

Report of Dr. Ashok Sahu, Thematic Special Rapporteur (Child/Bonded/Migrant Labour), NHRC on visit to Rajasthan (Jaipur, Jaisalmer and Jodhpur) during 06-11 November, 2017.

I.General

1.1 The State of Rajasthan, formed after merger of Rajputana into the Dominion of India, is located in the north-western side of the country. The State accounts for a major portion of the inhospitable Thar Desert and shares border with Pakistan. It presently comprises of 33 Districts placed under 7 Administrative Divisions, namely, Ajmer, Bharatpur, Bikaner, Kota, Jaipur, Jodhpur and Udaipur. Rajasthan's economy is primarily agricultural and pastoral. The State produces wheat, barley, pulses, sugarcane and oilseeds. Cotton and tobacco are State's cash crops. The Indira Gandhi canal irrigates north western Rajasthan; otherwise, water for irrigation comes from wells and tanks. The State is known for animal husbandry (milk, meat and wool) and production of crude oil, salt, copper, zinc, sandstone, marbles and handicrafts. Premier business communities of India are natives of the State and it is also famous for art and artists, tourism and education (Kota emerging as a major coaching centre). According to 2011 census, the State had a population of 6.85 crore, S.Cs and STs accounting for about 17% and 12% of the population respectively. The percentage of people below poverty line was 14.71 in Rajasthan as against all India average of 21.92 in 2011-12. Rajasthan has

problems associated with all the three types of labour, namely, child, bonded and migrant labour.

1.2 Certain issues specific to Rajasthan require special mention. First, the contribution of Desert Development Programme (DDP) in preventing advancement of Thar desert through Babul plantation (especially of varieties whose leaves animals do not consume), stoppage of wanton grazing etc. has been immense. But the efforts need to be further intensified as it is being reported in the press that spread of the desert has not been completely arrested. Secondly, water available from Indira Gandhi canal both for drinking, animal rearing and irrigation purposes has vastly changed the landscape. Since its coverage is nearly exhausted, there is need for constant upgradation of micro water management. Thirdly, the advent of Bt. cotton in Rajasthan and neighbouring States, has both been a boon – in terms of productivity, production, employment and earnings, and bane – in terms of exposure to hazardous pesticides which makes the occupation hazardous. Since cotton plants are shorter in size, employment of children is preferred during transplanting and harvesting. It has led to migration of workers, including children, from five Southern Districts of Rajasthan, namely, Udaipur, Dungarpur, Banswada, Rajsamand and Sirohi, especially to northern Districts of Gujarat like Banaskantha and Sabarkantha and their employment,

contravening the provisions of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. It has necessitated undertaking of preventive measures. Even though the State has boundary with Pakistan, it does not face any problem/difficulty in labour matters due to border fencing and BSF vigil.

Child Labour

1.3 According to 61st Round of National Sample Survey, 2004-05, child workforce in Rajasthan was estimated at 8.21 lakh. Child labour is engaged in agriculture (especially Bt. Cotton), animal rearing, brick kilns, gem and jewelry industry, entertainment, shops, hotels and dhabas and as domestic help.

1.4 The State Government has taken following measures in order to tackle the problem of child labour:

- To prevent employment of children in Bt. cotton cultivation and their migration for this purpose, Task Force under the chairmanship of District Collector has been constituted in the aforesaid Districts comprising of Police, Labour, Women and Child Development, Education and Health Departments as well as representatives of Gram Panchayats and NGOs. Efforts are made to generate awareness, maintain records of migrating children to prevent trafficking, tracking of absence in schools, constitution of mobile parties, establishment of check gates and physical

checking at borders, implementing tribal development schemes relating to free education and meals, health checkups, women and child development, food security, Aanganwadis etc. as tribals are prone to migration, holding inter-State meetings from time to time and joint patrolling by States.

- Task Force under the chairmanship of District collector has been constituted in each District.
- Department of Social Justice and Empowerment, which looks after the protection and rehabilitation of children under the Juvenile Justice (Care and Protection) of Children Act, 2000 and the corresponding Rajasthan Rules, 2001, has issued a Standard Operating Procedure (SOP) which has delineated the roles of different Departments/Organisations.
- Under the National Child Labour Policy, 1987, the National Child Labour Project (NCLP) was implemented in 27 Districts of the State. As a result, from 1988 till now, 59,119 child labourers have been mainstreamed. NCLP has not been approved in 6 Districts. Presently NCLP is not operating in any District. Efforts to conduct the District-wise Surveys in those Districts for which funds have been made available is on.
- Under the direction of the Chief Secretary, a special Child Labour Eradication Drive was conducted between 15th January to 15th March,

2016 during which 1004 child labourers were rescued. Another similar Drive is being contemplated.

- Under the amended Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Nodal Officers have been appointed in all the Districts. Implementation of the provisions of the amended Act is being ensured.
- Efforts are being made for continuous awareness generation, sensitization of officials, inspection of vulnerable enterprises and creation of Rehabilitation Fund in each District.

Bonded Labour

1.5 The bonded labour problem earlier in Rajasthan was primarily associated with the brick kiln industry. According to the Socio-Economic Caste Census, 2011, conducted by the Ministry of Rural Development, the number of rehabilitated bonded labour households in Rajasthan was 3,165 (Jaisalmer:6, Jodhpur:889). In the State the work relating to identification, rescue, release and rehabilitation of bonded labour was being done by Special Planning Unit; since April 2002, it has been transferred to the Labour Department. According to the State Government, from 1976 till now, 12,085 bonded labourers were identified and released in Rajasthan, of which 9,500 have been rehabilitated in the State and 2,585 repatriated to other States (like Bihar, Chhattishgarh,

Haryana, M.P. and U.P) for rehabilitation. Rajasthan Government has got brick kilns mapped by District Collectors; there are 3281 brick kilns functioning in the State (Jaisalmer:8, Jodhpur:0) but no bonded labour was found to be employed there. The State Government has taken following steps to eliminate bonded labour in the State:

- As per the direction of the Hon'ble Supreme Court, The State Government has prepared Action Plan for eradication of bonded labour. Vigilance Committees have been constituted in all 33 Districts and Sub Divisional level where during last year 103 and 760 meetings have been held respectively. To these Committees, representatives of SCs, STs and non-Governmental Organisations associated with Rural Development have been nominated.
- For searching and identification of bonded labour, Surveys are conducted in all Districts twice (May-June and November-December) a year.
- DMs, ADMs and SDMs have been vested with the powers of First Class Judicial Magistrate under the Bonded Labour System (Abolition) Act, 1976.
- The Labour Department officials have been directed to take action against the guilty employers under the Minimum Wages Act, the

Payment of Wages Act, the Child Labour Act, the Equal Remuneration Act etc. as well.

- In respect of bonded labour released earlier to 17.05.2016, rehabilitation assistance has been provided as per previous norms. In the event of delay in receiving Central Government share, funds amounting to Rs.72.68 lakh has been temporarily drawn from the Building and Other Construction Workers Cess Fund. Directives have been issued to provide rehabilitation assistance now as per the new Central Sector Scheme.

1.5 There is a case of good practice in Rajasthan in Sunda village of Baran District of Rajasthan. 135 persons belonging to 46 families of Saharia tribal community were working as bonded labour for three generations in this village. After a public hearing on 04.07. 2012, they were released and given 625 bigha land which was under illegal occupation of powerful Dabang community. The released bonded labour families are doing joint farming in this land for which the Government is providing assistance in form of seed, fertilizers, tractors etc. During his visit to Baran Dist., Dr. G.B. Panda, NHRC Special Rapporteur in charge of Rajasthan had visited the Community Farm and interacted with members of 29 rehabilitated families on 19.03. 2016.

Migrant Labour

1.6 So far migrant labour is concerned, both in and out migration takes place in Rajasthan. It is a destination State for workers of States like Bihar, Chhattisgarh, Jharkhand and West Bengal to work in brick kilns, agriculture, hotels and small-scale units. Rajasthan is a State where a lot of fairs (like Pushkar mela) are held in different places. Temporary migration of construction workers from neighbouring States takes place to work in mela sites. Migration of Bt. Cotton workers from Rajasthan to Gujarat has been discussed in para 1.2. Lack of information about the migrant workers from other States due to non-registration in home State, lack of portability of many social security benefits, involvement of contractors etc. are proving to be major handicaps. Coverage under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is rather low.

1.7 The State Government has taken following measures to tackle the problem of migrant labour:

- Efforts are being made to register more number of establishments, workers and contractors under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
- A Special Inspection Move was carried out in brick kilns to ensure that norms relating to payment of wages, working hours, lodging, medical,

potable water and creche facilities are being followed. Prosecution was lodged against 22 managements.

- Steps are taken to prevent migration, especially of children, to work in Bt. Cotton fields.

Human Trafficking

1.8 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, known as Palermo Protocol, was adopted by the UN General Assembly and entered into force on 25 December, 2003. It is the first globally binding instrument with an agreed definition on trafficking in persons. The Protocol defines 'trafficking in person' as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion such as abduction, fraud, deception, abuse of power or position of vulnerability, and also covers giving and receiving of payments or benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation.

1.9 The State Government has taken following important measure to combat human trafficking:

- The focus is on creating awareness and taking preventive action.
- Anti-trafficking units have been established.

- To prevent child trafficking, a special drive was made in 1996 in which 727 child workers were rescued from various Districts.
- A help line is functioning.
- A complaint portal has also been started.

1.10 Against this background, field visits were made to Government Observation and Children Home for Boys at Jaisalmer and Sangria village housing rehabilitated bonded labour households and Government Observation and Children Home for Boys housing both destitute and Conflict with Law (CWL) children at Jodhpur. Discussions were held at Jaipur with State level officials and at Jaisalmer and Jodhpur with District level officials, whose outcomes are discussed below.

II. Meeting at Jaipur

2.1 The meeting at Jaipur was attended by Secretary (Labour), Additional Labour Commissioner and other officials of Labour Department, Additional Director general of Police (AHT), ADM (City), Additional labour Commissioner and officials of Labour Department and representatives of Education Department.

2.2 At the outset the State government made a presentation after which I explained the purpose of the meeting. Since child, bonded, migrant and

trafficked labour are all rooted in poverty, though they have separate features, there is need for comprehensive attack on all of them and effective coordination between various Government Departments as well as civil society in this regard. We have to recognise advent of new forms of bondage gradually emerging in our economy, being termed as 'neo-bondage'. In view of this, the State Government may consider conducting a comprehensive Survey on Bonded Labour, inter alia, capturing existence of neo-bondage, if any, by availing funding being provided by Ministry of Labour and Employment, Government of India, under the new Scheme. In respect of child labour, the Child Labour (Prohibition and Regulation) Act, 1986 has been amended with a new name 'the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986' to prohibit the engagement of children (age up to 14 years) in all occupations and to prohibit the engagement of adolescents (age between 14 to 18 years) in hazardous occupations and processes. Hereafter no child shall be employed or permitted to work in any occupation or process except where the child helps his family or family enterprise, or works as an artist in an audio-visual entertainment industry after his school hours or during vacation. With this amendment, the way one looks at the problem of child labour and the way labour inspection has to be carried out will have to undergo a change. This also needs to be captured by an appropriate Survey, for which there is provision for

funding by the Central Government. Efforts are also needed to prevent distress migration and human trafficking as well as to provide vocational training to the younger generation.

2.3 During the interaction it was pointed out bonded labour is not a major problem in the State. On the other hand, even though the magnitude of child labour has declined in the State due to continuous awareness generation and ameliorative measures taken, the problem lingers in form of employment in dhabas and restaurants and as domestics, especially among migrant children from outside States. So far as migrant labour is concerned, Rajasthan is both a labour despatching and destination State. Labour goes from Southern Rajasthan Districts to Gujarat to work in Bt. Cotton fields. While the Rajasthan Government is trying to curb this menace, there is possibility of labour migrating to other States in a clandestine manner to reap higher wage benefits. Similarly, labour is migrating into Rajasthan due to peaceful industrial climate and higher wage rates prevalent here, compared to their home States. Education of children accompanying such parents is a casualty in the process. There is, however, no data available about the magnitude of this category of labour as there is no accurate system of registration of migrant labour or contractors either in the home or destination State under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act,

1979. A Memorandum of Understanding between Governments of Rajasthan and Bihar is under consideration. Other issues mentioned in the meeting pertained to non-availability of any information about the whereabouts of the rehabilitated labour especially regarding their relapse, need for effective stakeholders, false complaints being lodged with NHRC by some NGOs, need for CWC to become more cooperative while dealing with cases of child labour and the role of master craftsmen imparting vocational training to improve the employment of destitute children and improving the accessibility of such children to avail facility of vocational training in formal institutions like ITIs.

III. Visit to Jaisalmer

3.1 The meeting with District level officials was held at Jaisalmer which was attended by Additional District Magistrate, Superintendent of Police, Chairman (CWC), CDMO, BDOs, Deputy Labour Commissioner and officials of Department, representatives of Zilla parishad, Education and Women & Child Development Departments and Centre Coordinator, Childline.

3.2 At the outset the purpose of the meeting was explained suggesting that the District-specific problems would be discussed. During interaction it was pointed out that Jaisalmer is a border District which is big but thinly populated, being partly occupied by Thar desert. It is famous for tourism (Jaisalmer Fort being the main tourist attraction), camel rides, traditional handicrafts and

performance by rural artists. Though not industrialised, the District seems to be potentially rich in terms of oil and gas reserves and Non-Conventional Energy Sources with many functioning wind mills. There is not much prevalence of either bondage/neo-bondage or migrant labour in Jaisalmer even though engagement of child labour to some extent as domestics and performing artists, guiding tourists in camel rides, in household enterprises, dhabas, helping in selling merchandise during seasonal melas (some of them accompanying parents coming from other States also) and rearing animals, is noticed. On the question whether it affects their studies, the response was that their education, quality-wise, suffers. There is need for amending laws on both bonded and child labour from time to time to bridge the gap between legal provisions and ground realities. For example, while the definition of family needs to be changed in the amended Child Labour Act (implying only parents and not extended family like father's or mother's brothers and sisters) so as to prevent dilution and making application of penal provisions difficult, complete ban on employment of child labour in helping family occupations is not a feasible proposition. Similarly in case of bonded labour difficulties encountered in issuing release certificates and rehabilitating them so that there is no relapse need to be removed. The Health Department, Social welfare Department and CWC are playing their respective roles effectively. In the

meeting cooperation between different Department was stressed upon. The District is not facing any specific problem being a border District due to fencing of the border. Expansion of the desert has been arrested to a considerable extent and water available from Indira Gandhi canal is a great boon in augmenting agricultural production and consequential employment. There is an anti-trafficking unit functioning in the District, but no serious case of trafficking has been noticed, even for employment in Bt. Cotton fields of Gujrat.

3.3 A visit was made to Government Observation and Children Home for Boys, Jaisalmer which is functioning since 2000 under the Social Welfare Department. Interaction was held with inmates, Chairman, CWC, management personnel and teachers. While passed out inmates of this Shelter Home are either studying in higher academic institutions or employed in different vocations, the present inmates (about 19 in number) felt that coaching in English and Mathematics will help them to perform better in examinations.

IV. Visit to Jodhpur

4.1 The meeting with District-level officials was held at Jodhpur which was attended by officers representing Administration, Police, Labour, Education, Planning, Medical, Social Justice, Statistics and Mining Departments.

4.2 During the meeting I briefed about the purpose of my visit and the nuances associated with the three types of labour, namely child, bonded and migrant labour. Even though the problem of bonded and child labour is not acute in the District, it was suggested that when Surveys take place, these should address the issues of neo-bondage and whether children's studies are not hampered when they help in family work. In the District, a Child Labour Task Force, a Childline Advisory Board and Anti-Trafficking Unit are functioning. Even though there is no problem of child labour, action has been taken in the past against employers for engaging 53 child labour. Similarly, in respect of bonded labour, a Vigilance Committee under the chairmanship of District Magistrate has been constituted. Between 1976 and 2011, 104 bonded labour have been released and rehabilitated. So far as migrant labour is concerned, many workers coming from other states like Bihar, Uttar Pradesh and West Bengal are employed in different establishments in Jodhpur District. But they have mostly come on their own and not through middlemen. So far no licence has been either given or complaint received under the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

4.3 A visit was made to Sangria village, Soni Tehsil where about 22 bonded labour households have been rehabilitated. During interaction it was found that these labourers were released from Bhatti mines at the behest of reputed

activist Swami Agnivesh and (present Nobel Laureate) Kailash Satyarthi, relocated and resettled here. All of them have been provided with single storey pucca houses by the Government and have received rehabilitation assistance. There has been no relapse into bondage and the labourers are earning their livelihood by working as building and road construction workers. They are having Aadhar and voter identity cards and bank accounts. They have been enrolled as building and construction workers to avail admissible benefits under the Cess fund. This appeared as a successful case of rehabilitation of bonded labour. On the flip side, however, despite facilities being available, education of the younger generation has not progressed as desirable. There has been frequent drop outs and virtually no vocational training. Hence there is stagnation in the matter of employment. Besides, the workers also complained that no land 'patta' has been given to them in respect of houses provided despite their approaching various authorities without which they are not able to get any further assistance to construct another floor and are being compelled to stay in constricted accommodation even though their family size has increased in the mean while. The Labour Department officials accompanying me informed that, being registered as building and construction workers, they will be entitled for assistance for this purpose from the Cess Fund once they are able to submit 'pattas'.

4.4 I also visited Government Observation & Children Home for Boys at Mangra Punjla, Jodhpur where I had the opportunity of interacting with destitute and Conflict with Law (CWL) inmates as well as their teachers, counsellors and management functionaries. Apart from Government grant, the institution is also receiving assistance of charitable institutions/persons. The infrastructure and facilities appeared good and was being improved. Detail discussion was held as to how the CWL can receive vocational education to the extent possible to enable them to get employment and earn reasonably decent livelihood.

V. Conclusion

5.1 The visit to Rajasthan, especially the field visits at Jodhpur, was an unique experience and quite educative. Some of the outstanding problems need to be resolved. The recommendations are annexed. NHRC may like to take up relevant issues with concerned Ministries and State Government.

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RecommendationsAnnexure

(i) Surveys on Child and Bonded Labour are required to be taken up by the State Government after availing funding from the Central Government. The ministry of Labour and Employment has also to decide early about pending issues, especially on Child Labour, of the State.

(ii) Inter-State coordination, especially with Government of Gujarat, has to be pursued relentlessly to prevent migration and engagement of child labour in Bt. Cotton employment.

(iii) The problem of rehabilitated bonded labour in Jodhpur, especially in the matter of giving 'patta' of the land on which their allotted houses stand, can be

resolved by the District Administration. This requires priority attention which will also amply display Administration's sense of empathy and sensitiveness.

(iv) The Sunda experiment (para 5.1) requires to be lauded as it has the potential of being replicated elsewhere.

(v) The children of the rehabilitated bonded labourers as well as the inmates the Shelter Homes are required to be both encouraged and facilitated to seriously take up vocational education, leading to reasonably decent employment.

(vi) On a broader issue, fight against expanding desert has to continue relentlessly.
