



Bonded Labour Trafficking Caselaw

(Reference Materials for Public Prosecutors)



IJM

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A Laws

I. Summary of BLSA

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3	Act to have overriding effect
4	Abolition of the bonded labour system
5	Agreement or custom requiring bonded labour void
6	Liability to repay bonded debt extinguished
7	Property restored to bonded labourer
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9	Creditor not to accept payment against extinguished debt
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20	Abetment
21	State government may confer the power of a JM on an executive magistrate
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25	Jurisdiction of civil court barred
26	Central Government power to make rules
27	Bonded Labour System (Abolition) Ordinance, 1975 repealed

II. Bonded Labour System

S. 2(g), BLSA: Definition of Bonded Labour System:

- (g) "bonded labour system" means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,-
- (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
 - (ii) in pursuance of any customary or social obligation, or
 - (iii) in pursuance of an obligation devolving on him by succession, or
 - (iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
 - (v) by reason of his birth in any particular caste or community,-

he would-

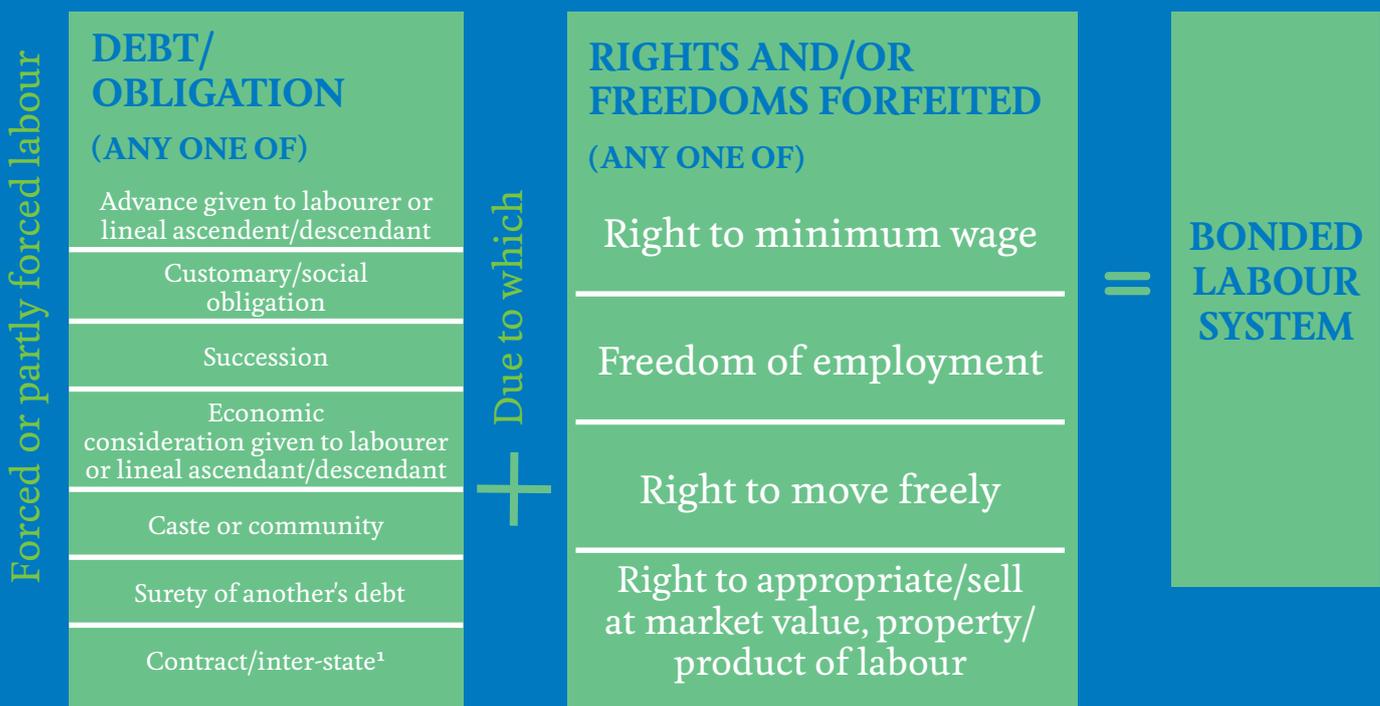


- (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- (3) forfeit the right to move freely throughout the territory of India, or
- (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him,

and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor;

Explanation.— For the removal of doubts, it is hereby declared that any system of force or partly forced labour under which any workman being contract labour as defined in clause (b) of subsection (1) of section 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (73 of 1970), or an inter-State migrant workman as defined in clause (e) of sub-section (1) of section 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is "bonded labour system" within the meaning of this clause.

S. 2(g) of the BLSA defines the 'bonded labour system' as:



¹ S. 2(g) Explanation



III. Trafficking of Person

S. 370, IPC: Trafficking of Person.²

- (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 1.—The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in a determination of the offence of trafficking.

S. 370¹ of the IPC defines the offence of 'trafficking of person' as:

ACTIONS (ANY ONE OF)	MEANS (ANY ONE OF)	PURPOSE (ANY ONE OF)
Recruits	Threats	Physical exploitation
Transports	Force/coercion	Sexual exploitation
Harbours	Abduction	Slavery
Transfers	Fraud/deception	Practices similar to slavery
Receives	Abuse of power inducement of person having control ²	Servitude
		Forced removal of organs
		Other forms of exploitation

¹ As amended by the Criminal Law (Amendment) Act, 2013.

² S. 370, IPC, “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.”

IV. Table of Offences in Bonded Labour/Trafficking Cases

Statute Abbreviations

S.	Section
IPC	Indian Penal Code
BLSA	Bonded Labour System (Abolition) Act, 1976
BLR Scheme	Central Sector Scheme for Rehabilitation of Bonded Labour (2016)
SC/ST Act	Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
JJA	Juvenile Justice (Care and Protection of Children) Act, 2015
CLA	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
ISMW	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
CrPC	Criminal Procedure Code, 1973

Act	S.	DESCRIPTION OF OFFENCE	CLASSIFICATION OF OFFENCE	PUNISHMENT
IPC	S. 370(2)	Trafficking of person	Cognisable and non-bailable	7 to 10 years and fine
	S. 370(3)	Trafficking of more than one person	Cognisable and non-bailable	10 years to life and fine
	S. 370(4)	Trafficking of minor	Cognisable and non-bailable	10 years to life and fine
	S. 370(5)	Trafficking of more than one minor	Cognisable and non-bailable	14 years to life and fine
	S. 370(6)	Person convicted of offence of trafficking of minor on more than one occasion	Cognisable and non-bailable	Life and fine
	S. 370(7)	Public servant or a police officer involved in trafficking of person	Cognisable and non-bailable	Life and fine
	S. 370A(1)	Sexual exploitation of a trafficked minor	Cognisable and non-bailable	5 to 7 years and fine
	S. 370A(2)	Sexual exploitation of a trafficked person	Cognisable and non-bailable	3 to 5 years and fine
	S. 371	Habitual dealing in slaves	Cognisable and non-bailable	Up to 10 years or life, and fine
	S. 374	Unlawful compulsory labour	Cognisable and bailable	Up to 1 year or fine or both
	S. 323	Voluntarily causing hurt	Non-cognisable and bailable	Up to 1 year or fine up to Rs. 1,000 or both
	S. 325	Voluntarily causing grievous hurt	Cognisable and bailable	Up to 7 years and fine
	S. 327	Voluntarily causing hurt to extort property or to constrain to an illegal act	Cognisable and non-bailable	Up to 10 years and fine
	S. 329.	Voluntarily causing grievous hurt to extort property or to constrain to an illegal act	Cognisable and non-bailable	Up to 10 years or life and fine
	S. 341	Wrongful restraint	Cognisable and bailable	Up to 1 month or fine up to Rs. 500 or both
	S. 342	Wrongful confinement	Cognisable and bailable	Up to 1 year or fine up to Rs. 1,000 or both
	S. 344	Wrongful confinement for 10 days or more	Cognisable and bailable	Up to 3 years and fine
	S. 352	Assault or criminal force	Non-cognisable and bailable	Up to 3 months or fine up to Rs. 500 or both
	S. 357	Assault or criminal force in attempt to wrongfully confine a person	Cognisable and bailable	Up to 1 year or fine up to Rs. 1,000 or both
	S. 367	Kidnapping or abducting in order to subject person to slavery	Cognisable and non-bailable	Up to 10 years and fine
S. 368	Wrongfully concealing or keeping confined a kidnapped or abducted person	Cognisable and non-bailable	Same as the specific offence of kidnapping or abducting	
S. 417	Cheating	Non-cognisable and bailable	Up to 1 year or fine or both	
S. 419	Cheating by personation	Cognisable and bailable	Up to 3 years or fine or both	
S. 506	Criminal intimidation	Non-cognisable and bailable	Up to 2 years or fine or both	

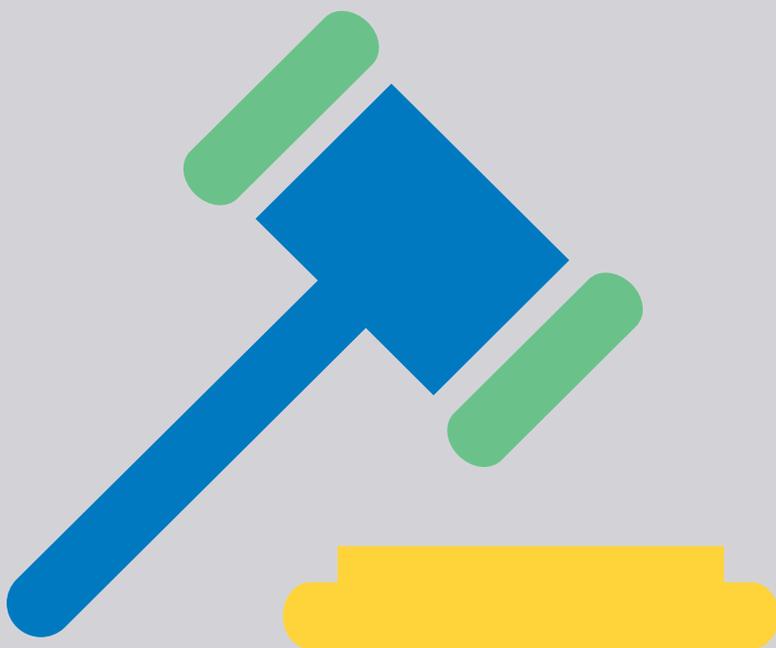


Act	S.	DESCRIPTION OF OFFENCE	CLASSIFICATION OF OFFENCE	IMPRISONMENT
IPC	S. 506	Criminal intimidation by threat to cause death or grievous hurt, arson, imply unchastity or cause any offence punishable with a sentence of up to 7 years or life or death	Non-cognisable and bailable	Up to 7 years or fine or both
BLSA	S. 9 (2)	Whoever accepts any payment from a labourer against a bonded debt	Cognisable and bailable	Up to 3 years and fine
	S. 16	Whoever compels any person to provide bonded labour	Cognisable and bailable	Up to 3 years and fine up to Rs. 2,000
	S. 17	Whoever advances a bonded debt	Cognisable and bailable	Up to 3 years and fine up to Rs. 2,000
	S. 18	Whoever enforces any custom, tradition, contract or agreement requiring any person to work under a bonded labour system	Cognisable and bailable	Up to 3 years and fine up to Rs. 2,000 and payment from fine to victim at Rs. 5 per day worked in bondage
	S. 19	Whoever omits or fails to restore any property of a bonded labourer	Cognisable and bailable	Up to 1 year or fine up to Rs. 1,000 or both and payment from fine to victim at Rs. 5 per day property not restored
	S. 20	Abetment of offence	Cognisable and bailable	Same as offence
SC/ST Act	S. 3(1)(h)	Making a SC/ST member to do 'begar' or any form of bonded labour	Cognisable and non-bailable	6 months to 5 years and fine
	S. 3(1)(z)	Forces or causes an SC/ST member to leave his house, village or residence	Cognisable and non-bailable	6 months to 5 years and fine
	S. 3(2)(v)	Commits an offence under IPC punishable with 10 years or more against a member of a SC/ST	Cognisable and non-bailable	Life and fine
ISMW	S. 25	Contravention of provisions regarding employment or license under ISMW	Non-cognizable and bailable	Up to 1 year or fine up to Rs. 1,000 or both and Rs. 100 per day contravening post first conviction
	S. 26	Contravention of other provisions under ISMW not punishable elsewhere	Non-cognisable and bailable	Up to 2 years or fine up to Rs. 2,000 or both
JJA	S. 76(1)	Employs child for begging or causes child to beg	Cognisable and non-bailable	Up to 5 years and fine of Rs. 1,00,000
	S. 76 Proviso	Amputates or maims child for the purpose of begging	Cognisable and non-bailable	7 to 10 years and fine of Rs. 5,00,000
	S. 77	Gives or causes to be given intoxicating liquor, narcotic drugs, tobacco product or psychotropic substance to a child	Cognisable and non-bailable	Up to 7 years and fine up to Rs. 1,00,00
	S. 78	Using a child for vending, peddling, carrying, supplying or smuggling intoxicating liquor, narcotic drugs, tobacco product or psychotropic substance	Cognisable and non-bailable	Up to 7 years and fine up to Rs. 1,00,000
	S. 79	Engaging and keeping child in bondage for purpose of employment or withholding earnings or using earnings for own purpose	Cognisable and non-bailable	Up to 5 years and fine of Rs. 1,00,000
	S. 81	Buying or selling children for any purpose	Cognisable and non-bailable	Up to 5 years and fine of Rs. 1,00,000
	S. 81 Proviso	Offence under s. 81 by person having charge of child including hospital or home employees	Cognisable and non-bailable	3 to 7 years
CLA	S. 3, 14(1), 14(1) Proviso	Employing or permitting a child in any occupation or process aside from non-hazardous family enterprise or safe audio-visual entertainment, subject to education	Cognisable and bailable	6 months to 2 years or fine of Rs. 20,000 to Rs. 50,000 or both (punishment exempt for parents or guardians committing for non-commercial purpose)
	S. 3A, 14(1A)	Employing or permitting adolescent in hazardous occupations or processes listed in CLA Schedule	Cognisable and bailable	6 months to 2 years or fine of Rs. 20,000 to Rs. 50,000 or both
	S. 3, 3A, 14(2)	Commission of like offence after conviction once under s. 3 or s. 3A	Cognisable and bailable	1 to 3 years
	S. 3, 3A, 14(2A), 14(1B)	Commission of like offence after conviction once under s. 3 or s. 3A by parents or guardians	Cognisable and bailable	Fine up to Rs. 10,000 (punishment exempt on first conviction for parents or guardians)
	S. 14(3)	Contravention of any other provision under CLA	Cognisable and bailable	Up to 1 month or fine up to Rs. 10,000 or both



B

Bonded Labour Caselaws



I. Introduction

- 1 **Bonded labour is rampant, and illegal, but continues in many industries today.**
 - ▶ *Public Union for Civil Liberties v. State of Tamil Nadu (2013) 1 SCC 585 (Supreme Court)*, [at pg. 595, para. 16.3]: “Bonded labour, it may be noticed, is rampant in brick kilns, stone quarries, crushing mines, beedi manufacturing, carpet weaving, construction industries, agriculture, in rural and urban unorganised and informal sector, power looms and cotton hand looms, fish processing etc.”
- 2 **Bonded labour system is a form of human trafficking and falls within the offence of ‘trafficking of person’ under s. 370, IPC.**
 - ▶ *Budhu Oraon Alias Budhua Oraon v. The State of Jharkhand*, B. A. No. 7255 of 2015 (*High Court of Jharkhand*, 28/01/2016); and *Kajo Devi v. The State Of Jharkhand*, B. A. No. 7213 of 2015 (*High Court of Jharkhand*, 23/09/2015): denying successive bail applications in a case where an FIR had been recorded under s. 370, IPC and BLSA.
 - ▶ *Raj Kumar Sahu v. The State Of Jharkhand*. B. A. No. 1145 of 2015 (*High Court of Jharkhand*, 08/05/2015); and *Bhola Munda v. The State of Jharkhand*, B. A. No. 7391 of 2014 (*High Court of Jharkhand*, 28/01/2015): denying bail application in a case where an FIR had been recorded under s. 370, IPC and BLSA.
 - ▶ *Dharmendra Kumar Beuria v. State of Orissa*, CrI. M. C. No. 3401 of 2015 (*Orissa High Court*, 20/11/2015): denying bail application in a case in which a minor was sold as a domestic help where an FIR had been recorded under s. 370, IPC and BLSA.
 - ▶ *Saraswathi v. The Inspector of Police*, CrI.O. P. No. 19596 of 2013 (*Madras High Court*, 10/12/2014): denying bail application in a case in which the court, ignorant of the new s. 370, IPC, previously granted bail, where an FIR had been recorded under s. 370, IPC and BLSA.



- ▶ *A number of other cases:*¹ denying bail application in a case where an FIR had been recorded under s. 370, IPC and BLSA.
- ▶ *Comprehensive Scheme for Establishment of Integrated Anti Human Trafficking Units and capacity building of responders, including Training of Trainers for strengthening the law enforcement response to human trafficking in India Plan, Ministry of Home Affairs, [at pg. 1, pt. 2]:* “The five states selected for the training are Maharashtra, Goa, West Bengal, Andhra Pradesh and Bihar and represent source, destination and transit areas for human trafficking of differing types (e.g., trafficking of women and children for commercial sexual exploitation, child labour, bonded labour, etc.)”
- ▶ *Standard Operating Procedure to Handle Trafficking of Children for Child Labour, F. No. 15011/20/2012-ATC (CF-145675) (12/08/2013) Ministry of Home Affairs, [at pg. 1, pt 1]:* “The trafficking of children for economic exploitation, bonded labour, forced labour, physical/sexual abuse and misuse is a heinous crime.”
- ▶ *[Pg. 2, pt. 3(v)]:* “The Supreme Court in *PUDR v. Union of India* (1982) 3 SCC 235 has elaborated on the issue of forced labour. Therefore, service without wages or with paltry wages; denial of choice of alternative avocations, denial of right of movement are all to be considered as forced labour. The trafficked children from any of these conditions are not only to be retrieved but the offender has to be charged as having committed a cognisable offence.”
- ▶ *[Pg. 6, pt. 2(b)]:* “Situation of the child: By paying some money to the parents as consideration or as Advance. Statute: b) The [BLSA].”
- ▶ *[Pg. 7, pt 5(b) and (a)]:* “Situation of the Child: ...Not paying wages or paying less than the minimum wage. Statute: ...The [BLSA].”
- ▶ *MHA, Advisory on Preventing HT in India, [at pg. 1, Introduction]:* “The Trafficking in Human Beings (THB) is a crime committed in order to target, lead or drive a human being into an exploitative situation with the aim to make profits. Such exploitation may take many forms, for example commercial sexual exploitation, child labour, forced labour, bonded labour or illegal organ removal etc. The country is witnessing cross-border as well as internal (intra-country) trafficking.”
- ▶ *[Pg. 1, Human Trafficking and Indian Laws, pt 2]:* “Trafficking in Human Beings (THB) is prohibited under the Constitution of India under Article 23(1). Following specific legislations deal with Trafficking in Human Beings (THB)... The [BLSA], being administered by [MOLE], provides for abolition of the system of bonded labour and the rehabilitation of released labourers. Child Labour (Prohibition and Regulation) Act, 1986 is also being administered by Ministry of Labour.”
- ▶ *[Pg. 3, pt. 5.1]:* “Identification of victims of trafficking for

the purpose of commercial sexual exploitation, child/ bonded/forced labour and for illegal organ removal.”

- ▶ *State of Odisha v. Prabesh, C. T. (Special Act) Case No. 11 of 2014, C. T. (SA) Case No. 27 of 2014 (Court of Additional Sessions Judge-Cum-Special Judge, Dharamgarh, District: Kalahandi, 24/12/2016) [at para. 24]:* “From the aforesaid observations [that the accused had engaged the victims in the field of the accused for labour work without any payment, using force with threat, after abducting them without allowing them to come outside] made against the accused persons, it can be easily held that, the essentials of the offence U/s. 370 of the IPC have been duly fulfilled by the prosecution for making out that offence U/s. 370/34 of the IPC against the aforesaid six accused persons...”

II. S. 370, IPC, post-Criminal Law (Amendment) Act, 2013

3 The terms ‘recruited’ and ‘harboured’ include acquiring a minor as domestic help by paying the minor's custodian.

- ▶ *Dharmendra Kumar Beuria v. State of Orissa, (2015) SCC OnLine Ori 472, Crl. M. C. No. 3401 of 2015 (Orissa High Court, 20/11/2015), [at para. 7]:* “...It is apparent from her statement that when she was very young her mother died of lighting. Thereafter, ...her aunt, took her to Lambay. ...she came to the house of the present petitioners. The petitioners engaged her in all kinds of domestic work like washing of latrine, cleaning of house, looking after the baby girl of the petitioners. In the meantime, [her aunt] ...took Rs. 15,000/- towards the service rendered by the victim to the petitioners.”
- ▶ *[Para. 14]:* “There is no dispute that there is severe allegation, which is supported by independent materials that the victim girl was exploited and harboured as a person similar to slave ...there is prima facie material before the Court indicating that the victim girl was, for the purpose of exploitation, recruited and harboured in the house of the petitioners by inducing, i.e. payment of money...”

4 The term ‘by inducement...’ includes inducing victim's custodian by payment for victim's services.

- ▶ *Dharmendra Kumar Beuria v. State of Orissa, (2015) SCC OnLine Ori 472, Crl. M. C. No. 3401 of 2015 (Orissa High Court, 20/11/2015), [at para. 7]:* “...It is apparent from her statement that when she was very young her mother died of lighting. Thereafter, ...her aunt, took her to Lambay [her aunt] ...took Rs. 15,000/- towards the service rendered by the victim to the petitioners.”
- ▶ *[Para. 14]:* “...it is also apparent from the records that

¹ G. P. Purushotama Reddy v. The State, Cri. P. No.6809 of 2014 (12.11.2014); Nanjappa v. The State of Karnataka, Cri. P. No. 5715 of 2014 (26.09.2014); Syed Athaulla v. State Of Karnataka, Cri. P. No.4738 of 2014 (25.09.2014); Mohammed Harfath v. State by D. J. Halli Police Station, Cri. P. No. 3585 of 2014 (23.07.2014); Mohammed Sarfraz Alam v. State Of Karnataka, Cri. P. No.3584 of 2014 (23.07.2014); Noushad v. State Of Karnataka, Cri. P. No.3582 of 2014 (23.07.2014); Kumara v. State, Cri. P. No. 4092 of 2014 (21.07.2014); and Sri Muniraju v. The State of Karnataka, Cri. P. No.7585 of 2013 (All by Karnataka High Court, 17.01.2014).

the petitioners by giving money (payments) obtained consent of the person having control over the victim. ...there is prima facie material before the Court indicating that the victim girl was, for the purpose of exploitation, recruited and harboured in the house of the petitioners by inducing, i.e. payment of money..."

5 The terms 'slavery' and 'practices similar to slavery or servitude' in the context of exploitation include torture and abuse of a minor recruited as domestic help.

- ▶ *Dharmendra Kumar Beuria v. State of Orissa*, (2015) SCC OnLine Ori 472, CrI. M. C. No. 3401 of 2015 (Orissa High Court, 20/11/2015), [at para. 7]: "...It is apparent from her statement ...the torture meted out to her and how she was assaulted by the petitioners and ultimately she was driven out on 07.01.2014 after inflicting injuries on her body."
- ▶ [Para. 14]: "There is no dispute that there is [a] severe allegation, which is supported by independent materials that the victim girl was exploited and harboured as a person similar to slave ...there is prima facie material before the Court indicating that the victim girl was, for the purpose of exploitation, recruited and harboured ...and the exploitation is akin to slavery or practices similar to slavery or servitude."

III. S. 370, IPC, pre-Criminal Law (Amendment) Act, 2013

6 'Deceit' includes misleading or cheating, and applies to the use of advances to recruit labourers.

- ▶ *Dhanurjaya Putel v. State of Orissa*, (2002) SCC OnLine Ori 225, (2003) 95 CLT 54, (Orissa High Court), [at pg. 58, para. 7]: defining deceit, in a case alleging abduction in order to subject a person to slavery per s. 367, IPC, the Court stated: "**'Deceit' means cheating or misleading and one of the ingredients of cheating, as in Section 415, I.P.C., is intentionally inducing a person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.** ...In other words, as per the above noted allegation when the inducement is made by making payment of money in advance to a needy person and exploiting him in the aforesaid manner with the thrust of compulsion to leave his home and to go outside the State in the alleged manner for making bricks, this Court finds that a prima facie case for abduction, as defined in Section 362, I.P.C., is made out."

- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014* (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015) [at para. 14]: "Therefore, section 370 IPC as amended Act 13/2012 is attracted in this case because the accused **has recruited and transported the workers from Orissa state to Andhra Pradesh to work in his brick kiln by advancing some amount** and engaged them and transport[ed] and received them for the work in [h]is brick kiln, trafficking of persons under section 370 of IPC is proved in this case as the accused recruit[ed] and transported the workers including PWs 6 and 8 from Orissa state to Andhra Pradesh for work in his brick kiln. So also, the evidence on record proved the fact that **by inducing the workers with a promise to provide good salary and facilities...**"
- ▶ *State of Harohalli Police v. Nanjappa, SC 5056 of 2014* (Court of II Additional District and Sessions Judge Ramanagara, at Kanakpura, 10/03/2017), [at para. 35]: "...that accused himself by going to the village of victims **brought victim to work on the pretext that he will pay good salary.** ...that accused is the root cause for getting the victims for work in his kiln factory as instead of advising the children not to do work and instead to sending to school, accused got done bricks work."

7 The terms 'slave' and 'slavery' include situations where a person is denied freedom of movement and paid less than minimum wage.

- ▶ *Dhanurjaya Putel v. State of Orissa*, (2002) SCC OnLine Ori 225, (2003) 95 CLT 54, (Orissa High Court), [at pg. 60, para. 10]: "It appears from all the aforesaid meaning[s] attributed to the term 'slave' and 'slavery' **that deprivation of the freedom of movement and right of expression with respect to person or property can be connote[d] as the meaning to the term 'slave' or 'slavery'.** In this case as per the prosecution allegation when a person is allowed to put a labour of about 18 hours a day for a paltry sum of Rs. 30/- may be with the assistance of his family members and yet he shall not have the freedom of expressing his grievance against the exploitation and meagre payment, this Court finds no better example of satisfying the requirement of the term 'slavery' in the context of the present day scenario and the prevailing law. Therefore, the allegation available from the Case Diary makes out a prima facie case satisfying the requirement of the terms 'slave' and 'slavery' too."
- ▶ *State of Harohalli Police v. Nanjappa, SC 5056 of 2014* (Court of II Additional District and Sessions Judge Ramanagara, at Kanakpura, 10/03/2017), [at para. 33]: "...the accused has exploited the workers due to their poverty. Further in view of the consequence act of the accused as he has forced them to work since early morning to evening, so also demanded for quality of work for meagre wages. ... Thus it could be gathered that **as the accused was not**



intending to allow the workers to go to their native places for celebrating festivals it can be said that accused had mens rea in committing of trafficking [offence].”

- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014 (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015), [at para. 11(c)]*: “...proved the fact that the accused had extracted work from the victims including PWs 6 and 8 with force and without paying any minimum wages to them and failed to provide any minimum facilities to them and wrongfully restrained them not to leave the brick kiln premises. Therefore, the accused is liable for punishment for the offence under [BLSA].”

IV. Definition of bonded labour

8 Labour for which pay is less than the minimum wages is presumed to be forced labour.

i Forced labour must be presumed if a person works for below minimum wage.

- ▶ *People’s Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 (Supreme Court), [at pg. 259-260, para. 14]*: Defining ‘forced labour’ to include the acceptance of work for “remuneration which is less than minimum wage” as compelled by economic circumstances including “hunger or starvation” and “utter grinding poverty”, the Court said: “Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as ‘force’ and if labour or service is compelled as a result of such ‘force’, it would be ‘forced labour’. [...] We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23.”
- ▶ *Sanjit Roy v. State of Rajasthan, (1983) 1 SCC 525 (Supreme Court), [at pg. 532-533, para. 3]*: Noted that the court must “hold consistently” with its previous decisions: “...that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words ‘forced labour’ and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the Court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated.”

- ▶ *Dr. L. Mishra, Human Rights Manual for District Magistrates, “Bonded Labour” (NHRC 2007) [at pg. 239]*: “Bulk of the migration in actual practice takes place under economic compulsions...”

- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014 (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015), [at para. 11(c)]*: “...proved the fact that the accused had extracted work from the victims including PWs 6 and 8 with force and without paying any minimum wages to them and failed to provide any minimum facilities to them and wrongfully restrained them not to leave the brick kiln premises. Therefore, the accused is liable for punishment for the offence under [BLSA].”

ii Even if remuneration is paid, the labour provided is still forced labour if it is done due to compulsion or force (including physical or legal force).

- ▶ *People’s Union for Democratic Rights v. Union of India (1982) 3 SCC 235 (Supreme Court), [at pg. 254-256, para 13]*: “‘Begar’ may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for it... ‘Begar’ is thus clearly a form of forced labour. ...Every form of forced labour, ‘begar’ or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion.”
- ▶ *Dr. L. Mishra, Human Rights Manual for District Magistrates, “Bonded Labour” (NHRC 2007) [at pg. 217]*: “Even if remuneration is paid, labour supplied by a person 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 forms of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service.”

9 Forced labour is rebuttably presumed to have been induced by payment of advance (or other economic consideration) and, thus, presumed to be bonded labour.

- ▶ *BLSA, s. 15*: “**Burden of proof**. - Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.”
- ▶ *Neeraja Chaudhary v. State of Madhya Pradesh, (1984) 3 SCC 243 (Supreme Court), [at pg. 251, para. 3]*: “Whenever it is found that any workman is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the State Government is in a position to

prove otherwise by rebutting such presumption.”

- ▶ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (Supreme Court), [at pg. 206, para. 24]: “**Now it is clear that bonded labour is a form of forced labour...**”
- ▶ [Pg. 207, para. 24]: “[The] ...ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage, **unless he has received some advance or other economic consideration from the employer and under the pretext of not having returned such advance or other economic consideration, he is required to render service to the employer** or is deprived of his freedom of employment or of the right to move freely wherever he wants. Therefore, whenever it is shown that labourer is made to provide forced labour, the Court would raise a **presumption** that he is required to do so in consideration of an advance or other economic consideration received by him and **he is therefore a bonded labourer**. This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory material is produced for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of the provisions of the Act.”
- ▶ *State of Harohalli Police v. Nanjappa*, SC 5056 of 2014 (Court of II Additional District and Sessions Judge Ramanagara at Kanakpura, 10/03/2017), [at para. 36]: “...the victims were put under tremendous pressure to do the work which they were perhaps not willing to do, prima facie it appears that the conduct of the accused was such that **the victims was left with no other option except to do the brick work and to discharge the debt of creditor.**”
- ▶ [Para. 43]: “Further as the accused compelled and extract[ed] work with force is liable for punishment of offences under relevant provision of [BLSA] and whenever it is shown that a labour[er] 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 with economic consideration received by him and he is therefore a bonded labour[er] this presumption may be rebutted by the employer. **But in this case the accused [has] not adduced any rebutted evidence that he has been paying minimum wages so also providing all the facilities to the victims.** Therefore it can be said that the freedom of employment and right of movement was denied by the accused. As it is clearly evident that accused has advanced some amount and engaged the victims and induced them that he will provide all facilities and proper wages but failed to do so. It is also pointed out by the prosecution that accused unlawfully confined the workers to extract work against their will and wish.”

- ▶ *Dr. L. Mishra, Human Rights Manual for District Magistrates, “Bonded Labour”* (NHRC 2007), [at pg. 239]: “Bulk of the migration in actual practice takes place under economic compulsions and **for economic considerations (on receipt of loan/debt/advance from the recruiting agents) and has all the nuances of debt bondage** as migrant workers cannot of their own accord leave the worksite at the destination point until and unless they have repaid the loan/debt/advance (taken from the recruiting agents).”
- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014 (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015)*, [at para. 11(b)]: “...whenever it is shown that a labourer is made to provide forced labour, the Court would **raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is therefore a bonded labourer**. This presumption may be rebutted by the employer. But in this case, the accused has not adduced any unrebutted evidence that he has been paying minimum wages and also providing all facilities to the victims. Therefore, the accused is liable for the offence under sections 16, 17 and 18 of [BLSA].”

10 Existence of a contract does not give right to force labour.

- ▶ *People’s Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235 (Supreme Court), [at pg. 256, para. 13]: “... **specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer.** Of course, if there is a breach of the contract of Service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer...”
- ▶ [Pg. 258, para. 13]: “It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, **he cannot be forced by compulsion of law or otherwise to continue to perform such service, as that would be forced labour within the inhibition of Article 23.**”

11 The BLSA defines ‘agreement’ broadly to include both verbal and written agreements including surety agreements and customary forms of forced labour.

i S. 2(b), BLSA defines “agreement” as follows:

- ▶ *BLSA, s. 2(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 labour, 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 custom, in relation to the following forms of forced labour, namely: Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garrugalu, Hali, Hari, Harwai, Holya, Jana, Jeetha, Kamiya, Khundit- Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit- Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti;”

ii No documentary proof of the agreement is required; the agreement may be presumed from the situation.

- ▶ *Shiva Ent Ydyog v. National Human Rights Commission, 2011 LAB. I.C. 2273 (Allahabad High Court), [at para. 21]:* “If an amount is advanced in consideration to promise to engage in work, coupled with some more advance paid it **has to be presumed that the parties to the arrangement entered into an agreement of labour in consideration of such advance, whether or not it is evidenced by any document**, taken by him or any of his lineal ascendants or descendants being the economic consideration for such work is included in the bonded labour system.”

iii A bonded debt created by surety falls within the definition of bonded labour system.

- ▶ *BLSA, s. 2(g):* “...includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor...”
- ▶ *Ordinance No. 4663(V)/36-5-75-86(V)/75, (17/12/1975) Joint Secretary, Labour:* “The definition of Bonded Labour System is an inclusive definition and it also includes the system of forced or partly forced labour under which a surety of debtor enters or has, or is presumed to have entered, into an agreement with the creditor to the effect that in the event of failure of the debtor, he would render bonded labour on behalf of the debtor. Thus, if debt has been taken or is taken by the debtor and his surety enters into an agreement as specified above; or has or is presumed to have entered into any such agreement, the case would be covered by clause 2(g) and it would amount to Bonded Labour if any labour or service is rendered even by such surety.”

12 An advance does not give right to force a labourer to work.

i An advance does not give the right to force a labourer to work. The Workmen’s Breach of Contract (Repealing) Act, 1925 abolished the notion of forced contractual labour. The proper method to recover the advance is to sue.

- ▶ *People’s Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 (Supreme Court), [at pg. 256, para. 13]:* “...**specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer.** Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer but he cannot be forced to continue to serve the employer without breaching the injunction of Article 23.”
- ▶ *[Pg. 258, para. 13]:* “It is therefore clear that even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise, to continue to perform such service, as that would be forced labour within the inhibition of Article 23... Article 23 therefore says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service.”

V. Procedure

13 Rescue must be completed in 24 hours of receipt of complaint. Inquiry must be completed within 24 hours of rescue.

- ▶ *Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, Ministry of Labour and Employment (F. No. S-11012/01/2015-BL (Dated 17 August 2017), [at pt. 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.”
- ▶ *[Pt. 1.2]:* “The DM, SDM or police shall issue a receipt to the complainant acknowledging that the complaint was recorded.”
- ▶ *[Pt. 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 workers as soon as possible but definitely within 24 hours of the rescue. ...”



14 The government shall conduct a bonded labour inquiry when an NGO reports bonded labour, and include the NGO in the rescue/accept their assistance.

- ▶ *Neeraja Chaudhary v. State of Madhya Pradesh*, (1984) 3 SCC 243 (Supreme Court), [at pg. 251-252, para. 4]: “What is really necessary is to involve social action groups operating at the grass roots level in the task of identification and release of bonded labourers. ...It is only through social action groups working amongst the poor that we shall be able to discover the existence of bonded labour and we shall be able to identify and release them. ...the State Government should start taking their assistance instead of looking at them askance and distrusting them.”
- ▶ *Central Sector Scheme for Rehabilitation of Bonded Labourer* (2016); amended by *Modification in the Central Sector Scheme for the Rehabilitation of Bonded Labour 2016*, (23/06/2017), [at para. 5(x)]: Central Government will give fifty percent of the amount required for conducting survey, awareness generation and evaluatory studies in advance. A state may conduct survey once in every three years per sensitive district. A state may conduct five evaluatory studies per year.

15 Bonded labour inquiries are not adversarial; criminal trial procedures (such as evidentiary and procedural requirements) do not apply.

- ▶ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (Supreme Court), [at pg. 207, para. 24]: “It would be cruel to insist that a bonded labourer, in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording of evidence. That would be a totally futile process because it is obvious that a bonded labourer can never stand up to the rigidity and formalism of the legal process due to his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State Government might as well obliterate this Act from the statute book.”
- ▶ [Pg. 211, para. 28]: directed that the purpose of bonded labour inquiry by the assigned official was: “...not to fasten any liability on the [owners]... but to secure the release and repatriation of those labourers who claim to be bonded labourers and who want to leave the employment and go somewhere else.”

16 The labourer does not need to prove the existence of an advance; creditor has the burden of proving that a claimed bonded debt is not, in fact, a bonded debt.

- ▶ *BLSA*, s. 15: “Burden of proof. — Whenever any debt is claimed by a bonded labourer, or a Vigilance Committee,

to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.”

- ▶ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161 (Supreme Court), [at pg. 204, para. 21]: “Then comes Section 15 which lays down that whenever any debt is claimed by any labourer or a Vigilance Committee to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.”
- ▶ [Pg. 206, para. 24]: Court noted that if the burden of proof lay on the labourer it would be: “...extremely difficult, if not impossible, for the labourers to establish that they are bonded labourers because they would have no evidence at all to prove that any advance or economic consideration was provided to them by the employer and since employment of bonded labourers is a penal offence under the Act the employer would immediately, without any hesitation, disown having given any advance or economic consideration to the bonded labourers.”
- ▶ *Dr. L. Mishra, Human Rights Manual for District Magistrates, “Bonded Labour”* (NHRC 2007), [at pg. 216]: “...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 defence, 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 not doing it out of any charity but out of some economic consideration.”

17 Release certificates are to be considered as identity proof.

- ▶ *Roscann Rajan v. Taluk Supply Officer*, (2015) SCC OnLine Mad 6741, (Madras High Court), [at para. 3-4]: “One of the measures suggested as per the Annexure to the Letter to facilitate the access to rehabilitative benefits is at Serial No. 2, which provides that a copy of the bonded labourer’s release certificate be considered as the identity proof to issue them the entitled benefits. We see no difficulty in implementing the aforesaid and there can be little doubt that the scheme being rehabilitative measure, it would apply across the Board to all the bonded labourers detected prior or after the issuance of the communication.”



18 Jurisdiction of Court to adjudicate offences under ss. 16 and 17, BLSA.

- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014 (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015)*, [at para. 17]: “The contention of the defence counsel is that the District Magistrate is competent person to take any action for the offence under [BLSA] and therefore, this Court has no jurisdiction to try the offences under [BLSA; the contention] is not applicable because as per the Act, all the sections are cognisable under section 22 of the Act. When the sections under [BLSA] are cognisable, this Court has got jurisdiction to try and determine the case. Therefore, the contention of the defence counsel that this Court has no jurisdiction and the Executive Magistrate has got jurisdiction. For the offence under the [BLSA] is not tenable. So this Court can consider the offence under the [BLSA] as the offences are cognisable.”
- ▶ *State of Odisha v. Prabesh, C. T. (Special Act) Case No. 11 of 2014, C. T. (SA) Case No. 27 of 2014 (Court of Additional Sessions Judge-Cum-Special Judge, Dharamgarh, District: Kalahandi, 24/12/2016)*, [at para. 19]: “The above provisions of the section 21 of the [BLSA], do not at all make powerless to a judicial authority like this court to adjudicate the offences U/s. 16 and 17 of the said Act. So, it is held that, this court has jurisdiction to decide and adjudicate, the matters relating to the offences U/s. 16 and 17 of the [BLSA] as alleged against the accused persons on behalf of the prosecution.”

19 Revisional jurisdiction under s. 397, CrPC is excluded under s. 14A, SC/ST Act.

- ▶ *In Re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 v. Nil (Allahabad High Court, 10/10/2018)*, [at pg. 137-138]: “...while the constitutional and inherent powers of this Court are not ‘ousted’ by Section 14A, they cannot be invoked in cases and situations where an appeal would lie under Section 14A. Insofar as the powers of the Court with respect to the revisional jurisdiction is concerned, we find that the provisions of Section 397 Cr.P.C stand [implicitly] excluded by virtue of the special provisions made in Section 14A. This, we hold also in light of our finding that the word ‘order’ as occurring in sub-section (1) of Section 14A would also include intermediate orders.”

VI. Prosecution

20 States should criminally prosecute those who exploit bonded labourers and perpetuate bonded labour systems.

- ▶ *Public Union for Civil Liberties v. State of Tamil Nadu, (1994) 5 SCC 116*, [at pg. 116, para. 1(2)]: Court directed State Governments, through their administrative processes: “...to

identify the employers exploiting the bonded labourers and to initiate appropriate criminal proceedings against such employers,....”

- ▶ [Para. 2]: States also directed to set forth steps for identifying and surveying bonded labourers, providing rehabilitation to bonded labourers, and reporting to the Supreme Court on compliance with these directives.

21 Fines alone are an insufficient and inappropriate punishment for bonded labour violations.

- ▶ *People’s Union for Democratic Rights v. Union of India, (1982) 3 SCC 235*, [at pg. 247-248, para. 7]: “[The Magistrates] seem to overlook the fact labour laws are enacted for improving the conditions of workers and **the employers cannot be allowed to buy off immunity against violations of labour laws by paying a paltry fine** which they would not mind paying, because by violating the labour laws they would be making profit which would far exceed the amount of the fine. . . . We would like to impress upon the Magistrates and Judges in the country **that violations of labour laws must be viewed with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment.**”
- ▶ *Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161*, [at pg. 218, para. 38]: “...the magistrates and judicial officers are not sufficiently sensitised to the importance of observance of labour laws with the result that the labour laws are allowed to be ignored and breached with utter callousness and indifference and **the workmen begin to feel that the defaulting employers can, by paying a fine which hardly touches their pocket, escape from the arm of law** and the labour laws supposedly enacted for their benefit are not meant to be observed but are merely decorative appendages intended to assuage the conscience of the workmen. We would therefore strongly impress upon the magistrates and judicial officers to take a strict view of violation of labour laws and to impose adequate punishment on the erring employers so that they may realise that it does not pay to commit a breach of such laws and to deny the benefit of such laws to the workmen.”

22 An FIR can and should be registered for an SC/ST Act offence even though the complaint did not disclose whether the accused was or was not a member of a scheduled caste or tribe.

NB. The police must record and register an FIR upon sufficient receipt of information (e.g., a complaint letter, or oral report) raising suspicion that a cognisable offence has been committed.

- ▶ *Ashabai Machindra Adhagale v. State of Maharashtra, (2009) 3 SCC 789, [at pg. 796, para. 10]*: holding that an FIR can and should be registered for an offence under the SC/ST Act even though the complaint did not disclose whether the accused was or was not a member of a scheduled caste or tribe (i.e., did not state all elements necessary to prove an offence), the Supreme Court emphasised: “It needs no reiteration that the FIR is not expected to be an encyclopaedia. As rightly contended by learned counsel for the appellant whether the accused belongs to scheduled caste or scheduled tribe can be gone into when the matter is being investigated.”

23 Conditions for denial of bail in trafficking cases.

i Extensive list of considerations on which bail may be denied.

- ▶ *Freedom Firm v. Commissioner of Police, Pune, Cr. PIL No. 4 of 2015 (Bombay High Court, 30/10/2015)*: “...We cannot but see the malaise as both astonishing as how a judicial officer can grant such bail and artful as to how an accused would successfully overreach law and justice.” “...The application for bail must take into account -
 - a. The fundamental right of the victim not to be trafficked...
 - b. The antecedents of the accused...
 - c. The repetitiveness of the offence - since it is a career in crime, it is bound to be repeated upon the accused being released on bail thus trafficking further similar victims which is the State’s duty to prevent.
 - d. The intimidation and threat that accompanies the relationship between the accused and the victim - The victim is the helpless chattel of the accused, the accused being in a position to threaten her to lie and coerce her to turn hostile and thus tamper with evidence.
 - e. The economic position of the accused, if a trafficker...
 - f. The violence involved in the case - reflected from the statement of the victim and the other witnesses...
 - g. The subterfuge deployed by the accused in diverting the police machinery from himself or herself - when non-traffickers and other docile persons who may be working for the accused in various positions may be kept in the frontline for arrest and who need to be released on bail as harmless co-accused.”

ii Guidelines to be followed in relation to bail applications.

- ▶ *Freedom Firm v. Commissioner of Police, Pune, Cr. PIL No. 4 of 2015 (Bombay High Court, 30/10/2015)*: “...It would be appropriate to set out some of the most needed guidelines thus:
 - a. Bail should be denied to habitual offenders...
 - b. Bail should be refused to brothel owner until the brothel is closed and sealed...
 - c. Bail should also be denied if the victim is a minor...
 - d. Bail should also be denied [*in cases*] of violent offence

which would be seen from the statements of the victims and witnesses...

- f. Bail, upon stringent conditions, (if at all), be granted to the trafficker or the brothel owners only after the statement of the victim is recorded under Section 164 of the [CrPC] and only if all other aforesaid conditions are met.
- g. Anticipatory bail should be denied in ITPA cases.
- h. Women accused who may be trafficker, brothel keeper or pimp have the benefit of not being arrested after sunset. Hence if she has to be arrested the next day or has to be directed to report to the police station the next day, it should NOT be stated to be a reason for granting bail; she should be arrested during the legally permissible hours and her application for bail must be considered on the aforesaid parameters the next day.
- i. The Magistrates and Judges shall use the following bail checklist proforma while deciding the application for bail:
 - i. Whether antecedents of the bail applicant have been checked.
 - ii. Whether antecedent report has been submitted before the Court.
 - iii. Whether the address of the bail applicant and the local surety has been verified by the Police and whether a report has been submitted before the Court.
 - iv. Whether bail applicant has had bail cancelled in the past.
 - v. If bail is applied for on medical grounds, whether treatment within the jail is possible.
 - vi. Whether accused is likely to have contact with the victim and intimidate or threaten her.
 - vii. Whether the accused is likely to repeat the offence; i.e. whether he/she would be able to return to and run the brothel.
 - viii. Whether the brothel is already sealed (and if not to undergo the process of sealing before any order of bail is passed)."

“Needless to mention that once an accused has absconded or jumped bail, his or her bail must be cancelled and treated as cancelled.”

iii Bail should also be denied while police investigations are pending.

- ▶ *Mohammed Safraz Alam and Mohammed Fayaz v. State of Karnataka by D J Halli Police, Cr. P. No. 3584 of 2014 c/w Cr. P. No. 3586 of 2014 (Karnataka High Court, 23/07/2014)*: “I am of the opinion that when serious allegations are made against the petitioners and **when the investigation of the case is still going on**, without expressing any opinion on the entitlement or otherwise of the petitioners to be released on bail, at this stage it is not proper for this Court to allow the petitions and to release the petitioners



on bail.”

- ▶ *Nanjappa s/o Lingegowda v. State of Karnataka*, 2014 SCC OnLine Kar 8689, (Karnataka High Court, 26/09/2014), [at para. 6]: “...the matter is still under investigation and the investigating officer has to collect some more material, and has to file the charge sheet. Therefore looking to these materials on record, I am of the opinion, that at this stage it is not proper for this court to allow the petition and release the petitioner on bail.”

iv Bail can be denied even after filing charge sheet in a bonded labour and trafficking case; expedited trial ordered.

- ▶ *Purushottam v. State of Karnataka*, Cri. P. No. 101109/2017 (Karnataka High Court, 15/06/2017), [at para. 7]: “Looking to the statements, prosecution made out a prima-facie case that out of the said bonded labour, some are minors and some females are involved in the case.”
- ▶ “The petitioner hails from Maharashtra State and it is also the prosecution case that earlier i.e., immediately after registration of the case, the petitioner absconded and subsequently, he was arrested by the Police.”
- ▶ “Therefore, looking to this conduct of the petitioner and as it is rightly submitted by the learned HCGP that in case if the petitioner is released on bail, he will abscond and may involve in committing the similar offences and put hurdles in the further progress of the case.”

v Bail should not be simply granted on account of sickness of accused.

- ▶ *Pawan v. Ramprakash Pandey*, (2002) 9 SCC 166, [at para. 10]: “So far as the ailment of Respondent No. 2 is concerned, it is not of such a nature as to require him to be released on bail. Respondent No. 2 can always apply to the Jail authorities to see that he gets the required treatment. It is pertinent to note that in the Review Petition it has not been stated that the applicant still needs medical treatment. It is not stated that he has not received proper medical treatment from the Jail authorities.”
- ▶ *Mahendra Manilal Shah v. Rashmikant Mansukhlal Shah*, 2010 Cri. LJ 4357, (2010) 5 AIR Bom R 308, (Bombay High Court), [at pg. 4375, para. 50]: “...mere admission of an accused to a hospital for medical treatment does not entitle an accused to obtain bail under the proviso to Section 437(1) Cr.P.C.”

vi Accused must show significant change in circumstances if lodging successive bail applications.

- ▶ *State Of Madhya Pradesh v. Kajad*, (2001) 7 SCC 673, [at pg. 676-677, para. 8]: “It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under

criminal law...”

vii Filing a charge sheet is not considered to be a change in circumstances.

- ▶ *State by Superintendent of Police Central Bureau of Investigation v. Adi Rajaram*, (1996) (1) CTC 249 (Madras High Court), [at pg. 252, para. 9]: “Filing of a charge sheet is only a compliance with the procedure within the stipulated period and it has nothing to do with the relative merits in the case. It may be stated that filing of a charge sheet cannot be construed to be a substantial change in circumstance.”

viii Lengthy detention does not constitute a change in circumstances.

- ▶ *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528, [at pg. 536-537, para. 14]: “...the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail.”

ix Correct response to a claim of lengthy detention is to request an expedited trial.

- ▶ *Krishan v. State Of Haryana*, Cri. M. C. No. M-8190 of 2011 (O&M) (High Court of Punjab and Haryana, 12/01/2012): “...only one witness remains to be examined... Since trial is at its [far] end, this Court shall not grant bail to the petitioner. However, considering the fact that the petitioner is in custody since 15th November, 2010, the trial Court is directed to proceed with the trial on day-to-day basis and conclude the same within a period of three months from the date of receipt of a certified copy of this order.”

x Bail denied in bonded labour and trafficking cases under the BLSA and s. 370, IPC.

- ▶ *Budhu Oraon Alias Budhua Oraon v. The State of Jharkhand*, B.A. No. 7255 of 2015 (High Court of Jharkhand, 28/01/2016); and *Kajo Devi v. The State Of Jharkhand*, B.A. No. 7213 of 2015 (High Court of Jharkhand, 23/09/2015): denying successive bail applications in a case where an FIR had been recorded under s. 370, IPC and BLSA.
- ▶ *Raj Kumar Sahu v. The State Of Jharkhand*, B.A. No. 1145 of 2015 (High Court of Jharkhand, 08/05/2015); and *Bhola Munda v. The State of Jharkhand*, B.A. No. 2391 of 2014 (High Court of Jharkhand, 28/01/2015): denying bail application in a case where an FIR had been recorded under s. 370, IPC and BLSA.

- ▶ *Dharmendra Kumar Beuria v. State of Orissa*, Cri. M. C. No. 3401 of 2015 (Orissa High Court, 20/11/2015): denying bail application in a case in which a minor was sold as a domestic help where an FIR had been recorded under s. 370, IPC and BLSA.
- ▶ *Saraswathi v. The Inspector of Police*, CrI. O. P. No. 19596 of 2013 (Madras High Court, 10/12/2014): denying bail application in a case in which the court, ignorant of the new s. 370, IPC, previously granted bail, where an FIR had been recorded under s. 370, IPC and BLSA.
- ▶ A number of other cases:¹ denying bail application in a case where an FIR had been recorded under s. 370, IPC and BLSA.
- ▶ *Purushottam v. State of Karnataka*, Cri. P. No. 101109/2017 (Karnataka High Court, 15/06/2017), [at para. 7]: “Looking to the statements, prosecution made out a prima-facie case that out of the said bonded labour[ers], some are minors and some females are involved in the case. ...The petitioner hails from Maharashtra State and it is also the prosecution case that earlier i.e., immediately after registration of the case, the petitioner absconded and subsequently, he was arrested by the Police. ...Therefore, looking to this conduct of the petitioner and as it is rightly submitted by the learned HCGP that in case if the petitioner is released on bail, he will abscond and may involve in committing the similar offences and put hurdles in the further progress of the case.”

xi Bail denied in case where victims were of schedule caste and scheduled tribe.

- ▶ *Narayan v. The State of Madhya Pradesh*, C. R. A. 3332 of 2017 (High Court of Madhya Pradesh, 10/11/2017): Counsel for defendants argued that: “...the appellants are influential persons. They are making efforts to influence the witnesses. Affidavit of the aforesaid persons is taken after recording of the statement during the trial is clear cut example of tampering evidence. In such circumstances, if appellants are released on bail no fair trial will take place. **The children and their parents are belonging to weaker section[s] of schedule tribe and schedule caste community and appellants are in a position to influence them.** Therefore, with a view to ensure fair trial and justice, they should not be released on bail...”
Court found: “Having considered the contentions of learned counsel for the parties and on perusal of record, in view of the facts and circumstances of the case and efforts of the appellants with regard to tampering the evidence, they are not entitle[d] to get benefit of bail.”

24 Victim (or their representative) has right to oppose bail.

- ▶ *Sathyavani Ponrani v. Samuel Raj*, (2010) (4) CTC 833, [at pg. 842, para. 30]: The Madras High Court explicitly held that any limiting language in s. 301, CrPC: “...cannot be interpreted

to hold that it would be a bar for hearing a victim in an application of Section 438 Cr.P.C. for the reasons no enquiry, trial or appeal is involved.”

- ▶ [Pg. 843, para. 33]: “Role of the prosecution is to prove the charges. There is a difference between a Public Prosecutor and a Prosecutor. **Any lawyer can be a prosecutor.** Inasmuch as the proviso to Section 24(8) which speaks about rights of a victim by way of assistance by engaging a lawyer the same cannot be curtailed as long as it is not contrary to the case of the prosecution.”
- ▶ [Pg. 843, para. 34]: “A lawyer engaged to assist the prosecution under Section 24 is not under the control of the Public Prosecutor but **his role is to assist the prosecution.** The discretion of the Court is a judicial discretion while permitting the victim to engage a lawyer to assist the prosecution. The very purpose of engaging a lawyer would amount to assisting the victim.”
- ▶ [Pg. 842 para. 35]: “Section 301 Cr.P.C. speaks about the power of the Public Prosecutor to conduct the prosecution. A conjoint reading of Section 301 and 24(8) would make it clear that it is the Public Prosecutor who conducts the case **but it does not mean that a lawyer engaged by a victim shall not be allowed to supplement the conducting of the case by the Prosecutor.** A lawyer has to render his assistance in three different ways. He has to render assistance to the victim, to the prosecution and as an officer of the Court.”
- ▶ [Pg. 844, para. 36]: “It is the sole prerogative of the public prosecutor to pick, choose and examine a prosecution witness. However if the public prosecutor fails in the above mentioned duty either accidentally or [by design] in the opinion of the Court, then **in such a circumstance it can permit a victim’s lawyer even to examine a witness.** Such a power can also be exercised by the Court for the purpose of conducting a free and fair trial and in the interest of justice.”
- ▶ [Pg. 844, para. 37]: “Therefore this Court is of the opinion that [the combination] of Section 301 and [the] proviso under Section 24(8) would make it clear that a lawyer can be engaged to argue and in an appropriate case with the permission of the Court to examine the witness.”
- ▶ [Pg. 844, para. 38]: “Further a reading of the above said provisions would show that Section 301 speaks about the instructing a pleader whereas Section 24(8) proviso speaks about engaging a lawyer. Therefore under Section 301 a party can instruct whereas under Section 24(8) proviso a victim can engage a lawyer and conduct the case along with the Public Prosecutor.”
- ▶ [Pg. 850, para. 56]: “A reading of the above said judgment [R. Rathinam v. State by DSP (2000) 2 SCC 391] would clearly show that in a given case **even a third party could be permitted to file appropriate application to cancel the bail.** Therefore the definition of victim would mean a person who represents the victim like a natural guardian

¹ G. P. Purushotama Reddy v. The State, Cri. P. No. 6809 of 2014 (12.11.2014); Nanjappa v. The State of Karnataka, Cri. P. No. 5715 of 2014 (26.09.2014); Syed Athaulla v. State Of Karnataka, Cri. P. No. 4738 of 2014 (25.09.2014); Mohammed Harfath v. State by D. J. Halli Police Station, Cri. P. No. 3585 of 2014 (23.07.2014); Mohammed Sarfraz Alam v. State Of Karnataka, Cri. P. No. 3584 of 2014 (23.07.2014); Noushad v. State Of Karnataka, Cri. P. No. 3582 of 2014 (23.07.2014); Kumara v. State, Cri. P. No. 4092 of 2014 (21.07.2014); and Sri Muniraju v. The State of Karnataka, Cri. P. No. 7585 of 2013 (All by Karnataka High Court, 17.01.2014).



or other guardian or a guardian of a person of unsound mind or even a third party, when the victim is so poor, illiterate and dependent to the extent of requiring support from others and not able to prosecute on his own.”

- ▶ *Santu Mahto v. State of Jharkhand*, (2014) 3 MWN (Cri) 230 (FB), AIR 2014 Jhar 108, [at pg. 247-248, para. 27]: “Therefore, on conjoint reading of the amended Proviso to Sections 24(8) and 301(2) of the Code, the legislative intention is evident that a victim or a private person has locus to appear through a pleader to assist the prosecution in any case where inquiry, trial or Appeal is pending in any Court. The expression ‘Court’ would mean all the Courts of Criminal Jurisdiction. Therefore, in a proceeding initiated for grant of Bail under Section 439, Cr.P.C. which are in the nature of special powers upon the High Court and the Court of Sessions, a Private person or the victim has a locus to appear and oppose the prayer for grant of Bail by the Accused.”

25 Action by Magistrate on receipt of a police report under s. 173(1), CrPC.

- ▶ *H. S. Bains v. State (UT of Chandigarh)*, (1980) 4 SCC 631, [at para. 6]: “...a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things:
 - (1) he may decide that there is no sufficient ground for proceeding further and drop action;
 - (2) he may take cognisance of the offence under Sec. 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report;
 - (3) he may take cognisance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200.

If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.”

26 Magistrate may take action on the basis of the protest petition even after he has accepted police closure report.

- ▶ *Mahesh Change v. B. Janardhan Reddy*, (2003) 1 SCC 734, [at para. 12]: “There cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognisance of the offence on a protest/complaint petition.”

27 Magistrate may direct for further police investigation.

- ▶ *Chandra Babu alias Moses v. State*, (2015) 8 SCC 774 (Supreme Court), [at pg. 785, para. 20]: “...Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In *Vinay Tagi* [(2012) 5 SCC 762] it has been held: ‘41. ...The power of the Magistrate to direct ‘further investigation’ is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report.’”

28 Consent obtained by fraud is not valid.

- ▶ *Deelip Singh and Dilip Kumar v. State of Bihar*, (2005) 1 SCC 88 (Supreme Court) [at pg. 102, para. 26]: The Supreme Court quoted the Madras High Court in *N. Jaladu, Re*, 9 ILR 1913 36 Mad 453, at pg. 456-457: “If the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed against the will of such a person.”
- ▶ *Rachapalli Abbulu v. State of A. P.*, (2002) 4 SCC 208 (Supreme Court), [at pg. 209]: “In the affidavits filed before the Sessions Court by the defence, PW 1 to PW 10 had stated that they did not see the occurrence. However, when confronted with the affidavits, these witnesses denied them and chose to depose before the court. The practice adopted by the defence side in getting the affidavits of these witnesses in advance is to be deprecated. That, in a way, amounts to an attempt aimed at dissuading the witnesses from speaking the truth before the court. The trial Judge as well as the High Court rightly rejected the defence contention. These witnesses appear to be illiterate persons. Their so-called affidavits must have been either cooked up or obtained by playing a fraud on them. This type of interference in the criminal justice shall not be encouraged and is to be viewed seriously.”

29 Evidence of rustic witnesses must be considered as a whole, regardless of minor discrepancies.

- ▶ *Yogesh Singh v Mahabeer Singh* (2017) 11 SCC 195 (Supreme Court), [at pg. 212, para. 29]: “It needs no special emphasis to state that every omission cannot take the place of a material omission and, therefore, **minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence.** The omission should create a serious doubt about the truthfulness or creditworthiness of a witness.

It is only serious contradictions and omissions which materially affect the case of the prosecution, but, not every contradiction or omission.”

- ▶ *State of UP v. Krishna Master, (2010) 12 SCC 324, [at pg. 333, para. 24-25]*: “The basic principle of appreciation of evidence of a rustic witness who is not educated and comes from a poor strata of society is that **the evidence of such a witness should be appreciated as a whole**. The rustic witness as compared to an educated witness is not expected to remember every small detail of the incident and the manner in which the incident had happened more particularly when his evidence is recorded after a lapse of time. Further, a witness is bound to face shock of the untimely death of his near relative(s). Therefore, the court must keep in mind all these relevant factors while appreciating the evidence of a rustic witness.

When the respondents were firing from their respective firearms, the High Court should not have expected PW 1 Jhabbulala to mention description of the whole episode which had happened in a few minutes. **The rustic witnesses cannot be expected to have an exact sense of time and so cannot be expected to lay down with precision the chain of events.**”

- ▶ *State of Rajasthan v. Kheraj Ram, (2003) 8 SCC 224 (Supreme Court), [at pg. 238-239, para. 23]*: “On a comparison of the version regarding the exact words, no substantial difference is discernible. Two rustic illiterate ladies while deposing are not expected to reproduce the words verbatim. Had it been so, the normal plea that it is parrot like would have been taken. Human mind is not a tape-recorder that it would make a perfect reproduction later. There is no substantial variance about the sum and substance of words used. The High Court was not justified in discarding the evidence of PWs 5 and 6.”
- ▶ *Krishna Mochi v. State of Bihar, (2002) 6 SCC 81 (Supreme Court), [at para. 31]*: “When a rustic or illiterate witness faces an astute lawyer, there is bound to be imbalance and, therefore, minor discrepancies have to be ignored.”
- ▶ *[Para. 32]* “Some discrepancy is bound to be there in each and every case which should not weigh with the Court so long [as] it does not materially affect the prosecution case... courts have been compelled to accept that ‘society suffers by wrong convictions and it equally suffers by wrong acquittals.’”
- ▶ *State of Odisha v. Prabesh, C.T. (Special Act) Case No. 11 of 2014, C. T. (SA) Case No. 27 of 2014 (Court of Additional Sessions Judge-Cum-Special Judge, Dharamgarh, District: Kalahandi, 24/12/2016), [at para. 14]*: “As stated above, when there is not material contradictions and discrepancies in the evidence of PWs 2, 6 and 9, [who were rustic, illiterate witnesses] then, by placing reliance on the ratio of the aforesaid decision of the Apex Court, it is held that, the aforesaid evidence of PWs 2, 6 and 9 made against the

above six accused persons along with their one associate namely Parsuram Naik in their respective examinations-in-chief has not at all been assailed or shaken in any manner through the cross-examination by any sets of defence.”

VII. Rehabilitation

30 States are obligated to rehabilitate bonded labourers, and to create and implement plans for the same.

- ▶ *Public Union for Civil Liberties v. State of Tamil Nadu, (1994) 5 SCC 116 (Supreme Court), [at pg. 116, para. 1]*: Court directed State Governments, through their administrative processes: “(6) To provide adequate shelter, food, education to the children of the bonded labourers and medical facilities to the bonded labourers and their families as part of a rehabilitation package..”
- ▶ *[Para. 2]*: Court additionally set forth steps for identifying and surveying bonded labourers, requiring the prosecution of bonded labour offences, and ordering reports to the Supreme Court on compliance with these directives.
- ▶ *Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 (Supreme Court), [at pg. 207, para. 24]*: “The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that though the concerned labourers may be providing forced labour, the State Government does not owe any obligation to them unless and until they show in an appropriate legal proceeding conducted according to the rules of adversary system of justice, that they are bonded labourers.”
- ▶ *[Pg. 209, para. 26]*: “The State Governments must therefore concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Indeed they are under an obligation to do so under the provisions of the [BLSA].”
- ▶ *Upendra v. State of Madhya Pradesh, (1986) Supp SCC 558 (Supreme Court), (1987) SCC (L&S) 31, [at pg. 559, para. 1]*: “We wish to emphasise what we have been saying time and again that **it is no use identifying and releasing bonded labourers unless provisions are also made for their rehabilitation** as otherwise we would be driving them to starvation. It is therefore necessary that as soon as the bonded labourers are identified and released the State Government should be in a position to rehabilitate them and there is no reason why the State Government should not be in position to do so particularly with regard to the various schemes sponsored by the Central Government as also the subsidies given by the Central Government for this purpose.”



- ▶ *Public Union for Civil Liberties v. State of Tamil Nadu*, (2004) 12 SCC 381 (Supreme Court), [at pg. 384-385, para. 6]: Court directed that States are to:
 - a. create plans to identify bonded labourers and the employers who exploit them;
 - b. eradicate any bonded debts;
 - c. appoint an independent, nongovernmental representative (e.g., an NGO) to survey the prevalence of bonded labour;
 - d. provide employment and/or agricultural land to bonded labourers;
 - e. provide a comprehensive rehabilitation package that includes shelter, food, medical facilities, and childhood education;
 - f. ensure oversight and inspection by Labour Commissioners, Vigilance Committees, and District Magistrates; and
 - g. criminally prosecute employees who employ bonded labour, employ children below age 14 in hazardous employments, fail to pay minimum wage, or provide compensation through *Khesri dal* that causes permanent disability.

31 Prosecution of the accused is to have no effect on the rehabilitation of victim even if eventually acquitted.

- ▶ *Rehabilitation of Freed Bonded Labourers, Abolition of Bonded Labour System: A Manual on Identification, Release and Rehabilitation of Bonded Labour*, Ministry of Labour & Employment, Government of India, 2004, [at pg. 23, para 6.4]: “While formulating a rehabilitation package for freed bonded labourers, the following general points are relevant: ...Even if cases related to release of bonded labourer are pending in courts, there is no restriction on the Government to issuing the release certificate to the bonded labourer and rehabilitating them.”
- ▶ *Know Your Rights Series, Bonded Labour*, National Human Rights Commission, 2010, [at pg. 10]: “Safeguards for Release of Bonded Labourers and Prevention from their lapsing into bondage again. Delay in conviction of the bonded labour keeper or even his eventual acquittal should not inhibit or stall the rehabilitation process.”

32 NGOs can be partners in the rehabilitation of former bonded labourers.

- ▶ *P. Sivaswamy v. State of Andhra Pradesh*, (1988) 4 SCC 466 (Supreme Court), [at pg. 472, para. 3]: Court suggested that: “...whatever rehabilitation is provided to the freed bonded labourers must be provided in the presence of a representative of such social action groups or voluntary agencies so as to ensure that rehabilitation provisions actually reach the hands of such labourers.”
- ▶ *Public Union for Civil Liberties v. State of Tamil Nadu*, (2004) 12 SCC 381 (Supreme Court), [at pg. 384, para. 5]: Court observed that: “The services of philanthropic organisations or NGOs could very well be utilised for rehabilitating

released bonded labourers. State could give necessary financial assistance under proper supervision.”

33 Immediate cash rehabilitation assistance of at least Rs. 20,000/- is to be provided by the District Administration on victim's release.

- i **The new Central Sector Scheme for Rehabilitation of Bonded Labour (2016) has increased the immediate cash rehabilitation assistance to at least Rs. 20,000/-, leaving it to the discretion of the District Magistrate to provide up to the total cash rehabilitation assistance.**
 - ▶ *Central Sector Scheme for Rehabilitation of Bonded Labour (2016); Enhancement of the amount of immediate financial assistance*, Ministry of Labour and Employment, Government of India, F.No.S-11012/01/2015-BL, (17/01/2017), [at para. 2]: “It is conveyed that the Central Government has decided to enhance the immediate financial assistance from Rs. 5,000/- to Rs. 20,000/- with immediate effect.”
 - ▶ *Central Sector Scheme for Rehabilitation of Bonded Labourer (2016); amended by Modification in the Central Sector Scheme for the Rehabilitation of Bonded Labour 2016*, (23/06/2017), [at para. 5(xiv)]: Immediate assistance to Rs. 20,000 may be provided to the rescued bonded labourer by District Administration irrespective of the status of conviction proceedings.
- ii **The new Central Sector Scheme for Rehabilitation of Bonded Labour (2016) has also increased the cash rehabilitation assistance to between Rs. 1 and 3 lakhs.**
 - ▶ *Central Sector Scheme for Rehabilitation of Bonded Labourer (2016)*, [at para. 5(ii)-(iv)]: “...(ii) The Rehabilitation package shall be Rs. 1,00,000/- per adult male beneficiary. Beneficiary shall have the option to either deposit it in an annuity scheme or receive cash grant. The District Administration will assess the cash requirement of the beneficiary and exercise its best judgement in the matter and put the money under annuity scheme with the consent of the said adult male. (iii) For special category beneficiaries such as children including orphans or those rescued from organised and forced begging rings or other forms of forced child labour, and women, the amount of rehabilitation assistance shall be Rs. 2 lakhs out of which at least Rs. 1,25,000/- shall be deposited in an annuity scheme in the name of each beneficiary and the balance amount shall be transferred to the beneficiary account through ECS. (iv) In cases of bonded or forced labour involving extreme cases of deprivation or marginalisation such as trans-genders, or women or children rescued from ostensible sexual exploitation such as brothels, massage parlours, placement agencies etc., or trafficking, or in cases of differently-abled persons, or in situations where the District Magistrate deems fit, the rehabilitation

assistance shall be Rs. 3 lakhs, out of which at least Rs. 2 lakhs shall be deposited in an annuity scheme in the name of each beneficiary and Rs. 1 lakh shall be transferred to the beneficiary account through ECS.”

iii Immediate cash rehabilitation assistance is to be provided to rescued labourers immediately.

- ▶ *Public Union for Civil Liberties v. State of Tamil Nadu*, (2004) 12 SCC 381 (Supreme Court), [at pg. 383, para. 3]: “Under the modified Centrally Sponsored Scheme for rehabilitation of bonded labour effective from May 2000 the rehabilitation assistance to the extent of Rs. 20,000/- per bonded labourer is provided for his/her rehabilitation. ...And under this Scheme, the State Governments shall provide Rs. 1,000/- as substance allowance to a bonded labourer immediately on his/her identification.”

34 S. 6, BLSA extinguishes every obligation of bonded labourer.

- ▶ *BLSA, s. 6*: “**Liability to repay bonded debt to stand extinguished.** - (1) On the commencement of this Act every obligation of a bonded labourer to repay any bonded debt or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall be deemed to have been extinguished.”
- ▶ *T. Chakkalackal v. State of Bihar*, 1993 Supp (4) SCC 211 (Supreme Court), [at pg. 212, para. 1]: “According to Section 6 of the said Act on the commencement thereof every obligation of a bonded labourer to repay any bonded debt or such part of any bonded debt as remains unsatisfied immediately before such commencement shall be deemed to have been extinguished.”
- ▶ [Pg. 213, para. 2]: “As pointed out earlier by virtue of Section 6 on the commencement of the Act the debt stood wiped out and it was obligatory on the part of the employer to return any property of the bonded labourer held by him.”

VIII. Conviction in bonded labour/trafficking cases

35 Reasons for conviction

- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014* (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015): Reasons for conviction were: Accused recruited the victims to extract work for manufacturing bricks to repay an advance. Accused made false promises that he will provide good accommodation, medical aid and sufficient coolie amount but failed to do so. Accused restricted workers’ movement from kiln, did not pay minimum wage, and made the ill workers to do work continuously leading to their deaths. He further beat one of the workers who did not come to work because of being sick.

- ▶ *State of Odisha v. Prabesh, C. T. (Special Act) Case No. 11 of 2014, C. T. (SA) Case No. 27 of 2014* (Court of Additional Sessions Judge-Cum-Special Judge, Dharamgarh, District: Kalahandi, 24/12/2016), [at para. 19-20]: Accused 1) took victims to house of accused to engage them in labour work; 2) gave each of the victims an advance and then took it away on basis that it was being given to respective family members (which it was not); 3) engaged victims forcibly as labourers in his cotton field for about ten days; 4) assaulted victims (chopped off their palms); and 5) gave victims no payment and restricted their freedom of movement.
- ▶ *State of Harohalli Police v. Nanjappa, SC 5056 of 2014* (Court of II Additional District and Sessions Judge Ramanagara, at Kanakpura, 10/03/2017), [at para. 2]: The accused is the proprietor of a brick factory who: “...had brought CW-2 to -14 as labourers by promising them to pay good salary and after taking work from them for entire week at the time of payment of coolie amount in the week end not paid proper salary, but said that the amount is adjusted towards advance, treated them as slaves and bonded labour[er]s and in furtherance of the same accused being the owner of the said brick factory got his work done through CW-2 to -14 not sanctioned leave and prohibited them, voluntarily caused hurt, and instead of paying good salary, treated them as bonded labour[er]s.”

IX. Sentencing

36 Sentencing

- ▶ *Selve Kumar Rice Mill Case - Sentencing*, (Madras High Court, per P. Velmurugan], 27/08/2019), [at para. 4]: “Considering the serious nature of offence and also the statement now produced by the first respondent/accused, this Court finds no mitigative circumstances and this Court is not satisfied with the statement filed by the first respondent/accused. Therefore, this Court is inclined to impose sentence on the first respondent/accused and accordingly he shall undergo Rigorous Imprisonment for a period of three years and also is directed to pay a compensation of Rs. 50,000/- to the appellant/victim under Section 357 (3) Cr.P.C. The first respondent/accused is also directed to pay compensation of Rs. 50,000/- to each of the victims, those who have been released by the Revenue Divisional Officer, Chengalpattu/PW 8, by way of release certificate.”
- ▶ *State of Odisha v. Prabesh, C. T. (Special Act) Case No. 11 of 2014, C. T. (SA) Case No. 27 of 2014* (Court of Additional Sessions Judge-Cum-Special Judge, Dharamgarh, District: Kalahandi, 24/12/2016), [at pg. 96-98]: “When, the convicts have committed the heinous crimes (offences) U/s. 364-A/34, 307/34 along with other offences after making criminal conspiracy with a pre-planned way in an inhuman, brutal and diabolic manner by chopping the right palms of two poor innocent labourers ...in their helpless condition through a dangerous weapon ...in a lonely place inside



the forest after abducting them and has made them ...disable[d] permanently for whole period of their lives, then, in view of the ratio of the decisions referred to Supra, the imposition of sentence against the convicts in this case **is required to be a model one for having its deterrent effect on the society and also to get ensure to justice to the victims, convicts and as well as the society at large**, as, the offences ...has an impact on the society.

So, by **taking into account to the statements of the convicts along with the submissions of the learned counsels of both the sides, the nature and gravity of the offences, in which, the convicts have been convicted, the manner in which, the offences have been committed by the convicts, the nature of their involvement and participation with the incident, the manner and the circumstances, in which the offences have been committed, the possible impact of the sentence on the society in this case and for meeting the ends of justice** as per the sentencing policies settled in the ratio of the decisions of the Apex Court referred to Supra, the convicts are sentenced for different offences hereunder as follows: [...] They [convicts] each are sentenced to undergo R.I. for **ten years and to pay fine of Rs. 20,000/-** (Rupees twenty thousand) each in default of payment of fine to undergo R.I. for one year each **for the offence U/s. 370/34 of the IPC.**

They [convicts] each are sentenced to undergo R.I. for **two years and to pay fine of Rs. 2,000/-** each separately for the offences U/s. 16 & 17 of the [BLSA] in default of payment of fine to undergo R.I. for three months **for each of the offences U/s. 16 & 17 of the Act, 1976.**"

- ▶ *Kattamanchi Jayakumar, C. S. No. 178 of 2014 (Court of Additional Assistance Sessions Judge, Tirupathi, 03/08/2015), [at pg. 19]:* "When questioning the accused with regard to quantum of sentence, the accused has stated that he is suffering with Sugar and Blood Pressure and he has to look after the welfare of his family, and prays lenient view may be taken.

As the proved offences are severe in nature, there is no question of leniency and so also the application of the Probation of Offenders Act.

In the result, the accused is found guilty for the offence under section 370 IPC and he is convicted under section 235(2) Cr.P.C. and **sentenced to suffer rigorous imprisonment for a period of 7 (Seven) years and also to pay a fine of Rs. 3,000/-** and in default of payment of fine, simple imprisonment for six months. ...For the offence under section 16 of [BLSA], the accused is sentenced to **suffer rigorous imprisonment for a period of two years and also to pay a fine of Rs. 1,000/-** and in default simple imprisonment for two months. For the offence under section 17 of [BLSA], the accused is sentenced to **suffer rigorous imprisonment for a period of two years and also to pay a fine of Rs. 1,000/-** and in default simple imprisonment of two months. For the offence under

section 18 of [BLSA], the accused is sentenced to **suffer rigorous imprisonment for a period of two years and also to pay a fine of Rs. 1,000/-** and in default of payment of fine, simple imprisonment for a period of two months."

- ▶ *State of Harohalli Police v. Nanjappa, SC 5056 of 2014 (Court of II Additional District and Sessions Judge Ramanagara, at Kanakpura, 10/03/2017), [at pg. 52, Orders on Sentencing, para. 4-5]:* Accused argued for leniency due to needs of wife, children, and ailing mother, and financial distress preventing his paying fines. For victims, counsel submitted that as there are multiple victims, punishment should be not less than 10 years for s. 370, IPC offence. Court found: "In view of the above, under the facts and circumstances of the instant case, looking to the gravity of the offence proved, I am of the considered view that accused to be sentenced accordingly. Therefore, I am of the considered opinion that justice would be met if the accused is sentenced to undergo **rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/- for the offence punishable u/s 370 of I.P.C.** and in default for payment of fine amount he has to undergo rigorous imprisonment for a period of 3 months, it will suffice justice.

Further, for the offence u/s 16,17 & 18 of [BLSA] if the **accused sentenced to undergo simple imprisonment for 1 year along with a fine of Rs. 2,000/- for each offence**, (i.e., in all 3 years along with a total fine of Rs. 6,000/-) it will suffice."

X. Recovery of wages

37 Wage legislation cuts across employment contract.

- ▶ *Pabbojan Tea Company Ltd. v. Deputy Commissioner, Lakhimpur, (1968) 1 SCR 260, AIR 1968 SC 271 (Supreme Court), [at para. 14]:* "There can be no question in this case that the Minimum Wages Act **cuts across the contract between the employer and the employee and wherever applicable the employer is obliged to pay the minimum wages** or take the consequences of failure to pay it. Any employee who feels himself aggrieved by the refusal of the employer to pay the minimum wages fixed under the Act has the right to make a complaint either by himself or through the prescribed agents to the Authority mentioned in the Act."

38 Requirement to hear employer/give opportunity to be heard.

- ▶ *Godse v. State and the Chief Inspector of Factories, U.P, 1957 SCC All 28, 1957 ALL LJ 280 (Allahabad High Court, 25/01/1957), [at para. 8]:* "...hearing has to be given to that person who, on the date of the hearing, is responsible for the payment of wages under Sec. 3 [of Payment of Wages Act]. ...The person who was, therefore, responsible for payment of the wages under Sec. 3 on the 6th of May, 1952

was [the owner] and under the provisions of Sec. 15(3) **no order could be made in the case without giving him an opportunity to be heard.** ...It is one of the fundamental principles of justice that no order can or should be made against a party without giving him an opportunity of being heard. The person from whom the amount is now being recovered, ...has had no opportunity either directly or through a properly constituted representative to have his point of view placed before the authority who had the jurisdiction to decide the matter.”

- ▶ *Thensingh v. Labour Officer and Minimum Wages Authority, Bangalore Sub-Division 3*, 1999 SCC Kar 74, (1999) LLN 223, (Karnataka High Court, 10/02/1999), [at para. 2 and 8]: “On the said petition the first respondent [the Authority] registered a case and notice was served on the petitioner. ...The first respondent cannot sit quiet waiting for the arrival of the petitioner before him. The first respondent has discharged his part of the statutory duty and the petitioner has failed to discharge his obligation.”

39 Jurisdiction of Authority to determine whether employee has worked overtime.

- ▶ *Bahadursingh Birsing v. Fernades*, (1955) SCC OnLine Bom 57, AIR 1956 Bom 95, (High Court of Bombay), [at para. 7]: “It is quite clear, however, from the Minimum Wages Act itself that the authority constituted under that Act **has ample power to decide the question as to whether the employees had worked overtime on any date upon which they claimed that they had done so.** It is true that the jurisdiction of the authority is confined to decide as to whether a minimum rate of wages has been paid; but the unit in this case is a day. The watchmen are paid daily wages.”

40 Term 'sufficient cause' for exceeding wage recovery limitation period to receive liberal construction.

- ▶ *K. Ramaswamy Doss, K. Sri Balasubramiam Motor Service, Kovilpatti v. A. Rama Pillai*, W. P. 333 of 1954, (Madras High Court, 24/02/1955), [at pg. 404]: “The date on which wages became payable to a given employee would obviously depend on the contract of service between that employee and his employer, and in this case, it was found that the first respondent was entitled to a monthly wage.”
- ▶ [Pg. 405]: “Neither the Act nor the rules framed thereunder prescribed that there should be any written application to get the benefit of the second proviso. ...As pointed out by the Supreme Court in *Dinabandhu Sahu v. Mangaraj* (2), with reference to an analogous provision, there is not even a requirement in the Act itself or in the rules framed thereunder that notice should be issued to the opposite side. The authority can act suo motu. As the Supreme Court pointed out, it is a matter between the Tribunal and the applicant whether delay should be

excused.”

- ▶ *Special Officer, Thanjavur Central Co-operative Bank Employees' Co-operative Thrifty and Credit Society, Ltd v. Deputy Commissioner of Labour*, W. P. 11671 to 11676, 11680 of 1996, W. M. Ps. 15727 to 15732, 15740, 23642 to 23648 of 1996 (Madras High Court, 18/12/2002), [at pg. 4, para. 17]: “The Court finds that sufficient cause has been shown for not making the application within the period. It is not as if the workmen have not advanced any claims in this respect but they have been agitating and making claims besides persuading the respondents/writ-petitioner-management to pay the minimum wages as seen from their representations... It is also clear from the contents of the applications filed by the workmen that they have been not only pressing for payment. The petitioners were made to believe that minimum wages will be paid to the workers as demanded by them and they were [in] negotiations for a considerable period. The workmen have written more than five letters. But only after a considerable delay and after holding discussions the employers have declined to pay the minimum wages. Immediately thereafter the applications have been filed.”
- ▶ [Pg. 5, para. 19]: “The proviso to Sub-sec. (2) of S. 20 confers wide discretion, a plenary power on the first respondent to condone the delay in presentation of a claim. The power conferred on the first respondent to condone the delay is not controlled by the period of limitation and the first respondent, in its discretion has the plenary power to condone the delay in the presentation of a claim.”
- ▶ [Pg. 5, para. 21]: “As against the language used in S. 5 the language used in the proviso to Sub-sec. (2) of S. 20, confers wide discretion on the first respondent to entertain an application which has been filed beyond the period. Such discretion, on the facts of the case, this Court is satisfied has been exercised and when justice has been rendered, this Court will not be justified in interfering with the said discretion.”
- ▶ *The Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi*, (1967) 3 SCR 774, AIR 1968 SC 222, (Supreme Court), [at para. 3]: “The Authority has a discretion to condone the delay in presenting the application provided sufficient cause for the entire delay is shown to its satisfaction. This discretion like other judicial discretion must be exercised with vigilance and circumspection according to justice, common sense and sound judgment. The discretion is to know through law what is just, see *Keighley case*.”
- ▶ [Para. 4]: Found that the second provision to s. 20(2) should receive: “...a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”
- ▶ [Para. 6]: “The **employees relied upon the assurances of the inspector and their superiors that proper steps would be taken for the remedy of their grievances and relying upon those assurances, they refrained from taking steps** under section 20(2) of the Minimum Wages



Act. Having regard to all the circumstances of the case, **the employees were not guilty of inaction or negligence** and the entire delay in presenting the application was due to their honest though mistaken belief that the relief of overtime wages would be granted to them through the intervention of the inspectors and their superior officers.”

41 Material particulars to be included in application.

- ▶ *Municipal Council, Panna v. Authority Appointed under Minimum Wages Act, 1986* SCC MP 170, (1987) 54 FLR 610 (MP), (Madhya Pradesh High Court, 25/07/1986), [at para. 9]: “The applications made before the Authority would show that they lack in material particulars as to the amount of wages claimed. **The period for which the amount is claimed must be specified and the employees must show as to how the days have been calculated as 60.** This apart, the entitlement for the wages for each such day must also be specified. When that is done, then alone the Council shall be in a position to properly reply to the claim. The Authority was also not right in disposing of the cases without any material in the shape of evidence before it, and only on the averments made in the applications, which averments too were substantially denied by the Municipal Council.”

42 Inquiry into unpaid wages must not be perfunctory and informal.

- ▶ *Pabbojan Tea Company Ltd. v. Deputy Commissioner, Lakhimpur, (1968)* 1 SCR 260, AIR 1968 SC 271, (Supreme Court), [at para. 14]: “Under sub-section (3) of Section 20, the Authority has to hear the applicant and the employer or give them an opportunity of being heard and could straightaway give a direction as regards the alleged non-payment of the minimum rates of wages and such compensation as he thinks fit not exceeding ten times the amount of the excess of the minimum wages over that which was paid. It is true that the sub-section provides for a further inquiry but such inquiry is to be at the discretion of the Authority. The nature and scope of the inquiry would depend on the exact controversy raised in the case. If it be of a trivial nature, the tribunal can probably deal with it in a summary manner, but **where it is alleged that the notification under the Act is not applicable to a certain class of workers it is the duty of the Authority to give a proper hearing to the parties allowing them to tender such evidence as they think proper before making an order which may have far-reaching consequences.**”

43 Appeal.

- ▶ *The Sarpanch, Lonand Grampanchayat v. Ramgiri Gosavi, (1967)* 3 SCR 774, AIR 1968 SC 222, (Supreme Court), [at para. 5]: “No appeal lies from an order of the Authority under Section 20. But the High Court is vested with the power of judicial superintendence over the tribunal under Article 227 of the Constitution. This power is not greater than the power under Article 226 and is limited to seeing that the tribunal functions within the limits of its authority. The High Court will not review the discretion of the Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires.”



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