



UNITED NATIONS
Office on Drugs and Crime

Government of India



Standard Operating Procedures (SOP)

**on Investigation of Crimes of
Trafficking for Forced Labour**

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**Bachpan
Bachao
Andolan**

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PREFACE

Trafficking of women and children is one of the gravest organized crimes and violations of human rights, extending beyond boundaries and jurisdictions. Preventing and combating of human trafficking requires all stakeholders to integrate their responses on prosecution, prevention and protection. Keeping this philosophy in mind, Project IND/S16 of the United Nations Office on Drugs and Crime, which is a joint initiative of UNODC and Government of India, with support from the US Government, has undertaken several initiatives since its launch in April 2006 in India. This project is focused on “Strengthening the law enforcement response in India against trafficking in persons, through training and capacity building”. The major activities in the project are training of police officials and prosecutors, setting up Integrated Anti Human Trafficking Units, establishing networks among law enforcement agencies and civil society partners as well as developing appropriate tools including Protocols, Manuals, Standard Operating Procedures (SOPs), Compendiums and other training aids.

Successful conviction of offenders, redressal of grievances of victims and consequent prevention of crimes of human trafficking is possible when the first responders, i.e., the police agencies, perform their tasks diligently. In this process, investigation of crimes assumes an important role. The task includes collection of intelligence about crimes, registering crimes in the police station, prompt action in investigation and prosecution and also ensuring all legal and administrative follow-up measures that are based on a victim-centric approach.

Appropriate tools, no doubt, are essential to empower the officials to carry out these tasks in the best professional manner. In this context this SOP is a tool for the law enforcement agencies to address the crimes of trafficking for forced labour (UNODC has brought out another SOP on Investigation of Crimes of Trafficking for Commercial Sexual Exploitation). This SOP, prepared in a user-friendly and simple style has been developed based on the regular feedback from the end users. The available literature on trafficking and the experience gained from the responders as well as victims of trafficking has also been taken into consideration in the various segments.

Trafficking for forced labour constitutes a major form of human trafficking. In fact, the history of exploitation, forced labour and slavery is also the history of trafficking. From slaves being trafficked from Africa centuries ago to child labourers being trafficked now in different parts of the world for domestic labour or camel jockeying, trafficking has resulted in slavery. Preventing and combating this scourge calls upon the law to be strongly enforced such that it acts as a deterrent against the entire process of trafficking that leads to exploitation.

In India, the existing legal framework to combat the vice of human trafficking for forced labour is provided in:

- The Constitution of India - All Fundamental Rights provide protection against trafficking specifically, Article 23 prohibits traffic in human beings, *begar* and all similar forms of forced labour
- The Indian Penal Code, 1860
- The Bonded Labour System (Abolition) Act, 1976
- Juvenile Justice (Care and Protection of Children) Act, 2000
- Local Laws, e.g., Goa Children's Act, 2003
- Supreme Court and High Court Judgments

Such elaborate legal framework must also be assisted with a Human Rights approach that caters to the physical, psychological as well as social needs and 'best interest of the victim'.

Human rights approach: Trafficking in human beings is a grave violation of human rights, which requires a 'rights based approach' to ensure that victims are assisted and perpetrators are punished. The officials who deal with the victims should be empathetic and understand the issues from the perspective of the victim. Decision making on and about the victim should be from the paradigm of the 'best interest of the victim'. The victim has a right to be protected, consulted and informed of all actions being taken on her/ his behalf.

Victim friendly procedures: Response to trafficking needs to be victim - centric. Any action being initiated by the law enforcement agencies should keep the victim as the focal point. This requires that:

- Victim is aware that she/ he is a victim of a crime and is being assisted by law enforcement.
- Victim is not arrested and the exposure to police and stay at police station is minimal.
- Victim is extended all help and assistance.

Multi-disciplinary approach: Response to trafficking requires simultaneous attention by various agencies mandated to carry out the diverse tasks. Therefore, law enforcement agencies such as police, Executive Magistrates and labour department officials need to coordinate amongst themselves along with other stakeholders such as prosecutors, counselors, Non Governmental Organizations, Juvenile Justice Board, Child Welfare Committee, National and State Human Rights Commission, National Commission for Protection of Child Rights, local media, local government hospitals and others. However, the legal response to the offences of trafficking for forced labour has to be primarily led by the police, labour department and the Executive Magistrates.

Child rights issues: Though the victim could be any person, large number of victims trafficked for forced labour are children. Children are more vulnerable and therefore, subject to extreme violations during and after trafficking. Improper response can aggravate the harm caused to them. Therefore, law enforcement response has to be child rights oriented.



Gender Issues: Girls, particularly in informal sectors, such as domestic labour, agriculture and circuses or occupations where they are required to stay for longer hours, especially nights, need special care and protection. After their rescue, an inadequate response to the trafficked victims by various agencies further exacerbates gender discriminations and gender violations that already exist in society. Hence, gender sensitivity is an essential requirement in addressing Human Trafficking (HT). The procedures and steps undertaken by the responders should conform to gender rights.

Organized crime approach: Trafficking is an organized crime extending beyond boundaries and is multi-dimensional in nature, because:

- It involves in itself the elements of several crimes, such as selling, buying, physical and sexual abuse, harassment, wrongful confinement, kidnapping and abduction, assault, threat, bonded labour, child labour, cruelty to children, etc.
- The scene of crime extends through the source, transit and destination areas and is thus a continuing offence, starting with recruitment and procurement and continuing until the victim is rescued.
- It involves multiple abuses and abusers, who are networked and organized.



OBJECTIVE:

The Standard Operating Procedures (SOP) is meant to help the investigator in carrying out professional investigation so as to ensure:

- Planning a proper rescue operation with the assistance of other stakeholders
- Victim assistance during rescue and repatriation
- Subsequent compensation and rehabilitation
- Conviction of the offenders (traffickers as well as employers)
- Expeditious, effective and timely law enforcement
- Non-harassment and non-victimization of victims
- Appropriate protection, care and attention be provided to victims and witnesses
- Post conviction steps are initiated against the offenders (such as closure of places of exploitation)
- Appropriate steps are taken for prevention of trafficking and re-trafficking.

The SOP may also be referred to by NGOs who are stakeholders in the pre and post rescue procedures related to victim care, protection, counseling, rehabilitation and or repatriation.

STRUCTURE:

The SOP provides a step by step guide to the police and other response agencies in addressing the issues of human trafficking for forced labour. This SOP is meant for a user who has basic knowledge and experience in the application of the provisions of the substantive and procedural laws, such as Indian Penal Code (IPC), Criminal Procedure Code (Cr. PC) and Indian Evidence Act as well as the basic procedures in the investigation of crimes. Therefore, the SOP does not go into a detailed discussion of these laws and procedures but is confined to specific areas of professional work. It has been divided under the following segments for complete clarity and ease of communication:

- Concepts of Trafficking
- Pre Registration of Crime
- Rescue
- Registering Crime
- Investigation
- Post Rescue
- Charge Sheet
- Prosecuting Crimes
- Post Conviction
- Prevention
- Referral Mechanisms
- Role of Supervisory Officers
- Human Trafficking: Responsibilities of the Police

2 CONCEPTS OF TRAFFICKING

2.1 Definition of Trafficking

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2002 (hereinafter referred to as the UN Protocol 2002) supplementing the UN Convention Against Transnational Organized Crime, 2000 provides specific clauses defining trafficking.

A) Trafficking as defined under Article 3 of the UN Protocol, 2002

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

| ACTIVITIES (any of these) | MEANS/METHODS (any of these) | PURPOSE/INTENTION (any of these) |
|------------------------------|---|--|
| Recruitment | Threat | For the purpose of exploitation ¹ - |
| Transportation | Force | Prostitution of others |
| Transfer | Other forms of coercion | Other forms of sexual exploitation |
| Harbouring | Abduction | Forced labour or services |
| Receipt ... of persons | Fraud | Slavery or practices similar to slavery |
| | Deception | Servitude |
| | Abuse of: Power Position of vulnerability | Removal of organs |
| | Giving or receiving of payments or benefits | |

The ‘consent’ of a victim of trafficking shall be irrelevant where any of the means set forth above have been used. ‘Consent’ is irrelevant in case of children even if this does not involve any of the means set forth above.

B) Prohibition on trafficking under the Constitution of India

The Constitution of India guarantees rights of equality, freedom, protection of life and liberty, as well as the rights against exploitation. Specifically, Article 23 of the Constitution states that traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

International Labour Organization (ILO) CONVENTION 29 (Forced Labour Convention (No. 29) Concerning Forced Labour) defines FORCED OR COMPULSORY LABOUR as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered herself/ himself voluntarily [Article 2 (1)].

Further, a SERVICE is any economic activity that does not result in ownership. And penalty is disadvantage or painful consequences resulting from an action or condition.

¹ The Annotated Guide (2002) to the Complete UN Trafficking Protocol consisting of The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children provides a definition of “exploitation”.

FORCED LABOUR vs. BONDED LABOUR

The Supreme Court has ruled in:

1. People's Union for Democratic Rights (PUDR) vs. Union of India [(1982) 3 SCC 235]

"...Any factor, which deprives a person of choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and any labour or service which is compelled as a result of such 'force', it would be 'forced labour'..."

"...Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour'... as described in Article 23 of the Indian Constitution".

2. Bandhua Mukti Morcha vs. Union of India [1982 (2) SCC 253]

"...Whenever it is shown that a labour 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 considerations received by him and is, therefore, a bonded labour..."

Thus in India, forced labour/ bonded labour/ unlawful compulsory labour denote similar working conditions.

Under the Bonded Labour Act, Sec 15 - 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.

Thus, as Supreme Court has ruled in PUDR vs. Union of India [1982 3 SCC 235] that in any situation where a trafficking victim is not getting minimum wages, the presumption shall be that the victim is a bonded labourer, regardless of age. The onus of disproving this presumption is on the employer/ trafficker.

2.2 Myths and Misconceptions of Human Trafficking

- The victim or victims' family knew what they were getting into
- The victim was paid for services/ labour
- The victim had freedom of movement
- There were opportunities to escape but the victim did not
- Trafficking involves crossing of borders
- If trafficker is related to the victim, there is no trafficking



Human Smuggling vs. Trafficking

Human smuggling and voluntary illegal migration are illegal transport of a person, in particular across a border. This differs from trafficking because it does not necessarily include the elements of force, fraud, deceit resulting in any/ many forms of exploitation.

Why are people trafficked?

It is easy to exploit a trafficked person because she/ he is vulnerable. This is due to: -

- Unfamiliar environment
- Different language
- Distance from her/ his support system (family, friends and well wishers)
- Separation from the sphere of influence
- In case of children, cheap/ free labour
- Various other reasons...

2.3 Who is a 'victim' of trafficking for forced/ bonded labour?

- Any trafficked person is a victim, irrespective of nationality, age or sex.
- Children who have not completed the age of 18 years and are engaged in hazardous processes or occupations and/ or for less than minimum wages which are mandatory under The Minimum Wages Act, 1948.
- Any person, regardless of age, who has been trafficked in consideration of an advance (money or benefit) and/ or is now working for less than minimum wages.
- Any child likely to be trafficked is a "child in need of care and protection" under S. 2 (d) of JJ Act and therefore, is a victim who should be rescued.
- Anybody who has been recruited, harboured, transported, detained, obtained or procured for forced labour.
- A person whose fundamental rights are being violated.

NOTE: The above list is illustrative and not exhaustive. There may be other similar situations where in a person becomes a victim of trafficking.

REMEMBER All children/ minors are victims. All trafficked persons are victims, irrespective of proclaimed or apparent voluntariness.

NOTE: In borderline cases, where there is doubt regarding age, presume that the person is a child/ minor.

CASE STUDY

Some circuses have emerged as one of the covert mechanisms for cross - border trafficking, especially of children from Nepal. Girls are recruited by force or often by the enticement of a grand lifestyle. Most of these girls end up in prostitution and for those who are employed in circuses, they are often kept in conditions of slavery.

In 2004, while rescuing girls from a circus in the state of Uttar Pradesh, human rights activists were attacked by the Circus owner and his trafficking partners.

The girls were hidden and upon a judicial order on a Habeas Corpus Petition, when the girls were found, they had horrifying tales to narrate. The girls could not run away even if they wanted to, they were physically/ sexually abused and even supplied to others as favours. Yet, even after their rescue they could not decide whether they wanted to go back home or not. This was due to the trauma that made the girls apprehensive and scared of the outside world. Traffickers often use various control tactics to ensure that the victims remain in their physical and mental control.



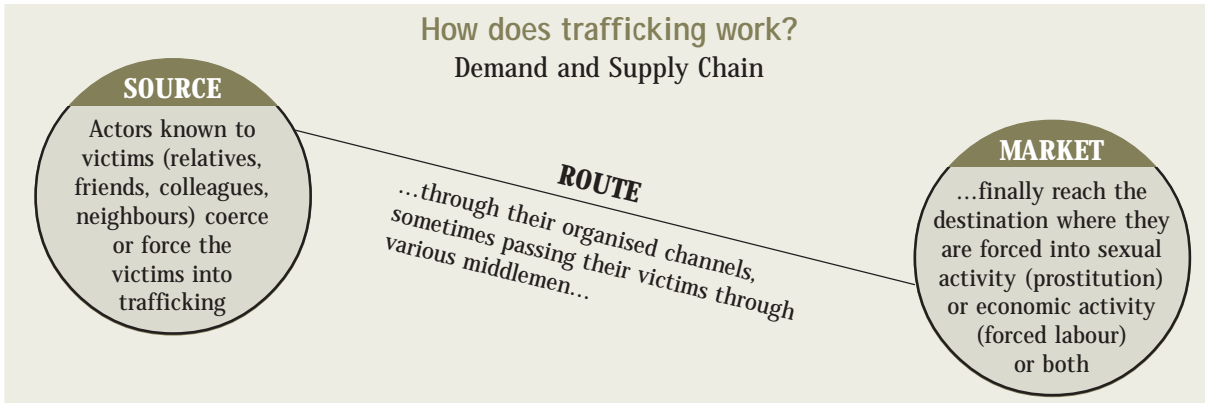
2.4 Who is a trafficker?

A trafficker is any person, who is -

- Involved in any act in the process of trafficking
- Who gains/ makes profit/ exploits
 - as the trafficked person passes through a chain,
 - from the point of source area to the point of final destination and
 - thereafter, throughout the process of exploitation.

The list of traffickers given below is only illustrative and not exhaustive. A trafficker could be any of the following person(s) involved in the process of trafficking:

- Recruiters
- Sellers of trafficked person
- Transporters
- Abettors
- Placement agencies
- Parent(s) and guardian(s) who knowingly sell/ cause to sell/ traffic their children/ ward
- People who keep custody of the victim during the act of trafficking
- Any other person who is involved in any act in the process of human trafficking
- Employers (contractors as well as principal employers)
- Agents of recruiters
- Buyers of trafficked person
- Conspirators
- Financiers



HUMAN TRAFFICKING: THE DYNAMICS OF CONTROL

(Modus operandi used by traffickers/ recruiters/ employers):

- Debt bondage, financial obligations or honour bound to satisfy debt. Debt bondage commonly includes the initial transportation fee, charges for food, housing, clothing, medical expenses or fines for failing to meet daily quota of production, services and is recurring and multiplying - increasing with time. The victim can never get out.
- Isolation from family, members of own (ethnic/ religious) community, limiting/ monitoring contact with outsiders.
- Confiscating passports and/ or other identification documents.
- Use or threat of violence towards victims and/ or family members.
- Threat of shaming victims by exposing circumstances (physical, sexual abuse, etc.) to family and/ or public.
- Telling victims they will be imprisoned or deported if they contact authorities.
- Control of victims' money and other personal belongings.
- Victims are often moved from location to location, or traded from one establishment to another resulting in a situation where victims may not know which town/ city/ state they are in and are thus unable to seek help.
- Create a dependency using tactics of psychological and emotional abuse.

The rationale for using such techniques is to instill fear in victims. Victims' isolation is further exasperated because they do not know whom to contact for help.

REMEMBER: An individual need not be beaten or restrained physically to be a victim.



3

PRE REGISTRATION OF CRIME

3.1 Intelligence collection and sharing

| STEPS TO BE TAKEN | POINTS TO NOTE |
|--|---|
| <p>Collect intelligence on crime linkages of traffickers, all exploiters and their associates from source, transit and destination areas.</p> <p>Share intelligence on linkages of crime and criminals within jurisdiction with concerned Station House Officer (SHO)/ Superintendent of Police (SP).</p> <p>Share intelligence on inter-state/ international linkages with law enforcement of the state on Anti Human Trafficking (AHT).</p> <p>Decoy Operations:</p> <ul style="list-style-type: none"> • When possible, conduct decoy operations to collect intelligence. • Take precautions for the personal safety of the decoy. • Decoy can operate as ‘customer’, ‘trafficker’, ‘labour contractor’, ‘middleman’, etc. • Brief the decoy, especially about the vulnerability of the trafficked person so that the victim is not traumatized further. • The decoy should not be in a position to take advantage of the situation. <p>Develop intelligence on victims and likely victims (vulnerable persons, persons in difficult situations, vulnerable communities, vulnerable areas such as source areas, etc.)</p> <ul style="list-style-type: none"> • Collect intelligence at transit points: depute watcher/ spy/ source, etc. at these places to look for both victims and offenders in transit. • Collect intelligence from the demand areas (on exploiters, on demand patterns, etc). • Media reporting (intelligence from media reports, advertisements, etc.). <p>Develop database on traffickers (including recruiters, financiers, ‘customers’, etc.)</p> | <ul style="list-style-type: none"> • Trafficking involves multiple abusers and multiple crimes. • Enquiry into missing persons can lead to intelligence on trafficking. • Enquiry into media reports or journalistic enquiries may provide valuable information <p>Providing intelligence/ information to source, transit and destination area police will lead to simultaneous and concerted action.</p> <p>Trafficking networks may have inter-state and international ramifications and intelligence on one crime can lead to detection of other crimes.</p> <ul style="list-style-type: none"> • Maintain confidentiality of the source and information. • Exercise care and caution in selecting decoy. • Decoy could be: <ul style="list-style-type: none"> • Police official • NGO representative • Any person willing to be a decoy • The decoy must be sensitized regarding the helplessness of the victim and the risks involved for the victim in conducting such operations. <p>Intelligence on traffickers may lead to other links in the chain. Intelligence on likely victims will help in easier identification of victims, especially during transportation.</p> <p>Trafficking is an organized network crime, involving multiple crimes and multiple offenders. Database should be updated and disseminated without delay so that the agencies concerned could use it at the right time.</p> |

Source Information is a major area of intelligence collection in India in discovering crimes of trafficking and rescuing victims. Hence, efforts in this direction need to be streamlined for best results.

REMEMBER

- Source could be anybody.
- Involve NGOs, crime stoppers, help lines, police control room, etc.
- Use previously rescued survivors as sources; informed consent must be taken.
- Develop partnerships with NGOs as they are important sources of information.
- Obtain full details of the information, names, phone numbers, place, etc. before rescue operations.
- Cross checking/ verification of information should be done before rescue operation.
- Steps are taken to prevent leakage of information. Share information with only those who need to know.
- Media reports may be a valuable source of information.
- Confidentiality of the source is maintained at all costs.

An illustrative list of where source information can be obtained is listed below. Note that this list is not exhaustive:

Illegal and legal factories
Tourist operators
Hotels
Abortion clinics
Illegal drug dealers
Known source areas

Travel agents, authorized and unauthorized
Immigration agents
Placement agencies
Help Lines/ helpdesks run by government/ NGOs
Dealers in legal/ illegal liquor trade
Officials of other departments, e.g. Labour Department

Transit points:

Bus stops
Airports
Immigration offices at borders

Railway stations
Tourist destinations
Custom offices at borders

Media reports:

Print and electronic

Advertisement in newspapers etc.
about placement agencies, massage parlours, etc.



4

RESCUE

4.1 Steps to be taken for rescue procedure:

RESPONSE HAS TO BE QUICK AND EFFECTIVE

- Step 1: Enter source information in the General Diary (GD) of the Police Station (PS) in such a way that anonymity of the source/ victim/ location is not compromised.
- Step 2: Any rescue operation should be so designed as to include details of location, entry and exit points, ways and means of removing victims securely and preventing the disappearance of traffickers. All entry and exit points must be secured. Carry out a recce of the place to be searched. An official conversant with the local language be sent to the place incognito. The help of local officers/ NGOs be taken, provided the information remains confidential. Empowered survivors, who are willing to co-operate, could be useful in recce. After recce, draw a sketch map of the area which could be used for briefing and for assigning specific duties to the officials who will participate in the rescue. This includes duties such as cordoning, guarding entry and exit points, locating the hide-outs, identifying safe place to keep the rescued persons till completion of the rescue operation, etc.
- Step 3: Rescue team should, where ever possible, be accompanied by a Sub Divisional Magistrate (SDM), who is the implementing authority under the Bonded Labour System (Abolition) Act, 1976 and officers of the labour department, so that the Child Labour (Prohibition and Regulation) Act, 1986 may also be utilized wherever applicable.
- Step 4: Rescue team should, where ever possible, obtain a search warrant from the jurisdictional Magistrate u/s. 166 Cr. PC if SDM is not accompanying. Since the SDM is the implementing authority under the Bonded Labour Act, any complainant including an NGO can approach the SDM for rescue/ identification.
- Step 5: Ensure adequate number of officials for rescue.
If rescued persons are to be interviewed, it shall be done by a police officer and not in the presence of the employer or any of his agents. If possible, the interview should be done by a member of a recognized welfare institution or organization (NGO) or a qualified social worker¹.
- Secure help of NGOs to act as witnesses.
 - Team should have at least one officer who is legally empowered to conduct rescue ie. a labour department officer authorized by the court or duly authorized by the Magistrate.
 - Maintain a list of officials of labour department and NGOs working on Anti Human Trafficking in the area. If no NGO is available, the services of any Government employee/ panchayat representatives, etc. may be utilized.
- Step 6: Arrange materials and equipment required for documentation and evidence collection (such as writing pad, white paper, pen, pencil, box for transporting the exhibits, box for belongings of the rescued persons, camera, videography, audio recording equipment, first aid kit, torch lights, hammers, cutters, etc.) Drinking water, snacks, etc. may also be arranged well in advance before a rescue.

¹ Neeraja Chaudhary vs. State of Madhya Pradesh (3 SCC 243 1984, para 255).

- Step 7: Inform the appropriate authorities regarding the proposed activities, including the places to be visited/ searched and the proposed time.
- Step 8: Alert the authorities of the Government run Homes or recognized homes run by NGOs at the place of rescue regarding the approximate number of persons likely to be rescued and the time when they are likely to be brought to the Home.
- Step 9: Arrange adequate number of vehicles and escort for the rescued persons so that the victims are always kept segregated from the offenders.
- Step 10: Identifying the victims during rescue; age is immaterial. No victim should be left behind.
- Step 11: Talk to the victim. Try and make the victim comfortable as soon as possible.
- Step 12: Immediate efforts should be made to win the confidence of the victim. Remember, most victims, especially children are scared of the police and many victims are often threatened by the employers that if they don't work harder, police will arrest them.
- Step 13: If the rescued persons belong to another state(s), inform the Nodal Police Officer of the concerned state(s).

4.2 Working with victims²

First response to victims: Victim must be informed immediately as to what is happening/ why the police and others have come and why s/he is being rescued.

INTERVIEWING VICTIMS - LOOK BENEATH THE SURFACE

The following points illustrate a number of challenges that law enforcement officials confront when having to interview victims of trafficking:

- Victims come from different social, cultural and ethnic backgrounds, which may be different from that of the investigating officers; so the investigating officer should be a trained person to handle the situation and seek the information gently and correctly.
- There may be a language barrier between the victim and the investigating officer. As far as possible, the recce should reveal the language predominantly spoken by the victims and suitable translator(s) should be taken along for the rescue operation and the subsequent investigation.
- Victims may be completely unaware of their rights or may have been intentionally misinformed about their rights. A briefing with the victims ought to be done to inform them about what is happening with them, what their rights are, what would eventually be the process of repatriation and rehabilitation.
- The victims may fear not only for their own safety but also for that of their families. All such fears must be listened to and addressed with utmost care and compassion. If the suspicions are found valid, necessary actions must also be taken.

Statement of victim is recorded u/S. 161 Cr. PC by the Investigating Officer (IO). However, this happens only after the First Information Report (FIR) is registered. Therefore, in such situations where pre-FIR rescue is undertaken, the police officer, the labour department, the SDM can all make notes of the relevant aspects including -

- The list of victims with details of names, address, age, identification particulars, etc.
- The details of the Scene of Crime, which have to be recorded in the Case Diary.

² For details, see Journey to Justice: A Manual on Psychosocial Intervention, UNODC, 2008.

- The list of witnesses whose statements are to be recorded.
- Any other relevant observation which can be of use later.
- It is possible and common that the victims who are under threat/ trauma give wrong information at this stage. Therefore, any statement of the victim, including statement u/S. 161 Cr. PC, should be recorded only when the victim is willing, comfortable and fit for statement.
- Statement to be recorded after assuring her/ him that whatever is being done is in her/ his best interest.

| DOs | DONTs |
|---|--|
| 1. Assurance Policing: inform the victims that they are not accused. | 1. NEVER treat any victim as accused in cases where a victim has been coerced/ forced to traffic others. |
| 2. Do treat victims with dignity. | 2. Do not get offended if the victims, who are in trauma, use abusive language or do not cooperate. |
| 3. Do use the services of translator for victims speaking different languages. | 3. Avoid insulting and humiliating language/ demeanour/ gestures, etc. |
| 4. Do take complete precaution to ensure that the identity of the victim is not revealed and anonymity is maintained. | 4. Do not allow media publicity of victims such that it reveals their identity. |
| 5. Keep victims away from accused. Ensure compliance of provisions of S. 21 JJ Act and S. 228 A of IPC (at the time of rescue, sexual exploitation may not be known). | 5. Do not allow media to take pictures of the rescued persons. |
| 6. Do keep the victims informed of the various stages of the investigation. | 6. Do not let the accused/ offender intimidate, threaten, or harm the victims. |
| 7. See that the victim's children/ wards (if any) are also rescued along with the victim. | 7. Exploiters may try to hide the children (if any) of victims as a bait to ensure that the victim returns. Do not allow this. |
| 8. See that the victim's belongings are also taken along with the victim. | 8. Exploiters may hide and/ or hold back victim's belongings, including earnings of the victim. Do not allow this. |

CASE STUDY

Bai Ram, a bonded labourer in a stone quarry in Haryana was told by his employer that the only way his daughter would not be raped was if he would bring 2 other children to work in his daughter's place. He was thus forced to become a trafficker even though he was a victim.

4.3 Working with witnesses/ informer/ complainant:

1. The witnesses/ informer/ complainant should be protected from unwanted exposure, threat, intimidation or harassment by the trafficker, employer, or any other offender and her/ his people.
2. S/he should be provided transportation, residential facilities, where ever possible and required.
3. Rights of witnesses should be ensured. Do not detain them if not required.

5.1 Where to register FIR

Trafficking is a continuing offence. The provisions of IPC with respect to offences of abduction/ kidnapping provide for registration of FIR at any place from the source to the destination¹. Similarly, FIR could be registered at the place of demand/ destination area/ place of employment (mostly the place of rescue) or the place of transit, or at the place where the person was trafficked from (source area).

Frequently asked questions

1. Can Police register an FIR without complaint/ direction from labour department or SDM?
Ans.: YES. Police can register an FIR without a complaint from anybody or without directions from District Magistrate (DM)/ SDM under the provisions of IPC. Police can investigate the matter and rescue the victim as well.
2. Can Police rescue without Labour Department/ SDM?
Ans.: YES.
3. What is the role of the labour department?
Ans.: Labour department can act under the provisions of Child Labour (Prohibition and Regulation) Act, 1986 in the case of a child under 14 years as well as under other safety and welfare legislations.
4. Is order of SDM an essential requirement before rescue?
Ans.: NO. Rescue can be done by the police without orders of SDM. SDM is however, the implementing authority under the Bonded Labour Act and provides for the rehabilitation package to the victim upon rescue under the Act.
5. What is a rescue? Can NGO rescue a victim?
Ans.: A rescue is a legal process that involves release/ liberation and assistance to the victim and legal action against the trafficker/ employer. An NGO or any person cannot conduct a rescue by themselves. They need help/ assistance from the law enforcement agencies.

5.2 Who can be the complainant in registering FIR of a crime of human trafficking?

A complainant could be anybody including:

- SDM (who can order the concerned police station after identification/ rescue of bonded labour)
- Labour department
- Police officer
- NGO
- Parents/ relatives of victim/ primary care givers
- Child Welfare Committee (CWC)
- Victim
- Any other person who has knowledge of the crime

5.3 Drafting FIR

- Appropriate sections of Bonded Labour Act, Child Labour Act and Juvenile Justice Act should be used in FIR along with the Indian Penal Code.
- Where ever possible, IPC provisions (such as, S. 367, 372, 373, 374, 376, 377, 120 A, 120 B, 416, 417, 339, 340, 341, 342, 506, 511, etc.) be invoked.

¹ For details, see Resource Book on Legal Framework on Trafficking, UNODC, 2008

- Local legislations like Goa Children's Act, 2003, the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) can be utilized, where ever applicable.

FIR may contain:

- Essential ingredients of the sections of the law referred to.
- Details of Source, Transit and Destination.
- Telephone numbers, cell numbers, internet sites, 'cover addresses', inter and intra state sites, etc.
- Brief description of 'Scene of Crime' and the 'Material Objects' seized.
- Description of the living and working conditions of the victim, for e.g., age of the victim, wages, hours of work, nature of employment, etc.
- Authority of the police officer who conducts the operations or activities of rescue, investigation, i.e. in one or more of the following situations -
 - Investigation by a police officer, or
 - Investigation by a sub-ordinate police officer, authorized by the State Government, or
 - Investigation by a sub-ordinate police officer, authorized by the relevant Magistrate (Metropolitan Magistrate, Judicial Magistrate of the First Class, District Magistrate, or Sub-Divisional Magistrate) under Child Labour, Juvenile Justice Act and/ or Bonded Labour Act.
 - Names of officers, NGOs, witnesses who accompanied the police party for the rescue.
 - Details of the physical injuries and trauma.

NOTE:

- Do take care that mentioning the apparent age of the victim is a crucial factor in deciding the course of action to be followed.
- When the rescued person is an adult and s/he says that s/he was trafficked when s/he was a child, use the sections of law, which would apply to child trafficking, such as Sec. 367, 372 (Whoever sells, ... any person under the age of eighteen years ... for any unlawful and immoral purpose ...), 373 (Whoever buys, ... any person under the age of eighteen years ... for any unlawful and immoral purpose ...) of IPC.
- Name of the IO/ Registering officer should be clearly written along with designation in the FIR.
- Name of the Magistrate, designate and date of the order of the authorizing person, if any, be recorded legibly in the FIR.

6

INVESTIGATION

6.1 Collection of 'Material Objects' (MO) from the Scene of Crime

A) **What to Collect:** Since trafficking is an organized and continuous offence, do not miss out in collecting all the 'Material Objects' from the scene of crime and linking them through investigation, to the offence of trafficking. Given below are some examples of MO and their relevance for investigation.

| What to Collect | Relevance for Investigation |
|---|---|
| <ul style="list-style-type: none"> • Diaries, notebooks, account books, registers in the place of work and work orders. • Material being produced, in case the victims being rescued are working at a factory/ production unit/ sweatshop etc. • Travel documents, bus/ train/ air tickets, papers of travel agents, visiting cards of travel agents, etc. • Rent agreement, rent receipts, house tax receipts, ration cards, passports, electricity/ telephone/ water/ mobile phone bills, voter identity cards, driving licenses, registration papers of vehicles, insurance policies, investment details, bank books, money order receipts, etc. • Photographs, albums, videos, letters, pornographic material, computers, hard discs, Compact Discs (CDs), brochures, advertisements in media. | <ul style="list-style-type: none"> • To prove existence of workplace; name of victims (already trafficked, likely to be trafficked); number of victims; details of payments, wages; earnings; accomplice; conspirators; abettors; traffickers and others; to prove hazardous employment, bonded labour, age of victims, etc. • To prove movement of persons during trafficking; to link source, transit, destination areas; to link the offenders in the process of the crime. • To prove the existence and address of the workplace and people who are managing it. • To prove the existence of an organized network of criminals and possible sexual abuse. |

B) **When to collect MOs:**

MOs should be collected at the scene of crime, during rescue/ or immediately thereafter, under panchnama. No time should be lost in seizure, as the exploiter/ offender will try to destroy/ conceal them.

C) **From where to collect MOs:**

- Search the person of the accused for documents and material exhibits (such as cell phones, travel documents, note books, etc., relevant to the crime).
- Look for documents/ materials/ exhibits at the scene of crime in the source, transit and destination areas.
- Search the vehicles of transportation.
- Search the places/ hotels, etc. where the offenders and victims may have halted anytime during the process of trafficking.
- Search the hideouts/ residence/ place of stay of the offenders and suspects.
- Search the bank lockers and other places/ agencies where the offenders have made investments.
- Search the customers/ clientele/ end product user (company/ business house for which production was being done) if victims have been rescued from a factory/ place of production of goods or services whose names figure prominently as exploiters.

REMEMBER TO DO THE FOLLOWING:

- Detailed scrutiny of MOs
- Deposit the MOs with Magistrate as per the State Rules
- Scrutinize and analyze the FIR with respect to the MO seized
- Ensure proper chain of custody (this may involve different police agencies, both inter and intra country)
- Connect crime to criminal (source and the destination may be in different States)

6.2 Interrogation of the suspects/ accused:

This is an essential requirement in any crime. In crimes of human trafficking, interrogation should be focused on the following:

1. To know the entire organized linkage (Source - Transit - Destination) of trafficking and its dimensions.
2. To know the entire process of human trafficking, the dimensions, the demand and supply patterns, the 'push and pull factors', etc. which will not only help locating evidence against the offenders but also provide intelligence in prevention of such crimes.
3. To explore contacts in the Source - Transit - Destination areas.
4. To find the means, routes, methods used for transportation of victims.
5. To know the communication channels (land line phones, cell phones, internet, etc.) of traffickers.
6. To understand the details of procurement, i.e. advance paid to parents of victim, advance paid to the victim and force used, if any.
7. To know whether others were trafficked with the victim.
8. To investigate the modus operandi of traffickers (all operational ways and means, such as, placement agencies, false marriage, jobs, work in cinemas, etc.).
9. To know the criminal antecedents, investigating the various dimensions of organized crime, nexus etc.
10. To know the details of the victims who have been trafficked earlier and/ or are likely to be trafficked (vulnerable sections).
11. To understand the motive/ intentions/ incentive of the traffickers.
12. In case trafficked victims are involved in production of goods and services, to find out the entire chain of demand and supply in order to prove vicarious liability.
13. To ascertain the financial transactions between the offenders.
14. To locate the illegal assets and take steps accordingly.
15. To ascertain the extent of harm done to the victim.

Considering the organized crime linkages in human trafficking, it is advisable that simultaneous investigations are carried out into all linkages of the offenders by:

1. Associating other agencies for interrogation such as
 - The income tax department and financial institutions where huge assets are disclosed or likely to be disclosed.
 - The immigration department, when foreign accused are involved.
2. Using scientific techniques/ methods in interrogation.
3. Carrying out scientific interrogation (1st degree = interrogation and 2nd degree = confrontation)
4. Interviewing the accused before interrogation, etc. to elicit themes and ideas for interrogation.
5. Using flow charts to depict the movement of persons trafficked, the mode of transportation and financial transactions.
6. Team interview has been found successful in interrogating organized criminals.

6.3 Arrest of accused persons

1. Being an organized crime, the arrest of the accused should be done at an appropriate time and without any delay.

2. Follow up on communications, especially the cell phones used by the accused before and after arrest, as it can lead to intelligence of trafficking links and maybe more arrests.
3. Medical examination of the accused may be done as required under S. 53, 53 A and 54 of Cr. PC.
4. If a woman offender is to be arrested do not fail to utilize:
 - the provisions of s. 46 (4) Cr. PC (no woman should be arrested after sunset and before sunrise, but in exceptional circumstances, the woman police officer shall obtain prior permission from the jurisdictional Judicial Magistrate First Class), and
 - provision of s. 50 - A, Cr. PC (obligation of person making arrest to inform a nominated person about the arrest etc.).

NOTE– The arrested female offender should be searched only by a female police official u/S. 51 (2) and 100 (3) Cr. PC

6.4 Collating evidence from other places

- If the trafficking is intra-district, collect evidence from the concerned PS.
- Inter-district linkages (but not inter-state) can also be attended to by the same IO after following administrative approval of the controlling official.
- When inter-state crime linkages are found during investigation, immediately take it up with the concerned PS in the other states so that no time is lost in simultaneous investigation. This will also help in sharing further intelligence and data on crime and criminals. Do keep the Police Nodal Officer informed during all interstate operations. This will ensure simultaneous investigations and sharing of crime data of offenders. Prompt action will help investigation into the entire trafficking linkages, at all sites, and build up a database of the offenders.

6.5 Closure or sealing of factories, etc. u/S. 105 A-L of Cr. PC

The Investigating Police Officer can move an application to the District Magistrate through Superintendent of Police to order detailed inspection of the place of exploitation to record the existing conditions in order to close that place under the provisions of the Criminal Procedure Code or the Criminal Law Amendment Ordinance, 1944. The Labour Department can move an application to the Magistrate to order closure of the illegal factories and cancellation of registration of legal factories/ places of work under Interstate Migrant Workmen (Regulation of Employment & Conditions of Service) Act 1979, The Factories Act 1948, Shops and Commercial Establishments Act and various other safety and welfare legislations. Unlawfully acquired property can be identified (S. 105 D Cr. PC), seized or attached (S. 105 E, Cr. PC).

6.6 Confiscation of assets of traffickers

Investigation should be caused into the assets from the crime acquired by the traffickers and other offenders in accordance with the procedure in S. 105 A – L of Cr. PC. The Criminal Law Amendment Ordinance 1944, the Prevention of Money Laundering Act, 2002, etc. should be utilized as and when applicable. The Competent Authority of the Ministry of Finance, dealing with Narcotic Drugs and Psychotropic Substances Act, 1985 and The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 has brought out protocols and check-list that can be considered by the Investigating Officers in other crimes also for purposes of carrying out investigation.

6.7 Organized crime approach for investigation

Human trafficking is a “basket of crimes”¹. Multiple abuses are committed by multiple abusers/ offenders who are located at different points of time and place. All together constitute the organized crime of trafficking. The following points need to be considered at all stages of investigation:

- Linkage of Source-Transit-Destination must be made during investigation.

¹ For detailed discussion see Nair, P.M. (Dr.), *Trafficking Women and Children for Sexual Exploitation, Handbook for Law Enforcement Agencies in India*, Second Edition, UNODC, 2007.

- Conspiracy angle to be investigated, since there are multiple offenders.
- Sharing criminal intelligence with other police agencies on traffickers and other accomplices.
- Sharing crime data with other police agencies on vulnerable areas and vulnerable people for trafficking.
- Accumulation of assets/ mapping the exploiters profit.
- Confiscation of assets is possible under Criminal Law Amendment Ordinance 1944 when IPC Sections are invoked. Therefore, IO may invoke relevant IPC provisions.
- Confiscation is possible under S. 105 A-L Cr. PC with respect to assets acquired as a result of trafficking and related crimes.
- Collect intelligence on income, expenditure & assets (movable, immovable property) from Source-Transit-Destination and other areas.
- Link the assets with the crime.
- Evaluation of the assets by Public Works Department/ other competent agencies (for ex. land survey department).
- Invoke provisions of all relevant laws which can be used to establish the organized crime perspective. In trafficking cases, Bonded Labour Act, Child Labour Act and the Juvenile Justice Act need to be used along with relevant sections of IPC, MCOCA, Goa Children's Act, etc.

A MODEL CASE

- On 4 May 2007, a complaint was filed by Bachpan Bachao Andolan (BBA) with the Sub Divisional Magistrate (SDM), Karol Bagh, New Delhi for release of bonded labourers engaged in making jewelry articles, under the Bonded Labour System (Abolition) Act, 1976.
- On 19 May 2007, 93 children were rescued in a joint operation by SDM, police, labour department officials and activists of BBA from jewelry units of New Delhi. All the children had been trafficked from West Bengal to New Delhi. The rescued children were immediately taken to a short stay home where the SDM recorded their statements.
- On 19 May 2007, the SDM also directed that FIR be registered against all employers u/ S. 367, 374 of IPC and Sec. 16 of Bonded Labour Act. The labour department initiated action under the Child Labour (Prohibition and Regulation) Act, 1986 against the employers.
- On 25 May 2007, the Resident Commissioner of West Bengal was approached for repatriating the victims back to West Bengal.
- In the first week of June all the victims were repatriated to their families.
- Based on the statements of these 93 victims and the modus operandi of their traffickers, the Police in West Bengal was approached and investigation against all traffickers was commenced by the West Bengal Police.
- A Public Interest Litigation was filed in the High Court of Delhi against child labour in jewelry units to put an end to all trafficking and forced labour in jewelry units and on orders of the Court many more trafficked children were rescued from the area.
- On 29 May 2007, all the children were provided with a Release Certificate under the Bonded Labour Act which entitled the victims to a rehabilitation package of Rupees 20,000/- and many other social welfare benefits totaling to more than Rupees 20 lakh.
- As a result of all the actions taken by BBA, on 31 May 2007, the employers first attacked the rehabilitation home to forcibly take away the children. When they were not successful, they brought the parents over from West Bengal to move applications for handing over custody to the parents without holding any inquiry. However, the SDM counseled the parents himself and repatriated the children through the correct legal process.

This is a model case where the legal processes were simultaneously set in motion at the entire demand and supply chain and action taken against both the traffickers as well as end users that is the employers. Thus, the law was effectively utilized at the source of the problem as well as the destination.

7.1 Recording statement u/S. 161 and 164 Cr. PC

While recording the statement of the victim in the Case Diary u/S. 161 Cr. PC the IO should consider the following:

- Record statements when the victim is fit (ready and able) to make a statement.
- Remember that there can be more than one statement by the victim, as and when s/he is fit to speak. Any contradiction from the previous statement may be explained in the following statement (it is possible that contradictions come in because the victim is traumatized and may not be able to recall events properly).
- Remember that the victim is fit to give a cogent statement after counseling. Utilize the services of appropriate NGOs¹.
- Record the statement in the language of the victim (use a trained / appropriate translator for translating the statement into the court language, as and when required).
- When recording the statement of a highly traumatized adult or child victim, it would be advisable to use the services of a trained counselor to communicate with the person.
- Let the victim select the place of interview and record statement of the victim. There is no need for taking the victim to a PS for this purpose or for subsequent statements. This could well be accomplished at the Shelter/ Children's Home where s/he is lodged or any other place of safety where s/he is comfortable (u/S. 160 (1) of Cr. PC).
- Mapping the harm done to the victim: The IO records his observations, in Part 1 of the Case Diary (CD) (u/S. 172 Cr. PC). Though Part 1 is not shared with the accused, the court peruses this during trial. Therefore, the IO should record his observations of the harm to the victim (physical, emotional and psycho social) in Part 1 of the CD. The 'harm factor' can be aptly recorded u/S. 161 Cr. PC also, to the extent required. Further, in order to make it admissible as evidence (u/S. 14 of Indian Evidence Act, 1872) during trial, the victim has to be examined by an appropriate health professional, whose report will be attached to the CD and a copy of this is made available to the defence, if cited as evidence.
- In case of sexual exploitation as well, care may be taken to record the statement in camera and in a non-intimidating environment. The IO may make a prayer u/S. 327 (2) Cr. PC (read along with Supreme Court judgment in Sakshi vs. Union of India²) to this effect.

7.2 Age assessment

Rescued victims often include men, women and children. It is important for the IO to do an on-the-spot age assessment of the children who appear to be below 18 years of age but who profess to be over 18 years of age. Such children may be under duress/ coercion/ compulsion by vested interests to declare themselves adults so that the offenders can get them released easily, citing their willingness for the same, and subsequently traffic them back for forced labour. The IO needs to exercise caution against such deceptions. Under Sec. 10 of the Child Labour Act, the labour inspector may also refer the matter to the prescribed medical authority in the absence of a certificate ascertaining the age of the child. In case of trafficking for forced labour, under the Bonded Labour Act the age of the victim is immaterial in order to rescue or provide rehabilitation to the victim. Therefore, at the time of rescue, no decision should be taken to leave any person on the basis of age pending investigation under the Bonded Labour Act.

- The IO must try and obtain date of birth certificate, school certificate, ration card, or any other government document, where ever possible to determine age of victim.
- The IO must send the victim for age determination test, preferably to forensic medicine department, wherever available.

¹ See Journey to Justice: A Manual on Psychosocial Intervention, UNODC, 2008

² (2004) 5 SCC 518

- The IO must also collect all possible circumstantial evidence regarding the age of the victim from the neighbours, locality, from other rescued persons, etc.
- In case of doubt or dispute with respect to the age of the victim, the IO must refer the case to a Medical Board.

7.3 Production of the rescued person before Magistrate/ Child Welfare Committee (CWC)

How to decide whether the person is an adult or a child?

The police officer is called upon to take a decision on the spot whether to produce the rescued person before the Magistrate or the CWC (under JJ Act) and therefore, this decision is crucial. The decision may be taken based on the following principles:

- Apparent look of the person.
- Consulting the rescued person, making him/ her understand the implications.
- Consulting the NGO partner participating in the rescue operation.
- Consulting a counselor if available.
- Checking available documents, if any.

When in doubt, treat the rescued person as a minor.

- Produce adult victims before District Magistrate (DM) under the Bonded Labour Act, if the DM/SDM was not accompanying the rescue team.
- Produce child victims before CWC u/S. 32 of JJ Act (if the Bonded Labour Act is not applicable).
- If the rescue is held at night, the night duty Magistrate may be approached.
- If nobody is available, send the rescued children to a Government/ NGO run Home (notified under u/S. 37 of JJ Act).
- If a notified Home is not available in the vicinity, the rescued children should be sent to any reputed NGO Home.
- If none of the above is available, the police officer should take initiative in arranging a place of safety for stay like, hotel, guest house, circuit house, etc. for the victims who should be accompanied with a female representative of the NGO (if the rescued victims include girls) and a police official.

The rescued victims should never be -

- SENT BACK TO THE WORKPLACE
- DETAINED IN THE POLICE STATION
- EXPOSED TO SITUATIONS OF FURTHER RISK

7.4 Medical care of victim and follow up

- IO should ensure that appropriate medical care should be extended to the victim without any delay and immediately after rescue. Informed consent of the victim is mandatory before medical examination (made under the suitable provisions of law).
- Female victims should be escorted by a lady police official.
- An NGO should also be associated in the process of medical examination and care.

1. If victim is female, medical examination be conducted by or under the supervision of a female doctor u/S. 53 (2) Cr. PC.
2. If no female doctor is available, medical examination be conducted in presence of a female official or a female representative of an NGO.
3. The IO should communicate to the doctor to take all steps for respecting dignity of the victim.

7.5 Shelter Homes/ Child Welfare Committee (CWC)

The IO should make interim arrangements for sending victim to place of safety such as, Shelter Homes (Government/ NGO run)/ CWC/drop-in-centres, etc. Avoid detaining the victim in the PS or other police outfits. PS should keep a list of agencies running such Homes, including their contact numbers and other details and network with them.

7.6 Home verification

- Under Sec. 33 of the JJ Act, when a 'child in need of care and protection' is produced before the CWC, the CWC may pass an order to send the child to the children's home for speedy inquiry by a social worker/ child welfare officer. Such inquiry is to be completed within 4 months of the receipt of the order.
- The IO should move the Prosecutor to oppose any release of the rescued person to anybody before Home Verification Report is received.
- In the meantime, the IO can request the Magistrate/ CWC to send the victims for interim care to the appropriate Home u/S. 34 of JJ Act respectively.
- Before the Magistrate/ CWC hands over the victims in the care of parents/ guardians, the Magistrate/ CWC should satisfy itself of the capability and genuineness of the person. The IO should move the Magistrate through the Prosecutor to ensure this and help to avoid any decision otherwise.

7.7 Restoration of victim

Considering the 'best interest' of the victim, police can play a proactive role in the restoration of the victim by taking initiative on several counts, including the following:

- Ensuring that the victims are released to the appropriate person after due Home Verification report by moving the Magistrate with a report to this effect.
- Moving the Magistrate not to release the victim to fake or 'self styled' or abusive parents/ guardians.
- Liaising, supporting and facilitating the NGOs which are carrying out the Home Verification.
- Providing security to the victim/ accompanying person/ NGO during transfer of victim.
- Facilitating the genuine parents/ guardians to take custody of the rescued victim by networking with the concerned authorities.

7.8 Interim relief to the victim¹

Under the Bonded Labour Act, there is a provision for an interim relief of Rs. 1000/- before the legal formalities are completed (the Release Certificate (sample at Annexure 4) would entitle the victim a monetary compensation of Rs. 20,000/-). The IO should send proposals to the concerned authority (District Magistrate) immediately after rescue for extending such benefits to the rescued person, wherever applicable.

7.9 Rehabilitation

Rehabilitation of bonded labour has two distinct components:

1. Psychological rehabilitation: The released bonded labour needs to be assured that s/he is a human being, entitled to earn an economic livelihood and have a decent living. Unless s/he is psychologically assured that debt need not regulate her/ his destiny, there is every possibility of him/ her being vulnerable to the vicious circle of trafficking and bondage.
2. Physical and economic rehabilitation has the components of -
 - Protection of civil rights
 - Allotment of house site and agricultural land
 - Land development (including irrigation of lands already in their possession and irrigation of lands allotted)

¹ Para 7.6.4 of the Abolition of Bonded Labour System: A Manual on Identification Release and Rehabilitation of Bonded Labour, Government of India, Ministry of Labour, New Delhi, February 2004

- Provision of low cost dwelling units
- Agriculture, animal husbandry, dairy, poultry, fodder cultivation, etc.
- Training for acquiring new skills or developing existing skills
- Traditional art and craft
- Wage employment, enforcement of minimum wages, etc.
- Collection and processing of minor forest produce
- Health, medical care, sanitation, etc.
- Education of children of released bonded labourers

Moreover, according to the Centrally Sponsored Scheme² for rehabilitation of bonded labour (as modified in May, 2000) each released bonded labour (after rescue and issuance of Release Certificate by DM) will get a rehabilitation grant of Rs. 20000/-, out of which Rs. 1000/- would be paid immediately on release as subsistence allowance.

2 Abolition of Bonded Labour System: A Manual on Identification Release and Rehabilitation of Bonded Labour, Government of India, Ministry of Labour, New Delhi, February 2004

A correct and proper charge sheet is an essential prerequisite in securing conviction in cases of crimes of trafficking. IOs should bear the following points in mind when preparing charge sheets in human trafficking crimes.

1. Present the Case Diary with a Crime Map of the entire Scene of Crime from source through transit to destination areas and other places of exploitation.
2. As trafficking is an organized crime, there will be multiple crimes and multiple offenders. All these have to be presented in the documents. Prepare a matrix of crime - offender - evidence and present the same in the CD.
3. Take legal opinion of prosecutor for drafting charge sheet.
4. Use provisions of S. 173 (6), Cr. PC wherever necessary, for ensuring confidentiality of the statement of the victim.
5. Collect all expert opinions and reports that are admissible u/S. 45, Indian Evidence Act. In a trafficking crime the reports and opinions will include:
 - Medical report of physical injury of the victim.
 - Medical report of sexual abuse of the victim.
 - Medical report of Sexually Transmitted Diseases.
 - Medical history of victim to prove earlier violations on him/ her.
 - Report of age verification/ determination.
 - Expert opinion on psycho social trauma ('the harm factor').
 - Medical report of the accused in cases of sexual assault.
 - Any other relevant forensic reports to show the victim's exploitation, identity of the accused persons, etc.
 - Copies of statements recorded u/S. 164 Cr. PC in the same case or in any other case, which are relevant.
 - Copies of statements recorded u/S. 25 Indian Evidence Act, 1872 (extra judicial confessional statements of the accused), if any.
 - Test Identification Parade report, if any u/S. 54 (A) of Cr. PC.
6. The charge sheet should include the details of terms of employment, the living and working conditions, details of wage or other payments, how did the victim end up in the situation of exploitation, details of subsequent exploitation, etc.

8.1 Further investigation after charge sheet

It has often been noticed that rescue in one case leads to intelligence on another crime which may have already been disposed off from the police records. In such situations, after filing charge sheet, it would be appropriate to carry out further investigation, so as to bring out the entire linkages of the organized crime. The IO on receipt of any further information and fresh evidence can cause further investigation u/S. 173 (8) Cr. PC and can file supplementary charge sheet.

9

PROSECUTING CRIMES¹

The police can play an important role even at the stage of prosecution. The IO should:

- Brief the Prosecutor not only on the facts of the case, but also on the special features of the crime, viz. the trauma of the victim, the organized crime linkages, the need for care and attention of the victims, decisions that can be taken from the 'best interest of the victim', etc.
- Prepare the victim with the assistance of counselors or NGOs for testimony in court and/ or in front of the Executive Magistrate (Bonded Labour Act).
- Prepare the witnesses (getting witnesses on time, briefing and debriefing them, thanking them promptly, etc.)
- Travel allowance to victims and witnesses from their homes to the court or place of inquiry whenever called for should be ensured.
- Ensure victim/ witness protection during the trial and post-trial situations.
- Watch on the bailers and sureties.
- Summary trial under Bonded Labour Act can be ordered by the DM/ SDM.
- If the case is discharged/ acquitted and the IO feels that there is merit in appeal, the IO should move the prosecutor to file an appeal in the appropriate court.

- The IO should ensure that the provisions of S. 437 (3) Cr. PC are invoked against the accused who violates the provisions of bail. The IO should move application for this to the court through the Prosecutor.
- IO should ensure that the surety who stands for the accused furnishes a declaration to the court regarding the number of persons for whom he has earlier stood surety including traffickers (S. 441 A Cr. PC).
- In case the IO comes to know that the accused trafficker or other exploiters have threatened a victim/ witness, he can file an FIR u/s. 195 A and 506 IPC and take up investigation.

1 For details, see Standard Operating Procedures on Prosecution of Crimes of Trafficking, UNODC, 2008

10 POST CONVICTION

The police have a significant function to perform even after conviction of the accused. The IO should move the Prosecutor to apply to the court:

- For an enhanced punishment in cases of subsequent conviction and in cases of offences committed against children.
- For recovery of fine up to Rs. 20,000/- under the Child Labour Act in the case of children.
- Ensure the payment of minimum wages to the victim for the period of work by taking note of the victim's statement and ensuring proper legal recourse.
- The attachment and forfeiture of unlawfully acquired property u/S. 105 Cr. PC.
- Externment: the convicted traffickers need to be prevented from indulging in further crime. Externment proceedings under the relevant laws in the States may be utilised. For eg. MCOCA, 1999 in Maharashtra and Delhi, AP Goonda Act, Crime Control Act in Bihar etc. Orders of externment may also be passed against habitual traffickers involved in multiple crimes in a particular place.
- History sheets/ suspect sheets: Police should open dossiers and keep watch on the activities of convicted persons and suspects.
- Naming and shaming: Wide publicity be given on the convicted traffickers so that:
 - a) It creates adequate impact on the convicted person and on other offenders
 - b) Public gets alerted to the activities of such offenders
 - c) Vulnerable persons are thus forewarned and thereby, trafficking is curtailed.

11 PREVENTION

Law acts as a deterrent against any crime and in crimes relating to trafficking, aggressive law enforcement is the best solution. Police officers have an important part to perform in the prevention of crimes of trafficking. IOs may involve themselves in matters pertaining to prevention, such as -

- Convicted offender being behind bars means curtailment of trafficking crimes which he would have otherwise indulged in.
- Prevention through proper rehabilitation and reintegration to prevent re-trafficking.
- Prevention at the source area by identifying vulnerable victims, empowering them through public awareness campaigns, involving concerned agencies for undertaking empowerment programmes, etc.
- Prevention at the transit area, such as railway junctions and bus stops.
- Empowering survivors by facilitating watch dog groups, being whistle blowers, manning borders, picketing, working with those who prevent crime, etc.
- Prevention at the demand area by understanding/ addressing new forms of demand. For example, placement agencies providing domestic child labourers.
- Prevention through coordination and cooperation with other agencies, including NGOs.
- Keeping vigil at locations prone to trafficking and monitoring the movements of strangers in the villages.
- Ensuring that effective patrolling is carried out, by looking out for suspicious movement of victims at places such as highways, dhabas, railway stations and bus stations.
- By ensuring check on transporters to prevent physical transportation of the trafficked persons.

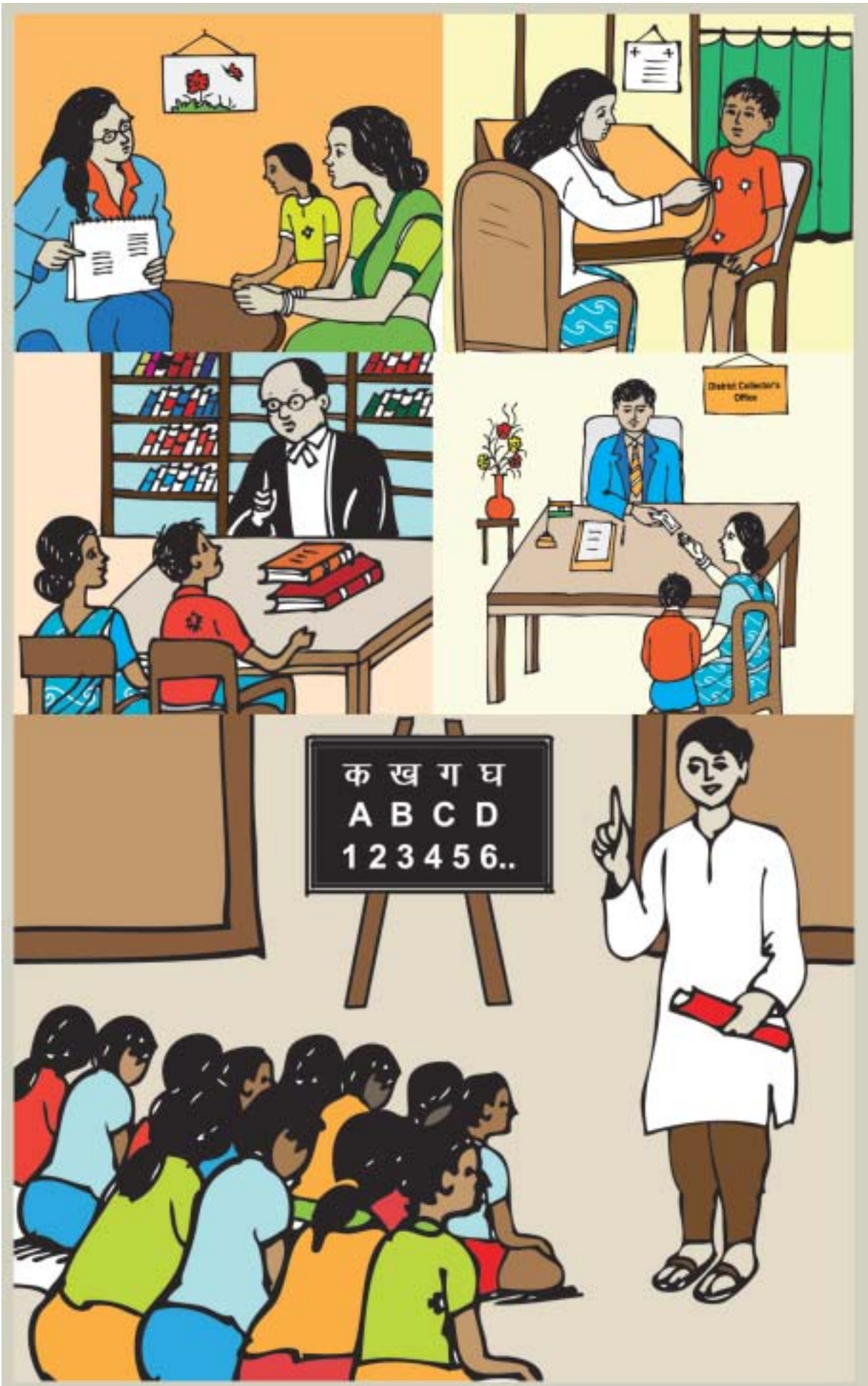
REMEMBER THE BEST WAY OF PREVENTION IS TO HIT THE ECONOMICS. TRY TO HAVE THE PROPERTY ATTACHED, ENSURE PAYMENT OF BACK WAGES IN ACCORDANCE WITH MINIMUM WAGES ACT, 1948/ COMPENSATION.

FOLLOW THE MONEY TRAIL AND YOU WILL FIND ALL TRAFFICKING SYNDICATES.

12 REFERRAL MECHANISM

The 'referral mechanism approach' recognizes that all stakeholders, including law enforcement agencies must co-operate and work in synergy to develop a truly effective and comprehensive protection structure for trafficked persons. The objective is to rehabilitate trafficked persons and implement sustainable structures that will provide them with support. The police can play an active role as facilitators in several ways:

- **Referral to a counselor:** Rescued trafficked persons to be referred to an appropriate NGO for holistic counseling, especially for relief and rehabilitation.
- **Referral for health care:** When the victim needs immediate medical attention it should be attended to on priority. Suggest a lady medical officer/ medical attendant if the victim is a female. If the service providers are males, ensure that female representatives of an NGO are present. The District Medical Officer/ Civil Surgeon to be contacted.
- **Referral for psychosocial intervention:** The rescued person is often extremely traumatized and needs to be handled sensitively and in a humane manner. The police must make all efforts to facilitate psychosocial help and intervention through the services of a skilled counselor to reduce the person's trauma and distress. Assistance should be taken from the staff of the government/ NGO run Shelter/ Children's Home.
- **Referral for legal representation:** Though the state is duty bound to take up the legal representation of the victim, private lawyers are often required to intervene, particularly when the victim knows and has trust in the lawyer. Police officials should promote such legal representation. The District Legal Services Authority should be consulted for any assistance required.
- **Referral for compensation:** Men, women and children who are rescued from situations of forced labour require immediate sustenance for their survival. The IO should contact the concerned district administration officials for incidental expenses such as travel, clothing, medicine and other immediate necessities. The District Collector and the District Social Welfare Officer to be consulted. The mandatory compensation under the government schemes should be obtained for the rescued persons.
- **Referral for rehabilitation:** Though this appears to be a non-police job, it is clear that a victim who is not properly rehabilitated can, and more often is, re-trafficked. Preventing re-trafficking is a police mandate; therefore, the police officer should deem it essential to take all steps for proper rehabilitation of the victim. Refer the victim to the government/ NGO run Homes; link up with appropriate rehabilitative agencies, including corporates and other bodies who could provide support.



13 ROLE OF SUPERVISORY OFFICERS

Existing response systems in India provide a prominent role for supervisory officials in addressing human trafficking through Prevention, Protection and Prosecution. Some tasks for police managers are listed here:

- Networking with officials in other districts and other states: The Director General of Police (DGP) has nominated Police Nodal Officers (PNOs) in all states, for this purpose. Since trafficking is a borderless crime it requires borderless policing that can be facilitated through police manager networks.
- Developing and sharing a comprehensive database of traffickers/ exploiters. This has to originate from the police station, move to the district and then to the state database, and eventually be amalgamated into a master database at the national database of the National Crime Records Bureau. Data has to be updated on a monthly basis, at all levels and disseminated to all concerned without delay.
- Developing and sharing intelligence regularly, on traffickers/ exploiters/ victims.
- According adequate priority to law enforcement on Anti Human Trafficking (AHT). There are several activities that can be under taken, e.g. the crime data board displayed in all PS does not show human trafficking data separately. This should be added as a separate head and updated regularly.
- Regular review of AHT activities in the monthly crime meetings with the Superintendent of Police/ Deputy Commissioner of Police and other officers, to ensure that human trafficking crimes are investigated thoroughly and professionally and progress of work is reviewed constantly.
- Taking law enforcement activity beyond the realm of rescue and looking at it from an organized crime perspective.
- Providing NGO networks to police officers by developing partnerships with NGOs.
- Developing synergy of police with other government departments, especially labour officials, thereby ensuring and facilitating appropriate responses by these departments.
- Providing adequate support to ensure speedy trial.
- Taking all steps for prevention of human trafficking.
- Ensuring a victim-centric approach and perspective in law enforcement.
- Short listing and mapping target/ vulnerable/ geographic areas and situations to ensure concerted action.
- Empowering police officers of all ranks with proper training focused on Knowledge, Skills, Attitude and Resources.
- Providing stability of tenure to trained and functional officers handling AHT activities.
- Ensuring accountability of officers with respect to the 3 Ps - Prevention, Protection and Prosecution - in their jurisdiction.
- Rewarding and commending officers doing good work on AHT.
- Documenting and disseminating good practices and providing a forum for wider discussion and emulation.

Police has responsibilities relating to:

- The identification of victims
- The protection of victims and support workers
- The protection of life
- Investigation, intelligence gathering and surveillance, including liaison with national and international enforcement agencies
- Gathering all evidence, both scientific and material, to ensure there is a fair trial (this includes the disclosure to the defence of any evidence that may assist the accused)
- The recording of crime (this includes rape and assault, abduction etc) and,
- Identification and support of vulnerable or intimidated witnesses.

Children

With regard to child victims of trafficking, police responsibilities include:

- Identification of children at risk, (e.g. following raids on off-street sites, responding to referrals from other agencies or members of the public, following up reports of missing children)
- Report instances of children in need of protection to relevant child protection agencies
- Contributing to the development of victim profiling with other agencies
- Undertaking joint interviews with social workers of children identified as victims or potential victims to assess risk and assist in the development of protection plans
- Carry out checks on sponsors and 'uncles' and 'aunts' who claim to be the relatives of children already identified as being at risk of trafficking
- Receiving and seeking intelligence, undertaking investigations with immigration officials and any other appropriate parties
- Participating in local child protection networks with related organizations (immigration, social services, NGOs, health, education) to develop joint approaches to the issue at local level and contribute to wider forums as appropriate
- Responding to media enquiries and utilizing publicity as appropriate to raise awareness and hence improve the quality of intelligence and investigations
- Log intelligence material as specified and ensure links with other forces and national/ international policing organizations
- If children disappear, initiate missing persons procedures, investigate circumstances and circulate information/ undertake investigations, linking with other agencies as required
- Use and contribution to the development of investigation toolkits for trafficking work.

Adults

With regard to adult victims of trafficking, police responsibilities include:

- Contributing to the development of victim and offender profiles on an inter-agency basis
- Identification of adults at risk (e.g. following raids on off-street sites, responding to referrals from other agencies, members of the public, etc.)
- Informing victims/ potential victims of their rights (for example, to obtain legal advice)
- Informing victims/ potential victims who are not Indian citizens or permanent residents of their options with regard to immigration status
 - Identifying support services and referring victims/ potential victims to specialist NGO's and safe accommodation, where these are available and arranging safe transport

¹ This segment is borrowed from the Model Screening Tool provided by the Department of Justice, Canada in Human Trafficking: *Human Trafficking Reference Guide for Canadian Law Enforcement* – 2005 (amended for Indian law enforcement officials)

- Undertaking interviews, receiving and seeking intelligence, undertaking investigations with immigration officials and any other appropriate parties, logging intelligence material and ensuring links are made with other forces and national/ international policing organizations
- Providing protection to victims and staff supporting them, involving the appropriate Witness Protection norms
 - Making referral to Victim Services for witness preparation and court familiarization
- Language support (translation services)
- If adults who have been identified as victims/ potential victims disappear, initiate missing persons' procedures, investigating circumstances and circulating information/ undertake investigations, linking with other agencies as required.

Collaboration

- Police should work closely with immigration authorities, Border Security Force (BSF), Railways and other transport authorities, provincial/ territorial and municipal agencies, with Social Services, child welfare authorities and with any NGOs involved in service delivery to provide protection to the children
- Police need to utilize existing liaison structures with authorities in the states/ countries of origin
- Currently, there are no organizations with the sole responsibility of protecting and providing support to trafficked victims; therefore, many agencies need to work together
- Although this may reasonably be considered to be the role of an NGO, police may need to provide some specific services, including protection to a trafficked victim during their court case
- Police need to provide front-line information/ intelligence to local intelligence offices and data banks
- Police should work with other agencies trying to ensure that those who are removed or who choose to return are not re-trafficked; this should include a risk assessment of the danger to returning victims (child care authorities would prepare risk assessment for children).

COMMON QUESTIONS ABOUT VICTIMS OF TRAFFICKING AND CHILD LABOUR

Q. Who is a child?

Ans. A child is a person who has not completed 18 years of age.

Q. I see a child being exploited at work. What can I do?

Ans. Call the police. The police is mandated to take action against the employer who employs a child or a juvenile in any hazardous occupation, or keeps him/ her in bondage, or withholds his/ her earnings u/S. 26 Juvenile Justice Act, 2000. Also, Sec. 23 provides for punishment in case of cruelty to the child. The offences under both Bonded Labour Act and Juvenile Justice Act are cognizable offences.

Call the labour department. They can act under the Child Labour (Prohibition and Regulation) Act, 1986 and impose a fine on the employer (Minimum fine of Rs. 10,000/- and a maximum fine of Rs. 20,000/-).

Both Police and Labour Department can rescue a child labourer under Child Labour Act on orders of a magistrate.

Call 1098, the Child Line telephone number, if available in your city.

Best option: If you can, a complaint may be filed before a Sub Divisional Magistrate to rescue the child under the Bonded Labour Act. This would also enable the child to be rescued and also be statutorily rehabilitated. Under the Bonded Labour Act, the SDM may grant an immediate relief of Rs. 1000/- upon rescue and also issue a Release Certificate that would entitle the victim to get a rehabilitation package of Rs. 20,000/-.

Ideally, the government can and should impose all these laws simultaneously. The rescue of the child is done under the Bonded Labour Act. Prosecution is done under the Sec. 16 of the Bonded Labour Act, provisions of IPC like Sec. 367, 372, 373, 374, Sec. 23, 26 of the JJ Act & Sec. 14 of the Child Labour Act. Immediately upon rescue, the child is taken to a shelter home under the JJ Act. The child is then repatriated in accordance with the JJ Act and the Bonded Labour Act.

Q. The child is above 14 yrs. old and is allowed to work under the Child Labour (Prohibition and Regulation) Act. What do I do now?

Ans. First, verify the nature and extent of work/ exploitation. In case of forced labour, under Bonded Labour Act, age is not a relevant factor. Moreover, the Juvenile Justice Act (Sec. 26) applies to any person under 18 yrs. of age. Ask employer how he has got the verification of age done. Is there a birth certificate or any other legal proof of age determination. In the absence of proof, the police has to refer the child for age determination.

Q. The medical examination ascertains the age to be 16 yrs. I think child is 12-13 yrs. What do I do now?

Ans. Doctor says that age is 16 yrs but it is approximate calculation. There is a margin of 2 yrs. in the bone density ossification test normally conducted for age determination. Thus, presumption has to be in favour of the victim. Even if there is a dispute as to age, if the victim is not getting minimum wages (e.g., Rs.133/- per day in Delhi for unskilled worker), the police can use the provisions of the Bonded Labour Act. Under Supreme Court guidelines in PUDR vs. Union of India, (1982) 3 SCC 235, paragraphs 259-260, "...Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour'..." as described in Article 23 of the Indian Constitution. The onus is on the employer who has to rebut the presumption.

In case of a difference of opinion, the child may once again be referred to a Medical Board for a re-examination.

Q. The employer says that the child came to me asking for work. S/he has consented to work for the wages that s/he has been offered.

Ans. The child (in law) does not have the right of contract. Thus, a child's consent is no consent. Moreover, even if the parents have consented, such consent is a misinformed consent where the gullible parents are also not aware of their rights. If the wages are below the minimum wages, the provisions of the Bonded Labour Act may be invoked and the employer should prove the non-existence of bondage.

Q. The employer says that the parents of this child are very poor. They asked me to take care of the child. The child is just like our own child and we take full care of the child. S/he will starve if we don't keep the child.

Ans. Ask if they really feel so much for the poor parents, why don't they keep the parent as a worker or pay the child the required minimum wages, send the child (working) to the same school as their own child, or let her/ him use the same bathrooms.

A child labourer is rarely given minimum wages and are kept only for the benefit of the employer as the child is the cheapest source of labour and may be exploited easily. It is a myth that children are engaged in child labour because they are from poor families.

Looking from a different perspective, figures available from various sources indicate that India may have around 6 crore child labourers. Say, each child labourer earns Rs. 10/- per day, i.e. a total of Rs. 60 crore is earned by children every day. Instead, consider a scenario where the 6 crore children are replaced by unemployed adults who are paid minimum wages. The same earning shoots up by 6-8 times thus increasing the total money in circulation, the total purchasing power of families by 6-8 times, thereby eliminating poverty of the families. Not only would there be employment for adults, but the children would be able to study and thus lead to both literacy and reduction of poverty.

Q. What if the employer says, 'We pay full wages to the child'?

Ans. Ask the employer for pay receipts of the payments made to the child. Ask if the child is going to school apart from working (in rare cases where children are in non-hazardous conditions of work). Ask if child has sent money (or if the employer has sent money) home, ask for the money order receipts. Ask for bank account details. Ask tough questions.

Q. The child labourer has been rescued. What happens now?

Ans. The child's statement is recorded by the police and SDM. Care should be taken that the statement is not taken in the presence of the employer as children are often quite shaken up by the proceedings and may get intimidated or threatened by the employer's presence. Care should also be taken that the child does not spend a lot of time in the Police Station. Now, the child may be handed over directly to the parents (if they are present) or repatriated back to the parents as soon as possible. In the meantime the rescued child could be sent to a Government/ NGO run Shelter Home.

Q. The parents of the child are not present. What do I do now?

Ans. If the rescue has been done by the SDM, s/he has the power to order the child's custody to any person or institution until s/he may be repatriated back to the parents. Alternatively, the child may be produced before a member of the Child Welfare Committee for being placed in safe custody or otherwise, when the Committee is not in session.

Q. What happens if the child's parents' whereabouts are not known?

Ans. The child may be ordered to be sent to a Shelter Home for urgent support till the parents are

found. Restoration of the child has to be the primary objective. The Child Welfare Committee may order the child to be restored to a guardian or even a fit person or fit institution as it deems.

Q. Sometimes the children have been kidnapped or moved after allurements to them or their families but the kidnappers are not the employers. Can something be done about that?

Ans. These children have been victimised by the crime of trafficking and the traffickers need to be punished as much as the employer. The various provisions of law that may be applied have been provided in Annexure 2.

Q. What is the process of rehabilitation of the child labourer?

Ans. Rehabilitation may be statutory through monetary compensation or organization based.

Immediately upon rescue, if it has been done under the Bonded Labour Act, a Release Certificate may be issued and an interim relief of Rs. 1000/- may be given. The Release Certificate issued by the DM/ SDM shall entitle the child (or even adult) victim to a rehabilitation package of Rs. 20,000/-. The SDM shall write to the Resident Commissioner of the state to which the child belongs for the safe repatriation of the child or shall order a law enforcement authority to repatriate the child back to the parents safely.

If rescue has been done under Juvenile Justice Act or any other legal provision, the rescued child may be sent to a Shelter Home and/ or to Children's Home in accordance with the JJ Act for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. The rehabilitation and social reintegration of a child shall begin during the stay of the child in a Children's Home or Special Home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship or (iv) sending the child to an after-care organization.

However, the child shall remain in the Children's Home till s/he attains the age of 18 or till suitable rehabilitation is found.

Q. The child may be rescued and repatriated, but how can a child be reintegrated back in mainstream society?

Ans. Once a rescued child from worst forms of child labour has been repatriated back and is reunited with her/ his parents, efforts may be made by parents/ NGOs, government agencies to reintegrate the child in mainstream society through formal education. This may be done through combination of policies and efforts available under, e.g.. The National Policy on Child Labour - 1987, NCLP - 1994 (National Child Labour Project), the INDUS Child Labour Project¹, Sarva Shiksha Abhiyan, National Charter for Children 2003, National Plan of Action 2005, etc. or directly in formal schooling, if possible.

¹ The INDUS Child Labour Project is implemented by the International Labour Organization, which is funded jointly by the United States Department of Labour and the Government of India.

LEGAL PROVISIONS WITH RESPECT TO TRAFFICKING FOR FORCED LABOUR

THE INDIAN PENAL CODE, 1860

| Section | Provision | Punishment | Classification of Offences | Explanation |
|---------|---|--|----------------------------|--|
| 340 | Wrongful confinement | | | To limit a person from movement by restricting him at one place |
| 342 | Punishment for wrongful confinement | Imprisonment for a term of up to 1 year, a fine of Rs. 1000 or both | Bailable, Cognizable | |
| 343 | Wrongful confinement for 3 or more days | Imprisonment for a term of up to 2 years, a fine or both | Bailable, Cognizable | |
| 344 | Wrongful confinement for 10 or more days | Imprisonment for a term of up to 3 years, and a fine | Bailable, Cognizable | |
| 346 | Wrongful confinement in secret | Imprisonment for a term of up to 2 years and any punishment he is liable to for such wrongful confinement | Bailable, Cognizable | Confine a person in a way that anyone interested can not discover |
| 361 | Kidnapping from lawful guardianship | Taking or enticing of a minor (male under 16 years or female under 18 years) | Bailable, Cognizable | Children are made false promises as allurement |
| 362 | Abduction | Compel by force or by deceitful means, to take a person to another place is abduction | Bailable, Cognizable | Living and working conditions are never as promised |
| 366 | Kidnapping, abducting or inducing woman to compel her marriage, etc. | Imprisonment for a term of up to 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Kidnap or abduct a woman to marry or to force or seduce to illicit intercourse |
| 366A | Procuration of minor girl | Imprisonment for a term of up to 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Procure a girl of under 18 years to force or seduce to illicit intercourse |
| 366B | Importation of girl from foreign country | Imprisonment for a term of up to 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Import a girl into India from other country to force or seduce to illicit intercourse with another person |
| 367 | Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc | Kidnap or abducts in order to cause grievous hurt or slavery or unnatural lust of a person; Imprisonment for a term of up to 10 years and fine | Non Bailable, Cognizable | In trafficking, all movement is either through force or deceit. The victim almost never gets minimum wage, thus maybe termed forced labour (PUDR case) |
| 368 | Wrongfully concealing or keeping in confinement, kidnapped or abducted person | Same punishment as for kidnapping or abduction | Non Bailable, Cognizable | Concealing the information about a kidnapped or abducted person is punishable |
| 370 | Buying or disposing of any person as a slave | Imprisonment for a term of up to 7 years and shall also be liable to a fine | Bailable, Non-Cognizable | To import, export, remove, buy, sell or dispose of any person as a slave, or accept, receive or detain against his will any person as a slave |
| 371 | Habitual dealing in Slaves | Imprisonment for a term of up to 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Habitually import, export, remove, buy, sell, traffic or deal in slaves |
| 372 | Selling minor for purposes of prostitution, etc. | Imprisonment for a term of up to 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Sells, lets to hire a person under 18 years for prostitution or illicit intercourse or for unlawful or immoral purpose |

| Section | Provision | Punishment | Classification of Offences | Explanation |
|---------|---|--|----------------------------|---|
| 373 | Buying minor for purposes of prostitution, etc. | Imprisonment for a term of up to 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Buys, hires or obtains possession of a person under 18 years for prostitution or illicit intercourse or for unlawful or immoral purpose |
| 376 | Punishment for rape | Rape of a woman not his wife - imprisonment for Min-7 years, Max- life term; or up to 10 years and a fine | Non Bailable, Cognizable | |
| 377 | Unnatural offences | Imprisonment for life term; or for a term of 10 years and shall also be liable to a fine | Non Bailable, Cognizable | Voluntarily have carnal intercourse against the order of nature with a man, woman or animal |
| 374 | Unlawful compulsory labour | Unlawfully compel a person to labour against the will of the person; imprisonment of a max of 1 year or fine or both | Bailable, Cognizable | |
| 406 | Punishment for criminal breach of trust | Dishonestly misappropriating or converting to one's own use any entrusted property; imprisonment for a term of up to three years or with fine or with both | Non Bailable, Cognizable | A trafficked person very often entrusts property to the employer or trafficker |
| 417 | Punishment for Cheating | Deceiving any person; imprisonment for a term of up to one year or with fine or with both | Bailable, Non Cognizable | In trafficking, often there is deceit, dishonest concealment of facts, which constitutes cheating, such that it causes damage or harm to a person in body mind, reputation or property |
| 506 | Punishment for criminal intimidation | Imprisonment for a term which may extend to 2 years, or fine or with both | Bailable, Non-Cognizable | Criminal intimidation is to threaten a person with injury to his person, reputation or property or to the person or property of whom the person is interested, with the intent to cause alarm |

THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

| Section | Provision | Punishment | Classification of Offences |
|---------|---|--|----------------------------|
| 2 | Definition of bonded labour- "bonded labour" is when a person pledges to offer his or his family's services in lieu of the debt that he has taken from the debtor | | |
| 16 - 23 | Penal provisions | | Bailable, Cognizable |
| 16 | Punishment for enforcement of bonded labour | Imprisonment for a term which may extend up to 3 years and a fine of up to Rs. 2000/- | |
| 17 | Punishment for advancement of bonded debt | Imprisonment for a term which may extend up to 3 years and a fine of up to Rs. 2000/- | |
| 18 | Punishment for extracting bonded labour under the bonded labour system | Imprisonment for a term of up to 3 years and a fine of up to Rs. 2000/- | |
| 19 | Punishment for omission or failure to restore possession of property to bonded labourers | Imprisonment for a term of up to 1 year or fine of up to Rs.1000 or both | |
| 20 | Abetment to be an offence | Whoever abets any of the punishable offences in this act is liable for the same punishment | |
| 23 | Offences by companies | Where an offence is committed by a company, the person in charge will be guilty of offence | |

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

| Section | Provision | Punishment | Classification of Offences |
|---------|---|--|----------------------------|
| 3 | Prohibits the employment of children in certain occupations and processes set forth in Part A and Part B respectively | | |
| 14 | Employing a child or permitting any child to work in contravention of provisions of Section 3 | Imprisonment: Min-3 months, Max-1 year; Fine: Min- Rs. 10,000, Max- Rs. 20,000. For repeated offence, imprisonment of at least 6 months and max of 2 years | Bailable, Non-cognizable |

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

| Section | Provision | Punishment | Classification of Offence |
|---------|---|--|---------------------------|
| 23 | Punishment for cruelty to a juvenile or child | Imprisonment up to 6 months or fine or both | Cognizable |
| 24 | Employment of juvenile or child for begging | Imprisonment for a term of maximum 3 years and also fine | Cognizable |
| 26 | Exploitation of a juvenile or child employee | Imprisonment for a term of maximum 3 years and also fine | Cognizable |

THE INTERSTATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

| Section | Provision | Punishment | Classification of Offences |
|---------|---|---|----------------------------|
| 2 (e) | Definition of an "interstate migrant workman" - Any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State whether with or without the knowledge of the principal employer | | |
| 4 | Registration of certain establishments employing 5 or more workmen | | Non Cognizable |
| 6 | Prohibition against employment of inter-State migrant workmen without registration | | Non Cognizable |
| 25 | Contravention of provisions regarding employment of inter-State migrant workmen | Imprisonment of up to 1 year or fine of Rs. 1,000/- or both | Non Cognizable |

REMEMBER THIS LIST IS NOT EXHAUSTIVE - USE LAWS RELATING TO:

Criminal conspiracy,

Confiscation/ seizure of property,

Extradition

International cooperation mechanisms, and as many as possible

SCREENING TOOL TO HELP IDENTIFY A POTENTIAL VICTIM OF HUMAN TRAFFICKING¹

The questions set out below are merely guidelines. There is no substitute for the judgement and intuition of the interviewer in determining whether an individual is a victim of trafficking. The critical concepts to be discerned are those of exploitation and loss or severe limitation of liberty.

- Collaborative Materials: In relation to all key points, ask if there are any witnesses; police; any documentation or travel tickets; reports of any medical treatment provided in respect of injuries prior to referral; documents showing victim acting in a nominee role (i.e. beneficial owner is really the trafficker); copies of bogus employment contracts or copies of the original advertisement; materials produced by the victim during exploitation or diary entries, letters, etc. written by the victim.
- None of the answers to any of the questions will on their own resolve the issue.
- They must all be considered collectively together with the indicators highlighted above.

A. General Information

Victim's name, age, nationality, professional and educational background

B. Recruitment

1. What is the victim's native place?
2. What location was the victim last residing in?
3. How long was the victim residing at that location?
4. How old was the victim when he/ she left the native community?
5. Do members of the family know the victim's whereabouts?
6. Was the victim forcibly transported to another location in his/her native place? If yes, how?
7. Who recruited the victim?
8. What was the purpose of the recruitment?
9. Was initial contact with recruiter voluntary or not?
10. If not, was the victim forcibly transported out of his/her place of origin? If so, how?

C. Use of Force or Threat

11. If force was used in the recruitment please respond to the following questions:
12. Was the victim abducted or kidnapped?
13. Was the victim threatened with harm to his or her self or family?
14. Was the victim sold? By whom?
15. What were the circumstances of the forcible removal?
16. Who initiated the contact? How?
17. What was the method of recruitment (e.g. by advertising, acquaintance, family, study, training, etc.)?

D. Employment

18. If the recruitment was for employment, please answer the following questions:
19. What kind of work was offered to the victim or what activities did the victim believe she/he would be engaged in following arrival at the new location?
20. How much money was promised to the victim and by whom?
21. Did the victim sign a contract? (e.g. an employment contract)

¹ This screening tool has been adapted from Human Trafficking Reference Guide for Canadian Law Enforcement, 2005

22. If so, what are the terms of the contract? Does the victim know them (e.g. was the contract in a language the victim understood)?
23. Does the victim possess a copy of the contract?
24. Was the victim coerced into signing the contract? How?
25. Was anyone paid a fee for recruiting the victim for work?

E. Travel and Identity Documents

26. Does the person have a passport?
27. If so, is it their own legitimate passport or is it a fraudulent passport?
28. How did they acquire this passport?
29. Was it provided to them by the trafficker?
30. What kind of employment authorization was promised to the victim and by whom?
31. Was the victim promised permanent residency upon arrival in India/ another state in India or after a certain period? By whom?

F. Movement

32. Was the victim coerced into moving? How?
33. If any travel costs were incurred before departure, who paid them?
34. Did the victim pay money in advance or agree to pay the costs or remainder of costs upon arrival?
35. Did the victim sign a loan contract? If so, does the victim have a copy?
36. What means of transport was used?
37. Was the vehicle stopped at any check-point?
38. Was the vehicle examined by check-point officials?
39. Did the victim change handlers during migration?
40. Was a fee paid for organizing the victim's transportation? By whom and to whom?
41. Was the victim threatened, sexually or physically assaulted or confined during transportation?

G. Working Conditions (Exploitation)

42. Does the victim believe that she/ he is subject to some form of debt bondage? (Debt bondage refers to the status of a debtor arising from a pledge by the debtor for his/ her services or of those of a person under his control as a security for debt)
43. Does the victim believe that she/ he owes money to recruiters/ transporters/ exploiters?
44. Was the victim paid and at what rate?
45. Who has the possession of these earnings now?
46. How many hours a day did the victim work?
47. Was the victim allowed any time off? Allowed to rest if sick?

H. Restriction of Freedom

48. Was the victim unable to quit working for the employer and get a job somewhere else?
49. Was the victim's movement restricted? How? (e.g. did the victim have a key of the house)
50. Was the victim allowed to communicate with family members? Other workers?
51. Was the victim living and working at the same place?
52. Was the victim chaperoned, guarded, incarcerated?
53. When did the victim realize that he/ she was not free?

I. Living Conditions

54. What were the living conditions of the victim? (e.g. no. of rooms, no. of people living together)
55. Did the victim have friends?
56. Did the victim have money? Could the victim buy his/ her own belongings?

J. Physical Coercion

57. Was the victim subject to physical assaults or torture? (pinching, hitting, slapping, punching, kicking, shaking, burning, branding, chained, etc.)
58. Was the victim subject to sexual assaults? (forced sexual contact, rape, forced prostitution etc.)
59. Was the victim forcibly confined or isolated?
60. Was the victim denied essential medical care?
61. Was the victim denied food/ clothes and other basic necessities including ability to maintain basic hygiene?

K. Psychological Coercion

62. Was the victim threatened with violence, harm or retaliation against victim or the victim's family members (or friends)?
63. Were there threats to report the victim to authorities?
64. Did the victim view or hear others being physically or sexually assaulted?
65. Was the victim deceived regarding the employment, activities or basic conditions of his or her employment?
66. Was the victim subject to verbal abuse, name calling, degrading remarks about victim's ethnicity/ social group?
67. Was the victim photographed and filmed while being physically or sexually assaulted, humiliated or degraded?
68. If so, did the traffickers threaten to use the images against the victim?
69. Was the victim threatened with confinement or isolation?

L. Risk Assessment

70. Do the traffickers know the victim's home/ work address or contact details?
71. Is the victim married? Does the victim have any children?
72. Do the traffickers have any details about the victim's family or loved ones?
73. Do the traffickers claim to know these things?

RELEASE CERTIFICATE

Sl. No.....

Court of the Deputy Commissioner/SDM

(Under Section 6, 7, 8 and 9 of the Bonded Labour System (Abolition) Act, 1976)

ORDER

On verification under the provisions of the Bonded Labour System (Abolition) Act 1976 Shriaged about.....years S/o Shri..... caste.....R/o Village.....P.S..... Tehsil.....District.....State.....is certified as a bonded labour. According to the statement of aforesaid Shri.....S/odated.....a sum of Rs.....was taken as advance at the rate of.....% annual interest/ other financial obligations of the employer Shri.....R/oDelhi, the aforesaid bonded labour was forced to work in similar manner in lieu of the advance/ financial obligation by him. Besides providing him his labour at nominal wage, he is not free to move or work elsewhere.

As such under the provisions of the Bonded Labour System (Abolition) Act 1976, power bestowed upon me, Shri.....aged.....S/o Shri..... R/o village.....P.S.....PO..... Tehsil.....Dist.....State.....is being released from bondage and all the debts are declared to be extinguished. The said money lender / employer is being informed herewith that he is no more entitled to get back any of the aforesaid debt / financial obligation from the above mentioned released bonded labour Shri..... S/o Shri.....R/o village..... The aforesaid employer / money lender should not conspire for realisation of the aforesaid debt / financial obligations and force him for bonded labour or displace him from the house provided to him during the course of employment and return all his belongings to him immediately kept as mortgaged by the money lender / employer in its original form, otherwise, he will be liable for punishment under the provisions of the Bonded Labour System (Abolition) Act 1976, Sahukari Act 1976 and Minimum Wage Act 1948.

Releasing Officer / SDM

Delhi

Copy for information and necessary action to:

1. Released Bonded Labour Shri
2. Employer / Money lender Shri
3. D.M.
4. SHO
5. General Secretary, BBA (NGO), L-6, Kalkaji, ND-19

Releasing Officer / SDM

Delhi

ACRONYMS

| | |
|-------------------|--|
| AHT | Anti Human Trafficking |
| BBA | Bachpan Bachao Andolan |
| Bonded Labour Act | Bonded Labour System (Abolition) Act, 1976 |
| CD | Case Diary |
| Cr. PC | Criminal Procedure Code |
| DM | District Magistrate |
| FIR | First Information Report |
| GD | General Diary |
| HT | Human Trafficking |
| ILO | International Labour Organization |
| IO | Investigating Officer |
| IPC | Indian Penal Code |
| JJ Act | Juvenile Justice (Care and Protection of Children) Act, 2000 |
| MO | Material Objects |
| NGO | Non Governmental Organization |
| PUDR | People's Union for Democratic Rights |
| PS | Police Station |
| S. | Section |
| SCC | Supreme Court Cases |
| SDM | Sub Divisional Magistrate |
| SHO | Station House Officer |
| vs. | Versus |
| u/s. | Under section |

