT OR RECORD A CASE - (1)**

Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section

(1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

**SECTION 22. PUNISHMENT FOR FALSE COMPLAINT OR FALSE INFORMATION -** (1) Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

## **SECTION 23. PROCEDURE FOR MEDIA-**

(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.



(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.

## **PROCEDURES FOR RECORDING STATEMENT OF THE CHILD**

**SECTION 24. RECORDING OF STATEMENT OF A CHILD -** (1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

## **SECTION 25. RECORDING OF STATEMENT OF A CHILD BY MAGISTRATE -**

(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (herein referred to as the Code), the Magistrate recording such statement shall, notwithstanding anything contained therein, record the statement as spoken by the child: Provided that the provisions contained in the first proviso to sub-section (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

### **SECTION 26. ADDITIONAL PROVISIONS REGARDING STATEMENT TO BE RECORDED -**

(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

### **SECTION 27. MEDICAL EXAMINATION OF A CHILD -**

(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-



section (3) cannot be present, for any woman nominated by the head of the medical institution.

#### **SECTION 40. RIGHT OF CHILD TO TAKE ASSISTANCE OF LEGAL PRACTICENER -**

Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act:

Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.





## CHAPTER - 9

# THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

## KEY DEFINITIONS:

**SECTION 2: (1)** In this Act, unless the context otherwise requires,—

(a) **“atrocitiy”** means an offence punishable under section 3;

(b) **“dependent”** means the spouse, children, parents, brother and sister of the victim, who are dependent wholly or mainly on such victim for his support and maintenance;

(c) **“economic boycott means”**— (i) a refusal to deal with, work for hire or do business with other person; or (ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or (iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or (iv) to abstain from the professional or business relations that one would maintain with other person;

(d) **“public servant”** means a public servant as defined under section 21 of the Indian Penal Code (45 of 1860), as well as any other person deemed to be a public servant under any other law for the time being in force and includes any person acting in his official capacity under the Central Government or the State Government, as the case may be;



(e) **“Scheduled Castes and Scheduled Tribes”** shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution;

(f) **“social boycott”** means a refusal to permit a person to render to other person or receive from him any customary service or to abstain from social relations that one would maintain with other person or to isolate him from others;

(g) **“victim”** means any individual who falls within the definition of the Scheduled Castes and Scheduled Tribes under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs;

(ed) **“witness”** means any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving an offence under this Act, and who is or may be required to give information or make a statement or produce any document during investigation, inquiry or trial of such case and includes a victim of such offence;

## OFFENCES OF ATROCITIES

### SECTION 3. PUNISHMENTS FOR OFFENCES OF ATROCITIES—

(1) **Whoever**, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(a) **puts any inedible** or obnoxious substance into the mouth of a member of a Scheduled Caste or a Scheduled Tribe or forces such member to drink or eat such inedible or obnoxious substance;

(b) **.dumps excreta, sewage,** carcasses or any other obnoxious substance in premises, or at the entrance of the premises, occupied by a member of a Scheduled Caste or a Scheduled Tribe;

(c) **with intent to cause injury,** insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighbourhood;

(d) **garlands with footwear** or parades naked or semi-naked a member of a

Scheduled Caste or a Scheduled Tribe;

**(e) forcibly commits on a member** of a Scheduled Caste or a Scheduled Tribe any act, such as removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity;

**(f) wrongfully occupies or cultivates any land**, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;

**(g) wrongfully dispossesses** a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.

**Explanation.—** For the purposes of clause (f) and this clause, the expression wrongfully includes—

(A) against the person's will;

(B) without the person's consent;

(C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or

(D) fabricating records of such land;

(h) makes a member of a Scheduled Caste or a Scheduled Tribe to do beggary or other forms of forced or bonded labour other than any compulsory service for public purposes imposed by the Government;

(i) compels a member of a Scheduled Caste or a Scheduled Tribe to dispose or carry human or animal carcasses, or to dig graves;



(J) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(k) performs, or promotes dedicating a Scheduled Caste or a Scheduled Tribe woman to a deity, idol, object of worship, temple, or other religious institution as a devadasi or any other similar practice or permits aforementioned acts;

(l) forces or intimidates or prevents a member of a Scheduled Caste or a

**Scheduled Tribe -** (A) not to vote or to vote for a particular candidate or to vote in a manner other than that provided by law; (B) not to file a nomination as a candidate or to withdraw such nomination; or (C) not to propose or second the nomination of a member of a Scheduled Caste or a Scheduled Tribe as a candidate in any election;

(M) forces or intimidates or obstructs a member of a Scheduled Caste or a Scheduled Tribe, who is a member or a Chairperson or a holder of any other office of a Panchayat under Part IX of the Constitution or a Municipality under Part IXA of the Constitution, from performing their normal duties and functions;

(n) after the poll, causes hurt or grievous hurt or assault or imposes or threatens to impose social or economic boycott upon a member of a Scheduled Caste or a Scheduled Tribe or prevents from availing benefits of any public service which is due to him;

(o) commits any offence under this Act against a member of a Scheduled Caste or a Scheduled Tribe for having voted or not having voted for a particular candidate or for having voted in a manner provided by law;

(p) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(q) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

(r) intentionally insults or intimidates with intent to humiliate a member of a

Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;

(t) destroys, damages or defiles any object generally known to be held sacred or in high esteem by members of the Scheduled Castes or the Scheduled Tribes.  
Explanation.—For the purposes of this clause, the expression object means and includes statue, photograph and portrait;

(u) by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes;

(v) by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes;

(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent; (ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.

**Explanation.** – For the purposes of sub-clause (i), the expression consent means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act: Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity: Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;

(x) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used;

(y) denies a member of a Scheduled Caste or a Scheduled Tribe any customary



right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any other section thereof have a right to use or access to;

(z) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence: Provided that nothing contained in this clause shall apply to any action taken in discharge of a public duty;

**(za) obstructs or prevents a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to—**

(A) using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage; 5

(B) mounting or riding bicycles or motor cycles or wearing footwear or new clothes in public places or taking out wedding procession, or mounting a horse or any other vehicle during wedding processions;

(c) entering any place of worship which is open to the public or other persons professing the same religion or taking part in, or taking out, any religious, social or cultural processions including jattras;

(D) entering any educational institution, hospital, dispensary, primary health centre, shop or place of public entertainment or any other public place; or using any utensils or articles meant for public use in any place open to the public; or (E) practicing any profession or the carrying on of any occupation, trade or business or employment in any job which other members of the public, or any section thereof, have a right to use or have access to;

(zb) causes physical harm or mental agony of a member of a Scheduled Caste or a Scheduled Tribe on the allegation of practicing witchcraft or being a witch; or

(zc) imposes or threatens a social or economic boycott of any person or a family or a group belonging to a Scheduled Caste or a Scheduled Tribe, 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.

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—  
(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;

(ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine;

(iii) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(iv) commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property 1 [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such



offences and shall also be liable to fine;

(vi) knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or

(vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

## COMPENSATION TO BE GIVEN TO THE VICTIMS SUBJECTED TO THE ATROCITIES UNDER THE ACT:

The compensation required to be given to the victims of SC/ST category has been amended by the MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (Department of Social Justice and Empowerment)

vide NOTIFICATION dated 14th April, 2016 G.S.R. 424 (E), details whereof are given here in below:

### SCHEDULE ANNEXURE-I [See rule 12(4)] NORMS FOR RELIEF AMOUNT

SL.No.	Name of the offence	Minimum amount of relief
(1)	(2)	(3)
1.	Putting any inedible or obnoxious substance [Section 3(1)(a) of the Act]	One lakh rupees to the victim. Payment to then victim be made as follows:
2.	Dumping excreta, sewage, carcasses or any other obnoxious substance [Section 3(1)(b) of the Act]	( i )10% at First Information Report (FIR) stage for serial nos.(2) and (3) and 25% at FIR stage for serial no. (1), (4) and (5);
3.	Dumping excreta, waste matter, carcasses with intent to cause injury, insult or annoyance [Section 3(1)(c) of the Act]	( ii )50% when the charge -sheet is sent to the court;
4.	Garlanding with footwear or parading naked or semi -naked [Section 3(1)(d) of the Act]	( i i i )40% when the accused are convicted by the lower Court (2) (3) and like wise 25% for Sl.No.(1), (4) and (5)
5.	Forcibly committing acts such as removing clothes, forcible tonsuring	

	of head, removing moustaches, painting face or body [Section 3(1)(e) of the Act]	
6.	Wrongful occupation or cultivation of land [Section 3(1)(f) of the Act]	One lakh rupees to the victim. The land or premises or water supply or irrigation facility shall be restored where necessary at Government cost by the concerned State Government or Union territory Administration. Payment to the victim be made as follows:  (i) 25 percent at first information report (FIR) stage;
7.	Wrongful dispossession of land or premises or interfering with the rights, including forest rights. [Section 3(1)(g) of the Act]	
		(ii) 50% when the charge-sheet sent to the Court;  (iii) 25% when the accused are convicted by the lower Court.
8.	Begar or other forms of forced or bonded labour [Section 3(1)(h) of the Act]	One lakh rupees to the victim. Payment to be made as follows:  (i) Payment of 25 per cent First Information Report (FIR) stage;  (ii) 50 per cent when the charge sheet is
9.	Compelling to dispose or carry human or animal carcasses, or to dig graves [Section 3(1)(i) of the Act]	
10.	Making a member of the Scheduled Castes or the Scheduled Tribes to do manual scavenging or employing him for such purpose [Section 3(1)(j) of the Act]	
11.	Performing or promoting dedication of a Scheduled Caste or a Scheduled Tribe woman as a devadasi [Section 3(1)(k) of the Act]	
12.	Prevention from voting, filing nomination [Section 3(1)(l) of the Act]	Eighty-five thousand rupees to the victim. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage;  (ii) 50 per cent when the charge sheet is sent to the court;
13.	Forcing, intimidating or obstructing of holder of office of Panchayat or Municipality from performing duties [Section 3(1)(m) of the Act.]	



14.	After poll violence and imposition of social and economic boycott [Section 3(1)(n) of the Act]	(iii) 25 per cent, when the accused are convicted by the lower court.
15.	Committing any offence under this Act for having voted or not having voted for a particular candidate [Section 3(1)(o) of the Act]	
16.	Instituting false, malicious or vexatious legal proceedings [Section 3(1)(p) of the Act]	(i) 25 per cent at First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court;
		(iii) 25 per cent when the accused are convicted by the lower court.
17.	Giving false and frivolous information to a public servant [section 3(1)(q) of the Act]	One lakh rupees to the victim or reimbursement of actual legal expenses and damages, whichever is less. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage;  (ii) 50 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are
18.	Intentional insult or intimidation to humiliate in any place within public view [section 3(1)(r) of the Act]	One lakh rupees to the victim. Payment to be made as follows:
19.	Abusing by caste name in any place within public view [section 3(1)(s) of the Act]	(i) 25 per cent at First Information Report (FIR) stage;  (ii) 50 per cent when the charge sheet is sent to the court;
20.	Destroying, damaging or defiling any object held sacred or in high esteem [section 3(1)(t) of the Act]	(iii) 25 percent when the accused are convicted by the lower court.
21.	Promoting feelings or enmity, hatred or ill-will [section 3(1)(u) of the Act]	
22.	Disrespecting by words or any other means of any late person held in high esteem [section 3(1)(v) of the Act]	

23.	Intentionally touching a Scheduled Caste or a Scheduled Tribe woman without consent, using acts or gestures, as an act of sexual nature, [section 3(1)(w) of the Act]	Two lakh rupees to the victim. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage;  (ii) 50 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are convicted by the lower court
24.	Section 326B of the Indian Penal Code (45 of 1860) -Voluntarily throwing or attempting to throw acid. [section 3 (2)(va) read with Scheduled to the Act]	(a) Eight lakh and twenty -five thousand rupees to the victim with burns exceeding 2 per cent and above burns on face or in case of functional impairment of eye, ear, nose and mouth and or burn injury on body exceeding 30 per cent;  (b) Four lakh and fifteen thousand rupees to the victim with burns between 10 per cent to 30 per cent on the body;  (c) Eighty-five thousand rupees to the victim with burns less than 10 per cent on the body other than on face.  In addition, the State Government or Union territory Administration shall take full responsibility for the treatment of the victim of
25.	Section 354 of the Indian Penal Code (45 of 1860) – Assault or criminal force to woman with intent to outrage her modesty.  [Section 3(2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows:  (i) 50 per cent at First Information Report (FIR) stages;  (ii) 25 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are convicted by the Court.



26.	Section 354A of the Indian Penal Code (45 of 1860) – Sexual harassment and punishment for sexual harassment [Section 392)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows:  (i) 50 per cent at First Information Report (FIR) stages;  (ii) 25 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are convicted by the Court.
27.	Section 354B of the Indian Penal Code (45 of 1860) – Assault or use of criminal force to woman with intent to disrobe [Section 3(2) (va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows:  (i) 50 per cent at First Information Report (FIR) stages;
		(ii) 25 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are convicted by the Court.
28.	Section 354 C of the Indian Penal Code (45 of 1860) – Voyeurism. [Section 3(2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows:  (i) 10 per cent at First Information Report (FIR) stages;  (ii) 50 per cent when the charge sheet is sent to the court;  (iii) 40 per cent when the accused are convicted by the lower court.
29.	Section 354D of the Indian Penal Code (45 of 1860) – Stalking: [Section 3(2)(va) read with Schedule	Two lakh rupees to the victim. Payment to be made as follows:  (i) 10 per cent at First Information Report
30.	Section 376B of the Indian Penal Code (45 of 1860) – Sexual intercourse by husband upon his wife during separation. [Section 3(2)(va) read with Schedule to the Act]	Two lakh rupees to the victim. Payment to be made as follows:  (i) 50 per cent after medical examination and confirmatory medical report;  (ii) 25 per cent when the charge sheet is sent to the court;

		(iii) 25 per cent when the accused is convicted by the lower court.
31.	Section 376C of the Indian Penal Code (45 of 1860) – Sexual intercourse by a person in authority. [Section 3(2)(va) read with Schedule to the Act]	Four lakh rupees to the victim. Payment to be made as follows:  (i) 50 per cent after medical examination and confirmatory medical report;  (ii) 25 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are convicted by the Court.
32.	Section 509 of the Indian Penal Code (45 of 1860) – Word, gesture or act intended to insult the modesty of a	Two lakh rupees to the victim. Payment to be made as follows:
	woman. [ Section 3(2)(va) read with Schedule to the Act]	(i) 25 per cent at First Information Report (FIR) stages;  (ii) 50 per cent when the charge sheet is sent to the court;  (iii) 25 per cent when the accused are convicted by the lower court.
33.	Fouling or corruption of water [Section 391(x) of the Act]	Full cost or restoration of normal facility, including cleaning when the water is fouled, to be borne by the concerned State Government or Union territory Administration. In addition, an amount of eight lakh twenty -five thousand rupees shall be deposited with the District Magistrate for creating community assets of the nature to be decided by the District Authority in consultation with the Local Body.
34.	Denial of customary right of passage to a place of public resort or obstruction from using or accession public resort [Section 3(1)(y) of the	Four lakh twenty -five thousand rupees to the victim and cost of restoration of right of passage by the concerned State Government or Union territory Administration. Payment to be
35.	Forcing or causing to leave house, village, residence desert place of residence [Section 39 (1)(z) of the Act]	Restoration of the site or right to stay in house, village or other place of residence by the concerned State Government or Union territory Administration and relief of one lakh rupees to



		<p>the victim and reconstruction of the house at Government cost, if destroyed. Payment to be made as follows:</p> <p>(i) 25 per cent at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent when the accused are convicted by the lower court.</p>
36.	<p>Obstructing or preventing a member of a Scheduled Caste or a Scheduled Tribe in any manner with regard to –</p> <p>(A) using common property resources of an area; or burial or cremation ground equally with others or using</p>	<p>(A) restoration of the right using common property resources of an area, or burial or cremation ground equally with others or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, any public conveyance, any road,</p>
	<p>any river, stream, spring, well, tank, cistern, water -tap or other watering place, or any bathing ghat, any public conveyance, any road, or passage [Section 3(1)(za)(A) of the Act]</p>	<p>or passage equally with others, by the concerned State Government or Union Territory Administration and relief of one lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) 25 per cent at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent when the accused are convicted by the lower court.</p>
37.	<p>Causing physical harm or mental agony on the allegation of being a witch or practicing witchcraft or being a witch [Section 3(1)(zb) of the Act]</p>	<p>One lakh rupees to the victim and also commensurate with the indignity, insult, injury and defamation suffered by the victim. Payment to be made as follows:</p> <p>(i) 25 per cent at First Information Report (FIR) stage;</p> <p>(ii) 50 per cent when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent when the accused are convicted by the lower court</p>

38.	Imposing or threatening a social or economic boycott. [Section 3(1)(zc) of the Act]	Restoration of provision of all economic and social services equally with other persons, by the concerned State Government or Union territory Administration and relief of one lakh rupees to the victim. To be paid in full when charge sheet is sent to the lower court.
39.	Giving or fabricating false evidence [Section 3(2)(i) and (ii) of the Act]	Four lakh fifteen thousand rupees to the victim. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.
40.	Committing offences under the Indian Penal Code (45 of 1860)	Four lakh rupees to the victim and or his dependents. The amount would vary, if
	punishable with imprisonment for a term of ten years or more [Section 3(2) of the Act]	specifically otherwise provided in this Schedule. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.
41.	Committing offences under the Indian Penal Code (45 of 1860) specified in the Schedule to the Act punishable with such punishment as specified under the Indian Penal Code for such offences [Section 3(2)(va) read with the Schedule to the	Two lakh rupees to the victim and or his dependents. The amount would vary if specifically otherwise provided in this Schedule. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court;
42.	Victimisation at the hands of a public servant [Section 3(2)(vii) of the Act]	Two lakh rupees to the victim and or his dependents. Payment to be made as follows:  (i) 25 per cent at First Information Report (FIR) stage; (ii) 50 per cent when the charge sheet is sent to the court; (iii) 25 per cent when the accused are convicted by the lower court.



<p>43.</p>	<p>Disability. Guidelines for evaluation or various disabilities and procedure for certification as contained in the Ministry of Social Justice and Empowerment Notification No. 16 - 18/97-NI, dated the 1<sup>st</sup> June, 2001. A copy of the notification is at Annexure-II.</p> <p>(a) 100 per cent Incapacitation</p> <p>(b) Where incapacitation is less than 100 percent but more than 50 percent</p> <p>(c) Where incapacitation is less than 50 percent</p>	<p><b>Eight</b> lakh and twenty-five thousand rupees to the victim. Payment to be made as follows:</p> <p>(i) 50 percent after medical examination and confirmatory medical report;</p> <p>(ii) 50 percent when the charge sheet is sent to the court;</p> <p><b>Four</b> lakh and fifty thousand rupees to the victim. Payment to be made as follows:</p> <p>(i) 50 percent after medical examination and confirmatory medical report;</p> <p>(ii) 50 per cent when the charge sheet is sent to the court;</p> <p><b>Two</b> lakh and fifty thousand rupees to the victim.</p>
		<p>Payment to be made as follows:</p> <p>(i) 50 percent after medical examination and confirmatory medical report;</p> <p>(ii) 50 percent when the charge sheet is sent to the court;</p>
<p>44.</p>	<p>Rape or Gang rape.</p> <p>(i) Rape [Section 375 of the Indian Penal Code (45 of 1860)]</p> <p>(ii) Gang rape [Section 376D of the Indian Penal Code (45 of 1860)]</p>	<p>Five lakh rupees to the victim. Payment to be made as follows:</p> <p>(i) 50 percent after medical examination and confirmatory medical report;</p> <p>(ii) 25 per cent when the charge sheet is sent to the court;</p> <p>(iii) 25 per cent on conclusion of trial by the lower court.</p> <p>Eight lakh and twenty -five thousand rupees to the victim. Payment to be made as follows:</p> <p>(i) 50 percent after medical examination and confirmatory medical report;</p> <p>(ii) 25 percent when the charge sheet is sent to the court;</p> <p>(iii) 25 percent when the accused are convicted by the lower court.</p>
<p>45.</p>	<p>Murder or Death.</p>	<p>Eight lakh and twenty -five thousand rupees to the victim. Payment to be made as follows:</p> <p>(i) 50 per cent after post mortem report;</p> <p>(ii) 50 percent when the charge sheet is sent to the court.</p>

46.	Additional relief to victims of murder, death, massacre, rape, gang rape, permanent incapacitation and dacoity.	<p>In addition to relief amounts paid under above items relief may be arranged within three months of date of atrocity as follows:</p> <p>(i) Basic Pension to the widow or other dependents of deceased persons belonging to a Scheduled Caste or a Scheduled Tribe amounting to five thousand rupees per month, as applicable to a Government servant of the concerned State Government or Union territory Administration, with admissible dearness allowance and employment to one member of the family of the deceased, and provision of agricultural land, and house, if necessary by outright purchase;</p> <p>(ii) Full cost of the education upto</p>
		<p>graduation level and maintenance of the children of the victims. Children may be admitted to Ashram schools or residential schools, fully funded by the Government.</p> <p>(iii) Provision of utensils, rice, wheat, dais, pulses, etc., for a period of three months.</p>
47.	Complete destruction or burnt house	Brick or stone masonry house to be constructed or provided at Government cost where it has been burnt or destroyed.





## CHAPTER - 10

# EMPLOYEE COMPENSATION ACT, 1923

(As amended by Act 11 of 2017)

**K** **EY DEFINITIONS:** Section 2. Definitions In this Act, unless there is anything repugnant in the subject or context,-

(b) "**Commissioner**" means a Commissioner for employee's Compensation appointed under section 20;

© "**compensation**" means compensation as provided for by this Act;

(d) "**dependant**" means any of the following relatives of deceased \*[employee], namely:--

(I) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and

(ii) if wholly dependent on the earnings of the employee at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

(iii) if wholly or in part dependent on the earnings of the \*[employee] at the time of his death,-

(a) a widower,

(b) a parent other than a widowed mother,

© a minor illegitimate son, an unmarried illegitimate

daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,

(d) a minor brother or an unmarried sister or a widowed sister if a minor,

(e) a widowed daughter-in-law,

(f) a minor child of a pre-deceased son,

(g) a minor child of a pre-deceased daughter where no parent of the child is alive, or

(h) a paternal grandparent if no parent of the \*[employee] is alive;

**Explanation.**-For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.

**(dd) "employee"** means a person, who is—

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other members of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or



(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;]

**(e) "employer"** includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a \*[employee] are temporarily lent or lent on hire to another person by the person with whom the \*[employee] has entered into a contract of service or apprenticeship, means such other person while the \*[employee] is working for him;

**(f) "managing agent"** means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

**(ff) "minor"** means a person who has not attained the age of eighteen years;

**(m) "wages"**, includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a \*[employee] towards any pension or provident fund or a sum paid to a \*[employee] to cover any special expenses entailed on him by the nature of his employment;

### **SECTION 3. EMPLOYER'S LIABILITY FOR COMPENSATION.-**

(1) If personal injury is caused to a \*[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable -

(a) in respect of any injury which does not result in the total or partial disablement of the \*[employee] for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the \*[employee] having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the \*[employee] to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of \*[employees], or

(iii) the willful removal or disregard by the \*[employee] of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of \*[employee],

**© Omitted by Act 5 of 1929.**

(2) If a \*[employee] employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a \*[employee], whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a \*[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is proved, the accident shall be deemed to have arisen out of, and in the course of, the employment:

Provided that if it is proved,--

(a) that a \*[employee] whilst in the service of one or more employers in any employment specified in Part C of Schedule III has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:



Provided further that if it is proved that a \*[employee] who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a employee employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply, in the case of a notification by the Central Government, within the territories to which this Act extends or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

**(4) Save as provided by sub -** sections (2), (2A) and (3) no compensation shall be payable to a \*[employee] in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a employee in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a \*[employee] in any Court of law in respect of any injury-

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) if an agreement has been come to between the \*[employee] and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

#### SECTION 4. AMOUNT OF COMPENSATION.-

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:--

(a) where death results from the injury : amount equal to fifty per cent of the monthly wages of the deceased \*[employee] multiplied by the relevant factor; or an amount of \*[one lakh and twenty thousand rupees], whichever is more;

(b) where permanent total disablement results from the injury : an amount equal to sixty per cent of the monthly wages of the injured \*[employee] multiplied by the relevant factor; one lakh and twenty thousand rupees, whichever is more;

\*[Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).

**Explanation I.-** For the purposes of clause (a) and clause (b), "relevant factor", in relation to a \*[employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the \*[employee] on his last birthday immediately preceding the date on which the compensation fell due.

**Explanation II .-** Omitted by

(c) where permanent partial disablement result from the injury:

(i) in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and



(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

Explanation I.--Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

Explanation II.--In assessing the loss of earning capacity for the purpose of sub-clause (ii), the qualified medical practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in Schedule I;

© where temporary disablement, whether total or partial, results from the injury :a half monthly payment of the sum equivalent to twenty-five per cent of monthly wages of the \*[employee], to be paid in accordance with the provisions of sub-section (2).

**(1A) Notwithstanding anything contained in sub-** section (1), while fixing the amount of compensation payable to a \*[employee] in respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such \*[employee] in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the \*[employee] in accordance with the law of that country.

**(1B) The Central Government may,** by notification in the Official Gazette, specify, for the purposes of sub-section (1), such monthly wages in relation to an employee as it may consider necessary.

**(2) The half-** monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day -

(i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

**Provided that-**

(a) there shall be deducted from any lump sum or half-monthly payments to which the \*[employee] is entitled the amount of any payment or allowance which the \*[employee] has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

**(b) no half-** monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the \*[employee] before the accident exceeds half the amount of such wages which he is earning after the accident.

**Explanation.-**Any payment or allowance which the \*[employee] has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning of clause (a) of the proviso.

(2A) The employee shall be reimbursed the actual medical expenditure incurred by him for treatment of injuries caused during course of employment.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

(4) If the injury of the \*[employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of \*[not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the \*[employee] towards the expenditure of the funeral of such \*[employee] or where the \*[employee] did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure.



Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount specified in this sub-section.





## CHAPTER - 11

# THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

**K** **EY DEFINITIONS** Section 2 k. "juvenile" or "child" means a person who has not completed eighteen years of age

### PENALIZING PROVISIONS:

#### SECTION 75. PUNISHMENT FOR CRUELTY TO CHILD-

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such





## CHAPTER - 12

# THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

## **A**ND CONDITIONS OF SERVICE) ACT, 1979 **OBJECTIVE**

The system of employment of inter-State migrant labour (known in Orissa as Dadan Labour) is an exploitative system prevalent in Orissa and in some other States. In Orissa, Dadan Labour is recruited from various parts of the State through contractors or agents called Sardars/Khatadars for work outside the State in large construction projects. This system lends itself to various abuses. Though the Sardars promise at the time of recruitment that wages calculated on piece-rate basis would be settled every month, the promise is not usually kept. Once the worker comes under the clutches of the contractor, he takes him to a far-off place on payment of railway fare only. No working hours are fixed for these workers and they have to work on all the days in a week under extremely bad working conditions. The provisions of the various labour laws are not being observed in their case and they are subjected to various malpractices.

### **APPLICABILITY: Sec – 1 (4)**

#### **This Act applies-**

- (a) to every establishment in which five or more inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months;
- (b) to every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any



day of the preceding twelve months.

## KEY DEFINITIONS:

### SECTION 2

(e) **"inter-State migrant workman"** means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment;

(i) **Wages"** have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 Clause (vi) of section 2 of the Payment of Wages Act, 1936 is as under:

**wages"** means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms 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-

(a) any remuneration payable under any award or settlement between the parties or order of a court;

(b) any remuneration to which the person employed is entitled in respect of over- time work or holidays or any leave period;

© any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contractor instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

**but does not include-**

- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of tile remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;
- (2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by general or special order of the State Government;
- (3) any contribution paid by the employer to any pension or provident fund, and te interest which may have accrued thereon;
- (4) any travelling allowance or the value of any travelling concession:
- (5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or
- (6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

## **DUTIES AND OBLIGATIONS OF CONTRACTORS**

### **SECTION 12. DUTIES OF CONTRACTORS.-**

- (1) It shall be the duty of every contractor-
  - (a) to furnish such particulars and in such form as may be prescribed, to the specified authority in the State from which an inter-State migrant workman is recruited and in the State in which such workman is employed, within fifteen days from the date of recruitment, or, as the case may be, the date of employment, and where any change occurs in any of the particulars so furnished such change shall be notified to the specified authorities of both the States;
  - (b) to issue to every inter-State migrant workman, a pass book affixed with a passport size photograph of the workman and indicating in Hindi and English languages, and where the language of the workman is not Hindi or English, also in the language of the workman,-
    - (i) the name and place of the establishment wherein the workman is employed;
    - (ii) the period of employment;
    - (iii) the proposed rates and modes of payment of wages;



(iv) the displacement allowance payable;

(v) the return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed and in such other contingencies as may be specified in the contract of employment;

(vi) deductions made; and

(vii) such other particulars as may be prescribed;

© to furnish in respect of every inter-State migrant workman who ceases to be employed, a return in such form and in such manner as may be prescribed, to the specified authority in the State from which he is recruited and in the State in which he is employed, which shall include a declaration that all the wages and other dues payable to the workman and the fare for the return journey back to his State have been paid.

(2) The contractor shall maintain the pass book referred to in sub-section (1) up-to-date and cause it to be retained with the inter-State migrant workman concerned.

**Explanation.-** For the purposes of this section and section 16 "specified authority" means such authority as may be specified by the appropriate Government in this behalf.

## **WAGES WELFARE AND OTHER FACILITIES TO BE PROVIDED TO INTER-STATE MIGRANT WORKMEN**

### **SECTION 13. WAGE RATES AND OTHER CONDITIONS OF SERVICE OF INTER-STATE MIGRANT WORKMEN.-**

(1) The wage rates, holidays, hours of work and other conditions of service of an inter-State migrant workman shall,-

(a) in a case where such workman performs in any establishment, the same or similar kind of work as is being performed by any other workman in that establishment, be the same as those applicable to such other workmen; and

(b) in any other case, be such as may be prescribed by the appropriate Government:

Provided that an inter-State migrant workman shall in no case be paid less than the wages fixed under the Minimum Wages Act, 1948 (41 of 1948).

(2) Notwithstanding anything contained in any other law for the time being in force, wages payable to an inter-State migrant workman under this section shall be paid in cash.

#### **SECTION 14. DISPLACEMENT ALLOWANCE.-**

(1) There shall be paid by the contractor to every inter-State migrant workman at the time of recruitment, a displacement allowance equal to fifty per cent of the monthly wages payable to him or seventy-five rupees, whichever is higher.

(2) The amount paid to a workman as displacement allowance under sub-section (1) shall not be refundable and shall be in addition to the wages or other amount payable to him.

Every inter-State migrant workman is entitled to a displacement allowance at the time of recruitment, which may be either seventy-five rupees or half of the monthly wages payable to him, whichever is higher.

#### **SECTION 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.

#### **SECTION 16. OTHER FACILITIES.-**

It shall be the duty of every contractor employing inter-State migrant workmen in connection with the work of an establishment to which this Act applies,-

- (a) to ensure regular payment of wages to such workmen;
- (b) to ensure equal pay for equal work irrespective of sex;



- © to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;
- (d) to provide and maintain suitable residential accommodation to such workmen during the period of their employment;
- (e) to provide the prescribed medical facilities to the workmen, free of charge;
- (f) to provide such protective clothing to the workmen as may be prescribed; and
- (g) in case of fatal accident or serious bodily injury to any such workman, to report to the specified authorities of both the States and also the next of kin of the workman.

#### **SECTION 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 the 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 as 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 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.

#### **SECTION 18. LIABILITY OF PRINCIPAL EMPLOYER IN CERTAIN CASES. –**

(1) If any allowance required to be paid under section 14 or section 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 section 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 allowances 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 a debt payable by the contractor.

### **SECTION 19. PAST LIABILITIES.-**

It shall be the duty of every contractor and every principal employer to ensure that any loan given by such contractor or principal employer to any inter-State migrant workman does not remain outstanding after the completion of the period of employment of such workman under the said contractor or, as the case may be, in the establishment of such principal employer and accordingly every obligation of an inter-State migrant workman to re-pay any debt obtained by him during the period of his employment from the contractor or the principal employer and remaining unsatisfied before the completion of such period shall, on such completion, be deemed to have been extinguished and no suit or other proceeding shall lie in any court or before any authority for the recovery of such debt or any part thereof.

## **PENALIZING SECTIONS**

### **SECTION 25. CONTRAVENTION OF PROVISIONS REGARDING EMPLOYMENT OF INTER-STATE MIGRANT WORKMEN.-**

Whoever contravenes any provisions of this Act or of any rules made there under regulating the employment of inter State migrant workmen, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.



## SECTION 26. OTHER OFFENCES.-

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

## SECTION 27. 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(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 the 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.



## CHAPTER - 13

# MATERNITY BENEFIT ACT, 1961

### SECTION 3. DEFINITIONS IN THIS ACT, UNLESS THE CONTEXT OTHERWISE REQUIRES- (d)

**"employer"** means- (i) in relation to an establishment which is under the control of the government a person or authority appointed by the government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(ii) **in relation to an establishment under any local authority**, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iii) **in any other case**, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to any other person whether called a manager, managing director, managing agent, or by any other name, such person;

(h) **"maternity benefit"** means the payment referred to in sub-section (1) of section 5;

(n) **"wages"** means all remuneration paid or payable in cash to a woman, if the terms of the contract of employment, express or implied, were fulfilled and includes-

(1) such cash allowances (including dearness allowance and house rent allowances) as a woman is for the time being entitled to,



(2) incentive bonus, and

(3) the money value of the concessional supply of food grains and other articles but does not include-

(i) any bonus other than incentive bonus;

(ii) over-time earnings and any deduction or payment made on account of fines;

(iii) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the woman under any law for the time being in force; and

(iv) any gratuity payable on the termination of service;

(o) **"woman"** means a woman employed, whether directly or through any agency, for wages in any establishment.

#### **SECTION 4. EMPLOYMENT OF, OR WORK BY WOMEN PROHIBITED DURING CERTAIN PERIODS**

(1) No employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery, <sup>11</sup>[miscarriage or medical termination of pregnancy.

(2) No woman shall work in any establishment during the six weeks immediately following the day of her delivery <sup>11</sup>[miscarriage or medical termination of pregnancy.

(3) Without prejudice to the provisions of section 6, no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in sub-section .

(4) any work which is of an arduous nature or which involves long hours of standing, or which in any way is likely to interfere with her pregnancy or the normal development of the fetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

(4) The period referred to in sub-section (3) shall be-

(a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery;

(b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence under section 6.

### SECTION 5. RIGHT TO PAYMENT OF MATERNITY BENEFITS

[(1) Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

**Explanation:** For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, <sup>12</sup>[the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 (11 of 1948) or ten rupees, whichever is the highest.

(2) No woman shall be entitled to maternity benefit unless she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than <sup>13</sup>[eighty days] in the twelve months immediately preceding the date of her expected delivery:

**PROVIDED** that the qualifying period of <sup>13</sup>[eighty days] aforesaid shall not apply to a woman who has immigrated into the State of Assam and was pregnant at the time of the immigration.

**Explanation :** For the purpose of calculating under this sub-section the days on which a woman has actually worked in the establishment, <sup>14</sup>[the days for which she has been laid off or was on holidays declared under any law for the time being in force to be holidays with wages] during the period of twelve months immediately preceding the date of her expected delivery shall be taken into account.



(3) The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery:

**PROVIDED** that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death:

**PROVIDED FURTHER** that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child.

**Comment:** The provisions of S. 5 of the Act quoted above make it clear that a woman worker who expects a child is entitled to maternity benefits for a maximum period of twelve weeks which is split up into two periods viz. pre-natal and post-natal. The first one i.e. pre-natal or ante-natal period is limited to the period of woman's actual absence extending upto six weeks immediately preceding and including the day on which her delivery occurs and the second one which is post-natal compulsory period consists of six weeks immediately following the day of delivery. *B. Shah v. Presiding Officer, Labor Court Coimbatore, AIR 1978 SUPREME COURT 12*

## **SECTION 5A. CONTINUANCE OF PAYMENT OF MATERNITY BENEFIT IN CERTAIN CASES -**

Every woman entitled to the payment of maternity benefit under this Act shall, notwithstanding the application of the Employees' State Insurance Act, 1948 (34 of 1948), to the factory or other establishment in which she is employed, continue to be so entitled until she becomes qualified to claim maternity benefit under section 50 of that Act.

## **SECTION 5B. PAYMENT OF MATERNITY BENEFIT IN CERTAIN CASES -**

### **Every woman-**

(a) who is employed in a factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), apply;

(b) whose wages (excluding remuneration for over-time work) for a month

exceed the amount specified in sub-clause (b) of clause (9) of section 2 of that Act; and

© who fulfils the conditions specified in sub-section

**(2) of section 5**, shall be entitled to the payment of maternity benefit under this Act.

### **SECTION 21. PENALTY FOR CONTRAVENTION OF ACT BY EMPLOYER -**

(1) If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharges or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees:

PROVIDED that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in lieu of imprisonment.

(2) If any employer contravenes the provisions of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both:

PROVIDED that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.]





## CHAPTER - 14

# WEEKLY HOLIDAYS ACT, 1992

**SECTION 3. CLOSING OF SHOP-** (1) Every shop shall remain entirely closed on one day of the week, which day shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop.

(2) The day so specified shall not be altered by the shop-keeper more often than once in three months.

### **SECTION 4. WEEKLY HOLIDAYS IN SHOPS, RESTAURANTS AND THEATRES**

Every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day:

Provided that nothing in this section shall apply to any person whose total period of employment in the week including any days spent on authorized leave is less than six days or entitle to an additional holiday a person employed in a shop who has been allowed a whole holiday on the day on which the shop has remained closed in pursuance of section 3.

### **SECTION 5. ADDITIONAL HALF-DAY CLOSING OF HOLIDAY -**

(1) The State Government may, by notification in the Official Gazette, require in respect of shops or any specified class of shop that they shall be closed at such hour in the afternoon of one week-day in every week in addition to the day provided for by section 3 as may be fixed by the State Government, and, in respect of theatres and restaurants or any specified

class of either or both, that every person employed therein otherwise than in a confidential capacity or in a position of management shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the State Government.

(2) The State Government may, for the purposes of this section, fix different hours for different shops or different classes of shop or for different areas or for different times of the year.

(3) The weekly day on which a shop is closed in pursuance of a requirement under sub-section (1) shall be specified by the shop-keeper in a notice permanently exhibited in a conspicuous place in the shop and shall not be altered by the shop-keeper more often than once in three months.

#### **SECTION 6. NO DEDUCTION OR ABATEMENT TO BE MADE FROM WAGES -**

No deduction or abatement of the wages of any person employed in an establishment to which this Act applies shall be made on account of any day or part of a day on which the establishment has remained closed or a holiday has been allowed in accordance with sections 3,4 and 5, and if such person is employed on the basis that he would not ordinarily receive wages for such day or a part of a day he shall nonetheless be paid for such day or part of a day the wages he would have drawn had the establishment not remained closed or the holiday not been allowed on that day or part of a day.





## CHAPTER - 15

# EQUAL REMUNERATION ACT, 1976

**SECTION 2. DEFINITIONS** In this Act, unless the context otherwise requires- (c) **"employer"** has the meaning assigned to it in clause (f) of section 2 of the Payment of Gratuity Act, 1972 (39 of 1972);

(d) **"man" and "woman"** means male and female human beings, respectively, of any age;

(g) **"remuneration"** means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled;

(h) **"same work or work of a similar nature"** means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman and the differences, if any, between the skill, effort and responsibility required of a man and those required to a woman are not of practical importance in relation to the terms and conditions of employment;

(i) **"worker"** means a worker in any establishment or employment in respect of which this Act has come into force;

**SECTION 4. DUTY OF EMPLOYER TO PAY EQUAL REMUNERATION TO MEN AND WOMEN WORKERS FOR SAME WORK OR WORK OF A SIMILAR NATURE -**

(1) No employer shall pay to any worker, employed by him in an establishment or employment, remuneration, whether payable in cash or in kind, at rates less favorable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.

(2) No employer shall, for the purpose of complying with the provisions of sub-section (1), reduce the rate of remuneration of any worker.

(3) Where, in an establishment or employment, the rates of remuneration payable before the commencement of this Act for men and women workers for the same work or work of a similar nature are different only on the ground of sex, then the higher (in cases where there are only two rates), or, as the case may be, the highest (in cases where there are more than two rates) of such rates shall be the rate at which remuneration shall be payable, on and from such commencement, to such men and women workers.

Provided that nothing in this sub-section shall be deemed to entitle a worker to the revision of the rate of remuneration payable to him or her with reference to the service rendered by him or her before the commencement of this Act.

**Comment:** It is lastly urged on behalf of the petitioner that the enforcement of the Act will be highly prejudicial to the management, since its financial position is not satisfactory and the management is not able to pay equal remuneration to both male Stenographers and female Stenographers. The Act does not permit the management to pay to a section of its employees doing the same work or a work of similar nature lesser pay contrary to section 4(1) of the Act only because it is not able to pay equal remuneration to all. The applicability of the Act does not depend upon the financial ability of the management to pay equal remuneration as provided by it. AIR 1987 SUPREME COURT 1281, *Mackinnon Mackenzie and Co. Ltd.v. Audrey D'Costa*

## **SECTION 5. NO DISCRIMINATION TO BE MADE WHILE RECRUITING MEN AND WOMEN WORKERS -**

On and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, [or in any condition of service subsequent to recruitment such as promotions, training or transfer,] make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force:



Provided that the provisions of this section shall not affect any priority or reservation for scheduled castes or scheduled tribes, ex-servicemen, retrenched employees or any other class or category of persons in the matter of recruitment to the posts in an establishment or employment.

## **SECTION 10. PENALTIES -**

(1) If after the commencement of this Act, any employer, being required by or under the Act, so to do-

(a) omits or fails to maintain any register or other document in relation to workers employed by him, or

(b) omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or

© omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or

(d) omits or refuses to give any information, he shall be punishable 2[with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both].

(2) If, after the commencement of this Act, any employer

(a) makes any recruitment in contravention of the provisions of this Act, or

(b) makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or

© makes any discrimination between men and women workers in contravention of the provisions of this Act, or

(d) omits or fails to carry out any direction made by the appropriate government under sub-section (5) of section 6, he shall be punishable 2[with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months

but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences].

(3) If any person being required so to do, omits or refuses to produce to an inspector any register or other document or to give any information, he shall be punishable with fine which may extend to five hundred rupees.

## SECTION 11. 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(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 the 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 any body corporate and includes a firm or other association of individuals; and

(b) **"director"**, in relation to a firm, means a partner in the firm.

## SECTION 12. COGNIZANCE AND TRIAL OF OFFENCES -

(1) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate



of first class shall try any offence punishable under this Act.

(2) No court shall take cognizance of an offence punishable under this Act except upon-

(a) its own knowledge or upon a complaint made by the appropriate government or an officer authorized by it in this behalf, or

(b) a complaint made by the person aggrieved by the offence or by any recognized welfare institution or organization.

**Explanation:** For the purposes of this sub-section "recognized welfare institution or organization" means a social welfare institution or organization recognized in this behalf by the Central or State Government.]





## CHAPTER - 16

# MINIMUM WAGES ACT, 1948

### **S**ECTION 3. FIXING OF MINIMUM RATES OF WAGES - (1) The appropriate government shall in the manner hereinafter provided – (a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Party by notification under section 27

in the manner hereinafter provided – (a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Party by notification under section 27

:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary :

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(1A) Notwithstanding anything contained in sub-section (1) the appropriate government may refrain



from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment but if at any time the appropriate government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding.

(2) The appropriate government may fix –

(a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");

(b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");

© a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employees (hereinafter referred to as "overtime rate").

(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act 1947 (14 of 1947) or before any like authority under any other law for the time being in force or an award made by any Tribunal National Tribunal or such authority is in operation and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award then notwithstanding anything contained in this Act the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or as the case may be where the notification is issued during the period of operation of an award during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment no

minimum rates of wages shall be fixed or revised in respect of that employment during the said period.

**(3) In fixing or revising minimum rates of wages under this section –**

**(a) different minimum rates of wages may be fixed for –**

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults adolescents children and apprentices;
- (iv) different localities;

**(b) minimum rates of wages may be fixed by any one or more of the following wage periods; namely :**

- (i) by the hour
- (ii) by the day
- (iii) by the month or

(iv) by such other larger wage-period as may be prescribed and where such rates are fixed by the day or by the month the manner of calculating wages for a month or for a day as the case may be may be indicated :

Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act 1936 (4 of 1936) minimum wages shall be fixed in accordance therewith.

**SECTION 4. MINIMUM RATE OF WAGES -**

(1) Any minimum rate of wages fixed or revised by the appropriate government in respect of scheduled employments under section 3 may consist of –



(i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of suppliers of essential commodities at concession rates where so authorized; or

(iii) an all-inclusive rate allowing for the basic rate the cost of living allowance and the cash value of the concessions if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

## **SECTION 12. PAYMENT OF MINIMUM RATE OF WAGES -**

(1) Where in respect of any scheduled employment a notification under section 5 is in force 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 authorized within such time and subject to such conditions as may be prescribed.

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act 1936 (4 of 1936)

## **SECTION 13. FIXING HOURS FOR 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 –

(a) fix the number of hours of work which shall constitute a normal working day inclusive of one or more specified intervals;

(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;

© provide for payment for work on a day of rest at a rate not less than the overtime rate.

(2) The provisions of sub-section (1) shall in relation to the following classes of employees apply only to such extent and subject to such conditions as may be prescribed :-

(a) employees engaged on urgent work or in any emergency which could not have been foreseen or prevented;

(b) employees engaged in work in the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned;

© employees whose employment is essentially intermittent;

(d) employees engaged in any work which for technical reasons has to be completed before the duty is over;

(e) employees engaged in a work which could not be carried on except at times dependent on the irregular action of natural forces.

(3) For the purposes of clause (c) of sub-section (2) employment of an employee is essentially intermittent when it is declared to be so by the appropriate government on the ground that the daily hours of duty of the employee or if there be no daily hours of duty as such for the employee the hours of duty normally include periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention.

## **SECTION 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.



(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act 1948 (63 of 1948) in any case where those provisions are applicable.

**Comment:** " Overtime under Section 14 is payable to those employees who are getting a minimum rate of wage as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under Section 14 would become payable. In the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Service (Scales of Pay and Allowances) Rules, 1967. Therefore, Section 14 has no application to them. We have not been shown any other provision under which they can claim overtime" Municipal Council, Hatta v. Bhagat Singh. Air 1998 section 22. Penalties For Certain Offences-

### **Any employer who**

- (a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act or
- (b) contravenes any rule or order made under section 13; shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both :

Provided that in imposing any fine for an offence under this section the court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under section 20.

## **SECTION 22A. GENERAL PROVISION FOR PUNISHMENT OF OTHER OFFENCES-**

Any employer who contravenes any provision of this Act or of any rule or order made thereunder shall if no other penalty is provided for such contravention by this Act be punishable with fine which may extend to five hundred rupees.

## **SECTION 22C. OFFENCES BY COMPANIES-**

(1) If the person committing any offence under this Act is 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(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 the 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 of the company shall also 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 any body corporate and includes a firm or other association of individuals and

(b) "director" in relation to a firm means a partner in the firm





## CHAPTER - 17

# EMPLOYEE'S PROVIDENT FUNDS MISCELLANEOUS PROVISIONS ACT, 1952

**K** **EY DEFINITIONS: Section (b) " basic wages"** means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case] in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;

**(e) "employer" means:**

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing

director or managing agent, such manager, managing director or managing agent];

**(f) "employee"** means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment], and who gets his wages directly or indirectly from the employer, [and includes any person

(l) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment];

**(ff) "exempted employee"** means an employee to whom a Scheme or the Insurance Scheme, as the case may be,] would, but for the exemption granted under section 17, have applied;

**(fff) "exempted [establishment]"** means [an establishment] in respect of which an exemption has been granted under section 17 from the operation of all [or any of the provisions of any Scheme or the Insurance Scheme, as the case may be], whether such exemption has been granted to the [establishment] as such or to any person or class of persons employed therein;

**(g) "factory"** means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power;

**(h) "Fund"** means the provident fund established under a Scheme;

**(i) "industry"** means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4;

**(ia) "Insurance Fund"** means the Deposit-linked Insurance Fund established under sub-section (2) of section 6C;

**(ib) "Insurance Scheme"** means the Employees' Deposit-linked Insurance Scheme framed under sub-section (1) of section 6C



## SECTION 5. EMPLOYEES PROVIDENT FUNDS SCHEME -

(1)] The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Funds Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the [establishments] or class of [establishments] to which the said Scheme shall apply [and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(1A) The Fund shall vest in, and be administered by, the Central Board constituted under section 5A.

(1B) Subject to the provisions of this Act, a Scheme framed under sub-section (1) may provide for all or any of the matters specified in Sch. II.

(2) A Scheme framed under sub-section (1) may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in the Scheme.

## SECTION 6. CONTRIBUTIONS AND MATTERS WHICH MAY BE PROVIDED FOR IN THE SCHEME

The contribution which shall be paid by the employer to the Fund shall be [ten per cent] of the basic wages, [dearness allowance and retaining allowance (if any)], for the time being payable to each of the employees [(whether employed by him directly or by or through a contractor)] and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires be an amount not exceeding [ten per cent] of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section:

Provided that in its application to any establishment or class of establishments which the Central Government, after making such inquiry as it deems fit, may, by notification in the Official Gazette specify, this section shall be subject to the modification that for the words [ten per cent], at both the places where they occur, the words [twelve per cent] shall be substituted:

**Provided Further that** where the amount of any contribution payable under this

Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee.

**Explanation [11] :** For the purposes of this [section], dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

**Explanation 2 :** For the purposes of this [section], "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

## SECTION 6A. EMPLOYEES' PENSION SCHEME -

(1) The Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for:

(a) superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and

(b) widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

(2) Notwithstanding anything contained in section 6, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the Pension Scheme:

(a) such sums from the employer's contribution under section 6, not exceeding eight and one-third per cent of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the Pension Scheme;

(b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;

© the net assets of the Employees' Family Pension Fund as on the date of the



establishment of the Pension Fund;

(d) such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

(3) On the establishment of the Pension Fund, the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to, and all liabilities under the ceased scheme shall be enforceable against, the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits, not less than the benefits, they were entitled to under the ceased scheme, from the Pension Fund.

(4) The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

(5) Subject to the provisions of this Act, the Pension Scheme may provide for all or any of the matters specified in Schedule III.

(6) The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

**(7) A Pension Scheme**, framed under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made, the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme.

## **SECTION 6C. EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME -**

**(1) The Central Government may**, by notification in the Official Gazette, frame a Scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

**(2) There shall be established,** as soon as may be after the framing of the Insurance Scheme, a Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one per cent of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may, by notification in the Official Gazette, specify.

**Explanation:** For the purposes of this sub-section, the expressions "dearness allowance" and "retaining allowance" have the same meanings as in section 6.

(4)(a) The employer shall pay in to the Insurance Fund such further sums of money, not exceeding one-fourth of the contribution which he is required to make under sub-section (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.

(5) The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.

(6) The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

(7) The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

## **SECTION 7A. DETERMINATION OF MONEYS DUE FROM EMPLOYERS -**

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act,



the Scheme or the <sup>33</sup>[Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such enquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation: Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex-pert order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

## **SECTION 12. EMPLOYER NOT TO REDUCE WAGES, ETC. -**

No employer in relation to [an establishment] to which any [Scheme or the Insurance Scheme] applies shall, by reason only of his liability for the payment of any contribution to [the Fund or the Insurance Fund] or any charges under this Act or the [Scheme or the Insurance Scheme], reduce, whether directly or indirectly, the wages of any employee to whom the [Scheme or the Insurance Scheme] applies or the total quantum of benefits in the nature of old age pension, gratuity<sup>74</sup> [provident fund or life insurance] to which the employee is entitled under the terms of his employment, express or implied.

## **SECTION 14. PENALTIES -**

(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act [the Scheme, ,the [Pension] Scheme] or the Insurance Scheme] or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of five thousand rupees, or with both.

**(1A) An employer who contravenes,** or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or para 38 of the Scheme insofar as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to [three years] but



**(a) which shall not be less than** [one year and fine of ten thousand rupees] in case of default in payment of employees' contribution which has been deducted by the employer from the employees' wages;

**(b) which shall not be less than six months and fine of five thousand rupees,** in any other case:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

**(1B) An employer who contravenes,** or makes default in complying with, the provisions of section 6C, or clause (a) of sub-section (3A) of section 17 in so far as it relates to payment of inspection charges, shall be punishable with imprisonment for a term which may extend to [one year] but which shall not be less than [Six months] and shall also be liable to fine which may extend to [five thousand rupees]:

**Provided that the court may,** for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term ]

(2) [Subject to the provisions of the Act, the Scheme,] the Pension Scheme or the Insurance Scheme] may provide that any person who contravenes, or makes default in complying with any of the provisions thereof shall be punishable with imprisonment for a term which may extend to [one year, or with fine which may extend to four thousand rupees, or with both.

[[2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to <sup>146</sup>[six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

## **SECTION 14A. OFFENCES BY COMPANIES -**

(1) If the person committing offence under this Act, the Scheme , the [Pension] Scheme or the Insurance Scheme] is 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:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

**(2) Notwithstanding anything contained in sub-section (1)**, where an offence under this Act, the Scheme, the [Pension] Scheme or the Insurance Scheme] has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or 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

**(i) "company"** means any body corporate and includes a firm and other association of individuals; and

**(ii) "director"**, in relation to a firm, means a partner in the firm.]

### **SECTION 14AA. ENHANCED PUNISHMENT IN CERTAIN CASES AFTER PREVIOUS CONVICTION -**

Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme, the [Pension] Scheme or the Insurance Scheme], commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two years, and shall also be liable to a fine of twenty-five thousand rupees.]



## CHAPTER - 18

# PAYMENT OF WAGES ACT, 1936

### SECTION 2. DEFINITIONS

**In this Act unless there is anything repugnant in the subject or context -**

(l) **"employed person"** includes the legal representative of a deceased employed person;

(ia) **"employer"** includes the legal representative of a deceased employer;

(ib) **"factory"** means a factory as defined in clause (m) of section 2 of the Factories Act 1948 (63 of 1948) and includes any place to which the provisions of that Act have been applied under sub-section (1) of section 85 thereof;

(ii) **"industrial or other establishment" means any -**

(a) Tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock wharf or jetty;

(c) inland vessel mechanically propelled;

(d) mine quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;

(g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation, irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

(h) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

**(vi) "wages"** means all remuneration (whether by way of salary allowances or otherwise) expressed in terms of money or capable of being so expressed which would if the terms of employment express or implied were fulfilled by payable to a person employed in respect of his employment or of work done in such employment and includes -

(a) any remuneration payable under any award or settlement between the parties or order of a court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law contract or instrument which provides for the payment of such sum whether with or without deductions but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed



under any law for the time being in force, but does not include -

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) the value of any house-accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment;

or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).

### **SECTION 3. RESPONSIBILITY FOR PAYMENT OF WAGES -**

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

**Provided that in the case of persons employed (otherwise than by a contractor) -**

(a) in factories if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act 1948 (63 of 1948);

(b) in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

© upon railways (otherwise than in factories) if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.

The person so named the person so responsible to the employer or the person so nominated as the case may be shall also be responsible for such payment.

#### **SECTION 4. FIXATION OF WAGE-PERIODS -**

(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month

#### **SECTION 5. TIME OF PAYMENT OF WAGES -**

##### **(1) The wages of every person employed upon or in -**

(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,

(b) any other railway factory or industrial or other establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable:

Provided that in the case of persons employed on a dock wharf or jetty or in a mine the balance of wages found due on completion of the final tonnage account of the ship or wagons loaded or unloaded as the case may be shall be paid before the expiry of the seventh day from the day of such completion.

(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:

Provided that where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a



weekly or other recognised holiday the wages earned by him shall be paid before the expiry of the second day from the day on which his employment is so terminated.

(3) The State Government may by general or special order exempt to such extent and subject to such conditions as may be specified in the order the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) or to persons employed as daily-rated workers in the Public Works Department of the Central Government or the State Government from the operation of this section in respect of wages of any such persons or class of such persons:

Provided that in the case of persons employed as daily-rated workers as aforesaid no such order shall be except in consultation with the Central Government.

(4) Save as otherwise provided in sub-section (2) all payments of wages shall be made on a working day.

## **SECTION 6. WAGES TO BE PAID IN CURRENT COIN OR CURRENCY NOTES -**

All wages shall be in current coin or currency notes or in both:

Provided that the employer may after obtaining the written authorisation of the employed person pay him the wages either by cheque or by crediting the wages in his bank account.

## **SECTION 15. CLAIMS ARISING OUT OF DEDUCTIONS FROM WAGES OR DELAY IN PAYMENT OF WAGES AND PENALTY FOR MALICIOUS OR VEXATIOUS CLAIMS -**

(1) The State Government may by notification in the Official Gazette appoint a presiding officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with

experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages or delay in payment of the wages of persons employed or paid in that area including all matters incidental to such claims :

Provided that where the State Government considers it necessary so to do it may appoint more than one authority for any specified area and may by general or special order provide for the distribution or allocation of work to be performed by them under this Act.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed such person himself or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act or any other person acting with the permission of the authority appointed under sub-section (1) may apply to such authority for a direction under sub-section

Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made as the case may be:

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3 or give them an opportunity of being heard and after such further inquiry (if any) as may be necessary may without prejudice to any other penalty to which such employer or other person is liable under this Act direct the refund to the employed person of the amount deducted or the payment of the delayed wages together with the payment of such compensation as the authority may think fit not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter and even if the amount deducted or the delayed wages are paid before the disposal of the application direct the payment of such compensation as the authority may think fit not exceeding twenty-five rupees :

Provided that no direction for the payment of compensation shall be made in the



case of delayed wages if the authority is satisfied that the delay was due to -

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person

**or**

(b) the occurrence of an emergency or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable though exercising reasonable diligence to make prompt payment

**or**

(c) the failure of the employed person to apply for or accept payment.

**(4) If the authority hearing an application under this section is satisfied -**

(a) that the application was either malicious or vexatious the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application;

**or**

(b) that in any case in which compensation is directed to be paid under sub-section (3) the applicant ought not to have been compelled to seek redress under this section the authority may direct that a penalty not exceeding fifty rupees be paid to the State Government by the employer or other person responsible for the payment of wages.

(4A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person the decision of the authority on such dispute shall be final.

(4B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 219 and 228 of the Indian Penal Code (45 of 1860).

**(5) Any amount directed to be paid under this section may be recovered -**

(a) if the authority is a Magistrate by the authority as if it were a fine imposed by him as Magistrate and

(b) if the authority is not a Magistrate by any Magistrate to whom the authority makes application in this behalf as if it were a fine imposed by such Magistrate.

## **SECTION 20. PENALTY FOR OFFENCES UNDER THE ACT -**

(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following sections namely section 5 except sub-section (4) thereof section 7 section 8 except sub-section (8) thereof, section 9 section 10 except sub-section (2) thereof and section 11 to 13 both inclusive shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

(2) Whoever contravenes the provisions of section 4 sub-section (4) of section 5 section 6 sub-section (8) of section 8 sub-section (2) of section 10 or section 25 shall be punishable with fine which may extend to five hundred rupees.

### **(3) Whoever being required under this Act to maintain any records or registers or to furnish any information or return -**

(a) fails to maintain such register or record; or

(b) wilfully refuses or without lawful excuse neglects to furnish such information or return;

**or**

© wilfully furnishes or causes to be furnished any information or return which he knows to be false;

**or**

(d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act shall for each such offence be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

### **(4) Whoever -**

(a) wilfully obstructs an Inspector in the discharge of his duties under this Act;



or

(b) refuse or wilfully neglects to afford an Inspector any reasonable facility for making any entry inspection examination supervision or inquiry authorised by or under this Act in relation to any railway factory or industrial or other establishment;

or

© wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act;

or

(d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act;

shall be punishable with fine which shall not be less than two hundred rupees but which may extend to one thousand rupees.

(5) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision he shall be punishable on a subsequent conviction with imprisonment for a term which shall not be less than one month but which may extend to six months and with fine which shall not be less than five hundred rupees but which may extend to three thousand rupees.

Provided that for the purpose of this sub-section no cognizance shall be taken of any conviction made more than two years before the date on which the commission of the offence which is being punished came to the knowledge of the Inspector.

(6) If any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority in this behalf he shall without prejudice to any other action that may be taken against him be punishable with an additional fine which may extend to one hundred rupees for each day for which such failure or neglect continues.



## CHAPTER - 19

# A BRIEF NOTE ON SPEECH/ INTERACTION BY HON'BLE MEMBER JUSTICE SHRI D. MURUGESAN WITH THE STAKEHOLDERS DURING THE NATIONAL SEMINAR ON BONDED LABOUR, 2017

**T**he Hon'ble Member Justice Shri D. Murugesan at the very outset apprised the participants of the National Workshop that the National Human Rights Commission was asked by the Supreme Court of India in 1997 to get involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976. The Court's directions came while hearing a Writ Petition (No. 3922/1985) - People's Union for Civil Liberties Vs State of Tamil Nadu & Others. Since then, the NHRC has been overseeing the implementation of the Bonded Labour System (Abolition) Act 1976 in different parts of the country. Therefore, the Commission, in its endeavour to raise concerns on the continuance of bonded labour has been organising workshops to sensitize official machinery to work for its abolition in different parts of the country.

He further stated that the officers dealing with the subject are not aware of the provisions of the Bonded Labour System (Abolition) Act and it is a fact that the menace of bonded labour could not be eradicated even after 1976, when the Act was passed by the Parliament.

The Commission has therefore even decided to visit the States, call the officers and make them aware of the provisions of the Act. Bonded labour is nothing



but slavery and the system of bondage is taking new dimensions. The element of bondage debt was pre-conditioned, when the Act was enacted but now even without debt, the victims are subjected to forced labour, which is also a form of bondage like 'Bartan' system in Odisha. The issue of bonded labour in the past was confined to mining, stone quarries and agricultural fields but has now taken new shape even after change in employment and also change in employer. People are even kept in bondage for the domestic purposes from one State to another State. While speaking on the newly launched Central Scheme on Rehabilitation on the Bonded Labour by the Government of India. He mentioned that the financial burden of the State Governments has been completely taken away and Consequently it is presently vested on the Govt. of India. The suggestion for this new scheme was given by him to the Central Government during the first workshop in Chandigarh. The suggestion was given due to precise reason that the State Governments were reluctant to declare the victims as bonded labourers for want of funds. He then suggested that the Central Government should take financial burden as a whole an amount of Rs.86,000 Crores spent by them and equally by the State Government and still the problem of bonded labour exists in the society. Corpus of Rs.10 Lakhs is to be maintained at the District level, which is renewable. There is no dearth of laws and shortage of schemes but the menace is yet to be eradicated. The poor labourers are languishing at a particular place for food devoid of basic facilities/amenities and it is shame on the part of the State. The interactions and workshops are therefore necessary to create awareness amongst all the stakeholders for eradication and elimination of bonded labour. Identification of employment and employer is also necessary. The source States like Bihar, Jharkhand, Uttar Pradesh, Odisha, Rajasthan need to be vigilant for identification of bonded labour. Payment of minimum wages is one of the test but not the only test. Police department has though no direct role but police assistance is required in order to ascertain as to whether the victims in particular, the child and the woman, were physically or sexually assaulted/exploited. In case of child labour, action under the Act is to be initiated and an amount of Rs.20,000/- is to be recovered from the employer, Rs.5,000/- to be added by the State Government and the entire fund is to be utilized by the District Magistrate for the welfare of the child labour. In case the victims are from SC/ST, then they are entitled for other benefits under SC/ST (Prevention of Atrocities) Act and Rules made there under. While narrating the ordeal of interstate migrant labourers, the Hon'ble Member emphasized that at the time of identification and rescue, if proper address of the victim has not been obtained, then rehabilitation process will not commence, defeating the very purpose and objectives of the Act. He stated that all of us must alive to the reality that the system cannot be abolished in a day as it is recurring problem to eradicate expeditiously and permanently and all should

work in coordination.

While speaking in the National Workshop on the issue of identification of the bonded labourers, he stressed upon certain standards to be adopted in a prescribed proforma being worked out and drafted by the Commission. The District Magistrates need to adhere to the following guidelines:-

1. Whether the brick-kiln operator obtained a licence to run the brick kiln from Competent Authority or not? If obtained, the details thereof. If not, why it has been allowed to operate and forward the name/s of persons with designation permitting to operate without licence.
2. How many labourers belong to S.C./S.T./O.B.C.? and whether the provisions of SC/ST Act are followed during enquiry.
3. Total number of labourers, male, female, child with names, age and their complete address.
4. Amount of wages paid to them - monthly/fortnightly. Is it in conformity with the notified minimum wages?
5. Forward the legible copies of wages register, muster roll, wage slips, copies of Registers required to be maintained under various labour legislations (Payment of Wages Act, Contract Labour (Regulation & Abolition) Act, Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act.
6. Whether the labourers were employed directly or through an agent/Thekedar/Contractor and whether such an agent obtained a licence under the law or not?
7. Total number of migrant labourers from Nepal and Bangladesh, if any, details thereof and action taken for their deportation through the concerned Foreigners Regional Registration Officers.
8. Whether the recruiting agents obtained a licence under the Inter- State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979, whether the Principal employer obtained a Registration Certificate under



the Act or not, and whether the brick- kiln operator paid benefits under the aforesaid Act and the Rules made thereunder or not. If there is failure, forward the names of officers with their designations.

9. Whether actions under all other relevant Acts like IPC, POSCO Act, JJ Act, SC/ST Act have been taken in the matter, if yes details thereof, if not, reasons thereof.

10. Whether the brick-kiln owner has followed all the provisions contained in the Minimum Wages Act, 1948 and the Rules made thereunder or not. If not, what action is taken?

11. Whether the labourers have been provided with basic amenities like schooling to children, Medical and Health care, Food, Water, Sanitation/toilets and proper accommodation by the employer?

12. Whether the labourers have been got medically examined by the District Administration during the course of enquiry, if not, reasons thereof?

13. Whether the concerned District Magistrates of their native place have been informed of their release and steps taken for ensuring their safe arrival at the destination point, if yes, details thereof?

14. Whether recoveries of Rs. 20,000/- each have been made from the employer in favour of the Child Labourers and the funds @ Rs. 25,000/- each stand deposited with the District Magistrate for the welfare of such Child labourers, if not reasons thereof, if yes, details the reof.

15. Whether Vigilance Committee as mandated under the provisions of the Bonded Labour System (Abolitions) Act, 1976, was constituted or not. If not, the reasons thereof. If functioning, since when? You may give all the details of the Committee constituted according to law.

16. Whether the members of the Vigilance Committee belonging to SC & ST accompanied the team or not? If not, the reasons of the same to be conveyed.

17. In view of the averments made in the complaint and in absence of documents required to be maintained and in absence of benefit to be extended as

mandated by law, the District Magistrate is duty bound to raise the presumption that the labourers are bonded labourers. Attention of the District Magistrate is drawn to the judgement of the Hon'ble Supreme Court in cases i.e. a) Bandhua Mukthi Morcha delivered on 16.12.1983 in Writ Petition No.2135. b) People's Union for Democratic Rights v/s Union of India (1982) 3 SCC at 259. c) Sanjit Roy v/s State of Rajasthan (1983) SCC 525 at 535. d) Neeraja Choudhary v/s State of M.P. (1984) 3SCC 243 at 250.

18. The Commission had experienced over the years the deprivation of the benefits to the victims solely due to either failure or inaction of the officers entrusted with the task under the Act. The Commission would like to draw the attention of the officers concerned to strictly adhered to the provisions of the Act and various orders of the Supreme Court and promptly reply to each of the above queries, failing which the Commission would be constrained to view the lapses, delay and inaction of the officers concerned seriously and would take action accordingly.

While speaking on the issue of Release Certificates, he emphasized on uniformity to be followed and informed that the NHRC shall prepare a proforma for Release Certificates to be followed across the country. Immediately after identification and rescue, the victims should be given immediate financial assistance from the corpus to be created by the State Government at each and every District. The sensitization of District Magistrates, Labour Officers, Member of Vigilance Committee, employers and common public on the Act is also equally important. It should be borne in mind that the children who are either the bonded labourers or with parents need to be put in schools. The victims immediately after the rescue should compulsorily be got medically examined. The District Magistrates/Sub Divisional Magistrates should verify from the victims or other offences under IPC of other laws having been committed at the workplace and prosecution needs to be launched.

The release certificates be sent immediately to the District Magistrates of source State wherever applicable and the victims are to be extended benefits under the Social Welfare Legislations for their permanent rehabilitation.

While speaking on the importance of survey, the Hon'ble Member apprised the participants that specific amount has now been earmarked for the survey and hence it is to be seen that proper survey is conducted. Keeping in view of different dimensions of the problem, one should find out under what circumstances people from one State are migrating to other State and by doing this, the migration can be prevented as it is not good for any State that their



people are moving in the absence of employment to another States for their bread. The source State should give them benefit of Social Welfare Schemes to reduce migration wherever possible for their livelihood. The officers are also required to sensitize the employers to follow laws and make payment of due wages to the labourers in order to achieve the target. With this introduction, he called the participants for their respective presentations.

On Day 2, After the presentations during interactive session, the Hon'ble Member Justice Shri D. Murugesan stated that it is important to have faith in the District Magistrates. He mentioned that the financial burden of the State Governments has been completely it is presently vested on the Govt. of India. Before the new scheme, provisions of funds were within the domain of District Magistrates/ Government as to their share only and now the things rest with the Central Government. The States of Tamil Nadu and Madhya Pradesh are dependent on the judicial courts for the verdict on the issue of bonded labour. This issue could be discussed with the Ministry of Labour in the Core Group Committee. During the session, the Hon'ble Member deliberated upon intention of the Parliament while enacting the Act and in particular on Rule 7 of the Act. As per the Rule, the Register is to be maintained but none of the District Magistrates is maintaining the Register. At least from hereafter, District Magistrates should make the register, take this message and inform their colleagues to maintain register as per Rule 7. He then asked from the participants as to in how many cases, legal assistance was provided to the victims under Section 14 of the Act but no one replied. Prosecution must be launched in all cases where Bonded Labourers are rescued and release certificates are issued, and this is all the more important because of the new scheme. If prosecution is not launched, the victims who are exploited persons will get nothing. Under Section 15, the burden of proof is on the employer. The District Magistrate is Chairperson of the Vigilance Committee and this is backbone of the Act. Maintain the Register, make entries even if no bonded labour is there as this will help in conducting further surveys. Food, education and nutrition are related to right to life. The children at the workplace as per Article 21A of the Constitution of India are entitled for free and compulsory education. Statements of the labourers should be recorded separately and not in the presence of the employer. The women victims and the children are to be asked specifically on physical and sexual exploitation. Actions under IPC, Child Labour Act, POCSO, SC/ST Act are to be taken as the case may be. This will not come in the way to the newly centrally scheme. Record address of the victims and their native place, record their background and the reasons under which they have migrated. The rehabilitation package is to be drawn carefully. Contractors are taking people to different places like selling the human beings. The NGOs are giving complaints. Vigilance Committees are

not doing their job and the officers are proceeding with negative mindset. The victims during rehabilitation are to be extended benefits under MANREGA, Swachh Bharat Abhiyan and loans for different industries. Just cutting the branches is not going to solve the problem, cut the roots, which are the contractor and the employer. District Magistrates/ Field Officers/ Vigilance Committee Members are reluctant to prosecute the employer/ contractor/ middle men. No efforts are being made to catch hold of the contractor. He will ultimately escape and will take along other set of people. The officers therefore, should have the details of the contractors. It was further pointed out that under the Minimum Wages Act, only the Labour Department can verify the facts. While assisting the District Magistrate/ Sub Divisional Magistrate or the Vigilance Committee, the Labour Department though do not have direct role but by implication, role of the Labour Department is very important and the inspection report of the labour officer has the evidentiary value. The Labour Officers can also recommend to the District Magistrate for action to be taken on violation of other laws.

While speaking on the role of police in the case of bonded labour, the Hon'ble Member highlighted the instances of other offences warranting police action and investigation. The presence of police in the inquiry team may instill fear amongst the employers who commit offences. While answering the point raised as to whether the element of bonded debt is compulsory as in the Act, the Hon'ble Member responded by saying that read the Statement and Object of the Act. Advance is not merely cash, even a promise will do. The field officers/ District Magistrates/ Vigilance Committee Members have to see intention of the Parliament as it is not the one time act. He further stated that take care of Section 2 (g) (V) related to caste and community. While citing the cases of Bartan system in Odisha, he stated that here the bondage is by old age customs where no cash advance or debt is there. The victims are forced to perform certain rituals. Hence, the definition of debt cannot be read restrictively.

On the question of stay of the victim during the course of inquiry, the Hon'ble Member apprised that it is the duty of the District Magistrate to provide shelter to the victim, transport and security. At the end, the Hon'ble Member thanked all the participants for taking active part in the deliberations in a meaningful manner.



## CHAPTER - 20

# THE SUPREME COURT'S DIRECTIVES

Several important judgements have been pronounced at the end of public interest litigations admitted as a Writ Petition by the Supreme Court under Article 32 of the Constitution. Clear, precise and authoritative directions have been issued by the apex Court to competent authorities responsible for the enforcement of the provisions of the Bonded Labour System (Abolition) Act, 1976. Names of the cases in which these judgements were delivered and a gist of the directions contained in them is listed as under:

**1. AIR 1984 Supreme Court 802 P.N. Bhagwati, R.S.Pathak and Amarendranath Sen JJ Writ Petition No.2135 of 1982 Bandhua Mukti Morcha Vs. Union of India and others Date of judgement- 16.12.1983**

### **Gist of important directions:**

- 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 and he is, therefore, a bonded labourer entitled to the benefits under the law.
- Government of Haryana should without any further delay and within 6 weeks from 16.12.1983 constitute a Vigilance Committee in each sub-division of a district.
- Government of Haryana will instruct the District Magistrates of all the districts in the State to take up the work of identification of bonded labour as one of

their top priority tasks.

- The State government, the Vigilance Committees and the District Magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of law.
- There is no substance in the contention of the State government that the workmen in the stone quarries and crushers might be providing forced labour, but they were not working under bonded labour system.
- The State government should draw up within 3 months from 16.12.1983 a scheme for rehabilitation of freed bonded labourers in the light of the guidelines sent by Secretary, Ministry of Labour on 02.09.1982.
- The State government should adopt a non-formal and unorthodox approach in implementation of the law which is an important instrument for ensuring human dignity.
- The Central and State governments will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen employed in the stone quarries and stone crushers and not through middlemen.

## **2. AIR 1984 Supreme Court 1099**

**P.N.Bhagwati and Amarendranath Sen JJ**

**Writ Petition (Criminal) No.1263 of 1982**

**Neerja Chaudhury Vs. State of Madhya Pradesh**

**Date of judgement - 08.05.1984**

### **Gist of important directions:**

- 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 Govt. is in a position to prove otherwise by rebutting such presumption.



- Rehabilitation must follow in the quick footsteps of identification and release, if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again.
- Social action groups operating at the grass root level should be fully involved with the task of identification and release of bonded labourers.
- The district and sub-divisional level Vigilance Committees should be reorganized and activated. Their meetings should be held at more frequent intervals than now.
- Officers who are posted at different levels to deal with the problem of bonded labour system should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor.
- Officers who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition should be encouraged and their efforts commended by way of suitable public recognition.
- An intensive survey of the areas which are traditionally prone to debt bondage should be undertaken by the Vigilance Committees with the assistance of social action groups operating in such areas.
- The pace and progress of schemes under implementation must be evaluated. Such evaluation should be target group oriented.

### **3.1987 (Supplementary) Supreme Court cases 141**

**P.N. Bhagawati, CJ and K. N. Singh J**

**Santhal Pargana Antyodaya Ashram Versus State of Bihar and Others**

**Writ Petition No.13450 of 1983**

**Date of judgement - 19.12.1986**

### **Gist of main important directions:**

- All persons who have been found to be bonded (2515) by K.B.Saxena Committee should be released within 2 weeks from the date of the order.
- The Collector should issue a release certificate to each of the persons so released.
- Each of the released bonded labourers shall be paid a sum of Rs. 3000-00 by way of interim relief.
- Such payment shall be made in the following manner:
  - Rs. 500-00 simultaneously with release
  - Rs. 2500-00 within 2 weeks from the date of release.
- The released bonded labourers (2515) must be rehabilitated by the State government on a permanent basis.
- Implementation of the rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court.
- The State government will submit within 2 weeks from the date of receipt of the order a report setting out the permanent rehabilitation programme formulated by them for scrutiny and approval by the Court.
- Other recommendations in K. B. Saxena Committee report shall be implemented as far as possible within one month from the date of receipt of order of the Court.

4. The Apex Court in its order dated 11-11-1997 in *Public Union for Civil Liberties v. State of Tamil Nadu & Others* (Writ Petition Civil No. 3922 of 1985) case directed that the National Human Rights Commission (NHRC) should be involved in monitoring the pace and progress of implementation of the law, national policy and programme of action as also directions of the apex Court issued from time to time. The NHRC is monitoring the bonded labour situation in the country.



## Gist:

In order to ensure compliance of the above directions, the Ministry of Labour constituted a Task Force, comprising officers of the Central Government and the Government of Haryana who are responsible for enforcement of various labour laws. The Task Force is required to undertake periodic visits and inspections of the stone quarries and crushers to ascertain facts about working and living condition of the workers. The task force is carrying out its assignment by meeting regularly and submitting reports to the Central as well as the State Government indicating therein status of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

5. The Supreme Court of India in Peoples Union for Civil Liberties vs State of Tamil Nadu in its judgment delivered on 15/10/2012 has categorically mentioned brick kilns as an industry where bonded labour is rampant and has placed the duty on the Vigilance Committee to conduct periodic inspections.



## CHAPTER - 21

# SUMMARY TRIALS UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT

**B**ackground and Objectives for Summary Trials The Code of Criminal Procedure has within its purview, scope for expeditious trials, which has to be applied more broadly by the judiciary to reduce the large number of pending cases. The ever rising rate of pending cases and abysmal rate of convictions are flailing the swift dispensation of justice and continue to plague the public justice system in spite of the Supreme Court of India having recognised the 'Right to a Speedy Trial' as a subset of the Fundamental Right to Life guaranteed under Article 21 of the Constitution of India.

The Supreme Court has increasingly pointed to the need for proper implementation of existing statutory provisions geared towards expeditious delivery of justice. Further, the Supreme Court has also emphasized on the duty of the judge to monitor the criminal trial process, and to ensure that it takes place in accordance with the provisions of the Code of Criminal Procedure, 1973.

The Bonded Labour System (Abolition) Act, 1976 is a self-contained enactment for its enforcement and it abolishes the very Bonded Labour System itself. The Act basically emphasis for identification, rescue, Release and rehabilitation. As a punitive measure, Provisions for Prosecution and punishments are also made. The authority to try the offences under the Act is the Executive Magistrate u/s 21 of the Act. The procedure to be adopted is of Summary in nature as provided u/s 260/261 Cr.P.C. In the event sections 260/261 Cr.P.C. are read alongwith Sec. 15 of



Bonded Labour System (Abolition) Act, 1976, it is clear that the Magistrate will draw presumption of bondage in favour of the labourer once he is issued with the Release Certificate and the burden of proving otherwise shall be on the employer. Hence, all that the Executive Magistrate is required to give an opportunity to the employer concerned to invoke Sec. 15 of the Bonded Labour System (Abolition) Act and to establish his case. This opportunity is required keeping the principles of natural justice in mind and not otherwise.

In terms of Sec. 262 Cr.P.C., the Executive Magistrate shall follow the procedure for summary cases laid down u/s 251, 252, 253, 254, 255, 256, 257, 258, 259, 261, 262, 263 and 264 Cr.P.C.

### **Section 251. Substance of accusation to be stated -**

When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

### **Section 252. Conviction on plea of guilty -**

If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion convict him thereon.

### **Section 253. Conviction on plea of guilty in absence of accused in petty cases -**

(1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons. (2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and

sentence him as aforesaid.

### **Section 254. Procedure when not convicted -**

(1) If the Magistrate does not convict the accused under Section 252 or Section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. (3) A Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.

### **Section 255. Acquittal or conviction -**

(1) If the Magistrate, upon taking the evidence referred to in Section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal. (2) Where the Magistrate does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law. (3) A Magistrate may, under Section 252 or Section 255, convict the accused of any offence triable under this Chapter which form the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

### **Section 256. Non-appearance or death of complainant -**

(1) If the summons has been issued on complaint and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases



where the nonappearance of the complainant is due to his death. Comments- There is no denying that the dismissal of the complaint in default under section 256 entails the acquittal of the accused. Once an accused has been acquitted of the offence, the law provides a remedy by way of an appeal against the order of acquittal under section 378 (4) of the Code; H.P. Agro Industries Corpn. Ltd. v. M.P.S. Chawla, (1997) 2 Crimes 591 (H&P).

### **Section 257. Withdrawal of complaint -**

If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

### **Section 258. Power to stop proceedings in certain cases -**

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

## **CHAPTER XX-TRIAL OF SUMMONS-CASES BY MAGISTRATES**

### **Section 259. Power of Court to convert summons- cases into warrant cases -**

When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.

## **CHAPTER XXI - SUMMARY TRIALS**

### **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 -**

(1) In trial under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned. (2) 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:— (a) the serial number of the case; (b) the date of the commission of the offence; (c) the date of the report of complaint; (d) the name of the complainant (if any); (e) the name, parentage and residence of the accused; (f) 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; (g) the plea of the accused and his examination (if any); (h) the finding; (i) the sentence or other final order; (j) the date on which proceedings terminated.

### **Section 264. Judgement 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.

This opportunity is required keeping the principles of natural justice in mind not otherwise.

## **Procedure for Conducting Summary Trial**

### **A. Initiation of trial:**



(i) Summary trials are to commence for offences under the Act simultaneously on rescue and not later than issuance of release certificate.

(ii) At any stage of the summary proceedings, if the accused is found to be chargeable for offences other than the BLSA, the Executive Magistrate shall refer the complaint to the jurisdictional police for registering the case under relevant provisions of the other Acts and to investigate the same.

## **B. Examination of the accused:**

(iii) The first step to be undertaken by the Executive Magistrate is to ensure the appearance of the accused before him.

(iv) The particulars of the offence that he is accused of shall be stated to him and he would be asked whether he pleads guilty to the offence or not.

(v) In the event of the accused pleading guilty, the Executive Magistrate will make a record of the plea in as much as the words of the accused, and issue an order for conviction, upon the Magistrate's discretion. Such conviction shall not exceed a term of three months as per Section 262 of the Code. A copy of the order shall be furnished to the employer/accused free of cost.

(vi) If the accused doesn't plead guilty, the Executive Magistrate shall consider the records relating to the issuance of release certificates. The other materials and the contentions of the accused employer, may pass an order of conviction.

(vii) The Executive Magistrate, in every case tried summarily, where the accused doesn't plead guilty, should record the reasons for conviction in writing and copy of the same shall be furnished to the employer/accused concerned free of cost

## **D. Format for recording proceedings -**

**(viii) The Executive Magistrate shall make a record of particulars in such form as the respective state government directs and they include: -**

(a) the serial number of the case

(b) the date of the commission of the offence (offences related to Sec. 9

- and Sections 16-20 of the BLS(A) Act, 1976.)
- (C) the date of the report or complaint
  - (d) the name of the complainant
  - (e) the name, parentage and residence of the accused
  - (f) the offence complained of and the offence (if any) proved (offences related to section 9 and 16-20 of the BLS(A) Act, 1976.
  - (g) the plea of the accused and his examination (if any)
  - (h) the finding with reasoning
  - (I) the sentence or other final order with reasons
  - (j) Amount of debt extinguished (if any)
  - (k) Extent of mortgage freed (if any)
  - (l) date on which proceedings concluded/terminated

**F. Duration of trial and the day to day recording of evidence:**

- (ix) A summary trial conducted by the Executive Magistrate must be concluded as expeditiously as possible.





## CHAPTER - 22

# PROCEDURE/GUIDELINES FOR DISTRICTMAGISTRATE / SUB DIVISIONAL MAGISTRATE TO FOLLOW AT THE TIME OF IDENTIFICATION AND RESCUE OF ALLEGED BONDED LABOURS

**T**he District Magistrates or the Sub Divisional Magistrates as the case may be on receipt of complaints should follow the following points while undertaking the enquiry under the provisions of Bonded Labour System (Abolition) Act, 1976:

1. To record the statement of the individual labourer (not in the presence of the employer).
2. To record the statement of the employer (in the presence of the labourers).
3. Whether the Employer has obtained a license to run the Unit from Competent Authority or not? If obtained, the details thereof. If not, the action to be taken against the employer as per extant law.
4. Total number of labourers, male, female, child with age.
5. Whether the Employer has followed all the provisions contained in the Minimum Wages Act, 1948 and the Rules made there under or not. Amount of wages paid to each of the labourers. Is it in conformity with the notified

- minimum wages?
6. To collect the legible copies of wages register, muster roll, wage slips, copies of Registers required to be maintained under various labour legislations (Payment of Wages Act, Contract Labour (Regulation & Abolition) Act, Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act.
  7. Whether the labourers were employed directly or through an agent/Thekedar/Contractor and whether such an agent obtained a licence under the law or not?
  8. Total number of Inter State Migrant labourers.
  9. Total number of Inter State Migrant labourers from Nepal, Bangladesh and other similar countries, if any, details thereof and action taken for their deportation through the concerned Foreigners Regional Registration Officers.
  10. Whether the recruiting agents have obtained a licence under the Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979.
  11. Whether the Principal employer has obtained a Registration Certificate under the Act or not.
  12. Whether the operator paid benefits under the aforesaid Act and the Rules made there under or not.
  13. To verify any offence is committed under the provisions of the Acts like IPC, POSCO Act, JJ Act, SC/ST Act, etc., and if so, take action against the employer under the provisions of the above Acts.
  14. Whether the labourers have been provided with basic amenities like Health care, Food, Water, Sanitation / toilets, proper accommodation, etc., by the employer?



- Whether the children are provided the education by the parents / employer, if not what action has been taken to provide the education.
15. Whether the labourers are allowed to freely move out from the workplace.  
Whether the labourers are allowed to have access to family members / relatives and civil society.
16. To recover a sum of Rs.20,000/- from the employer in favour of each of the Child Labourers.
17. To immediately record the above details in the proforma annexed to these guidelines.





## CHAPTER - 23

# PROFORMA ON IDENTIFICATION AND RESCUE OF BONDED LABOURERS PARTICULARS OF IDENTIFIED AND RESCUED BONDED LABOURER TO BE RECORDED BY THE VIGILANCE COMMITTEE

### I. IDENTIFICATION PARTICULARS

- i. Name:
- ii. Father / Mother's Name:
- iii. Gender: Male/Female/Transgender:
- iv. Age:
- v. Whether special / other category\* Y/N
- vi. Whether physically disabled: Y/N
- vii. If yes, details thereof:
- viii. Permanent address of the Labourer :
- ix. Village with house No. if any:
- x. Taluk:
- xi. Block:
- xii. District:
- xiii. State:
- xiv. Aadhar and Voter I.D / BPL Card No. (if any available):
- xv. Bank Account Details:
- xvi. Mobile numbers, if any:

**\*Special/Other category as specified at para 5 (iii) and 5(iv) of this scheme**

### II. PARTICULARS OF LABOUR:

- i. Nature of Labour:
- ii. Duration of Labour:



- iii. Whether free to work elsewhere: Y/N
- iv. Name of Middleman / Contractor and his Address:

### **III. PARTICULARS OF EMPLOYER**

- I. Name and Address:
- II. Father / Mother's Name:
- III. Occupation:
- IV. No. of bonded labourers under the Employer:
- V. Aadhar No.:
- VI. Whether the Employer has obtained a license to run the Unit from Competent Authority or not? If obtained, the details thereof. If not, the action to be taken against the employer as per extant law.
- VII. Whether the employer is maintaining the wages register, muster roll, wage slips, copies of Registers required to be maintained under various labour legislations (Payment of Wages Act, Contract Labour (Regulation & Abolition) Act, Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act.

### **IV. PARTICULARS OF CONTRACTOR**

- i. Name and Address:
- ii. Father / Mother's Name:
- iii. Occupation:
- iv. No. of bonded labourers under the Contractor:
- v. Aadhar No.:
- vi. Whether the Contractor has obtained a license under the law or not? If obtained, the details thereof. If not, the action to be taken against the Contractor as per extant law:
- vii. Whether the Contractor is maintaining the records required to

be maintained under the Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act:

**V. WORKING CONDITIONS:**

- i. Wages agreed upon by the Employer:
- ii. Wages paid in kind (per day / week/ month/year):
- iii. Wages paid in cash (per day / week/ month/year):
- iv. Any other non-cash / kind benefit received from the employer:
- v. Details of the Punishment for absence or slackness in work:
- vi. Daily hours of work:
- vii. Weekly off – Day and Days in a month:
- viii. Details of Medical Examination at workplace:
- ix. Whether physically / sexually assaulted at workplace:
- x. Details of services and basic facilities available to the labourers and their family at the workplace:
- xi. Number of Child Labourers:

**VI. NATURE OF BONDAGE [in lieu of advance / debt]**

Name	Age	Duration of work	Loan taken	Interest, if any	Hours of work	Wages paid



- I. Amount of loan / Advance received (cash / kind):
- II. Rate of Interest
- III. Purpose of borrowings:
- IV. Who has taken the loan and his relation with the victim:
- V. Mode of repayment:
- VI. Number of year working for the loan taken:
- VII. When will the loan get repaid along with interest
- VIII. Is any other member of the family also bonded : Yes / No  
If yes, please indicate his/her

**(IX) OFFENCES FOUND TO HAVE BEEN COMMITTED AND ACTION TAKEN THEREOF.**

**VERIFICATION**

It is certified that the facts stated are true to the information provided by the released bonded labourer / employer which have been read over and explained to the employer / employee in their mother tongue:

Signatures of District Magistrate /  
Sub Divisional Magistrate

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Signature/Thumb impression of the victim

Case No: \_\_\_\_\_

A colour passport size photograph of the bonded labour released should be pasted in the box

## 6. PROFORMA OF RELEASE CERTIFICATE

### ORDER UNDER SECTION 12 OF THE BONDED LABOUR SYSTEM (ABOLITION) ACT 1976

On verification under the provisions of BLS (Abolition) Act, 1976 Shri/Smt.

Age \_\_\_\_\_ s/o/w/o \_\_\_\_\_ belonging to the \_\_\_\_\_ community, presently residing at \_\_\_\_\_ village, of \_\_\_\_\_ Taluk in \_\_\_\_\_ District \_\_\_\_\_ State \_\_\_\_\_ and permanent resident of \_\_\_\_\_ has been found on \_\_\_\_\_ to be a bonded labourer and forced to work without reasonable wages at the \_\_\_\_\_ for the owner, Shri \_\_\_\_\_ in the order to extinguish the debt, under physical threat to his/her life.

He/she is hereby declared free of all his/her obligation and debt liabilities on \_\_\_\_\_ to Shri/Smt. \_\_\_\_\_ s/o \_\_\_\_\_ of \_\_\_\_\_ village in \_\_\_\_\_ District under whom he/she was kept in bondage.

The employer/contractor will not conspire for realization of the aforesaid debt/financial obligations and not force him to work as bonded labour or displace him from the house provided to him during the course of employment and return all his belongings to him immediately kept as mortgaged by the money lender/employer, in its original form, otherwise, he will be liable for punishment under the provisions of the Bonded Labour System (Abolition) Act, 1976 and Minimum Wages Act, 1948.



## The Personal particulars of the released bonded labourer are as under:-

1. Name:
  2. Father/Mother's Name:
  3. Age:
  4. Caste SC/ST/OBC
  5. Identification Mark
  6. Whether special category\*: Y/N  
If yes, details thereof:
  7. Whether physically disabled#: Y/N  
If yes, details thereof:
  8. Address where bonded labour is identified:
  9. Male/Female/Transgender/Child Voter I.D/ BPL Card:
  10. Aadhar No. (if available):
  11. Ration Card/Labour Card No.:
  12. Jan Dhan a/c No. with IFSC code:
  13. Address of Bonded Labour
  14. Name of the Captor/Bonder
  15. Aadhar Card No. of Captor/Bonder:
  16. Address of Captor/Bonder:
  17. Details of immediate financial assistant paid and other relief provided:
  18. In case of child, whether a sum of Rs.20,000/- has been recovered from employer and whether the amount together with State share has been credited to the Child Welfare Fund to be maintained by the District Magistrate:
  19. Details of prosecution and criminal cases registered and details thereof:
  20. Amount of Debt extinguished u/s 6:
  21. Extent and nature of property freed u/s 7, if any:
  22. Place, District and State for rehabilitation and the date the Release Certificate is forwarded to the source State:
- \* Special/other category as specified at para 5 (iii) and 5 (iv) of this scheme#  
"Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority, medical authority is Hospital funded by Central or State Government.

Given under my hand and seal on Date\_\_\_\_\_.

Signature

Name

District Magistrate / Sub Divisional Magistrate

District..... State.....Seal  
Signature/ Thumb impression of Bonded Labour

Signature/ Thumb impression of Employer

Copies in bilingual to:- Labourer, Chief Secretary, Labour Commissioner, District Magistrate of Domicile State, M.O.L. & NHRC





## CHAPTER -24

# PROSECUTION OF EMPLOYER/ MIDDLEMEN / CONTRACTOR

**T**he Labour in unorganized sector often faces exploitation and various legislations including inter alia the Bonded Labour System (Abolition) Act, 1976, Section 16 to 18 and 20 of the Act deals with the Penal Sanctions which are, if enforced properly, sufficient to have the requisite effect. Payment of Wages Act, 1936; Minimum Wages Act, 1948; Prevention of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989(Offences enumerated Section 3 of the Act); Interstate Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979; Contract Labour (Regulation and Abolition) Act, 1970; Child Labour (Prohibition and Regulation) Act, 1976 (Section 14 in particular); Juvenile Justice (Care and Protection) Act, 2015 (Section 23 in particular) and Weekly Holidays Act, 1942 have been enacted as welfare legislations by the Parliament yet the implementation is far below satisfactory.

The facts may disclose commission of a cognizable offence under the provisions of the Indian Penal Code, U/ S 342, 344, 370 and 374. It is to be borne in mind that when there is Compulsory Labour, then it implies that “whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both, also”. The system is also an infringement of the basic human rights and destruction of the dignity of human labour. If the facts disclose sexual harassment/exploitation then Section 354 IPC, 376 IPC, POSCO ACT also stand attracted as the case may be. In case, the victims are from SC/ST, then the provisions of the SC/ST (POA) ACT also come into



play.

Despite lapse of considerable time, enforcement mechanism of these legislations needs complete overhauling. The Government machinery obligated to get these legislations enforced lacks proper knowledge and training. The employers are also not aware of the provisions of these Acts. A provision does find mention in Article 23 of the Constitution of India but the law enforcement agencies are not as sensitive as they should be. The Apex Court in Peoples Union for Democratic Rights v/s Union of India in 1982 held as under:- “Then there is the complaint of non-observation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and this is also in our opinion complaint relating to violation of Article 21. It is also observed that violation of labour laws must be viewed by Magistrates and Judges seriously and met with stringent fines. Meager fines allow employers to profit from violation of labour laws. They would remain merely paper tigers without any teeth or claws.

Even in the absence of records in most of the cases, the District Magistrates without adhering to the above guiding principles simply conclude that the allegations are not true. The Commission then invite their attention to the fact that the provisions contained in Section 10 of the Bonded Labour System (Abolition) Act, 1976 (hereinafter referred as 'The Act') are required to be followed strictly while making an inquiry. Attention must be paid to the provisions contained in sub-clause (g) of Section 2 of the Act, which points out the system of forced or partly forced labour where one has to presume that labourer has entered into an agreement with the creditor to the effect that in consideration of an advance obtained by him or for any economic consideration received by him, he would render services without wages or with nominal wages and he forfeits the freedom of employment or other means of livelihood or he forfeits the right to move freely or forfeits 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. This includes the system of forced or partly forced labour and presumption is required to be raised.

Sub-clause (i) of Section 2 of the Act, defines 'nominal wages'. If the wages, which are less than the Minimum Wages fixed by the government, are paid the provision is attracted. The minimum wages Act, 1948 also stipulates payment of overtime wage and paid weekly rest apart from the minimum wage rate fixed by the State Govt. for the employment. The officer should know about the decision of the Apex Court wherein the broad, liberal and expansive interpretation of the definition of 'bonded labour system' is given. According to



the interpretation, it is not necessary to prove beyond doubt the element of loan/debt/advance in the creditor/debtor relationship. Such an element can always be implied or assumed. This is on account of the fact that the creditor and the debtor represent two diametrically opposite sections of the society. Traditionally, the debtor is poor, resource less and in need of defense, whereas the creditor is rich, resourceful and dominant. Thus, their relationship is an unequal exchange relationship. If the debtor is rendering certain services to the creditor without any wage or with nominal wage, it is to be presumed that he is doing it not out of any charity but out of some economic consideration. It is on account of this that it is not necessary to prove beyond doubt the element of loan/debt/advance.

The provisions contained in Article 23 of the Constitution of India are also not noticed by the officers. Even if remuneration is paid, labour supplied by the persons would be hit by Article 23 if it is forced labour i.e. service has been rendered by force or compulsion. Article 23 strikes at all form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service.

It should not be forgotten that the poor people in this country, who are uneducated or mostly belong to Scheduled Castes and Scheduled Tribes, have no other alternative but to survive on the earth with whatever is paid. They are required to do work as directed by their masters and they have no alternative but to accept whatever is paid to them. It is for the officers exercising powers under the Bonded Labour System (Abolition) Act, 1976, to read between the lines and to understand the circumstances under which a poor person is compelled to work. He would send a complaint as a last resort. Without making any inquiry from such labourers and to accept the version of the employer is nothing but breach of the duty cast upon them. It is their duty to raise a presumption when the employer has failed to produce relevant records required to be maintained under the Minimum Wages Act and to declare labourers as bonded labourers when they are not paid Minimum Wages according to law and no satisfactory evidence is produced as pointed out under the Minimum Wages Act. Moreover, Equal Remuneration Act, 1976 mandates equal pay for equal work for both men and women.

Law mandates that the employer shall maintain registers and records giving particulars of employees employed by him, the work performed by them, the wages paid to them and the receipt obtained. When the employer claims that he has paid minimum wages under Minimum Wages Act, then it is for him to

produce documentary evidence in proof of payment to show that he has paid wages in accordance with law. It is for this purpose that he is required to maintain muster roll and other record. If the employer fails to produce the books of accounts then the Distt. Magistrate or the officer authorized by him must raise the presumption that the labourers were kept as bonded labourers.

Every employer is required to maintain a register of wages in form X. He shall mention the details of the person employed and the entries pertaining to the wages for a period for which he worked. A wage slip in form XI shall be issued by every employer to every person employed by him. He shall get the signature or thumb impression of every person employed, on the register of wages and wage slip. These entries in the register shall be authenticated by the employer or any person authorized by him in this behalf. A muster roll shall be maintained by every employer at the work spot and in form IX and the attendance of each person employed in the Establishment shall be recorded daily in that form within three hrs. of the commencement of the work shift. It has been observed by the Commission that the team who visits the brick kiln for inspection does not take trouble to verify as to whether the employer is maintaining these records as mandated by Law. The team also does not verify if the entries in the register of wages and wage slips have been authenticated by the employer or by any other person authorized by him in this behalf. In the absence of these documentary evidence and books of accounts, a duty is cast on Distt. Magistrate to presume that the allegations made in the complaint are true and they are being kept as bonded labourers.

Not conducting the enquiries immediately by the officer concerned amounts to nothing but frustrating the object of the Act. The philosophy of the Constitution, the intention of the Parliament in enacting and amending Labour Welfare Legislation and the Law interpreted by Supreme Court that the denial of minimum wages tantamount to forced labour and infringement of Article 23 of Constitution of India thus, affecting the provisions of Bonded Labour System (Abolition) Act.

The Enquiry Officer shall also verify the license issued by the competent authority under the Provisions contained under the Environmental Laws and shall record his satisfaction about the same with license number, etc. and the name of issuing authority.

The Commission when finds that there is a violation of human rights and various



labour welfare legislation, in such cases the damage caused cannot be repaired but can be remedied by declaring them as bonded labourers and further by rehabilitating after issuance of certificate in accordance with the policy of the government.





## CHAPTER - 25

# REHABILITATION AND CENTRAL SECTOR SCHEME FOR REHABILITATION OF BONDED LABOUR, 2016

**F**inancial Assistance under New Scheme In order to assist the State Governments in their task of securing physical and psychological rehabilitation of released bonded labourers, the Ministry of Labour earlier launched a Scheme in May 1978. The scheme has undergone qualitative changes from time to time and has been progressively liberalized. The rehabilitation assistance was earlier enhanced from Rs. 10,000/- to Rs. 20,000/- per bonded labourer w.e.f. May, 2000. Now the Central Government has approved the revamped scheme w.e.f. 17.05.2016.

The modified scheme also provides for financial assistance to the State Governments/UTs for conducting survey of bonded labourers, awareness generation activities and impact evaluation.

### Components of the Scheme for Rehabilitation of Bonded Labour -

The Centrally Sponsored Scheme for rehabilitation of bonded labour has the following components:

- Revised to Central Sector Scheme. State Governments not required to pay any matching contribution for cash rehabilitation assistance
- Immediate interim relief at the time of rescue has been enhanced from Rs.1,000/- to Rs.20,000 to be paid to the each victim.
- Financial assistance increased from Rs. 20,000/- to one lakh per adult male beneficiary, Rs. 2 lakh for



child labour & women and Rs. 3 lakh to trans-genders, or woman or children rescued from ostensible sexual exploitation

- Land, housing and other non-cash assistance from State Governments
- Rs. 4.50 lakh per district for bonded labour surveys, Rs. 1 Lakh per District for evaluation and Rs. 10 Lakhs per State for public awareness on reimbursable basis
- Release of remaining full rehabilitation amount after immediate assistance, linked to conviction” (Section 6.3 of the Scheme)
- Scheme provides for creation of District Bonded Labour Rehabilitation Fund with a permanent corpus of at least Rs. 10 lakh at the disposal of the District Magistrate for extending immediate help to the released bonded labourers.
- Reimbursement funds to be released by the Ministry to the District National Child Labour Project Society, which in turn releases the fund to the implementing agencies including district administration.
- Transfer of benefits to beneficiary account is to be on DBT (Direct Benefit Transfer) mode with Aadhar linkage.

(b) Social welfare legislations/other schemes

### Government sponsored Flagship program

The matters pertaining to labour issues across the country are dealt by the Ministry of Labour & Employment, Government of India. In pursuit of prevention, identification and rehabilitations of bonded labour, the Ministry had initiated various flagship programs which are as follows:

- **NCLP Scheme:** In varying degrees the State authorities tend to ignore the fact that bonded labour does exist in their respective States to avoid bad name on the administration. The policy has three main ingredients, viz; Legal Action Plan, General development programmes and Project based plan of action. Under the scheme, the target groups are Occupations and processes listed in the Schedule to the Child Labour (Prohibition & Regulation) Act, 1986, Occupations &

processes, which adversely affect their health and psyche; and, the hazardousness of the employment towards the children should be reasonably established. The important parameters introduced in the scheme are providing stipend of Rs. 100/- per child per month, provision for nutrition, health component, vocational training and training for educational teachers.

(Source:<http://labour.nic.in/upload/uploadfiles/files/schemes/SchemeofNationalChildLabourProjectRevised.pdf>)

- **Grant in Aid on Child Labour:** Funds under Grants-in-Aid Scheme are sanctioned directly to NGO for elimination of Child Labour in districts not covered by NCLP Scheme. Under the scheme voluntary agencies are given financial assistance by the Ministry of Labour on the recommendation of the State Government to the extent of 75% of the project cost for the rehabilitation of working children. Voluntary organizations have been receiving funds under the scheme since 1979-80. Currently, about 70 voluntary agencies are being assisted.

- **Grant in Aid on Women Labour:** This Scheme, which has been continuing since Sixth Five Year Plan (1981-82), is administered through voluntary organizations by giving grant-in-aid to them for the following purposes:

Organizing working women and educating them about their rights/duties, Legal aid to working women

- **Seminars, workshops,** etc. aiming at raising the general consciousness of the society about the problems of women labour As per the provisions of the Scheme, grants-in-aid is being provided as 75% of the total cost of the project. However, the projects relating to studies entrusted to various institutes are funded in full, i.e., 100%.

- **Rashtriya Swasthya Bima Yojana:** A large chunk of workers belong to unorganized sector in the country. In order to implement social security measures, central government has introduced RSBY Scheme. The health insurance scheme aims to facilitate launching of health insurance projects in all the districts of the States in a phased manner for BPL workers. In this, 75% of the estimated annual premium of Rs.750, subject to a maximum of Rs. 565 per family per annum. The cost of smart card will be borne by the Central Government. Whereas the State



governments will contribute by 25% of the annual premium, as well as any additional premium. The beneficiary would pay Rs. 30 per annum as registration / renewal fee. The monitoring, administration and other related cost of administering the scheme would be borne by the respective State Governments.

• **Directorate General of Employment & Training (DGET) Schemes: There are various schemes running under DGET:**

• **Craftsmen Training Scheme (CTS):** Training is imparted in 70 engineering and 63 non-engineering trades and are functioning under the administrative control of the respective State Govts./UTs / Private Organisations. About 70% of the training period is allotted to practical training and the rest to theoretical training relating to Trade theory, Workshop Calculation & Science, Engineering Drawing, Social Studies including environmental science & family welfare. Seats are reserved for SC/ST, OBCs, Differently abled and women candidates as per norms. Reports of inspection & accreditation, as received from QCI, are processed at DGE&T HQ and put up before the sub-Committee of NCVT for grant of affiliation.

• **Apprenticeship Training Scheme (ATS):** Apprentices Act, 1961 was enacted with the objectives to regulate the programme of training of apprentices in the industry so as to conform to the syllabi, period of training etc. as laid down by the Central Apprenticeship Council; and To utilize fully the facilities available in industry for imparting practical training with a view to meeting the requirements of skilled manpower for industry.

• **Skill Development Initiative Scheme (SDIS):** This scheme is 100% centrally sponsored. The main objectives of the scheme are to provide vocational training to school leavers, existing workers, ITI graduates, etc. This is to improve their employability by optimally utilizing the infrastructure available in Government, private institutions and the Industry. Existing skills of the persons can also be tested and certified under this scheme. As per the scheme, priority will be given to covering those above the age of 14 years who have been or withdrawn as child labour to enable them to learn employable skills in order to get gainful employment. The Central Government took up the role of facilitator and training promoter while State Governments, private sector and industry provide training to the persons.

- **Vocational Rehabilitation Centers for Handicapped (VRCs):** Vocational rehabilitation of the handicapped person is a process which enables him to secure suitable employment which he could retain and advance a permanent base with an ultimate aim of integrating or re-integrating him/her in the society. At present 21 Vocational Rehabilitation Centres for Handicapped have been functioning one each at Agartala, Ahmedabad, Bangalore, Bhubaneswar, Chennai, Delhi, Guwahati, Hyderabad, Jabalpur, Jaipur, Kanpur, Kolkata, Ludhiana, Mumbai, Patna, Puducherry, Ranchi, Srinagar, Thiruvananthapuram, Una, and Vadodara.

(Source: <http://dget.gov.in/content/institute/vocational-rehabilitation-centers-for-handicapped-vrcs.php>)

- **Women Training:** Women Training under Directorate General of Employment & Training, Ministry of Labour & Employment aims to provide vocational skill training to women for wage and self-employment to help them gain economic upliftment and social empowerment. Regular vocational training programmes are being conducted for women under Craftsmen Training Scheme (CTS) and Craft Instructors' Training Scheme (CITS) by the Central Government. Training facilities are being offered to women through 11 institutes spread across the country – One National Vocational Training Institute (NVTI) at NOIDA and 10 Regional Vocational Training Institutes (RVTIs) one each at Mumbai, Bengaluru, Thiruvananthapuram, Panipat, Kolkata, Tura, Allahabad, Indore, Vadodara and Jaipur. These institutes are financed and managed by the Central Government. There are about 1988 training seats under CTS and 4080 seats under CITS. A total of 6068 regular seats have been sanctioned in 2013-14 as on September, 2013. Vocational Training is presently being provided in diverse fields such as Electronics Mechanic, Secretarial Practice, Architecture, Hair & Skin Care, Computer Operator and Programming Assistant, Dress Making, Catering & Hospitality, Interior Decoration & Designing etc.





## CHAPTER - 26

# ROLE OF THE STATE AND VIGILANCE COMMITTEE

**C**reation of Corpus Fund - The State Government and Union Territories should create and maintain corpus fund for providing immediate finance for rehabilitation at all district levels which will be utilised directly for the aid of the released bonded labourers.

**2. Conducting Surveys** - The State Government shall conduct surveys on bonded labourers half-yearly to know the number of bonded labourers in their State, the reasons for their being in bondage and also understand the reasons for inter-state migrants workers becoming bonded labourers.

**3. Registration of Migrant Workers And Contractors / Agents / Middle Men**- Migration of workers is a phenomenon where the search for labour is the source of survival. Identification of migrant workers is difficult due to lack of effective procedure of registration. The State Government should take effective measures to register the migrant workers by issuing identity cards at the source State and also their destination State (or place of work). The State Government should also take proper measures for registration of contractors/agents/middlemen in order to make them accountable.

**4. Sensitise People/Employer on the issue of Bonded Labour** - There is a need to sensitise people to the evils of bonded labour in our society. The State Government along with a participative citizenry needs to address the challenges and work towards a solution to eradicate bonded labour. All the employers shall be sensitised about the Bonded Labour Act/Schemes and the various programmes.

**5. Prevention and convergence model** - Multi-

stakeholders response is needed from the Central Government, State Government, NHRC, SHRC, NGOs and other social actions groups to participate in the discourse, decision-making and implementation of solution to the common goal of eradication and abolition of bonded labour.

**6. Medical Check-up of Released Bonded Labourers** - Proper health screening of the released bonded labourers should be done at Government Hospitals. The report of the medical health check up along with all necessary details should be attached with the release certificate.

7. Released child bonded labourers or children of released bonded labourer shall be admitted in schools immediately after their rescue.

**8. Vocational Training and Skill Development** - The State Government should start programmes that would ensure proper vocational training and skill development to the released bonded labourers and their families at district level. Vocational Training and Skill Development would ensure economic opportunities to the released victims. Adequate funds be made available for skill development of released bonded labourers and potential bonded labourers.

**9. Training of District Magistrates** - There is a need to prepare and conduct an effective Training Programme to train the concerned field officers i.e District Magistrate/SDM of each state through coordinated and coherent action. The training must be carried out by administrative training institutes. Online course for 5 days duration be inculcated in the training programme within one month of joining as District Magistrate in the district.

**10. Release Certificate** - Release Certificate issued by the State should be standardized in all States and Union Territories. The Release Certificates should be in a specific Performa and should provide all the details of the released bonded labour. It is mandatory that while issuing the release certificates in respect of bonded labour to affix the photographs to each of the released bonded labourer along with full permanent address for accurate identification at his/her native place at a subsequent date within this period.

**11. Financial Assistance to the Released Bonded Labourer** - The released bonded labourer be given financial assistance by the designated district magistrate



and balance financial assistance funds/package be given by the District Magistrate of the home State.

**12. Rehabilitation of the Released Bonded Labourers** -The State Governments should ensure that necessary and effective steps are taken to rehabilitate the victims.

**13. Filling up Vacancies in the State Labour Department** -The Commission has come across that on account of large vacancies in the State Labour Department, the inspections are not being carried out. The State Government's shall ensure to fill up all the posts of labour inspectors in the department lying vacant for better enforcement of labour laws.

**14. Compliance of Sustainable Development Goals** - In light of Goal 8 of the SDG immediate and effective measures need to be taken to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour. Promotion of labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants and those in precarious employment needs to be undertaken.

**15. Multilingual Help Line Number** -There should be a multi-lingual helpline number so that bonded labour cases can be reported directly from all over India and effective action can be taken accordingly.

**16. Inter-State Education Scheme** - Inter-State Education scheme shall be initiated by the State Governments where the children of the migrant workers can continue their education. This Scheme can co-ordinate between the source state and the destination state (of place of work) and facilitate the right to education of the children of the migrant workers.

**17. Open counselling Centre at District/State Level** - Counselling Centre shall be opened at the District Level and State Level to provide assistance to the bonded labourers, released bonded labourers and potential bonded labourers. The Counselling Centre should have psychological and other experts to provide proper guidance to the victims.

**18. Creation of Data Base and Online Portal for Bonded Labourers** - Data base should be created for identifying bonded labourers and potential bonded labourers. The data base would ensure coordination amongst the States. In fact the data base will facilitate information flow among all the States amongst each other. With the rise of cases of bonded labour the data base will integrate knowledge and information in addressing the menace of bonded labour. The data base can be prepared with the assistance of professional research organisation. The data base shall be online and also be linked through GPS.

**19. Review Meeting with the State** - Review Meeting of the all stake holders should be held within 3 months. This review meeting would ensure understanding the various issues of bonded labour and work towards a solution oriented approach to eradicate bonded labour.

**20. Accountability of all stakeholders** - Accountability of Stakeholders involved in the abolition of bonded labour shall be clearly defined and will be fixed for effective implementation and monitoring.

## MISCELLANEOUS

**1. Strict Vigilance** - Strict vigilance should be maintained towards the occupations that are more prone to bonded labour, for instance, rice mill, brick kilns, etc. Licenses should be provided to the contractors/ middle men in order to prevent any kind of bonded labour. Moreover the vigilance committees should be more pro-active on such industries through vigilance committees and shall make effort to prevent and protect the bonded labourers.

**2. Aadhar for Identification** - Inter-State Migration has thrust the problem of bonded labour and identification of bonded labour needs to be done by the inclusion and usage of Aadhar identification number.

**3. Social Awareness** - social awareness and sensitization about the Act amongst all state holders/DM's/SP's/Local administration at the grass root level.

**4. Regional Workshops in North-Eastern States** - Regional workshops to be conducted in North-Eastern States either at Guwahati or Aizwal.



## CHAPTER - 27

# INITIATIVES OF THE NATIONAL HUMAN RIGHTS COMMISSION

**T**he Supreme Court in the Writ Petition (No.3922/1985) – Public Union for Civil Liberties v. State of Tamil Nadu & Others – requested the NHRC to get involved in the monitoring of the implementation of the Bonded Labour System (Abolition) Act, 1976.

- The Supreme Court stated that the NHRC should follow the manner indicated in the order passed by the Supreme Court on 11-11-1997 in Writ Petition No.1900 of 1981 requesting the NHRC to be involved in the supervision of the working of the Agra Women's Protective Home to “ensure that the Home functions in the manner as is expected for achieving the objects for which it has been set up” and that “the concerned authorities would promptly comply with the directives given by the NHRC”.

- The NHRC views the responsibility assigned to it from the angle of the Constitutional guarantee [Article 23(1) of the Constitution of India] incorporated in the Bonded Labour System (Abolition) Act, 1976.

- The NHRC took up the monitoring of implementation of the Bonded Labour System (Abolition) Act, 1976 in early 1998. It focused attention on 13 states – Andhra Pradesh, Arunachal Pradesh, Bihar, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh, identified as bonded labour prone areas by the Union Labour Ministry on the basis of several study reports.

- The Commission has been monitoring the



implementation of the Bonded Labour System (Abolition) Act, 1976 through its Special Rapporteurs.

- Several reviews in the States have been conducted by the Chairperson, Members, and Special Rapporteur of the Commission.
- The Commission keeps the Supreme Court informed about the steps taken by it to discharge the responsibility entrusted.
- In the year 2000, the Commission constituted an expert group to prepare a report on the status/improvement of the existing scheme and recommendation to effectively implement laws for the abolition of the bonded labour system.
- The group in its report gave its findings on the present status, the position of the existing schemes and recommendations relating to the law. It also gave an Action plan for the NHRC indicating that the task of monitoring entrusted to the NHRC by the Supreme Court requires the Commission's involvement in all the three functions, namely Identification, Release and Rehabilitation of bonded labour.

### **INITIATIVES OF THE NATIONAL HUMAN RIGHTS COMMISSION (I)**

Core group on Bonded Labour was constituted in 2014 and reconstituted in 2016 to completely eradicate the menace of bonded labour in all its forms in the Country.

(ii) Committee is being constituted to prepare a draft Prison Act which is in final stage.

NHRC also completed three important researches in area of labour issues, the title and objectives of the studies are as follows:

NHRC has also conducted various awareness drives, competition programs, conferences, seminars and workshops on frequent basis and across the country for dissemination of information and sensitizing masses about evil clutch of bonded labour system grasping vulnerable segment brutally ever since.

The recommendations made by the Commission with respect to workshops, seminars or visits held regarding scrutinizing of bonded labour system are all properly recorded. These observations are then forwarded to all the Chief Secretaries/Administrators for their requisite necessary compliance. Currently,



Research Title	Objectives
<p><b>Freedom Mortgaged and Future Abandoned: Bonded Child Labour in Karnataka Silk Industries (2004)</b></p>	<p>To analyze the household conditions contributing to the occurrence of child labour and bonded child labour in the silk industry in Karnataka, To examine the processes leading to the emergence of bonded child labour in silk industry and to examine the working conditions, To estimate the magnitude of child labour and bonded child labour in sericulture in Karnataka, To analyze the policies and programmes of Govt. and Non -Govt. agencies in eliminating child and bonded child labour in silk industry and To suggest ways to eliminate child labour and promote child rights.</p>
<p><b>Current Trends in Child Labour: A Study of Beedi Industry in Bharatpur -II Block, Murshidabad Distt, West Bengal (2004)</b></p>	<p>To highlight the living and working conditions of beedi workers in general and child workers in particular, To unveil the social and economic realities that forces the children to start beedi rolling at an early age, To understand the current trends in child labour in beedi industry and to find a proper explanation as to why child labour in beedi industry is growing, while it is showing a clear cut decline at national level as a general trend, To enumerate Go – NGO level intervention towards protection of rights and rehabilitation programmes for the beedi making child labour.</p>
<p><b>Impact, Community Response and Acceptance of Non Formal Education Impact, Community Response and Acceptance of Non Formal Education under the National Child Labour Project – A Case Study of Carpet-Weaving belt of Mirzapur–Bhadhoi and Glass–Bangle region of Ferozabad</b></p>	<p>The objectives of the study were to examine the initiatives of the government, international and voluntary sectors towards eradication of child labour, rehabilitation and education of working children in India. The study focused on the carpet-weaving and glass -bangle regions in Uttar Pradesh and examined the impact and changes brought by the Non Formal Education (NFE) programme in the region.</p>

ATR's are being received from all the States of India and subsequently reminders are sent to call for consolidated report on present status of bonded labour in the respective states. NHRC makes sure that it plays its role of a responsible and an alert watchdog and instigates compliance by all the States.





## CHAPTER - 28

# 12.RECOMMENDATIONS OF NATIONAL SEMINAR ON BONDED LABOUR 2017 MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA

### Central Sector Scheme Of 2016

**1.Creation of Corpus Fund -** The Central government must issue directions to the State Governments to maintain corpus fund for providing immediate finance for rehabilitation at all district levels which will be utilised directly for the aid of the released bonded labourers.

**2. Revision of National Minimum Wages -** The Central Government should adopt scientific method to ascertain minimum wages. Minimum wages should be fixed at Rs 300 per person in every State for unskilled labour and maximum of Rs 600 per person as per the Seventh Pay Commission. The Minimum wages paid to the labourers shall be periodically revised to create an atmosphere that would focus on the growth and welfare of the labour force in India. Further the law should also incorporate the concept of living wages in labour laws.

**3. Release of Payment -** The Central Government shall issue proper directions relating to release of payment under Clause 6.2 and Clause 6.3 of the Central Sector Scheme of 2016. Whether the conviction is an essential condition which needs to be fulfilled for disbursement of assistance or the final disbursement shall be made upon the proof of bondage and other legal consequences as per the judicial process needs to be elaborated by the Central Government.

**4. Linkage of the Welfare Schemes -** The Rehabilitation package has been revised with effect from 17<sup>th</sup> May 2016. However the benefits such as

land development, allotment of the agricultural land to be linked with other government welfare schemes.

**5. Digitalizing Funds Transfer** - Adoption of technology especially in the digital age to provide transfer of funds for relief and rehabilitation would bring transparency and accountability in the usage of funds.

**6. Implementation of Scheme-** The Central Government shall see that the Central Sector Scheme for Rehabilitation of Bonded Labourer-2016 should be implemented in each State/Union Territory in its letter and spirit.

**7. Creation of National Level Task Force** - The National Level Task Force should be created on the sole purpose of abolition of bonded labour in India. The function of the task force initially would be to examine the obstacles and the challenges in the implementation of the Act and Rules of 1976 and Scheme of 2016. The task force may enable to make appropriate recommendations to the various issues of bonded labour.

**8. Rehabilitation Package** - A comprehensive rehabilitation package should be included in the scheme of 2016 indicating all social welfare schemes which can guarantee transparency and access should be available to the released bonded labourers.

## **B) Bonded Labour System (Abolition) Act And Rules of 1976**

**4. Guidelines on Section 21 of the Bonded Labour System (Abolition) Act 1976** - Section 21 provides that the offences under the said Act be tried by the Executive Magistrates who would be conferred the powers of the Judicial Magistrate 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. Notification under Section 21 of the Act of 1976 to be issued conferring powers on the Executive Magistrates to conduct Summary Trial in a time bound manner.

**5. Quantum of Punishment** - The Act should be effectively implemented which will ultimately lead to more convictions of the creditors and middlemen who not only infringes the basic human rights but also destroys the dignity of labourers.



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## CHAPTER - 29

# STATISTICS OF NHRC ON BONDED LABOUR

SrNo	State/UT Name	Total No. of Cases Registered	Disposed	Pending
1	ANDHRA PRADESH	46	38	8
2	ARUNACHAL PRADESH	7	7	0
3	ASSAM	3	3	0
4	BIHAR	62	53	9
5	GOA	4	4	0
6	GUJARAT	170	112	58
7	HARYANA	716	567	149
8	HIMACHAL PRADESH	40	26	14
9	JAMMU & KASHMIR	57	37	20
10	KARNATAKA	78	71	7
11	KERALA	4	3	1
12	MADHYA PRADESH	57	48	9
13	MAHARASHTRA	51	45	6
14	MANIPUR	0	0	0
15	MEGHALAYA	1	1	0
16	MIZORAM	1	1	0
17	NAGALAND	0	0	0
18	ODISHA	9990	9972	18
19	PUNJAB	709	577	132
20	RAJASTHAN	218	152	66
21	SIKKIM	0	0	0
22	TAMIL NADU	151	131	20
23	TRIPURA	1	1	0
24	UTTAR PRADESH	2394	1863	531
25	WEST BENGAL	4	4	0
26	ANDAMAN & NICOBAR	0	0	0
27	CHANDIGARH	1	1	0
28	DADRA & NAGAR HAVELI	0	0	0
29	DAMAN & DIU	0	0	0
30	DELHI	58	50	8
31	LAKSHADWEEP	0	0	0
32	PUDUCHERRY	5	4	1
33	CHHATTISGARH	12	8	4
34	JHARKHAND	9	6	3
35	UTTARAKHAND	88	77	11
36	TELANGANA	42	23	19
37	ALL OVER INDIA	1	0	1
38	FOREIGN COUNTRIES	4	4	0
	<b>TOTAL</b>	<b>14984</b>	<b>13889</b>	<b>1095</b>



# CONCLUSION

The problem of bonded labour is serious in nature and it can reoccur at any point of time. Thus, the bonded labourers must be rehabilitated as soon as possible after their release. If this is not done then it is a remedy worst than the malady because these labourers will die of starvation. Thus, before releasing the bonded labourers a sound rehabilitative planning is inevitable. The following measures can be adopted in this regard:

- Public awareness and education is a must,
- Productive and income generating schemes must be formulated in advance otherwise they will again fall back upon the system of bonded labour after their release,
- These schemes should be chosen after duly consulting the concerned labourers and NGOs involved in their emancipation and rehabilitation,
- The government should work on a priority basis in areas vulnerable for the system of bonded labour and for the rehabilitation of already released labourers,
- An effective and speedier grievance redressal machinery should be established for proper disposal of cases pertaining to bonded labour,
- A humanitarian training programme should be formulated for persons dealing with bonded labourers,
- There should be a system of summary disposal of cases under various laws dealing with the evil of bonded labour
- There should be a strict enforcement of the welfare and labour legislations,
- There should be more stringent penal laws for effectively dealing with the menace of bonded labour etc.



## UNIVERSAL DECLARATION OF HUMAN RIGHTS

THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1:** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2:** Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3:** Everyone has the right to life, liberty and security of person.

**Article 4:** No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5:** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6:** Everyone has the right to recognition everywhere as a person before the law.

**Article 7:** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8:** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9:** No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10:** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11:** 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

- Article 12:** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- Article 13:**
1. Everyone has the right to freedom of movement and residence within the borders of each State.
  2. Everyone has the right to leave any country, including his own, and to return to his country.
- Article 14:**
1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
  2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.
- Article 15:**
1. Everyone has the right to a nationality.
  2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.
- Article 16:**
1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
  2. Marriage shall be entered into only with the free and full consent of the intending spouses.
  3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- Article 17:**
1. Everyone has the right to own property alone as well as in association with others.
  2. No one shall be arbitrarily deprived of his property.
- Article 18:** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- Article 19:** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
- Article 20:**
1. Everyone has the right to freedom of peaceful assembly and association.
  2. No one may be compelled to belong to an association.
- Article 21:**
1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
  2. Everyone has the right to equal access to public service in his country.



3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22:** Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23:** 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24:** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25:** 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26:** 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27:** 1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28:** Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29:** 1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30:** Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.





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National Human Rights Commission invites for  
Human Rights Pledge

## मानव अधिकार शपथ | HUMAN RIGHTS PLEDGE

### मानव अधिकार शपथ

मैं शपथ लेता / लेती हूँ कि मैं बिना किसी भेदभाव के, हमेशा सभी के मानव अधिकारों का संरक्षण एवं संवर्धन करूँगा / करूँगी। मैं प्रत्यक्ष या परोक्ष रूप से, अपने कृत्यों शब्दों अथवा कर्मों से किसी के मानव अधिकारों का हनन नहीं होने दूँगा / दूँगी।

### HUMAN RIGHTS PLEDGE

I hereby solemnly pledge to protect and promote human rights of all, at all times, without any discrimination. I shall not, directly or indirectly, through my actions, words or deeds violate the human rights of others.



सर्वे  
भवन्तु सुखिनः



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