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Report of review of the pace and progress of activities pertaining to implementation of Bonded Labour System (Abolition) Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986 for the State of Bihar from 8th to 10th April, 2008 by Dr. Lakshmidhar Mishra, Special Rapporteur, NHRC

I visited Bihar from 8th April, 2008 to 10th April, 2008 for (a) thorough review of the situation obtaining on the ground in regard to prevalence of bonded labour system and child labour (b) review of the new initiatives and efforts, if any, made by the State to identify, release and rehabilitate bonded labourers and to withdraw children from work and rehabilitate them through education, nutrition and skill training.

The same threefold strategy as has been adopted by me for undertaking similar reviews in Haryana (Nov.06), Orissa (Dec.06), M.P. (Jan.07), Rajasthan (Feb.07), Karnataka (May.07), Jharkhand (March.08), Punjab (March.08) and Chattisgarh (March.08) was adopted for Bihar as well. The strategy is as under:-

- I Two questionnaires – one on elimination of bonded labour system and another on elimination of child labour covering all aspects of the 2 issues relevant both for the macro as well as micro levels were circulated to Principal Secretary, Labour, Bihar in advance with a view to eliciting the desired response from the State Government and district administration.

- II Two power point presentations – one on elimination of bonded labour system and another on elimination of child labour were made to the Secretaries to Government of Bihar in Labour, Law, Home, Agriculture, Animal Husbandry and Veterinary, Forest, Fisheries, Food and Civil Supplies, Health, Education, Rural Development, SC and ST Welfare, Women and Child Development with the following objectives:-
 - to familiarize them with the basic facts (international treaty provisions, Constitutional and legal provisions,

judgements of the apex Court, National Policy and Programme of Action);

- removing doubts, misgivings and mindsets, if any and enabling all the functionaries involved with implementation of BLS(A) Act and CL(P&R) Act to develop complete Constitutional, legal and definitional clarity;
- sensitizing the insensitive.

III To undertake field visits, address the field functionaries, study the ground level realities and cross validate the same with the response to the questionnaire to establish the truth about the actual situation prevailing in the State.

Initially the district of Monghyr was selected for the field visit but considering the long distance from Patna (250 kms), the time involved in travel (7 hours) and the problems in getting the logistic support it was replaced by Muzaffarpur (75 Kms. from Patna).

In course of my power point presentation which was attended by Secretaries to Government of Agriculture, Health, Social Welfare, SC and ST Welfare etc. the following issues were covered:-

Bonded Labour - a few basic facts:

- What makes us talk about the bonded labour system despite clear Constitutional and legal provisions, provisions of 2 ILO Conventions (Convention No. 29 of 1930 and Convention No. 105 of 1957) ratified by the Government of India and judgements of the Supreme Court which are binding on all Courts under Article 141 of the Constitution;
- List of occupations where bonded labourers have been found (both originating point and destination point) in Bihar;

- Special problems of migrant bonded labourers from Bihar;
- How to identify bonded labour system with reference to peculiar customs and traditions obtaining in Bihar (Kamiatu System);
 - Concept of summary trial;
 - Physical, economic and psychological rehabilitation of released bonded labourers; how to make the same meaningful, effective and permanent;
 - Can bonded labour system be prevented – need for drawing up a perspective plan to eliminate bonded labour system in Bihar covering a few priority steps.

Child Labour – a few basic facts:

- Definition of child, childhood, child labour – need for adoption of a uniform, consistent and holistic approach;
- Rationale behind a minimum age of entry to the world of work;
- Magnitude of the problem – a comparison between 1991 and 2001 Census; why there has been such a steep increase in Bihar;
- Why child labour – mindsets of parents, employers, working children and those of the civil society;
- Constitutional and legal provisions;
- Forms of hazardous occupations and processes in which children are employed, consequences of such employment;
- Worst forms of child labour – ILO Convention No. 182;
- National Policy and Programme of Action for withdrawal of children from hazardous work and their rehabilitation through education, nutrition and vocational skill training;
- Sharing a success story of MVR Foundation, Hyderabad, Andhra Pradesh.

The presentations which were well received were followed by a question answer session. There was, however, no presentation from Labour Department (which is the nodal department for bonded and child labour) highlighting their programmes and achievements. The Principal Secretary, Labour was away to Delhi (the programme of my visit was finalized in consultation with him only) to attend to some urgent personal work and in his absence it was a herculean task to see my programme through in its entirety.

The visit was wrapped up by having a final round of discussion with the Chief Secretary to Government of Bihar on 9.4.2008 (6 PM to 7 PM).

Historical background of the origin of bonded labour system in Bihar:

There are a number of interesting articles written on the subject of bonded labour system which throw adequate light on the prevalence of the pernicious system and factors/forces contributing to the system in several parts of undivided Bihar (some of which are now in Jharkhand State created w.e.f. 1.11.2000). These are:-

1. Promises to keep: repeat camp for free bonded labourers in Palamau (now in Jharkhand) by late Shri Arvind Narayan Das, eminent historian and social activist – published in National Labour Institute bulletin, Vol. 2, No. 11, 1976.
2. Contract labour or bonded labour by Smt. Mahasweta Devi, eminent writer (Gyanpeeth Award winner) and social activist published in Economic and Political Weekly, 6th June, 1981.
3. The bonded of Palamau (now in Jharkhand) by Shri Sudipto Mundle, eminent social anthropologist published in Economic and Political Weekly Vol. (page 653-656).
4. Bonded Migrant Labour from Bihar in Punjab by Shri Manjit Singh, Professor, Sociology, Punjab University published in Economic and Political Weekly Vol. 32 No. 11, 1997 (page 518-519).

In the first it was revealed in a repeat camp for freed bonded labourers in Palamau that the participants in the camp were bonded for an average period of 7 years for a paltry sum of Rs. 156/-. The new found freedom had instilled in them a rare strength, courage and confidence. There was no 'folding of hand, no keeping their heads bowed and no mumbling when asked to speak'. They had overcome the diffidence, fright, oppression and suffering which was writ large on their face at the time of the first camp. They displayed a rare grit, courage and determination to open up and articulate with total freedom and spontaneity notwithstanding the fact that the landlords of the village have boycotted them socially and denied them work. The manager of a local quarry had been persuaded to deny employment to the freed bonded labourers who went to him when they got no work in the field. In all these acts of denial, the bonded labour keepers had counted on the connivance of the lowest levels of administration, in particular of the police machinery. Minimum Wages Act was not being implemented all over the district and despite ban of liquor by Government, poor tribals were being forced to consume it and in the process get into the vicious cycle of indebtedness and bondage. The land given to the freed bonded labourers was not allowed to be owned by them and even the bonded labour keepers had staked their claims on the Mahua trees which had been given to the freed bonded labourers.

The second article written by Smt. Mahasweta Devi is a scintillating analysis of the working and living conditions of the members of the ST community from the districts of Palamau, Ranchi, Muzaffarpur, Samastipur, Bhojpur, Begusarai, Monghyr, Purnea, Gaya, Patna and Chapra recruited by middlemen to work in the brick kilns of West Bengal (the owners of which are mostly from North Bihar). Many of them are freed bonded labourers but have very little to fall back upon after their release and in the process from one debt trap they land up in another. The land given to them is uncultivable. The good land is held by the erstwhile bonded labour keepers though the land is in the name of the freed bonded labourer. There is no water for drinking or irrigation. There are no avenues of stable employment – either government or private. Under these circumstances they are lured and

recruited by middlemen (Sardars) to the brick kilns of West Bengal. The brick kiln owners buy paddy land from poor peasants for building the oven ruining in the process the paddy fields. The average earnings in a brick kiln are Rs. 4/- to Rs. 5/- per day for adults and Rs. 2.50/- to Rs. 3.50/- for children. Most of this is spent on buying rice and very little is left by way of saving when they return home in the same impoverished condition in which they had migrated. Yet they return to the brick kilns year after year as life at the originating point plagued by drought and scarcity is a nightmare. Things are no better at the destination point either. No attendance register is maintained; no identity or employment cards and no pay slips are issued. The author – a celebrity in literature has bemoaned that even in a politically conscious State like West Bengal women workers in brick kilns are denied minimum wage, medical facilities, maternity leave and their right to form a union. They are confined by force virtually as forced labourers.

The third article by a renowned social anthropologist provides a deeply moving account of the working and living conditions of Sevakias of Palamau district (now in Jharkhand). A person mortgages himself and the labour of his life to a landlord or money lender either for his own marriage or that of his son or daughter or performance of rites (associated with births and deaths) or illness of self or any of the family members. On the very day he gives up his freedom to begin a life of bondage. His bonded service is divided between the fields, the shops and the bullock cart. In return he gets banhi or 2 seers katchi as the minimum subsistence consumption to keep his body and soul together. The bonded person is unable to perceive the difference between his erstwhile miserable freedom and his present miserable bondage. For him, it is one and the same backbreaking and unceasing hard manual labour year after year. Escape from the clutches of bondage is virtually next to impossible on account of the closely guarded surveillance. It is brute force which rules the roost. The sevakia is tied to debt bondage for ever even though in principle he is bonded only till such time he has paid back the debt.

There are 2 types of agricultural workers namely the small and marginal tenant who is free (chutte Mazdoor) and the labourer who is bonded (Sevakia). The dream of both is to become a middle peasant who cultivates his own land and who is largely self sufficient. That unfortunately is not always the case. They do get exposed to the greedy clutches of the landlord/money lender in difficult situations like droughts. They are also vulnerable to the trickery, intimidation and forced occupation by the latter. Eventually the middle peasant also gets pauperized and joins the ranks of the chutte majdoor or sevakia. The dream thus in reality ends up only as an illusion.

The fourth article by an eminent sociologist, social activist and research scholar is an interesting account of the field study carried out in 2 phases namely 1980-81 and 1990-91 in 2 districts of Punjab namely Ludhiana and Hoshiarpur to assess the working and living conditions of migrant labour recruited from the districts of Monghyr, Saharsa, Darbhanga, Muzaffarpur and Samastipur in North Bihar and Chotanagpur belt of that State (now in Jharkhand). The author does not perceive anything wrong in migration perse. Migration according to him becomes objectionable only when it is associated with use of coercion and fraud and accompanied by violation of various labour entitlements such as wages, hours of work, social security and so on. The following are some of the highlights of that study:-

- the total number of persons who are recruited from Bihar would be around 5 lakh (0.5 million);
- 14% belonged to SC, 84% to OBC and only 2% to upper castes;
- They worked for 3 agricultural operations namely:-
 - Wheat harvesting;
 - Paddy transplantation;
 - Paddy harvesting.
- They were being brought by recruiting agents from Bihar to Punjab and on arrival, they were handed over to different farmers individually in an auction against advance payment;

- Sometimes they would be locked up by the farmers along with the cattle in their cattle-shed and would be physically assaulted by the employer to submit to the latter;
- Ironically enough they were visiting Punjab for the second or third time despite such inhuman treatment;
- This was the simple reason that back home they would not have enough food even for a biological survival.

In the second phase of the visit (1990-91) the following facts came to light:-

- The gap between the local and migrant labour in respect of minimum wage rates was bridged;
- The flux of migrant labour remained unabated despite militant violence in Punjab and despite massacre of many migrant workers;
- The triangular competition between local labour, migrant labour and machinery became more intense;
- The migrant labour replaced the local labour and started working as attached labour; they were also being replaced by combine harvesting in paddy harvesting-cum-threshing.

Enquiries conducted by a Fact Finding Committee constituted by the Ministry of Labour during 1996-97 under the leadership of Sri Arvind Risbud, a Director in the Ministry unearthed some distressing facts and confirmed large scale bondage of Bihari Labourers in Punjab as under:-

- Labour recruiting contractors take huge amount of cash advances from rich farmers of Punjab and lure labourers from various parts of Bihar with that money;
- In a few cases of need loans are advanced to labour @ 192% interest per annum;

- On arrival in Punjab labourers are handed over to farmers and are subjected to ruthless exploitation;
- Instances of bondage spread over 10 to 15 years came to surface;
- Siri or local attached labour is being progressively replaced by alien migrant labour which suites the interest of the farmer;
- The whole process of this recruitment and replacement of local attached labour has been a marriage of mutual convenience between the farmer and the labour contractor.

In 1977, Dr. A.K. Lal of Anugraha Narayan Sinha Institute of Social Studies, Patna brought out an interesting publication captioned, 'Politics of Poverty'. This is actually a case study of bonded labour in Bihar what the author calls the voluntary sentence for life. According to this case study, there is large scale prevalence of Kamiya system (a variant of bonded labour system) in Bihar which has country's lowest rate of literacy, lowest per capita income and where wages are paid mostly in kind. The age old pernicious system provides the wherewithal for a mere biological survival of a large number of landless agricultural labourers. The publication provides a lot of historical insight into the nature and character of the problem over a 30 year period (1926-56). The burden of the song in this landmark case study is that these unfortunate sections of humanity have evoked very little attention of academicians and researchers.

Even though the study is confined to one village with 159 households (Shankarpur in Wazirganj Block of Gaya district), the findings are breath taking. Broadly the following are the highlights of the study:-

- bonded labour system represents an unequal exchange relationship between 2 important constituents in the village namely the land owner and the tiller;
- the land owners belong to the upper castes while the tillers belong to Bhuinya caste;

- they bind themselves into a lifelong stable alliance;
- the bond is hereditary;
- it relates to the relationship between patrilineal descent groups of masters and servants;
- the process of dependence starts at the time when a Bhuinya boy is still half grown;
- as soon as the boy is found capable of being engaged in cattle grazing, he has to work for the man to whom his father is attached as a bondsman;
- for his duties as gorkhia (cattle grazer) the boy is entitled to one maund of paddy as his yearly wage and a half kaththa of land as Ghewari;
- the boy is required to serve his master for one year as an apprentice in order to qualify himself to be accepted as a bonded labourer;
- when the boy comes of age and wants to marry and seek his own subsistence his father or some other member of his family approaches the master with a request to meet his marriage expenses;
- the master accedes to this request by providing 2 dhotis, 2 sarees and one maund of rice to the family;
- after the marriage, the couple and afterwards the offsprings of such union become lifelong attached labourers to the master;
- the master also provides a small piece of land where the newly wed put up a house;
- the materials for thatching the house are provided by the master once a year;

- the relationship between a bonded labourer (Kamiya) and the master is hereditary as well as permanent;
- for a Bhuinya the status of bondsman is as ascriptive as is membership of his caste. The servitude, therefore, is not periodical in nature; the Bhuinya remains a bondsman for his whole life until he is dead;
- accepting the status of a bonded labourer in Shankarpur amounts to a life sentence so far as the Bhuinyas are concerned;
- in other parts of India, where bondage exists the duration of bondage in many cases is reported to be neither life long nor hereditary;
- in case of Bhuinyas of Shankarpur the existing ties are extended to the next generation;
- here once a man becomes a bondsman, his entire nuclear family (excluding minors or married daughters) becomes a property of the master;
- even if a master has at his disposal sufficient number of Bhuinyas (bondsmen) it does not necessarily mean that the son of the bondsman is free to seek a master of his choice;
- Through owning sufficient number of labourers as also by incurring the customary marriage expenditure of the labourer's son the upper caste landlords or bondsmen owners virtually go on expanding their reservoir of attached labour force;
- Where it is not possible for a master to recruit a new Kamiya or maintain the existing one there is the custom of sale and mortgage of the bondsman/bondsmen;
- This takes place in a contingency where the landlord feels that the Kamiya newly recruited to his labour force is a surplus one;

- Sale, purchase, mortgage or leasing out of a bonded labourer results in commodification of labour what the Philadelphia Declaration of 1944 had condemned in very strong words: 'Labour is not a commodity'.
- The bondsman, a man, a person in this process becomes a thing;
- The Royal Commission on Labour had observed in 1929 that these labourers are also exchanged when the landlord sells his land, that the buyer pays in addition to the price of the land, the sum which the bonded labourer owed to his previous master;
- As he is attached to the land his owner changes with the change in the ownership of the land;
- The case study refers to sale of 2 labourers in 1971 and 1974 in Shankarpur. In the first the price fetched by sale of a Bhuinya was Rs. 500/- whereas in the other the price fetched was Rs. 175/-.
- The age of the bondsman and his reputation as a worker are important considerations to determine his price;
- If, however, a labourer is attached to a farmer with whom one or more of his married sons are also attached, the sale of the father does not result into the sale of the married sons;
- There are also instances where Kamiyas have been mortgaged by a Rajput land owner to secure loan. In other words, a labourer is also transferred from one person to another as a security for getting a loan;
- The story reported in the case study may be reproduced here in support of the theory of commodification of labour which has been condemned by the Philadelphia Declaration:-

'Some years back, a Rajput who owned only a few acres of land was in need of money. He mortgaged his Kamiya to get loan from a Rajput of a neighbouring village. The new master of the Kamiya remortgaged the kamiya to a third party (again Rajput). With his third master, the Kamiya found it difficult to work. Infact, he compelled his first master to pay the debt back and rescue him from the clutches of a butcher'.

Within the framework of the case study and to sum up by way of concluding remarks, the following conclusions emerge from the report:-

- The bonded labour keepers represent an overwhelming numerical majority (83.6%) while bonded labourers constitute a numerical minority.
- Land distribution and ownership is skewed. 42% of the households are landless.
- Access to higher education still remains the preserve and privilege of the landed upper castes.
- Large number of children belonging to the SC community are victims of educational deprivation.
- Bondage has been institutionalized under a system in which the land owning upper castes and the labourers belonging to the lower castes have formed a stable alliance.
- It is also hereditary linked to the patrilineal descent groups of masters and servants. The process begins with birth and goes up to death. It's a life long bondage or voluntary sentence of life.
- The bonded labourer is purchased, sold, mortgaged or leased out like any other commodity or property.

- Sometimes the amount paid for hiring a leased out labourer is Rs. 20/- per annum which shows how human life is equated with goods and chattel.
- Escape from bondage is virtually impossible and is met with dire consequences. Sanctions for enforcement of the alliance are unilateral even though resort to violence to correct an intransigent Kamiya may occasionally spark off counter violence.
- The payment to the Kamiya is mostly in kind and falls far short of minimum wages notified under Minimum Wages Act. Wages are paid only for the days worked. No wages can be claimed for the period of illness of a Kamiya. The wages are terribly low to keep the family well fed all the year round. Low income compels the Kamiya for fresh loans and bondage is perpetuated.
- The Kamiya system is doubly beneficial to the keeper in-as-much as (a) it provides an assured supply of cheap labour (b) the keeper does not have to maintain the labourer all the year round.
- It is mostly disadvantageous to the Kamiya except as Prof. Jan Bremen puts it, it guarantees the basic livelihood of the labourer in an economy of scarcity. He has no voice and no bargaining power. He meekly endures the inhuman as well as subhuman treatment meted out to him.
- On the whole, it is an exploitative relationship.
- The resource disadvantage of the Kamiya tended to be cumulative. They are poor and deprived of basic entitlements, their educational and income levels are very low and they have no marketable occupational skills.
- Reduction of cumulative inequalities strengthens the roots of democracy while the bonded labour system robs democracy of its meaning and significance.

- Land is the main route to achieve rural equality while inequality in ownership of land is a major contributing factor to rural inequality.
- Ceiling legislations have been passed to acquire surplus land from big peasants for the purpose of redistribution among landless labourers.
- Three million tenants/share croppers have acquired ownership of land in more than 7 million acres through land distribution and ownership.
- In many parts of the country, however, land reforms are yet to be implemented and vested interests have successfully thwarted the attempts of the State in that direction.
- Measures for 'reverse discrimination' through reservation are yet another instrument to disperse the cumulative inequality of depressed classes.

Yet another distinguished historian and social anthropologist – Prof. Gyan Prakash in his work 'Bonded histories: genealogies of labour: Servitude in Colonial India' has tried to reconstruct the historical formulation of the discourse which looks at the notion of freedom as a natural right as an innate human condition and representation history as a process leading towards realization of the lost human essence i.e. freedom. He seeks the articulation of this discourse in a wide range of historical practices – political, administrative, economic and social – that constituted a group of persons (Kamiyas) as unfree (bonded). In the process he has spanned the vast frontiers of history between early 1800 to 1930 and in doing so, he has made a sincere and professional attempt to contextualize and interpret evidence and in particular, the oral tradition. While South Bihar constitutes the focal point of attention much of the evidence in the celebrated work flows from Gaya district in Central Bihar.

In tracing the origin and growth of Kamiya system in South Bihar, the author has made a graphic presentation of the geography, topography, agro climatic conditions, irrigation practices and has convincingly demonstrated how the incidence of labour bondage lies deeply embedded in the diversity obtaining in the 2 regions known as North Bihar (north of the Ganges) and South Bihar (South of the Ganges). The north of the Ganges represents a flat alluvial plain with a diversified cropping pattern – autumn, winter and spring (transplanted aghani rice, broadcast rice, maize, millets, marua and indigo (in autumn), wheat, barley and oil seeds (in winter and spring) despite having only 5% of the total land area covered by irrigation. The south of the Ganges, in sharp contrast, represents a strong slope, undulating landscape and inability of the soil to retain moisture. The peculiarity of geography and ingenuity of man have combined to go in for digging of canals and tanks in order to store and draw more water for agriculture.

The author has presented a succinct analysis of how the north-south divide is relevant not only for agricultural production but how the pattern of agrarian relations has also displayed corresponding pattern of divergence. In the context of origin, growth and continuance of Kamiya system he has presented a logical, coherent and convincing analysis of how and why Kamiyas (unfree labour) were preponderant in South Bihar (embracing Palamau, Hazaribagh and Santhal Parganas which are now in Jharkhand) as compared to the north. In the north of the Ganges, there is intensive agriculture, double cropping, higher population density, availability of family labour, high to moderate demand for labour (while family labour is sufficient for small peasants, demand for labour on large landlord estates and big peasant farms would be high) in south of the Ganges there is mono cropping (second crop is primarily Khesri dal which is sown on paddy fields), high agricultural seasonality and, therefore, need for supply of labour on an assured basis. The supply of labour could be guaranteed only if special ties were in place between the landlord and the agricultural labourer throughout the year. This is how existence of attached agricultural labour made sense in the areas south of the Ganges while in areas north of the Ganges where

work is available for most parts of the year, the need for such special bonds or the need for attached agricultural labour would be less.

The inescapable conclusion at the end of this analysis is that the agrarian economy was created under social relations of production secured and reinforced by power and it has to be sustained by the same process. Whether it is what Karl Marx called commodity fetishism or what Karl Polanyi formulated on the embeddedness of the economic in the social under percapitalist formations series of differences presented by the author along the North South continuum leads us to the stranglehold of agro-economic determinism, that social relations are to be seen in terms of their economic functions and that social relations are represented according to economic categories.

Administrative infrastructure – adequacy and effectiveness thereof:

- The administrative mechanism for enforcement of provisions of BLS (A) Act comprises of the following:-
 - State Level Monitoring and Coordination Committee;
 - District Level Vigilance Committee;
 - Sub Divisional Level Vigilance Committee;
 - Executive Magistrate vested by the State Government with powers of a Judicial Magistrate, 1st or 2nd Class;
 - District Magistrate.
- The norms for Constitution of Vigilance Committees have been provided in Section 13 of BLS(A) Act.
- Their functions have been clearly and elaborately laid down in Section 14 of BLS(A) Act.
- Section 13(4) of BLS(A) Act says that each Vigilance Committee shall regulate its own procedure.

- Section 14(e) provides for conducting survey as one of the important functions of Vigilance Committees; such survey is one of the effective tools for identification of bonded labour system.
- The Bonded Labour System (Abolition) Act does not provide for constitution of a State Level Monitoring and Coordination Committee.
- Such a Committee, however, is necessary to oversee the functioning of the VCs on the ground so that (a) they do not sit idle (b) they go out to the field to conduct surveys as also to enquire into complaints relating to bonded labour system (c) they take the help of NGOs and voluntary social action groups, wherever necessary, to do justice to their mandate (d) they prepare the reports containing the findings of the survey as well as findings of the enquiry and submit them to the competent authority (Magistrate appointed u/s 21 of BLS(A) Act) for necessary action.
- Such a Committee is also essential to coordinate the role of the following departments in relation to the functions of the Vigilance Committees for identification, release and rehabilitation of bonded labourers:-
 - Education;
 - Home;
 - Health;
 - Industry/IT;
 - Labour;
 - Law;
 - Revenue;
 - Rural Development;
 - Social Welfare/SC and ST Welfare;
 - Urban Development;
 - Women and Child Development.

- Adequacy of the administrative machinery would mean the following:-
 - the Committees including the State Level Committee are constituted with women and men of character and integrity, passion and dedication to a particular cause;
 - the vacancies in membership are filled up in time;
 - the Committees are reconstituted by following the same norms wherever such reconstitution is due;
 - financial constraints (including provision for TA/DA) are not allowed to inhibit the functioning of these Committees.
- Effectiveness of the machinery would mean the following:-
 - the women and men who constitute the Committees have a clear and correct understanding of the Constitutional and legal provisions as also of the judgements of the Supreme Court in the field of elimination of bonded labour system;
 - an effective mechanism and procedure for training of members of Committees and functionaries at all levels with the help of resource persons (to be specifically identified for the purpose) with a built in provision for evaluation of content, quality and impact of such training;
 - adequate budget provision covering the following activities:-
 - survey;
 - awareness generation;
 - human resource development;
 - evaluation of the content, process and impact of various activities.

a number of preconditions will have to be fulfilled to make the administrative mechanism strong, non-partisan, transparent and accountable; these preconditions may be laid down by the administrative department with the concurrence and guidance of the State Level Committee.

One of the preconditions, for example, is that the functionaries should always be positive and proactive and training should be so conducted that it should make them empathetic and sensitive.

The guiding principle here should be: 'when a law or ruling is capable of diverse interpretation, the DM, ADM, SDM, Executive Magistrates and all members of VCs should interpret it in a manner which will be beneficial to the people for whom the law is intended.

What is the ground level situation in Bihar?

- Labour Department has been made responsible under Allocation of the Rules of Business for overall planning, implementation, monitoring of all matters pertaining to BLS(A) Act. A chart giving structure of the Department from the Principal Secretary down below is given at Annexure-I.
- There is no State Level Committee for coordination with various departments listed at page 20 as also for overseeing the functioning of VCs.
- The administrative department does not perceive the need for such a Committee. It says that Labour Department is competent to monitor, coordinate and issue directions for implementation of the programme on the ground.
- Such a stand is not correct. Labour Department is one of the many departments of the State Govt. and under the Allocations of Rules of Business it has certain specific functions. It cannot issue directions

to other departments concerned with one of the important objectives of the law i.e. rehabilitation of freed bonded labourers. Such directions can be issued only by the Chief Secretary to Government. If a State Level Committee is formed under chairmanship of the Chief Secretary it can play a positive and decisive role in the matter of coordination with all other concerned departments.

- Besides, if a State Level Committee is formed under the chairmanship of the Chief Secretary to Government it can through discussion and consensus improve the content and quality of implementation of the rehabilitation programme on the ground by securing a much better coordination and liaison with the banks and other financing institutions.

Role of Vigilance Committees:

- The Department confirms that Vigilance Committees at the district and sub divisional levels have been constituted but it appears that they are not being reconstituted at an interval of 2 years. The reasons for delay in reconstitution could not be indicated by the department. The old Committees have, however, been allowed to continue.
- There is, however, no information with the Department on the following:-
 - whether they have been constituted strictly in conformity with the norms laid down in subsection 2 and 3 of section 13 of BLS(A) Act;
 - intervals at which the VCs meet;
 - an assessment of the business transacted by the Committees;
 - whether decisions are taken unanimously or by consensus;
 - who monitors the extent of implementation of the decisions taken by the Committees;

- what is the overall status of compliance with the decisions taken at various levels;
- how often the Committees go out to the field to conduct survey as required u/s 14 (e) as also to conduct enquiries into complaints;
- nature of Secretarial assistance made available.

Identification of bonded labour system:

- Identification of bonded labour system is the primary responsibility of VCs constituted u/s 13 of BLS(A) Act. Such a responsibility can be carried out by the Chairman and all members collectively or by any one member or members specifically entrusted. It can be carried out with (a) issue of a set of guidelines (b) the Committee as a whole or any member or members going out to the field to conduct the survey and an enquiry into the complaints received or by interaction with people on the ground to arrive at the truth.
- Assistance of good, reliable and committed NGOs or voluntary social action groups can also be taken in case the Chairman and members of VCs are preoccupied and do not find it possible to go to the field to conduct enquiries by taking a cue from the following directions of the Supreme Court in Neerja Chaudhury Vs. State of M.P. AIR 1984 Supreme Court 1099 W.P. (Criminal) No. 1263 of 1982 (date of the judgement 08.5.1984):-

'Social action groups operating at the grass root level should be fully involved with the task of identification and release of bonded labourers on account of the following reasons:-

- Members of the Legislative Assembly though sincere and well meaning with welfare of the poor at heart would hardly have the time to carry out any inquiry or investigation for the purpose of identification and release of bonded labourers;

- The Commissioners and Collectors have multifarious duties to attend and even if they are anxious to help in eradication of the vice of bonded labour system they would not find time to make any personal inquiry or investigation;
 - They instead would have to rely on their subordinate officers who generally lack social commitment and are in sympathy with the exploiting class;
 - The Panchayats are dominated by vested interests and having regard to their functioning may not be very effective in this task;
- The apex Court had also made a few other observations which are relevant particularly in the context of Bihar. These are:-
 - The district and sub divisional Vigilance Committees should be reorganized and activated;
 - Their meetings should be more frequent than now;
 - Officers who are posted at different levels to deal with the problem of bonded labour should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor;
 - Every officer who is placed in charge of identification, release and rehabilitation of bonded labourers should be made fully conscious of his/her responsibilities. He/she should be imbued with a sense of purpose and dedication which is necessary, if this important task is to be accomplished successfully;
 - There should be constant check and supervision over the activities of the officials charged with the task of securing identification, release and rehabilitation of bonded labourers;

- Offices who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition should be encouraged and their efforts appreciated/commended by way of suitable public recognition so that they may become exemplary models for other officers.
 - An intensive survey of the areas which have been traditionally prone to the system of debt bondage should be undertaken by the Vigilance Committees with the assistance of social action groups operating in such areas.
- These directions of the apex Court have come like breaths of fresh air. They are also binding on all subordinate Courts and in that sense constitute the law of the land (Article 141 of the Constitution).
 - The Labour Department does not appear to have any clue about the methodology which needs to be adopted or which has actually been adopted on the ground for identification of bonded labourers. In response to the questionnaire circulated by me the Department has stated that DMs are expected to design appropriate methodology for functioning of all Committees as well as identification of bonded labourers. Since the Minister incharge of Labour is answerable to the people through the legislative assembly it is imperative that the department has access to some of these vital areas of information. In response to a specific query as to whether field functionaries of Revenue, Rural Development and Social Welfare Department have any role to play in identification of bonded labourers (in addition to Vigilance Committees) the reply of the department is quite vague. It says that DMs are competent to utilize the services of the officials of all departments in their districts regarding identification of bonded labourers. It would have been appropriate if atleast one review could have been conducted in respect of one district by the Principal Labour Secretary himself so as to have access to correct factual situation obtaining on the ground. That has not been the case in regard to

Bihar. According to the directions of the apex Court there should be constant check and supervision over the activities of the officials charged with the task of securing identification, release and rehabilitation of bonded labourers but the Department does not perceive the need for issuing any guideline to enable the field functionaries to effectively discharge their mandate or for reviewing their actual functioning in this regard.

- It feels that the DMs are at liberty to issue direction to any official of the concerned department which by implication means that the actions of the DMs are not required to be overseen by the State Government.
- This contradicts the observation made under 'Administrative infrastructure' – that Labour Department issues directions to all District Magistrates for implementation of the Act from time to time.
- It is well known that DMs have a very heavy workload in as much as they are required to coordinate the activities of a number of departments/agencies at the district level. DMs themselves are Chairpersons of a number of statutory and non statutory bodies at the district level and remain heavily preoccupied. Time management is an extremely difficult proposition for most of the DMs.
- While this is the scenario with regard to the burden of responsibility with the DMs, BLS(A) Act is an important piece of socio-economic welfare legislation meant for the liberation and well being of the bonded labourers – the poorest of the poor and the weakest of the weak and casts the following specific responsibilities on the DMs:-
 - convening meetings of the Vigilance Committees at the district level;
 - ensuring that all such Committees at the district and sub divisional level are constituted and reconstituted in time and proposals suggesting names of women and men of character and integrity, passionate commitment and dedicated resolve to

carry out certain mandates tasks to be members of VCs are sent to the State Government in time;

- ensuring that they go out to the field and conduct enquiries as also surveys;
 - ensuring that they listen to the grievances of the aggrieved bonded labourers, if any, on the ground and that they take prompt measures for redressing those grievances and providing timely relief to the aggrieved;
 - reviewing from time to time the work of Executive Magistrates vested with powers of Judicial Magistrate, 1st or 2nd Class, as the case may be, and removing their operational constraints, if any;
 - discharging all other functions entrusted to them by the State Government u/s 10, 11 and 12 of BLS(A) Act.
- The duties and responsibilities of DMs under BLS(A) Act as above are onerous and their smooth discharge necessitates constant encouragement and support of the State Government and issue of detailed guidelines on various aspects of the law and procedure as interpreted by the Supreme Court from time to time.
 - It is incorrect, therefore, to take a stand that DMs can function on their own and can issue any direction to any official of the concerned Department and there is no need for issue of any guidelines.
 - On 3-4.12.82, the date of my earlier visit to the undivided State of Bihar as DG(LW)/JS, Ministry of Labour, the then Principal Secretary, Labour Department – Shri C.M. Jha had stated that by 1982-83, 7859 bonded labourers have been identified and freed out of whom 7300 belong to the State and 559 outside the State. This was the position 25 years ago. At that time there was no provision of extending any financial assistance by the Ministry of Labour to the State

Governments for conducting surveys. Subsequently and w.e.f. 1.5.2000 such a provision was made under the Centrally Sponsored Scheme of the Ministry of Labour and financial assistance @ Rs. 2 lakh per district was made available to enable the DM to conduct a survey. Such an assistance is available once in 3 years. The State Government of Bihar has not availed of any financial assistance under this head so far. Consequently no survey has been conducted in recent years to identify bonded labourers.

- While saying this in one breath the State Labour Department has on the other maintained that bonded labourers were identified by government functionaries and civil society organizations and the number of identified bonded labourers in the last 5 years is as under:-

S.No.	Year	No. of identified bonded labourers
1.	2003-04	305
2.	2004-05	281
3.	2005-06	141
4.	2006-07	146
5.	2007-08	120

It may be noted that identification of bonded labourers and their enumeration is the first step in the entire process leading to release and rehabilitation. Identification of bonded labourers is not the same as identification of voters with indelible ink nor is it plain head counting as in a census operation. Identification in its true sense and ultimate analysis is the discovery of a non being, an exile of the civilization and rehabilitation is the process of converting him into a full being through a process of self assurance and reassurance. In talking of this entire process commencing with identification and leading to rehabilitation one is reminded of those inimitable lines from 'Kadi and Komal' of Viswakabi Rabindranath Tagore. To quote:-

'Into the mouth of these
Dumb, pale and meek

We have to infuse the language of the soul
 Into the hearts of these
 Weary and worn, withered and forlorn
 We have to minstrel the language of humanity'.

When the Department says that 'x' number of persons have been identified as bonded labourers by Government functionaries and civil society organizations without naming them, it is pertinent to ask the following questions:-

- how could they identify so many persons without going to the field and without conducting a survey?
- what methodology was adopted in identification? i.e. who canvassed the questions, who elicited the responses and who compiled and analysed them?

It is important that the Department at all times is in full grip of the situation without sounding sometimes vague and evasive and inconsistent at other times.

Release of bonded labourers and issue of release certificate:

Like identification, the Department has no clue about the following:-

- whether Executive Magistrates have been notified and vested with powers of a Judicial Magistrate 1st or 2nd Class to try all offences by a summary procedure as laid down in Section 21(2) of BLS(A) Act?
- what is the total number of such Magistrates for the whole State?
- how many cases have been registered with them for trial u/s 21(2) of BLS(A) Act?
- how many cases have been disposed off?

- how many bonded labourers have been released?
- whether release certificates have been handed over to all freed bonded labourers by the magistrate concerned after verifying the identity of the person?
- whether a register has been opened and maintained for this purpose?
- how many cases are pending for disposal u/s 21(2) of BLS(A) Act.

In 1982-83 (4.12.82) when I visited undivided Bihar for a similar review I was told that the following procedure was in vogue in regard to release which was rather cumbersome and long drawn out:-

- the Karmachari who is the lowest level revenue functionary reports in a prescribed proforma the incidence of debt bondage in each and every case to the circle officer (who is equivalent in rank to a Tahasildar);
- on the basis of this report, the Dy. Collector, Land Records in the office of the Sub Divisional Officer opens a case record for each identified bonded labourer.
- At the relevant point of time I had reviewed a few test cases at Latehar Sub Division of Palamau district (now in Jharkhand) and had observed that each case on an average was taking about 2 years.
- In certain cases the proceedings have unnecessarily been allowed to drag on even though the landlord has given in writing that the person concerned is free to go anywhere he likes.
- One silver lining in the entire process now is that identification and release are co-terminus. In other words, the same number of persons who have been identified as bonded labourers have also been released from bondage and no case is pending. No information is,

however, available on the average time taken for release after identification.

Rehabilitation of freed bonded labourers:

Redeeming features:

- A Screening Committee headed by the District Magistrate screens all proposals formulated at the lower level for rehabilitation of freed bonded labourers and approves them.
- A sum of Rs. 1000/- (out of Rs. 20,000/-) is being disbursed to the freed bonded labourers in cash to enable them to defray the immediate subsistence needs.
- The non-land based scheme of supply of milch animals is generally being preferred (in preference to land based and art/craft/skill based programmes) by the beneficiaries.
- The content, process, quality and impact of rehabilitation in Monghyr district has been evaluated by A.N. Sinha Institute of Social Studies. The findings of the report could not, however, be shared with me.

Grey areas:

- While identification and release are coterminous, release and rehabilitation are not; there is a gap of one year between the date of release and date of sanction of rehabilitation assistance. By the time the rehabilitation programme is implemented it will involve a much longer time lag.
- By necessary implication it is difficult to expect that the released bonded labourer will wait for one full year to get the rehabilitation assistance and to get rehabilitated. In all probability, he may migrate to a destination point or in the worst eventuality may even prefer reversion to the erstwhile bonded labour keepers.

- If the Vigilance Committees would have been alert they would have been able to detect instances of such migration or relapse to bondage under the erstwhile master. That has not been the case here.
- The A.N. Sinha Institute of Social Studies in its evaluation on Monghyr district had generally observed that the fruits and benefits of rehabilitation are not percolating to the beneficiaries in a fixed time frame.
- Preference of the freed bonded labour beneficiaries for non-land based or asset based schemes would mean continuous involvement of officers of Animal Husbandry and Veterinary Department for proper upkeep and maintenance of animals. There was no confirmation about such involvement.

Suggestions:

- The gap between release and rehabilitation must be bridged and the process of rehabilitation must be accelerated.
- It is not enough to say that the beneficiaries prefer individual dole oriented assistance scheme to group based efforts. It is obvious that the field functionaries have not taken adequate care to impress on the beneficiaries the obvious benefits/advantages of a group approach to rehabilitation vis-à-vis individual beneficiary oriented approach. The following are some of those distinct advantages:-
 - group approach to rehabilitation would enable the freed bonded labourers to acquire a countervailing social power to withstand the organized resistance and onslaughts of the bonded labour keepers;
 - by bringing people belonging to different social groups (SC, ST, OBC, linguistic and cultural minorities) the group approach would promote social integration;

- the group approach would facilitate representatives of concerned development departments (Education, Health, SC and ST Welfare, Water Supply, Sanitation, Social Welfare, Women and Child Development, Rural Development etc.) to come, meet and interact with the beneficiaries at one single point, redress their grievances and implement various welfare schemes meant for the bonded labourers in a holistic manner;
- the group approach would promote economies of scale and would make implementation of programmes meant for the poor cost effective.

In 1982-83, the then Commissioner-cum-Secretary, Labour Department- Shri C.M. Jha had taken an excellent initiative in issuing a circular in which with the approval of the Cabinet he had invoked the total active involvement of all the departments in rehabilitation of freed bonded labourers. There is no such initiative now. Since there is no State Level Monitoring and Coordination Committee, it is difficult to secure interdepartmental coordination in a routine bureaucratic manner. A State Level committee under chairmanship of the Chief Secretary would have achieved that objective.

In course of review it transpired that in 2003-04 out of a total number of 20 cases which came before the Magistrate u/s 21 of BLS(A) Act, 8 bonded labourers stated that they were not bonded labourers and, therefore, refused to be released and rehabilitated. This was reported by DM, West Champaran on 18.3.2005. Three years have passed and the whereabouts of these persons are not known nor are the reasons for refusal by these persons to be released and rehabilitated. The legal position is clear. From 25.10.75, the date BLS(A) Act came into force nobody can be allowed to remain, wittingly or unwittingly a victim of the pernicious bonded labour system. The field functionaries including the DM should have impressed on these bonded labourers that their decision to remain bonded and not to get released is a crime and punishable by law. They have done precious little to do that.

While the report from DM West Champaran is still awaited, this needs a probing analysis from the following points of view:-

- I The tragic dilemma before policy planners and executives is that between the compulsions of security and freedom there is no straight jacketed reconciliation.
- II All bonded labourers who are tied to their masters on account of debt or customary obligations (like drummers of Uttarakhand) seem to be having that sense of security, howsoever illusory or insufficient that may be;
- III When it comes to freedom from captivity, rehabilitation and starting a fresh lease of life many are not prepared to undergo the stresses and strains associated with that freedom which is devoid of security in the initial phases and, therefore, they do not want to undergo that strenuous process.

This was succinctly summoned up by late Shri K.V. Raghunath Reddy while introducing the Bonded Labour System (Abolition) Bill in Parliament on 27.1.1976. To quote from an extract of his statement:-

'He will not have inputs for production or any supply of credit. He will neither have any professional skill that would enable him to pursue an independent livelihood Even when installed in a profitable activity, he will have no income during the period of gestation. The bonded labourer who is used to a world of domination and servitude will not obviously be aware of his rights. At times he may not even like to undergo the strenuous process of economic rehabilitation and may even prefer reversion to thralldom'.

Several years (32) later these lines pregnant with meaning continue to pose formidable challenges before the planners and administrators and the story of the 8 bonded labourers in West Champaran refusing to be released and rehabilitated is only one such example.

What could be the way out of this mind boggling problem? The Uttarakhand example might provide a possible answer to this dilemma. As DG(LW)/JS I had observed in June, 82 in Uttarakhand (at that time it was a part of undivided U.P.) how the fascinating and innovative experiment of Project Workers under the Project Director, Tribal Development Authority, Dehradun could be instrumental in removing insecurity and alienation of released bonded labourers and reintegrating them into the mainstream development. The salient features of that experiment could be summed up in the following words:-

- In all 54 Project Workers have been appointed;
- 18% belong to SC and 13% to ST;
- All of them have been recruited from the hill areas;
- They understand the language spoken by the people in hill areas which makes communication easier;
- Each Project Worker is put in charge of rehabilitation of 150 bonded labourers ranging between 15 to 20 villages;
- He has to identify the bonded labourers, release them from bondage with the help of Gram Panchayat and other local agencies;
- He ensures that all schemes sanctioned by the Project for rehabilitation of freed bonded labourers are properly executed;
- He expedites settlement of all claims arising out of cattle insurance;
- He coordinates all matters relating to bank finance;
- He undertakes survey for identification of bonded labourers;
- He is instrumental in spreading the message of family planning.

For all practical purposes, he acts as the 'friend, philosopher and guide' of all freed bonded labourers providing them assurance and reassurance that all is not lost and life can be started afresh.

Though the experiment is over 25 years old, it continues to be relevant even today. Government of Bihar may, therefore, consider adoption and replication of this model in all their bonded labour prone districts.

Special problems of interstate migrant workers migrant from Bihar to Punjab, Harana, Maharashtra, Gujarat etc. and getting into a new status of bonded labourers:

The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act was enacted in 1979 (Act 30 of 1979). I as Labour Commissioner, Orissa (1974-78) was a member of the Compact Committee of which Shri Debabrat Bandopadhyay, the then Joint Secretary, Ministry of Labour was the Chairperson which drafted this important piece of social welfare legislation to deal with a host of malpractices indulged in by the Contractors, Sardars or Khatadars and to protect and safeguard the interests of interstate migrant workmen. The Central Rules were framed in 1980. The following are some of the redeeming features of this progressive legislation:-

- The establishment proposing to employ interstate migrant workmen will be required to be registered with registering officers under the Central or State Government as the case may be;
- Every contractor who proposes to recruit or employ interstate migrant workmen will be required to obtain a licence from the licensing officers appointed by the appropriate government;
- The licence may contain such conditions including the terms and conditions of the agreement under which the workmen will be recruited, the remuneration payable, hours of work, wages and other essential amenities to which the inter-state migrant workmen shall be entitled;

- Every contractor is required to furnish full particulars about the interstate migrant workmen to the specified authority of the area in which they are recruited;
- He is also required to issue to every such workman a passbook affixed with a passport size photograph;
- He is required to pay to every such workman a displacement allowance equal to 50% of the monthly wages payable to the workman or Rs. 75/- whichever is higher;
- He is also required to pay journey allowance of a sum not less than the fare from the place of residence of the workman in his State to the place of work in the other State;
- He is required to pay wages to the workman so recruited during the journey period.
- The interstate migrant workmen are entitled to a host of other facilities and amenities such as provision of suitable residential accommodation, prescribed medical facilities free of cost, protective clothing etc.
- The contractor is required to report to the specified authority of both the States every fatal accident or serious bodily injury and also the next of kin of the workman.

Reference has already been made to the plight and predicament of interstate migrant workmen migrating from the districts of Monghyr, Saharsha, Darbhanga, Muzaffarpur and Samastipur in North Bihar to the 2 districts of Ludhiana and Hoshiarpur as reported by Prof. Manjit Singh of Punjab University at page 7 to 10 of this report. The Fact Finding Committee constituted by the Ministry of Labour in 1996-97 also confirmed instances of bondage spread over 10 to 15 years. In course of my tour to Kurukshetra district in Haryana in November, 2006 and a surprise visit along with DM Kurukshetra to a brick kiln in that district, I had observed that a large number

of workers who have been recruited from Latehar, Nawada and Lakshisarai districts of Bihar with receipt of huge advances were working in the brick kilns and had no freedom to leave until and unless the advances were fully liquidated. Some of the disquieting observations recorded by me at the time of that visit are as under:-

- the recruiting agent had not obtained any licence as required under the law;
- the principal employer had not obtained any registration certificate as required under the law;
- statutory entitlements like journey allowance, displacement allowance, wages during the journey period had not been paid;
- wage slips were not being issued;
- full wages were not being disbursed but only advances were being paid to enable the workers to keep body and soul together;
- the state of affairs relating to maintenance of registers was extremely crude;
- names of women workers were completely left out;
- workmen being illiterate cannot easily remember –
 - how much they are entitled by way of wages according to the minimum wage notified by the State Govt.;
 - how much was actually being adjusted with advances;
 - what is the balance and whether the same was being paid or not;
- Government notification issued under Minimum Wages Act itself provides for payment of Jamadari Commission contrary to the directions of the apex Court discouraging payment of such commission while disposing off W.P. No. 8143 in PUDR Vs. Union of

India (Asiad Worker's case) on 18.9.82 and W.P. No. 2135 of Feb.92 filed by Bandhua Mukti Morcha Vs. Union of India and Others dated 16.12.83.

- The State Government of Haryana was totally oblivious of the fact that any deduction from the statutorily notified minimum wage would amount to existence of forced labour and violation of Article 23 of the Constitution as established beyond doubt in the above judgements.
- In yet another report on 'Survey of bonded labour in Punjab' Dr. Manjit Singh has brought out the plight and predicament of migrant labourers from Bihar and the story of their ruthless exploitation in the hands of brick kiln owners of Punjab. To quote from some of the findings of that survey as under:-
 - The amount of advance taken by the migrant workers at the time of recruitment ranges between Rs. 10,000/- to Rs. 15000/- (27%), Rs. 5000/- to Rs. 9000/- (25%), Rs. 2000/- to Rs. 4000/- (48%) and less than Rs. 2000/- (17%);
 - The working hours range to 10 to 14 hours; it may go upto 18 hours;
 - The brick kiln season commences in September and goes upto June. When the Kilns remain closed for a few months the labourers have to look for work somewhere else. Most of them work as casual daily wage workers in farm or non-farm activities;
 - They get below minimum wages during off season;
 - During the season, 17% of the workers earned not more than Rs. 12000/- a year; 64.37% of the workers earn between Rs. 12000/- to Rs. 18000/- and only 18.6% earned beyond Rs. 18000/- per annum.

- If overtime which is required to be paid at double the rate of normal wages (and which is not paid) is to be taken into account it is easy to reach the conclusion that statutory minimum wages are not being paid.
- The survey has come to the conclusion that if the working hours are adjusted to 8 hours, the respective deficit in payment of minimum wage comes between Rs. 635/- per month and Rs. 461/- per month.
- The central objective of sharing the findings from some of the survey reports as above is to apprise to Government of Bihar about the following:-
 - Names of districts (originating points) from where workers are being recruited;
 - The number being more than five, the recruiting agents are required to obtain a licence u/s 8 of the Interstate Minimum Wage (ROE and COS) Act which they have scrupulously avoided;
 - Movement of workers to States (Punjab, Haryana) is taking place rather surreptitiously and clandestinely;
 - The recruitment of labour is invariably associated with grant of advances;
 - None of the statutory entitlements (journey allowance, displacement allowance, wages during the journey period) as required u/s 14 and 15 and none of the statutory facilities and amenities (residential accommodation, medical facilities, protective clothing) as required u/s 16 of ISMW (ROE and COS) Act is being fulfilled;

- - Whenever and wherever there is an element of advance from the creditor to the debtor and the same leads to one of the four consequences us/ 2(g) of BLS(A) Act, the debtor would come within the purview of a bonded labourer and would be entitled to be released and rehabilitated under the relevant provisions of that Act.
- The State Government is aware of the fact that people are migrating from the districts of North Bihar to the States of Punjab, Haryana, Gujarat, Maharashtra and NCT of Delhi.
- The Labour Department, however, is not correct to take a stand that generally people move out on their own in search of a job.
- In course of my interactions with the migrant workers from Bihar working in the brick kilns of Kurukshetra in Haryana the workers themselves have confirmed that they are being recruited by recruiting agents on payment of advances.
- Further from the survey conducted by Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh in 2004 in respect of 6 districts of Haryana (Panchkula, Bhiwani, Hissar, Faridabad, Sirsa and Mahendergarh) the following findings have emerged:-
 - workers are recruited by an agent called Jamadar who is a middleman between the employees and workers;
 - advances are paid to the workers through the jamadar;
 - 17.1% earned not more than Rs. 12000/- while another 17.7% earned between Rs. 12000/- to Rs. 15000/- per annum;
 - at the rate of minimum wage fixed by the State Government for an unskilled worker w.e.f. 11.10.2002, a worker should be in a position to earn more than Rs. 25000/- per annum;

- the survey has, however, confirmed that 90% of the workers are earning less than Rs. 24000/-.
- it was further brought out from the survey report that if a worker wants to quit work at his own will, he can do so only after paying a penalty in the form of rental for the accommodation, cost of electricity and water etc. He would be charged interest @ 24% per annum on the entire amount of debt taken right from the beginning. Consequently the worker would be left with half the amount of normal wage after making all the deductions.
- on the whole 30% of the workers were indebted for more than Rs. 20000/- each and were highly prone to bondage. Most of them were members of SC community.
- the conditions under which loans are advanced eventually leads to a situation where a worker falls into the debt trap pushing to bondage.
- Instead of being on the defensive the State Government could depute officials to Punjab and Haryana, get hold of copies of the survey reports referred to at page 41-45, go through them, cross validate the findings of the survey through their own field visits and take prompt steps to release bonded labourers at the destination point, bring them back to the originating point and take steps for their permanent rehabilitation.
- As a matter of fact, on receipt of a complaint/information that 78 migrant workers belonging to Bihar were working under conditions akin to bondage in Andaman and Nicobar, Government of Bihar deputed a team of officials led by the Labour Commissioner to the islands, rescued all the 78 workers and got them repatriated. The destination State initially cooperated in identification of these bonded labourers but refused to issue the release certificates. The Law

Department, Government of Bihar opined that they were bonded labourers even without the release certificates being issued. Thereafter steps have been initiated to rehabilitate all of them under the Centrally Sponsored Scheme for rehabilitation of freed bonded labourers.

- It is suggested that Government of Bihar should take the following steps to deal with special problems of interstate migrant workmen:-
 - identify through survey and through periodic reports being sent to DMs the pockets from where people migrate;
 - ascertain the names and full particulars of family members who have migrated and names of the destination points where they have migrated;
 - the Chief Secretary, Government of Bihar should write to his counterpart in the destination State(s) drawing his attention to the fact that so many families or persons have migrated, giving details of the place, names of the employer/contractor with whom they are working and with a request that their interests should be protected and safeguarded under the existing laws of the land like Payment of Wages Act, Minimum Wages Act, Contract Labour (Regulation and Abolition) Act and Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act etc. A specific request should also be made to the effect that (a) element of advance, if any extended to these workers should not result in their bondage and (b) they should be repatriated to Bihar on completion of the contractual work;
 - a constant vigilance and surveillance should be kept on the working and living conditions of these workers;
 - teams of officers should be deputed from the State Labour Department as a matter of routine to study the working and living conditions of these workers;

- help of the labour law enforcement machinery should be taken to have all the grievances of the workers related to non payment of wages and other benefits positively redressed.

Field visit to Muzaffarpur district to assess the overall situation regarding origin and present status of bonded labour system:

Date of visit : 9.4.2008
 Name of the Village : Chit Bhagawatipur
 Time of visit : 10 AM to 12.30 Noon

51 bonded labourers belonging to Muzaffarpur district have been identified as bonded labourers outside Bihar, released from bondage and brought back to Muzaffarpur but not yet fully rehabilitated. 11 of them happen to be children belonging to minority community in the age group of 10 to 15. Of them 8 children belong to Chit Bhagawatipur who were recruited by a recruiting agent called Jabbar belonging to the same village and taken to Delhi. The recruiting agent acted as a middleman on behalf of a zari manufacturing unit of Delhi. They were spotted, released and repatriated to Muzaffarpur by an NGO called Bachpan Bachao Andolan.

At the time of visit to the village 5 out of 8 children belonging to the village were found. They are:-

1. Mohammad Shivraj, son of Md. Karar (10);
2. Mohammad Nur Alam, son of Mohammad Jehangir (12);
3. Mohammad Rafique, son of Md. Idris (15);
4. Mohammad Javed, son of Md. Shaukat (12);
5. Mohammad Pyare, son of Md. Mustaq (10).

These children were interrogated by me and the following came out of the interaction:-

- They were working in a zari manufacturing unit at Gadi Shera Mohalla in Delhi.
- Their working hours in the zari manufacturing unit at Delhi ranged between 18 to 20 hours.

- No journey allowance, displacement allowance and wages during the journey period which are their statutory entitlements had been paid to them.
- No minimum wages were paid except food three times a day.
- They were provided warm protective clothing. They were also looked after by the employer during the period of their illness.
- The activists of Bachpan Bachao Andolan, Delhi conducted raid, the children were released and sent back to Muzaffarpur by the NGO.

Interaction with the Head of the Panchayat (Mukhiya) revealed that (a) births are not being registered under Registration of Births and Deaths Act (b) it was difficult to determine the age of children of the village in the absence of such registration and (c) when people move out either on their own or are being recruited by recruiting agents, Panchayat is not in the know of these movements; it becomes, therefore, extremely difficult to do anything either to prevent the movement or to provide any relief when the people (including children) are released from bondage and brought back to the village. The Mukhiya stated that he has absolutely no clue as to who is migrating, with whom, where, at what point of time and under what terms and conditions.

- It transpired that recruitment of children at a very tender, formative and impressionable stage of their development by recruiting agents to districts within and outside Bihar was a regular phenomenon.
- Such movements take place surreptitiously and the Panchayat have no clue about such movements even though work at this tender age in a hazardous occupation like zari manufacturing is clearly at the cost of health, safety and total development of children.
- The 73rd and 74th amendment of the Constitution took place in 1992-93. The 29 duties and responsibilities figuring in 11th Schedule of the Constitution were also transferred to the Panchayats soon thereafter.

Fifteen years after it was distressing to hear from the head of the village Panchayat (Mukhiya) that he had no information about the functioning of the Village Primary and Upper Primary School.

Child Labour

Magnitude of the problem:

According to 1991 census, Bihar had a population of working children at 9,42,245 which has gone upto 11,17,500 according to 2001 census. The increase is of the order of 18.6% and Bihar ranks No. 2 in population of working children (U.P. being No. 1). The nodal department should analyse the reasons for such steep increase so that preventive and corrective steps can be taken to halt this trend.

The break up of the child labour population as has been worked out by the State Government is as under:-

Category	Population	Remarks
Urban Areas	50,178	No break up of children in hazardous and non-hazardous occupations and processes has been worked out.
Rural Areas	10,67,322	
Boys	7,10,843	
Girls	4,06,657	

Administrative infrastructure:

Labour Resource Department is responsible for overall planning, implementation, monitoring and enforcement of Child Labour (Prohibition and Regulation) Act. The strength and effectiveness of the department in relation to the subjects entrusted and tasks mandated would depend on the following:-

- selection of such incumbents to man various positions as have the aptitude, urge, inclination and commitment to the primary objectives, goals and tasks mandated for the department;
- a reasonable continuity in tenure subject, however, to work, conduct and performance of the incumbents;

- opportunities for human resource development (training and retraining for professional competence, exposure to seminars, symposia and workshops for widening of horizon and experience, State government encouraging/appreciating/commending the performance of officers who are socially committed and naturally motivated as observed by the apex Court in Neerja Chaudhury Vs. State of M.P., W.P. (Criminal) No. 1263 of 1982 AIR 1982 SC 1099 etc.);
- tools and equipments (computer PC, fax, telephone both for office and residence), vehicles for mobility essential for inspection for smooth and efficient discharge of day to day duties;
- monitoring the feedback from the field officers about their performance and evaluation of the content and process thereof;
- taking prompt measures for filling up vacancies in conformity with principles and guidelines laid down by Government;
- adequate delegation of administrative and financial powers in favour of the Labour Commissioner as the Head of the Department so as to enable him to ensure discipline and performance of the subordinate field staff.
- framing rules for selection of incumbents to various positions, setting up appropriate mechanisms for promoting and facilitating career advancement and growth of various functionaries in as just and fair, open and transparent a manner as possible.
- The State Labour Secretary was requested to send a chart indicating the structure of the department, the number of sanctioned positions, number of posts filled up, number of posts vacant, extent to which tools and equipments essential for making the incumbents functionally efficient etc. These are yet to be received. He should, therefore, analyse the adequacy and effectiveness of the administrative infrastructure in the light of the norms and principles indicated in the

preceding paragraph and submit proposals to the State Government for strengthening the structure.

- There is no state level body or state level authority for elimination of child labour (on the central model). This is a serious omission. This is on account of the fact that elimination of child labour is not and cannot be the concern of one department or agency; it requires concern and close involvement of a number of departments and agencies such as:-
 - Education;
 - Finance;
 - Home;
 - Health and Family Welfare;
 - Industry;
 - Labour;
 - Law;
 - Panchayat;
 - Planning and Coordination;
 - Revenue;
 - Rural Development;
 - SC and ST Welfare;
 - Transport Department;
 - Urban Development;
 - Women and Child Development.

The role of each department is briefly delineated as under:-

1. **Education:**

- to ensure that all children who are in hazardous occupations and processes and who are withdrawn from such work are enrolled into the formal school system;
- to make available space in existing primary/elementary schools, wherever possible for NCLP Special Schools (particularly in those areas where no rented accommodation is available);

- to assist the NCLPs (particularly NGOs managing them) through SCERT/DIET/DRU in the task of preparation of curriculum, course content and textual materials for the special schools under them.

2. Finance:

- to assist the process of SCLPs (in addition to NCLP) as in Karnataka to supplement and complement NCLPs;
- to promote and encourage involvement of NGOs in child labour programmes through timely sanction and release of grant-in-aid in favour of such NGOs;
- to assist the Labour Department in undertaking work measurement and performance appraisal studies and sanction addl. posts which are needed strictly according to the nature of the job vis-a-vis number of persons required to perform the job.

3. Home:

- to play a proactive role in disseminating messages about right of children amongst police and correctional officers to create a more positive awareness;
- to issue instructions to the police to assist officials of Labour department in conducting raids at hotels/motels/restaurants/dhabas/SPAs as well as other establishments, occupations and processes where employment of children has been prohibited with a view to rescuing/withdrawing all such children;
- to instruct all police and correctional officials not to engage children below the age of 14 as domestic help (such employment has been prohibited w.e.f. 20.10.2006).

4. Health and Family Welfare:

- to make the Chief Medical Officers/Civil Surgeons of the districts responsible for regular check up of the health of children after they

have been withdrawn from work and enrolled either in formal schools or special schools of the NCLP;

- to organize orientation for the officers of the prescribed medical authority constituted u/s 10 of Child Labour (Prohibition and Regulation) Act for scientific determination of the age of children;
- to make the Chief Medical Officer/Civil Surgeon of the district responsible for monitoring the performance of the prescribed medical authority;
- to provide inputs to Labour Department on health, balanced diet and nutrition for incorporation in the curriculum, course content and textual materials being adopted for use in special schools under NCLPs;

4. Industry:

- to issue instructions to the GMs of DICs to visit the craft training or vocational training programme in the special schools of NCLP and advise the agency (NGO) managing the special schools as to how the content and quality of craft training can be improved upon;
- to make available space in ITIs/Polytechniques, wherever possible, for functioning of special schools of NCLPs (at such places where no rented accommodation is available).

5. Labour:

- to organize survey teams by pooling officers from other departments/agencies and to conduct surveys in selected establishments/pockets from time to time for identification and enumeration of working children;
- to appoint more Inspectors u/s 17 of Child Labour (Prohibition and Regulation) Act by pooling officers from other departments/agencies as was emphasized by the Supreme Court in M.C. Mehta Vs. State of Tamil Nadu and Others W.P. No. 465 of 1986:

- to organize orientation and training programmes for officers of labour law enforcement machinery;
- to strengthen the functioning of the cell constituted in the department as per the direction of the apex Court in M.C. Mehta Vs. State of Tamil Nadu and Others;
- to identify hazardous occupations and processes and report to the Technical Expert Committee constituted u/s 5 of Child Labour (Prohibition and Regulation) Act;
- to closely monitor the performance of the officers of labour law enforcement machinery and to ensure that (a) inspections are being conducted as per schedule (b) surprise inspections and raids are being conducted to rescue children employed in hazardous occupations/processes (c) inspection reports are being furnished and findings being acted upon;
- to meticulously monitor the constitution and functioning of District Child Labour Welfare-cum-Rehabilitation Funds under the chairmanship of DMs of the district concerned;
- to oversee proper functioning of special schools opened under the NCLP in a particular district;
- to secure collaboration of all other concerned departments/agencies as the administrative department.

6. Law:

- to promptly issue legal clarifications in all cases of doubts and disputes in the matter of enforcement of Child Labour (Prohibition and Regulation) Act;
- to issue instructions to APPs/PPs (wherever they are under Law Department) to assist the Labour Department in conducting proceedings under Child Labour (Prohibition and Regulation) Act.

7. **Panchayatiraj Department:**

- to instruct all GPs to play a more positive and proactive role in (a) disseminating messages pertaining to elimination of child labour (b) facilitating enrolment, retention and participation of all children in formal as well as non-formal education programmes.

8. **Planning and Coordination Department:**

- to assist the Labour Department in setting up SCLPs (like NCLPs which are 100% Centrally founded) wherever genuinely needed (depending on incidence of child labour in specific pockets).
- to extend a positive, supportive and proactive stand in regard to (a) strengthening of Labour Department to effectively deal with the menace of child labour (b) liberal provision for human resource development of the officers of the nodal department.

9. **Revenue:**

- to make land (both homestead and agricultural) available to landless families which are involuntarily pushing their children to work due to economic compulsions;
- to deal firmly and effectively with the employers of brick kilns to whom land in a specific area is leased out for specific periods to developing brick kiln industry.

10. **Rural Development:**

- to implement all rural poverty alleviation and rural employment promotion programmes in such a manner that BPL/Antyoday/Annapurna families who are pushing children involuntarily to work are economically rehabilitated and are discouraged from sending children to work;
- to ensure that all BPL families and in particular those belonging to SC and ST who do not have a roof above their head are given first priority in allocation of funds under Indira Awas Yojana.

11. SC and ST Welfare:

- to make land (both homestead and agricultural) available to all landless SC and ST families and in restoring land to them wherever land was initially allotted but later taken away;
- to develop all lands of SC and ST families to their fullest productive capacity;
- to set up revolving funds to meet essential consumption expenses of SC and ST families with a view to preventing economic distress which compel these families to push their children to work as also preventing avoidable indebtedness and continuous accretion to the ranks of bonded labourers.

12. Transport:

- to deal firmly and effectively with employers of motor transport undertaking which employ children.
- to allow the messages relating to elimination of child labour being printed on the buses (which go to villages) so that the desired level of awareness is created among all concerned.

13. Urban Development:

- to deal firmly and effectively with employers of rag picking enterprises often employing children.
- to encourage the NACs/Municipalities/Corporations to play a more proactive role in disseminating messages relating to elimination of child labour.

14. Women and Child Development:

- to ensure that the provisions of Registration of Births and Deaths Act are strictly implemented;

- to ensure that all children are registered after birth and the informations are made available to the prescribed medical authority u/s 10 of Child Labour (Prohibition and Regulation) Act;
- to ensure that the growth of all children at least upto 6 years is being recorded correctly and reported correctly;
- to ensure that health and nutrition of all children in 3-6 years receive proper attention in the anganwadi centres under the ICDS.

If a State level body or State level authority as at the central level is formed, that body can take complete responsibility for maintaining liaison with all concerned departments as above. It can also issue instructions to the concerned department to extend a particular nature of support to Labour Department or perform such responsibility as will put a brake to activities relating to child labour or pledging/mortgaging the services of children at the cost of their education. The Labour Department is requested to understand and appreciate the genuineness of this need and to take appropriate action accordingly.

Determination of the age of children:

Correct determination of age of children is extremely important as (a) employers invariably contest the age of children (b) prosecution will not succeed in securing conviction of the offending employer unless it is able to establish beyond doubt the correct age of children at work.

- The Department could not throw light on (a) how the birth of children is being registered (b) what is the extent of registration and (c) how many children have been left out even though in response to the questionnaire it said that Panchayats and Municipalities are the agencies for registration of births.
- In regard to the prescribed medical authority to be set up u/s 10 of the Child Labour (Prohibition and Regulation) Act, the Department confirmed that notification setting up the said authority has already been issued. The authority shall be:-

- a government medical officer not below the rank of an Assistant Surgeon of the district;

or

- a regular doctor of equivalent rank employed in ESI dispensary or hospital;

or

- any certifying surgeon.

- The Department also confirmed that no orientation and training has been provided so far to the prescribed medical authority which would help in the process of correct determination of the age of children.
- It further transpired that 19 cases have been referred to the Medical Board constituted under the Chairmanship of Civil Surgeon. Out of 19 cases certificates have been issued in 15 cases and the remaining 4 cases are still pending.
- The Department was requested to follow up and have all the age certificates issued within a prescribed time frame.

Prohibition of the employment of children:

- This is a sequential process involving the following:-
 - recommendation of the Technical Expert Committee constituted u/s 5 of Child Labour (Prohibition and Regulation) Act to the Ministry of Labour;
 - issue of notification by the Ministry of Labour;
 - survey to be undertaken by the State Government concerned to identify and enumerate working children;
 - inspections by the officers of Labour, Law enforcement machinery to unearth and withdraw children;
 - launching of prosecutions against offending employers.

- It was reported by the Department that children in Bihar are engaged primarily in the following occupations/processes where employment of children has been prohibited by law:-
 - Dhabas (road side eateries), restaurants, hotels, motels etc.;
 - Domestic help;
 - Brick kiln;
 - Automobile Workshops and Garages;
 - Beedi rolling, labeling and packaging;
 - Building and construction operations.
- It was further stated that special task forces under the supervision of DM has been constituted at the district level to carry out inspections. Additionally 4 special task forces under the supervision of Labour Commissioner have been constituted for Patna town.

Table-I below indicates the yearwise breakup of the inspections for the last 5 years:-

	April, 2002 to March, 2003	April, 2003 to March, 2004	April, 2004 to March, 2005	April, 2005 to March, 2006	April, 2006 to March, 2007
No. of inspections conducted	48276	36835	22800	19,984	15932
No. of violations detected.	6065	5431	4332	3488	2232
No. of prosecutions launched	398	385	259	147	260

Comments:

- The number of inspections has been progressively coming down year after year; inspections conducted in 2006-07 is less than 1/3rd of the number of inspections conducted in 2002-03. No reasons for such decline have been assigned.

- Number of prosecutions launched should be proportional to the number of violations detected. This is not so. Once again no reasons have been assigned.
- The number of convictions secured against these prosecutions has not been given.
- The primary purpose of inspection should be to identify children at the workplace and withdraw children from work. This would be possible if inspections are discretely conducted in a professional manner without any publicity and fanfare (so that employers do not push children underground). This has not been the case in Bihar.

Compliance with the directions of Supreme Court in Civil Writ Application No. 465 in M.C. Mehta Vs. State of Tamil Nadu and Others dated 10.12.96:

1. Survey:

- Establishment wise surveys were conducted from 1997 to 2000;
- Total number of working children identified were 49,020 of which children employed in hazardous work were 21,281 and children employed in non-hazardous work were 27,739;

Comments:

- the judgement of the apex Court was pronounced on 10.12.96. It was clearly stipulated in the judgement that survey should be completed within a period of 6 months and an affidavit containing the findings of the survey should be filed before the apex Court within a period of 6 months i.e. by 31.5.97;
- as against this clear direction surveys have been conducted spread over a period of 3 years i.e. 1997-2000;
- no reason for this major deviation has been assigned;

- as against 21,281 children found to have been employed in hazardous occupations and processes number of children reported to be withdrawn from work is only 472;
- these children have also been released in 2007-08 and not immediately after the survey was completed;
- there is no confirmation about the number of children who have been enrolled in the formal school system after having been withdrawn from work. It was the responsibility of the Department and not of the DMs to have ensured this. The response to the questionnaire on this point is unclear.

II Recovery @ Rs. 20000/- per child from every employer responsible for employment of the child in hazardous work:

At the rate of Rs. 20000/- a sum of Rs. 4,25,62,0000/- was recoverable from offending employers. As against this, the Department reports that only Rs. 2,80,000/- has been recovered from offending employers which is a pittance. No reasons are forthcoming as to why such a low amount was collected when the actual amount recoverable was much higher.

III Constitution of District Child Labour Welfare-cum-Rehabilitation Fund:

The undivided Bihar State had 61 districts when the judgement of the apex Court was pronounced. Bihar has now 38 districts. District Child Labour Welfare-cum Rehabilitation Funds should have been constituted in all the 38 districts by now. As against this it was reported that such funds have been constituted only in 21 districts. It was further reported that till now Rs. 3,80,000/- have been deposited in these 21 District Child Labour-cum-Welfare Funds. Contrary to the directions of the apex Court no investment of the amount deposited in the corpus of the fund has yet been made.

IV Employment to one able bodied adult member of every family sending children to work:

- According to the direction issued by the apex Court the State Government should provide a job to every able bodied adult member in a family which was pushing its children to work failing which a sum of Rs. 5000/- should be deposited in the District Child Labour Welfare-cum-Rehabilitation Fund.
- To start with, the State Government should have identified the number of such families which were sending their children to work.
- They should have, thereafter identified one able bodied adult member in those families and identified the jobs which could be made available to those able bodied members.
- The State Government have failed on both the counts.
- The statement of Labour Department made in response to the point in the questionnaire that efforts are being made to provide jobs under NAREGA is misleading.
- Employment under NREGA is maximum for 100 days; it is at best a piece rate work and not in the nature of a job envisaged in the judgement of the apex Court.
- Having failed to provide the job the State Government should have put @ Rs. 5000/- per child or Rs. 10,64,05,000/-). As against this they have put Rs. 1,00,000/- and that too in 2007-08 in flagrant violation of the direction of the apex Court.

V Non-formal education for children working in non hazardous work:

- The apex Court permitted children in non-hazardous work to continue working for 4 to 6 hours but receive non-formal education for 2 hours in the evening.

- The cost of such education was to be borne by the employers concerned.
- According to the figures furnished by the State Government themselves 27,739 children were found to have been employed in non-hazardous work. They should have been provided the opportunity of access to non-formal education at the cost of the concerned employers. The Inspectors of the Department were required to organize this activity i.e. identify the children in non-hazardous work, work out the number of NFE centres which would be needed for them, open the NFE centres in consultation with Education Department, work out the estimates of cost needed for running the NFE centres and ask the employers concerned to bear the cost. As against this, the Department is not able to furnish any reply which apparently means that this direction of the apex Court is yet to be complied with.
- Prior to working children are to be enrolled to the NFE centres these will have to be opened. Their opening requires a detailed planning involving the following:-
 - selection of the site/building where the centres are to be located;
 - location of the centres should correspond to the place where working children work and live;
 - selection of the agency (NGO) which will manage the NFE programme;
 - selection of NFE Instructor;
 - training of NFE Instructor;
 - design of curriculum, course content and textual materials for the NFE programme;
 - pretesting the suitability of the materials before their adoption;

- commencement of teaching learning process;
- evaluation of learning outcome (including learner's self evaluation);
- monitoring the pace and progress of learning;
- mainstreaming the learners into formal school system depending on their acquisition of the levels of learning and equivalence.

The apex Court had issued the direction about working children in non-hazardous work receiving NFE for 2 hours in the evening more than 11 years ago. Till date, the nodal department responsible for its implementation does not appear to have any clue about the direction and the knitty gritty of the planning to proceed further to secure compliance with the direction which is regrettable.

VI Creation of a cell in the Department to coordinate all items of work arising out of the judgement of the Supreme Court:

In response to the questionnaire, the department has stated that a Child Labour Cell with the support of UNICEF has been created in the Department since June, 2007 but the Department has not indicated the following:-

- who are the officers who are manning the cell?;
- What is the source of their placement?;
- What is their mandate?;
- Was it clearly explained to them in the beginning?;
- What is the work done by the Cell during the last 11 years?

Suggestion:

- It is necessary and desirable that even now the Cell should be properly constituted and devote its attention to the following areas:-
 - maintain a close and constant liaison with the district administration to get accurate information about pockets of

child labour, getting task forces or teams of officers constituted with the full knowledge and approval of the DM, getting raids conducted in sensitive pockets, tracking and rescuing children who were found employed in hazardous work, getting transit camps opened, bringing children to such camps and later rehabilitating them through education, nutrition, skill training, check up of health etc. – activities which constitute an integral part of the special schools of NCLP;

- collect, compile and disseminate all important events extracted from newspapers (press clippings), radio and television to DMs, NCLP officials and field functionaries of Labour Department;
- take initiative to design a few simple and telling messages relating to elimination of child labour and have them disseminated through both print and electronic media;
- have the same messages appear as advertisements in all the buses of Bihar State Road Transport Corporation (since these buses go to all villages, the messages will also travel to the villages);
- take initiative to organize essay and debate competitions on elimination of child labour as the dominant theme in all schools and colleges affiliated to all the Universities of the State and have trophies/prizes awarded to successful individuals and teams;
- take initiative to flash messages on elimination of child labour in simple and bolchal Hindi in all the Panchayat offices (at the village level, block level and district level) for the benefit of the parents as also with a view to sensitizing all parents that what they have been doing so far is wrong;

- they have no moral and ethical right to push their children involuntarily to work and they must now stop doing once for all what they have been doing so far.

VII Initiating legal and penal action against offending employers:

In addition to recovery of Rs. 20,000/- per child legal and penal action was to be initiated against all offending employers (this is over and above the routine prosecutions launched at the end of routine inspections). The Department has not indicated the nature of such action initiated, stage at which they are pending and eventual outcome i.e. how many prosecutions have ended in securing convictions.

National Child Labour Projects:

NCLP constitutes an integral part of the National Policy on elimination of child labour which was formulated in August, 1987. The special schools which are to be opened under the NCLP are meant for enrolling children withdrawn from hazardous occupations/processes and securing their rehabilitation through education, nutrition, skill training and check up of health. In order that these schools and NCLP as a whole achieve their desired objective, a step by step approach which should be planned and coordinated is absolutely essential. The steps are:-

- spot the specific locations which have concentration of child labour in hazardous occupations/processes on the basis of survey conducted;
- identification of such children, enumeration and their withdrawal from work;
- location of special schools at those points;
- selection of teachers – mode of selection;
- training of teachers – identification of training institutions and Resource persons, designing training curriculum, imparting

training with the help of Resource persons, evaluating content, quality and impact of training;

- designing curriculum, course content, textual materials to be used for the 3 years cycle of the special schools under a NCLP through a workshop of creative thinkers, writers, artistes, curricular experts;
- identification of a good, reliable and committed NGO which will manage the NCLP in a particular district;
- commencement of teaching learning process;
- monitoring and evaluation of content, process, quality and impact of the programme;
- mainstreaming the children to formal school system on the basis of level of equivalence achieved in special schools.

There are 3 other components in a special school under an NCLP which also need detailed Planning. These are:-

- I Nutrition through Mid day meal
- II Check up of health
- III Vocational Skill Training Programme.

These also need elaboration as under:-

- Nutrition is important for
 - physical growth and development;
 - cognitive development;
 - adequate immune competence.
- Intake of wholesome and adequate food at appropriate intervals enhances nutritional status. Such food which is described as balanced diet contains different types of food (from all food groups) in such quantities and proportions as would meet the needs of all nutrients.

These nutrients are certain chemical compounds in food which are absorbed in the body and which promote health. They are:-

- carbohydrates;
 - fat;
 - protein;
 - minerals;
 - water.
-
- It is obvious that the nutritive value of food measured in kilo calorie which is required for a child of 12 to 13 years (minimum 1000) cannot come from one mid day meal which forms part of a package of rehabilitation under NCLP.
 - For this as also for promoting awareness of parents and children about the importance of nutrition in day to day life, what is necessary is to launch a simple programme of nutrition education for both through the teachers of the special schools which will be implementing the mid day programme.
 - These teachers would need to be given training specifically in the following areas:-
 - nature of nutrients in food;
 - distribution of nutrients in food;
 - their metabolic effects;
 - consequences of inadequate intake of food which is also not nutritious;
 - forms of malnutrition (Vitamin A deficiency, nutritional anaemia and iodine deficiency disorder);
 - grades of malnutrition (Gr. I, II, III and IV).

II Check up of health:

- one MO should be attached to 20 special schools in the maximum for check up of health;
- there should be a minimum provision of Rs. 250/- per special school for payment of honorarium of the MO;
- the MO who is engaged by the Health Department for this purpose should devote atleast 15 to 20 minutes for each child for a thorough check up;
- such screening should include (a) screening in the aftermath of handling chemicals (b) screening in the aftermath of inhalation of dust, smoke, fume, toxic and gaseous substances (c) screening for infection and (d) screening for ordinary ailments;
- the findings and remedies prescribed should be clearly recorded in the health check up register;
- the MO who is screening the health should dispense the prescribed medicines on the spot;
- in case of specialized and long term treatment the child should be referred for such treatment entirely at the cost of the State to an appropriate referral institution;
- there should be proper and timely feedback about response of the child to the treatment;
- further corrections should be applied on the basis of such feedback.
- On no account the health of an ailing child should be allowed to deteriorate and best possible efforts should be made to nurse the ailing child back to health.

III Vocational Skill Training Programme:

The entire objective of making children (who have been released from work) learn vocational skills is fourfold; these are:-

- I Break the mindset of parents (cobblers, blacksmiths, carpenters etc.) that children learn better when they learn skills with parents and that such learning should be intergenerational.
- II After learning the vocational skills children who have been released from hazardous occupations and processes do not have to go back to those forms of work.
- III Children should learn simple, innocuous and harmless skills with freedom and spontaneity, with excitement and joy.
- IV After learning the skills and as children cross the threshold of childhood and enter adulthood they can grapple with and overcome the challenges of adult life as responsible, responsive and productive adult citizens.

For success of any skill training programme the following pre-requisites will have to be kept in view:-

- children have the aptitude, preference and interest in learning a particular skill or a few vocational skills;
- the right type of craft teacher for imparting instructional lessons has been selected; he has the flair for teaching;
- raw materials for teaching certain skills are easily available and affordable;
- tools and equipments have been in place;
- skills/trades are market relevant; whatever will be produced at the end of the cycle can be sold.

Deficiencies in planning and execution of NCLPs in Bihar:

- In order that all the above components and sub components of an NCLP are carried to their logical conclusion they have to be integrated into a complete package what may be called the Action Plan. Such an Action Plan will have to be formulated by the nodal department i.e. Labour Resource Department in consultation with all concerned departments but in particular the following:-
 - Education;
 - Health;
 - Women and Child Development;
 - Industry.
- It is an irony that the NCLP in Bihar is on the ground for the last 10 years or so but the State Level Action Plan for Bihar is still under formulation which amounts to putting the cart before the horse.
- The nodal department is clueless about the time frame as to when the State Level Action Plan will be ready for implementation, how it is being formulated, whether the 4 Deptts. listed above are being consulted about integration of the 10 vital components which have been elaborately dealt at page 72-73 and so on.
- Of the 38 districts in Bihar 24 NCLPs have been sanctioned to cover 24 districts but NCLP has been operational in respect of 17 districts only. The reason which could be attributed to late commissioning of the projects were, however, not shared with the Special Rapporteur nor there was any indication at all about time frame as to when the remaining 7 will be operational.
- According to the compendium of circular letters and instructions issued by the Ministry of Labour in 1998-99 as also according to the scientific norms of communication in a class room no more than 40 to 50 students should be enrolled in a special school as the same will make management of communication unwieldy.

According to the information made available by the nodal department to the Special Rapporteur, 21,281 number of working children were found in course of the survey conducted between 1997 to 2000 who have been employed in hazardous work. At the rate of 40 to 50 children per special school not more than 500 special schools should have been opened under all the NCLPs in 17 districts taken together. As against this 1104 special schools have been operational in 17 districts so far which gives an impression that (a) more centres have been opened than necessary (b) as against children released from hazardous work alone being eligible to be enrolled in the special schools children from non hazardous work might have been enrolled which is a violation of the guidelines of the NCLP scheme.

- According to the report of the nodal department itself 63,221 children have been enrolled into the special schools. This is obviously much more than the number of children employed in and released from hazardous occupations and processes. The State Government needs to reconcile these figures and clarify from where the difference (63,321 – 21,281) of 42,040 comes.
- If it is the intention of the State Government to enrol all children into the special schools, regardless of whether they were working in hazardous or non-hazardous occupations and processes this is a clear deviation from the approved scheme and they need the express permission of the Union Ministry of Labour to go in for the same.
- The ultimate objective of compressing a 5 year cycle into 3 years and imparting instructional lessons in a non-formal mode through the special schools of the NCLP is to facilitate acquisition of cognitive, affective and psychomotor skills and certain minimum levels of proficiency in mother tongue, arithmetic, physical and earth sciences, social science and environment. Since the nodal department is totally clueless about this objective (as is evident from their response to the questionnaire circulated by the Special Rapporteur) this requires a little elucidation as under:-

- cognitive skills involve the mental process of knowing which in its completeness includes perception and judgement. It includes all processes of consciousness by which knowledge is built up including perceiving, recognizing, conceiving and reasoning with knowledge as the essence.
- Affective skills pertain to the emotional aspect of human behaviour and are important from the human rights dimension of education in as much as:-
 - they promote stability, maturity, sensibility and sensitivity of human beings who learn;
 - they make one learner respect the dignity, decency, equality and freedom of other learners and human beings;
 - they promote civility, courtesy, consideration and decorum of one human being towards another;
 - they promote self esteem of all learners.
- psychomotor skills imply an organized, conscious and brain directed physical activity (walking, playing an instrument, performing a sport etc.).
- To the extent we achieve a holistic combination of all the 3 skills as above education becomes the most powerful tool for conversion, a tool in the making of a complete man or woman.
- Along with these 3 skills, achievement of the desired levels of proficiency in mother tongue, arithmetic, general and social sciences and environment is absolutely essential to make every learner self-efficacious and self-reliant. These levels have been scientifically laid down; they are scientifically measurable too.

- All the time the nodal department in an incorrect response to the questionnaire circulated to them in advance is harping on the point that everything (implying every stage in the process) has been integrated with SSA without elaborating as to what that integration means.
- The nodal Department sees the possibility or feasibility of training the children in the following skills/trades:-
 - tailoring and cutting;
 - plumbing;
 - bamboo cane work;
 - photography;
 - badi and pappad;
 - candle making;
 - coir rope and toys;
 - cookery;
 - carpentry;
 - soft toys;
 - wool knitting;
 - paper bag, envelop making;
 - beautician;
 - hair dressing.
- Since these are based on local demands the nodal Department suggests that they may be adopted keeping the following points in mind:-
 - assessment of labour market to identify entry level skills for boys and girls to make them employable;
 - provision of trained vocational instructors;
 - trade certificates to students on completion of the course;
 - linking the special schools to job placement services or to job opportunities.

- It needs to be clarified that :-
 - vocational skill training for children is not the end of the road to education;
 - the skills which are being imparted are meant to make the child more productive and self reliant; they are not meant so much for seeking a job or a career;
 - the question of issue of trade certificate or linking the special schools to job placement services/centres does not, therefore, arise; they are premature or inopportune;
 - these children should be encouraged to climb up further in the ladder of education instead of thinking in terms of job opportunities at that tender age;
 - as children cross the threshold of childhood and enter the portals of adulthood (18+) these skills learnt by them in special schools of NCLPs would make them responsible, responsive and productive adults.
- More important task for the nodal department instead of thinking in terms of jobs for tender children is to evaluate the content, process, quality and impact of the programme in terms of acquisition of skills (both cognitive, affective, psychomotor as well as vocational), strength and efficacy thereof.

Field visits and impressions at the end of visit to couple of special schools under NCLP, Muzaffarpur

Date: 9.4.2008

Time: 10 AM to 12.30 Noon

The following are the few highlights of NCLP, Muzaffarpur:-

- The Project society was formed and registered in the beginning of 2007 and the first meeting of the Executive Committee of the Project

Society was held on 13.2.2007. The Project Society is implementing 46 special schools w.e.f. 1.10.2007. A series of planning and preparatory activities have been launched prior to commencement of the school activity such as:-

- workshop among the PRIs and CBOs at Muzaffarpur under the name of Bal Shram Unmulan Bishesh Pakhwada;
 - school based training oriented workshops;
 - half day awareness generation workshops with the involvement of parents for sharing their opinions;
 - carrying out dhaba dal activity among brick kilns;
 - carrying out prabhat pheries with the students in and around the school working area.
- Children have been withdrawn from brick kilns, dhabas, mechanical micro units, repair shops, residences (where they were working as domestic help), rag picking, railway vending etc.
 - Sanctioned strength of children in the beginning of the year, number of children admitted and on roll as on date has remained 2300 in 50:50 ratio between boys and girls.
 - Only 2 children have joined the mainstream, the rest are continuing in the special schools.

The following are some of my general observations and impressions arising out of visit to a couple of centres under NCLP, Muzaffarpur:-

- There is no full time Project Director. The Asstt. Labour Commissioner who is already saddled with heavy responsibilities (conciliation, arbitration, submission of failure report, inspection, prosecution etc.) is functioning as part time Project Director which is not a very effective arrangement from the management point of view.

- The class room environment appears to be dull, unexciting and uninteresting. This could be enlivened with good lighting and ventilation (there is acute load shedding in Muzaffarpur for 8 to 10 hours a day) on the one hand and provision of good charts and posters carrying seminal messages on importance of education, health, attributes of a good human being and citizen, rights of children, social evils like caste system, untouchability, sex based discrimination, bonded labour, child labour, trafficking and so on. Important statements of prominent freedom fighters conveying the message of truth, non-violence, self abnegation, dignity of the individual and unity of the nation along with their portraits could also be displayed.
- The teachers are untrained; they, therefore, do not have access to the basic nuances and scientific techniques of teaching;
- No proper classification of students has been done. All teachers regardless of what they know or what they do not know and their levels of learning have been huddled together in what Rabindranath Tagore would describe as 'narrow, dark and empty cells'.
- The teachers are not giving enough dictations. They do not also correct the text recorded by the students at the time of his dictation. They do not train the students as to how to write short, simple sentences out of the text books in straight lines.
- Exercise books which have been supplied to the students are not of uniform shape and size.
- The levels of proficiency in mother tongue and arithmetic continues to be very low.
- The drop out rate contrary to the claim made by Project authorities continues to be very high (retention of 32 out of 50 enrolled in one special school meaning thereby 36% drop out). High drop out rate basically meant that high investment in special schools (Rs. 3700/- per

learner) of NCLP has been a very heavy drain of scarce resources and a waste.

- Check up of health of the students is irregular and erratic.
- Skill training programme is yet to gather momentum.

A few specific suggestions to improve the content and quality of educational and other activities in special schools of NCLPs:

During middle of 80s (when I was DG National Literacy Mission and Joint Secretary, Department of Education, Ministry of HRD) Muzaffarpur was the first district taken up in Bihar for launching a campaign for total literacy. Prof. Chakraborty, a well known scientist and social activist had launched this campaign on behalf of NLM and Zilla Saksharata Samiti after a lot of planning and preparation through which a ground swell for literacy was created and effective demand for education was generated. Simultaneously the Bihar Education Project was also launched by the Ministry of HRD to implement 'Education for All' for children, adolescents and adults in Bihar. Despite all these path breaking initiatives the educational scenario in Muzaffarpur continues to be depressing. The environment for education which was built assiduously step by step is not to be seen anywhere; there is no demand for literacy or education and the working and living conditions of people have become extremely difficult. There is neither the physical nor the social infrastructure nor the human resource – agile, alert, pains taking, sensible and sensitive. Despite these dark clouds on the horizon looming large, thickening and leading to an enveloping gloom a few suggestions have been attempted and placed below to bring about some change, if not too radical:-

Setting up the infrastructure:

- I The special schools under the NCLP are an outcome of the dualistic child labour policy meant to rehabilitate children who have been withdrawn from hazardous work. They are not meant to take care of rehabilitation of all children. This selective approach should always be borne in mind while planning to open special schools

and not a free for all approach as apparently has been the case in Bihar.

- II To identify and enumerate this category of children, proper survey has to be conducted with the help of survey teams comprising of officers to be drawn from all departments. The members of the team – 2 in the minimum need to be given proper orientation before they proceed to the field. A lot of planning and preparation without any publicity or fanfare is needed to make the survey a foolproof operation.
- III The findings of the survey need to be collected, compiled, analysed and computerized for the purpose of enumeration and classification of children age-wise and also according socio-cultural-economic background.
- IV Strictly on the basis of the findings of the survey the nodal department is to decide on the number of special schools in NCLPs which already have been sanctioned and special schools in new areas for which NCLPs are not in existence (14 districts are without any sanctioned NCLP out of 38 so far). For new NCLPs or additional special schools in existing NCLPs the Ministry of Labour is to be moved by the State Government after complete analysis of the findings of the survey has been completed.

Improving the content, process and quality of the programme on the ground:

Children who are working in Bihar – hazardous and non-hazardous alike come from an extremely poor and difficult background. Many of them are malnourished. Their parents – landless agricultural labourers or rural artisans or fishermen or leather workers or vegetable and fruit vendors are mostly illiterate (Bihar despite the Bihar Education Project going on for more than 2 decades has a literacy rate of 47.5% which is the lowest in the country today). The female literacy rate is quite low (33.6%) and, therefore, knowledge, understanding and awareness of the basic ingredients of health,

hygiene, sanitation, immunization and nutrition amongst women will be quite low posing series of threats to successful operationalization of programmes (like NCLP). In such a dismal situation if education is to act as a tool of liberation of the unlettered masses and their children, the special schools under NCLP and the teachers in particular will have to play a highly proactive role which can be delineated in the following words:-

- the teacher will have to identify himself/herself totally with the children, their background, their perception, their hopes, fear and aspirations. Most of the boys and girls enrolled in the special schools were either rag pickers or were employed as tea boys in hotels, as moulders in brick kilns or mechanics/helpers in motor transport undertakings. They need to be properly classified according to their educational levels, aptitude, preference and skills (cognitive, affective and psychomotor skills). The teachers will have to spend all the time with these learners and engage them constantly in friendly dialogue about their day to day life, their problems and challenges.

- In more concrete terms and with a view to improving the existing levels of proficiency in arithmetic, mother tongue etc. which are quite low, the following steps are suggested for implementation on the part of all teachers of all NCLP schools in Bihar (including Muzaffarpur which was visited by me):-
 - o the teacher should write on the blackboard short and simple sentences in straight lines and ask the students to read them with normal pause and rhythm.

 - o the teacher should dictate passages from the text with normal pause and should correct the dictated passage written by students in the exercise book on the same day.

 - o repeated dictation, repeated correction of mistakes and repeated practice would undoubtedly enable the students to read and write the passages correctly.

- the teacher should promote and encourage the ability of students responding to mathematical quizzes in as short a time as possible (what is known as mental arithmetic) without taking the help of slate or exercise book and pencil/lead pencil. This would refine and sharpen the capacity of learners to think and spontaneity of response.
- the teacher should ask the students to show with the help of a roller places on the globe or atlas without much effort. In the same way they should be taught latitude and longitude. In this process, the proficiency in geography will be sharpened and refined.
- One of the ways of promoting general and social awareness is to keep on asking the students to give the names of their country, province, district, sub division, taluk/tahasil, panchayat, police station, area, population, density of population, levels of literacy and numeracy, age of nuptiality (of both boys and girls) prevalent in a particular area, migration – why, how and with what consequences, all facts related to production, distribution, consumption and absorption of food grains etc.;
- The entire teaching learning process in the class room should be as interactive, joyous, exciting, interesting and worthwhile as possible. Both the teacher and pupils should learn in dialogue and by sharing with each other. As much time should be devoted to question answers in a dialogical fashion to elicit the best possible cooperation and desired response from the learners.

Suggestions relating to check up of health of children:

- As was observed earlier most of the children who have been withdrawn from work are victims of malnutrition;

- Their health has been shattered on account of constant exposure to dust, heat, fume and toxic substances at the work place;
- Their health needs to be restored to them without which no rehabilitation would be possible;
- The MOs deputed by the State Government will have to understand and internalize this predicament which is special to these working children and will have to take special care and attention of these children in a manner which paves the way for their recovery;
- Parents and guardians as also all family members must be told and retold in no uncertain terms about the importance of nutrition and nutritive value of food measured in kilo calorie (minimum 1000 for these children);
- If food that is locally available meets the nutritional requirement, such food should be taken in balanced quantities to give a balanced combination of carbohydrate, protein, fat, vitamins and minerals;
- Simultaneously access to potable water and environmental sanitation must be ensured.

Other suggestions:

- The Project Advisory Committee must meet more frequently than now to take stock of developments on a day to day basis;
- Parent teacher associations should be formed and should be fully functional;
- Village Education Committees should also be formed and wherever in existence should be activated.

Discussion with Chief Secretary to Government of Bihar:**Date: 9.4.2008****Time: 6 PM to 7 PM**

The following points were discussed with Chief Secretary in his chamber. The meeting was attended by Principal Secretary, Health, Welfare, Rural Development, Civil Supplies, Revenue and other senior officials of Labour Resources Department:-

- I The number of working children was 9.42 lakh in 1991 census. It has gone up to 11.17 lakh in 2001 census. Seven years have passed since then and at the rate of 18.6% increase, the population of working children would have gone up further. Bihar now ranks third in the country in terms of total number of working children. Causes and factors contributing to this increase must be found and ways and means must also be found out simultaneously to contain this growth.
- II The second area of concern is that very large number of children are employed in hazardous occupations and processes which are injurious to their health, safety, psyche and total development – physical, emotional and spiritual. A State wide drive will have to be launched to withdraw all these children from such occupations and processes within a time bound schedule. It should be made abundantly clear on all concerned that if we do not do this in time our succeeding generation will be carried to the brink of near destruction.
- III The third area of concern is that a very large number of children are migrating either on their own or with their parents or are being recruited by recruiting agents. The entire operation is taking place surreptitiously by fly-by-night operators. Even the Village Panchayat is not in the know of this development. Wherever necessary by law recruiting agents are not obtaining licence u/s 8 and 9 of ISMW (ROE and COS) Act, 1979. The principal employers who get the workers recruited through agents do not also obtain a registration

certificate as required u/s 4 of ISMW (ROE and COS) Act. The workers get into a very difficult situation at the destination point in terms of hours of work, denial of minimum wage and denial of other statutory facilities and amenities.

I brought to the notice of Chief Secretary that enough has not been done in the past to (a) prevent or minimize the incidence of migration (b) to protect and safeguard the interests of migrant workmen at the destination point (c) to settle the statutory dues of the workmen as they leave the worksite and return home and (d) even though many of these migrant workmen work under bonded or slave like conditions very few have been identified as such and repatriated to the home state and rehabilitated.

I suggested to the Chief Secretary that a beginning must be made to proactively deal with this problem in the following manner:-

- pockets of origin and pockets of destination must be correctly surveyed and details ascertained;
- these details must be shared between originating and destination states;
- it must be ensured by the originating State that all recruiting agents recruiting 5 or more persons from one State and going to another State obtain licence;
- village vigilance squads must be formed to keep a vigilant eye on all such movements outside;
- Panchayat must be in the full know of such movements as well; they must be fully documented;
- there should be no ifs and buts from any quarter in view of the immensity of human tragedy involved in the entire process;

- teams of officers must be deputed by the originating State to visit the work sites at the destination point and to observe the working and living conditions of migrant workers and their family members;
- in course of such visits an endeavour should be to get all the grievances of the workers positively redressed by patiently listening to these grievances and by invoking the support and help of labour law enforcement officials of the destination state;
- if in course of visits it was found that some workers were working under bonded or slave like conditions determined efforts should be made to release them from hazardous work and repatriate them to the originating state for their rehabilitation.

IV I brought to the notice of Chief Secretary a few salient findings of NFHS-III (2005-06) where the situation of Bihar as far as malnutrition and under nutrition of children are concerned is one of great concern and disappointment. To quote from that document about the nutrition scenario in Bihar:-

	<u>NFHS-III (2005-06)</u>	<u>% of children below 3 years:</u>	
	Stunted	Wasted	Underweight
Bihar	42	28	58

I urged that directions be issued by Chief Secretary to Health Secretary to initiate immediate follow up action on the findings of NFHS-III.

V The prescribed medical authority constituted by the Health Department of the State Government u/s 10 of Child Labour (Prohibition and Regulation) Act for conclusive determination of the age of children needs to be made more sensitive through orientation and training. Similarly the MOs of the Health Department visiting the special schools for check up of health of all children should also be given proper orientation and training to view and handle the tasks

entrusted to them with a little more sensitivity and professional competence.

- VI The Chief Secretary was requested to constitute two State Advisory Committees separately for bonded labour and child labour to monitor and coordinate the various activities on the ground under his own chairmanship. The Labour Resources Department has so far not been very enthusiastic about formation of such State level bodies.
- VI There is no mechanism as of now to oversee the functioning of Vigilance Committees at the district and sub divisional level. The feed back mechanism in the Labour Resource Department was extremely poor. The proposed State Level Committee as and when constituted can monitor the performance of Vigilance Committees as well.

An executive summary of impressions, conclusions and recommendations arising out of the 2 day review of measures taken for implementation of Bonded Labour System(Abolition) Act and Child Labour (Prohibition & Regulation) Act.

Bonded Labour System (Abolition) Act:

- A number of studies on the origin and prevalence of bonded labour system in Bihar and involving the people of Bihar outside Bihar have been conducted. These have been referred to at page 4-18 of the report.
- These could constitute a rich source of information, inspiration and strength to conduct fresh surveys for identification of bonded labour system.
- Efforts should be made to procure them, get them translated to simple Hindi spoken in Bihar and use them as reference materials in the training and retraining programmes for members of Vigilance Committees, police, magistracy, judicial officers and officers of labour law enforcement machinery.

- In a State like Bihar plagued by poverty, illiteracy and backwardness all around it will yield much better results and do immense credit to administration if the latter learns to take the bull by its horns instead of disowning the existence of the system by saying all the time:-
 - people migrate of their own; no middlemen are involved;
 - surveys have been conducted but no bonded labourers were found.
- Vigilance Committees should constantly go out to the field, maintain eternal vigilance and surveillance as to what is happening on the ground, take the help of good, reliable and committed NGOs, wherever necessary and make sincere and determined efforts to identify bonded labour system through unorthodox and unconventional means instead of not doing justice to their statutory mandate, sitting pretty tight in their respective offices and taking a negative stand on the issue all the while.
- The DMs and SDMs as Chairpersons of these Committees must provide leadership and direction to their proper functioning.
- A State Level Monitoring Committee is essential to monitor the work being done by Vigilance Committees as also to coordinate the role and activities of a number of departments (Education, Home, Health, Industry/IT, Labour, Law, Revenue, Rural Development, Social Welfare/SC/ST Welfare, Urban Development, Women and Child Development).
- A number of norms and parameters on the adequacy and effectiveness of the administrative infrastructure have been indicated at page 20-21. These should invariably be kept in view while selecting/nominating people to various Committees/bodies.
- The stand of the nodal department in the matter of Constitution of a State Level Monitoring Committee has been negative. It should

perceive and internalize the role, functions and importance of having such a body more proactively as stated at the bottom of page 21.

- Its stand in regard to the methodology to be adopted for identification of bonded labour system has been equally negative. It should, in this regard, be guided by the following:-
 - methodology prescribed by Shri S.R. Sankaran in 1975-76 for such identification;
 - directions of the apex Court in Neerja Chaudhury Vs. M.P. AIR 1984 SC 1099 W.P. (Civil) No. 1263 of 1982.
- In the light of the direction of the apex Court that there should be constant check and supervision over the activities of the officials (charged with the task of identification, release and rehabilitation of bonded labourers) at least one review should be conducted by the Principal Secretary, Labour to have access to the correct factual situation obtaining on the ground.
- It is necessary and desirable that the nodal department is at all times in full grip of the situation without sounding vague sometimes and evasive and inconsistent at some other time.
- It does not have any clue to the following:-
 - whether Government functionaries and civil society organizations have actually gone to the ground to conduct the survey and whether they have submitted reports to the Executive Magistrate for pronouncing orders u/s 21(2) of the Act?;
 - how many cases have been registered, how many disposed off and how many are pending?;
 - how many bonded labourers have been released?;
 - whether release certificates have been handed over to all freed bonded labourers after verifying the identity of the person?

- While identification and release are reported to be coterminous, there is a gap of one year between the date of release and date of sanction of rehabilitation assistance.
- A much longer time lag is involved in implementation of the rehabilitation proposal.
- By necessary implication, the freed bonded labourer would either migrate or return to the erstwhile bonded labour keeper either of which is not desirable.
- The nodal department should perceive and internalize the importance of a group approach to rehabilitation and its distinct advantages over those of an individual beneficiary approach and should carry conviction to the beneficiaries about the same approach.
- In 2003-04, it was reported that 8 out of 20 bonded labourers in West Champaran district refused to be released and rehabilitated. This is an offence as on 25.10.75 and thereafter no person can be allowed to remain a victim of the pernicious bonded labour system. The field functionaries have done precious little to have impressed on the bonded labourers that they cannot afford to remain bonded when bonded labour system has been abolished by law.
- The nodal department could depute officers to Dehradun to study the scheme of project workers who have been appointed by the Hill Areas Department of the Government of Uttarakhand to act as 'friend, philosopher and guide' of freed bonded labourers.
- The special problems of interstate migrant workmen migrating from Bihar to Punjab, Haryana, Maharashtra, Gujarat and getting into the status of bonded labourers at the destination point should engage the serious and urgent attention of the nodal department in general and of the State Government in particular.

- The department in general and State Government in particular should go through the report prepared by Prof. Manjit Singh (page 7 to 10 of the present review report) and take action on all the 5 suggestions contained at page 46 – 47 of this report.
- It would do immense credit to the State Government if instead of Bachpan Bachao Andolan, a Delhi based NGO identifying bonded labourers from Bihar at Zari manufacturing units at Delhi, getting them released and repatriated to Bihar, the State Government could constitute teams, depute them to destination points and get persons working there under bonded conditions released and repatriated to the state for their rehabilitation.

Elimination of Child Labour:

- The number of working children has gone up from 9,42,245 in 1991 to 11,17,500 in 2001. The increase is of the order of 18.6%. The nodal department should analyse the reasons for such steep increase so that preventive and corrective measures to prevent further increase can be taken.
- The Principal Secretary, Labour should analyse the adequacy and effectiveness of the administrative structure keeping in view the norms and principles enunciated at page 50-58 and submit concrete proposals for approval of State Government.
- A State Level Monitoring Committee should be set up to coordinate with various departments/agencies, take decisions and issue directions for progressive reduction and eventual elimination of child labour. This should be independent of the State Level Monitoring Committee on elimination of bonded labour system.
- For determination of the age of the child the Registration of Births and Deaths Act, 1969 must be universally implemented. Orientation and training should be provided to the GPs to enable them to do justice to this statutory mandate.

- Similar orientation and training should be provided to the prescribed medical authority so that they are able to do justice to their statutory mandate on determination of the age of the child.
- The number of inspections under Child Labour (Prohibition and Regulation) Act have been progressively coming down year after year. Inspections conducted in 2006-07 is less than 1/3rd of the number of inspections conducted in 2002-03. No reasons could be assigned.
- Number of prosecutions launched should be proportional to the number of violations detected. This does not appear to be the case. No reasons have also been assigned for this.
- The number of convictions secured against the prosecutions have not been given. This is a serious omission.
- The Principal Secretary, Labour should analyse these short falls and take necessary corrective action.
- The primary purpose of inspection under CL (P&R) Act is to identify children at the workplace, if any, and withdraw them from work for the purpose of rehabilitation. If inspection dates are made known to the employer in advance it is quite possible that he would withdraw the children and push them underground. It is imperative that inspections are discretely conducted with some element of confidentiality so that the desired objective of inspection could be achieved.
- The status of compliance with the directions of the apex Court in W.P. No. 465 of 1986 M.C. Mehta Vs. State of Tamil Nadu and Others has been found to be most unsatisfactory on account of the following reasons:
 - instead of conducting the survey between Jan'97 to May'97 and filing the affidavit before the apex Court by end of May'07, surveys have been spread over a 3 year period i.e. 1997 and 2000;

- as against 21,281 children found to have been employed in hazardous occupations and processes, number of children withdrawn from work is only 472 (all 21,281 children should have been withdrawn and sent to formal school system) and that too in 2007-08 while the survey was conducted in 2000;
- there is no confirmation about the number of children who have been enrolled in the formal school system after having been withdrawn from work;
- at the rate of Rs. 20,000/- per child from every employer responsible for employment of the child in hazardous work a sum of Rs. 4,25,62,0000/- was recoverable from offending employers. As against this only Rs. 3,80,000/- has been recovered from offending employers which is a pittance. No reasons are forthcoming about such low recovery;
- District Child Labour Welfare-cum-Rehabilitation Fund has been constituted in 21 out of 38 districts. The position in regard to the remaining 17 districts is not known;
- The State Government have failed in providing a job to every able bodied adult member in a family which was found sending its children to hazardous work;
- For failure to do so, they were required to deposit a sum of Rs. 10,64,05,000/- @ Rs. 5000/- per child; as against this they have deposited Rs. 1,00,000/- only and that too in 2007-08;
- 27,739 children who are in non-hazardous work were to receive non-formal education in the evening for 2 hours and the cost of that education was to be borne by the employers. The Inspectors of the Department were required to organize it. The nodal department which was not in a position to indicate the latest status should organize this activity without further delay;

- A Child Labour Cell has been created in the Department since June'07 (11 years after the judgement) but the nodal Department was clueless about the personnel manning the cell and the activities launched by the cell;
- The Department should launch the activities suggested at page 66-68 of the report so that the cell does not remain only by name but is truly functional;
- Legal and penal action was to be simultaneously initiated against offending employers in addition to recovery of Rs. 20,000/- per child. The Department could not indicate the nature of such action initiated, stage at which they are pending and eventual outcome thereof.

National Child Labour Projects:

- The Nodal department should organize the special schools under the NCLP as a step by step activity in the manner indicated at page 68-69 of the report.
- The entire process should be preceded by formulation of a State Level Action Plan.
- Even though NCLP as a Project activity was conceptualized in 1988 (12 Projects) and started gathering momentum from 1994 (76 Projects) no State Level Action Plan has been prepared by the nodal department so far.
- This should be done in consultation with the following Departments namely:-
 - Education;
 - Health;
 - Women and Child Development;
 - Industry.
 and should be in place without any further delay.

- The Action Plan should contain the following:-
 - magnitude of the problem of child labour in the State with disaggregated data for the districts according to 2001 census;
 - interventions made so far and results achieved;
 - future interventions needed.
- Of 38 districts, only 24 districts are covered by NCLP of which 17 are operational. These gaps must be bridged at the latest.
- Considering the fact that large number of families in Bihar belong to BPL and also considering the fact that there are a large number of working children who are also out of school, the State Government should plan for atleast one NCLP per district and draw up a proper schedule for operationalizing the NCLP at a much faster pace than now.
- According to the report of the nodal department 63,221 children have been enrolled in 1104 special schools which have been operational in 17 districts. According to the National Policy as also the direction of the apex Court all children who are employed in hazardous work should be withdrawn from work and enrolled in special schools. The number of such children was reported to be 21,281. The State Government should account for the difference of 42,040 children.
- Similarly one special school should accommodate 40 to 50 students. At this rate not more than 500 special schools should have been opened whereas 1104 special schools have been opened so far. This needs to be explained.
- The State Government should initiate action in the light of a few suggestions made at page 81-86 to improve the content, quality and impact of the entire projectized approach to rehabilitation of working

children released from work through NCLP and keeping in view the deficiencies in the programme highlighted at page 73-78.

- A large number of children are migrating either on their own or with their parents or are being recruited by recruiting agents. Adequate steps have not been taken in the past or now to (a) prevent the incidence of such migration (b) protect and safeguard the interest of migrant workmen (c) release children who have been working under bonded conditions and have them rehabilitated in the home state through education, nutrition and skill training. Action should be initiated as per the steps suggested at page 88-89 of the report.
- NFHS-III report (2005-06) has brought out a very disquieting picture as far as status of Bihar in the area of malnutrition of children (0-6 age group) is concerned. This will be evident from the following table:-

	<u>NFHS-III (2005-06)</u>	<u>% of children below 3 years:</u>	
	Stunted	Wasted	Underweight
Bihar	42	28	58

- Since malnutrition adversely affects acquisition of cognitive skills as also productivity of labour immediate necessary follow up action on the findings of NFHS-III should be initiated by the State Government.
