

**GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT**

RAJYA SABHA

**UNSTARRED QUESTION NO. 259
TO BE ANSWERED ON 12.12.2018**

STANDARD OPERATING PROCEDURE FOR BONDED LABOUR CASES

259. SHRIMATI VANDANA CHAVAN:

Will the Minister of LABOUR AND EMPLOYMENT be pleased to state:

- (a) whether Government has a Standard Operating Procedure to take uniform measures towards identification, rescue, release, rehabilitation and prosecution in bonded labour cases;**
- (b) if so, the details thereof and if not, the reasons therefor;**
- (c) whether measures have been taken by Government to inform and educate State officials of such Standard Operating Procedure to be followed in bonded labour cases; and**
- (d) if so, the details thereof and if not, the reasons therefor?**

ANSWER

**MINISTER OF STATE (IC) FOR LABOUR AND EMPLOYMENT
(SHRI SANTOSH KUMAR GANGWAR)**

(a) & (b): The Standard Operating Procedure (SOP) devised by this Ministry to take uniform measures towards identification, rescue, release, rehabilitation and prosecution in bonded labour cases is at Annexure -A.

(c) & (d): A detailed Manual for the Identification rescue, release, rehabilitation and prosecution in bonded labour cases was already in place before the formulation of Standard Operating Procedure. However, Standard Operating Procedure has been devised as a gist of already existing manual so as to further help the DMs/SDMs and related authorities to make implementation of the Bonded Labour System (Abolition) Act, 1976 more effective. This SOP was made available to all the States/UTs in August, 2017.

STANDARD OPERATING PROCEDURES**1. Complaint**

- 1.1 The DM, SDM or police on receipt of a complaint, whether oral or written, by any person or facts constituting the commission of an offence under the Act, shall reduce it to writing and record, in writing, the time and date of receipt of such a complaint.**
- 1.2 The DM, SDM or police shall issue a receipt to the complainant acknowledging that the complaint was recorded.**
- 1.3 The DM, SDM or police shall ensure that there is no tip-off or leak of information regarding the rescue, informant or complainant at any stage.**

2. Rescue

The DM, SDM or police shall rescue the labourer as soon as possible within 24 hours from the time of complaint received.

The DM, SDM or police shall ensure that the Rescue Team shall be multi-disciplinary and shall be comprised of the following members:

- a) one representative of the District Magistrate (DM) having jurisdiction not below the rank of Tehsildar to enable such representative to fulfil such duties as provided under BLSA and Central Sector Scheme for Rehabilitation of Bonded Labour – 2016;
- b) one police officer nominated by the Superintendent of Police;
- c) the Labour Officer(LO) having jurisdiction to inquire into, enforce and compensate under various labour laws including Minimum Wages;
- d) adequate number of police officers to secure the premises;
- e) two or more women officers;
- f) one police photographer;
- g) two independent witnesses, at least one of whom should be a woman;
- h) the complainant;
- i) members of a civil society organisation or social workers for rescued labourer support including counselling and other roles; and
- j) any other necessary person.

If the DM, SDM or police has reason to believe that it is necessary to conduct the search and rescue operation without delay for any reason, including danger to the rescued labourer and likelihood of interference with potential evidence, notwithstanding that any member of the rescue team may be unavailable, the DM or SDM shall carry out the search and rescue operation, and intimate any missing member without delay.

The DM or SDM in coordination with the police shall ensure that the rescue location is secured, and separate and protect the labourer from the offender and his associates.

The DM or SDM shall ask brief questions to the labourer in the absence of the offender and in the presence of a member of a civil society organisation or a social worker to determine whether there are indications of bonded labour. Such brief questions should include questions regarding nature of the advance or other obligation, wage payments and ability of the labourer to leave or work elsewhere.

The DM or SDM shall ensure that the all relevant evidence, such as phone books (directories with the numbers of other traffickers or accomplices), mobile phones, travel tickets and documents, accommodation receipts, bank statements, wage receipts slips and registers, muster rolls, ledger books, bond agreements, notebooks, cash, weapons, locks, ownership documents, lease, license are photographed and seized by the police, and the offender is arrested as per the Code of Criminal Procedure, 1973(“CRPC”).

The DM or SDM shall ensure that the police prepare a seizure list and rescue memo detailing the identities of the rescued labourer and his contact details, and cause it to be signed by independent and local witnesses.

All police officers and Executive Magistrates shall be competent to make arrest without warrant in accordance with Section 41 and 44 of the Code of Criminal Procedure, 1973 (“CrPC”).

The DM or SDM shall ensure that the labourer are removed from the rescue location, are separated and given adequate protection from the offender and his associates, and are brought to a safe location. The DM or SDM shall also ensure that no bonded labourer is left behind.

3. Inquiry

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

4. First Information Report

- 4.1** If the DM or SDM prima facie finds that offences under laws other than the BLSA have also been committed, he shall ensure that a complaint is made to the police for the registration of a First Information Report (“FIR”), under all relevant sections and laws for the time being in force, including relevant sections under the BLSA, within 24 hours of the date of rescue.
- 4.2** A complaint to the police alleging offences under the BLSA and other laws for the time being in force may be made by any person, including but not limited to the DM or SDM, the victim, family of the victim, NGO or any other person. Further, on receipt of such a complaint, Section 154 CrPC to apply.
- 4.3** Upon a complaint being made to the police, the DM or SDM shall ensure that all relevant documents in his custody, including the Inquiry Form, Release Certificate and Medical Examination Reports, are supplied to the police at the earliest for effective investigation.

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

5. Prosecution of Offences

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

6. Summary Trial

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

- (i) Executive Magistrates conferred by the State Government with the powers of a Judicial Magistrate of the first class to try offences under the BLSA under Section 21(1) of the BLSA (“Designated Magistrate”) are empowered to try offences under the BLSA summarily [S. 21(2)].**
- (ii) The commencement of Summary Trial of offences under the BLSA shall be not later than 24 hours from the date of identification or rescue, whichever is later. In neither case shall the commencement of Summary Trial be delayed for want of registration of an FIR.**
- (iii) If at any stage during the Summary Proceedings, it appears to the Designated Magistrate that the accused is also chargeable for offences under some other law for the time being in force, other than the BLSA, the Designated Magistrate shall proceed in accordance with the provisions of Section 322 or 323 CrPC, as the case may be.**
- (iv) If upon police report, it appears to the Designated Magistrate that the accused is also chargeable for offences under some other law for the time being in force, other than the BLSA, the Designated Magistrate shall commit the entire case along with the case records to the competent court.**

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

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

7. Trial Proceedings

- 7.1 The Designated Magistrate shall ensure that the victim, labourer or any witness to the commission of any offence under the BLSA shall be provided with protection during the pendency of the trial.**
- 7.2 Any complaints raised by the labourer, victim or witness in relation to harassment by the accused or his associates shall be acted upon urgently and the Designated Magistrate shall make orders for the protection of the labourer, victim or witness, such as cancellation of bail, or other appropriate orders.**
- 7.3 In case the accused is absconding from trial, proclamation and attachment of property may be initiated.**
- 7.4 Copies of case documents shall be made available on application.**

8. Evidence

- 8.1 In all proceedings herein, the Designated Magistrate shall record the substance of evidence and particulars as per Section 262(1) CrPC. Such evidence may include documentary evidence, and when necessary, oral evidence.**
- 8.2 The Designated Magistrate must make the record of the case in the appropriate form as per Section 263 CrPC.**

9. Judgment and Sentence in Summary Trial

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

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

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

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

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

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

10. Benefits to Labourer

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

- a) Aadhar Card,
- b) Ration Card,
- c) Caste Certificate,
- d) Voter ID,
- e) MNREGA Card
- f) Land patta
- g) Government Health Insurance and
- h) Any other relevant or required document.

10.2 Release Certificates shall be considered as Identity Proof for the labourer.

10.3 The DM or SDM shall provide the labourer or their representative with receipt of any application for provision of any benefit due to the labourer including benefits not included under the BLSA, herein or benefits that are specific to bonded labourer.

10.4 The DM or SDM shall ensure that the local primary health centre of the rehabilitation location medically screens the labourer.

11. Repatriation

11.1 Repatriation shall be subject to the consent of the labourer. The rescuing DM or SDM shall be responsible for repatriation, which must be done at the earliest possible time and in any case, no later than 24 hours from the date of rescue.

11.2 The DM or SDM shall coordinate with both rehabilitation and rescue location's police and District Administration ("DA") for quick and safe transfer, protection and rehabilitation, including,

- a) fooding, shelter, transport and protection,
- b) sending a written request to the local police of the rehabilitation location for protection of the rescued labourer against possible harassment and intimidation by the offender or his associates, and
- c) sending a written request for rehabilitation of the rescued labourer to the relevant officials of the DA, including the DM, of the rehabilitation location, including,
 - name(s), final address(s), contact detail(s) of the labourer(s),
 - name(s) of the offender(s), if available
 - certified copies of the Identification Form(s) and Release Certificate(s),
 - identity card(s) of the labourer(s), and
 - receipt(s) of any rehabilitation given to the labourer(s).

11.3 DM or SDM shall ensure that his representative along with the police accompanies the labourer during such repatriation. At all times, the DM or SDM shall ensure that the offender is not allowed to come into contact with the labourer.

11.4 The pendency of investigation or trial in relation to commission of offences under the BLSA shall not stand in the way of repatriation of the labourer and / or his family at any stage.

11.5 Where a labourer has been repatriated but, in the opinion of the Designated Magistrate, is later required to be summoned for evidence, the Designated Magistrate should ensure that any expenses incurred by the labourer or witness in this regard are met and that such labourer or witness is given adequate protection during and post trial.

11.6 For offences under laws other than BLSA, where statements under Section 161 CrPC are required to be recorded, the DM or SDM shall ensure that the same is done at the earliest, prior to repatriation.
