

CORE GROUP ON BONDED LABOUR

Chair: Justice Shri P.C. Pant, Member, NHRC

Date: 14 August 2020

Time: 11:00 AM

Platform: Google Meet

MINUTES

The National Human Rights Commission of India organized a meeting of the Core Group on Bonded Labour under the chairmanship of Justice Shri P.C. Pant, *Member, NHRC*, on 14th August 2020 at 11:00 AM via Google Meet. The meeting was attended by Shri Jaideep Govind, Secretary General, Shri Surajit Dey, Registrar (Law), Shri R.K. Khandelwal, Joint Secretary (A&R) Shri Indrajeet Kumar, Assistant Registrar, Shri Sudesh Kumar, Senior Research Officer, Shri Md. Alam Ansari, Research Officer from NHRC, Core Group Members, representatives from the Union Ministry of Labour and Employment (MoLE) and other government institutions. A complete list of participants is annexed (**Annex-I**).

2. **Shri Jaideep Govind, Secretary General, NHRC**, greeted all the participants of the meeting and stated that the Commission has been proactively engaging with the issue of bonded labour ever since it was entrusted with the task of implementation and monitoring of the Bonded Labour System (Abolition) Act, 1976 by the Hon'ble Supreme Court. He recalled some of the meetings on the issue of bonded labour organized by the Commission in the past; specifically, the National Seminar on Elimination of Bonded Labour System held on 8 November 2019 wherein the Minister of State for Labour and Employment, Shri Santosh Kumar Gangwar was present and overwhelming participation from States was witnessed. He further informed that the Commission, through its intervention in Supreme Court's Writ Petition on miseries of the migrant workers during the pandemic, series of meetings with the State Government for disposal of cases of bonded labour pending with the Commission etc. has been active in safeguarding the rights of migrant workers and bonded labourers in the pandemic and will continue to be committed to their rights. Thereafter, he invited the Hon'ble Member to deliver his inaugural address.

3. **Justice Shri P.C. Pant, Member, NHRC**, welcomed all the participants and expressed his pleasure to be part of the meeting of the Core Group. He stated that the Commission is organizing this meeting to deliberate upon some of the representations received on clarification

of interpretation of provisions under Bonded Labour System (Abolition) Act, 1976, implementation of Central Sector Scheme on Rehabilitation of Bonded Labourer, 2016 and the Standard Operating Procedure. Further, as the ongoing pandemic has revealed the vulnerability of the working class in the country, he opined that this meeting was a need of the hour to deliberate on ways and means to provide financial security and prevent the probability of debt bondage, among other issues. Further, as the meeting had representation from NGOs and civil society organizations working in the grassroots, he expressed his gratitude for their services rendered towards the welfare of migrant workers in the times of distress and for being supportive to the authorities in managing the unprecedented situation caused by the pandemic.

Agenda I: Clarification regarding interpretation of the Bonded Labour System (Abolition) Act, 1976

4. **Shri Surajit Dey, Registrar (Law), NHRC**, contextualized the first agenda item and stated that the deliberations should be on the relationship of powers under Section 10-12 and Section 21 and how it should reflect in the and the Central Standard Operating Procedure (SOP) for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017, and the clarification of powers of the police and the lower judiciary.

5. **Shri Kiran Kamal Prasad, Secretary, Jeevika/Vimukti Trust**, stated that in the Bonded Labour System (Abolition) Act (BLSAA), 1976, the powers under Section 10-12 and the functions of the Vigilance Committee (VC) under Section 14 are very distinct from the powers under Section 21. While the powers under Section 10-12 (administrative in nature) are used to investigate, determine, release and rehabilitate bonded labourers, the powers under Section 21 (judicial in nature) are used to provide the employer with an opportunity to prove that the debt involved is not debt bondage and determine the extent of punishment. According to him, if the aforementioned interpretation is followed, several misgivings in the Standard Operating Procedure (SOP) and the Central Sector Scheme for Rehabilitation of Bonded Labourer (CSS), 2016, can be removed.

6. Concerning the clarification of the role of police, the Central SOP gives equal powers to the police for receiving complaints of bonded labour. However, according to **Shri Kiran Kamal Prasad**, while a cognizable offence under general legislation can be taken up by the police, cases of bonded labour are in the purview of BLSAA which has made the Executive Magistrate and

VCS responsible for the investigation, determination, release and rehabilitation of bonded labour. Similarly, he drew attention to the issues with the powers of lower judiciary and raised questions regarding filling FIRs in bonded labour cases. Further, he pointed out that the Central SOP needs to contain clear guidelines regarding identification, release and rehabilitation of bonded labourers.

7. **Dr. Tina Kuriakose, Head, Central Government Partnerships, International Justice Mission (IJM)**, sharing the organization's experiences of having worked on bonded labour in several States in India, stated that the BLSAA is a robust legislation. The nature of bonded labour has evolved but, in most cases, the victims are often very poor, casual labour and 85 per cent of them are from the Scheduled Caste and Scheduled Tribe communities. Thus, BLSAA identifies, rescues and rehabilitates the most marginalized and the SOP's criminalization of bonded labour is in tandem with this reality. Even the Government has been seeing it as a crime and including its cases in the National Crime Records Bureau's (NCRB) reports. She further opined that to eliminate the practice of bonded labour, the crime and the offenders need to be addressed; thus, FIRs play a crucial role in providing justice to the victims who cannot seek justice on their own. However, she added that no victim can be forced to file an FIR.

8. **Dr. Tina Kuriakose** further asserted that the Central SOP is very detailed and elucidates the process to be followed for identification, rescue and rehabilitation, and also specifies the cash and non-cash assistance to be provided. However, she suggested de-linking rehabilitation from prosecution and consider the Release Certificate (RC) a sufficient basis for providing complete rehabilitation.

9. **Dr. Pravin Sinha, Executive President, National Labour Law Association**, on the issue of equal powers to police while receiving and investigating issues of bonded labour, stated that field experiences show that the involvement of police often gives the employer an upper hand in the situation due to the pre-existing nexus between the police and the employers. Thus, he opined that involvement of police should be restricted as it puts the labourer in a disadvantageous situation and should be allowed only when there are other crimes involved or the employer is unwilling to release the bonded labourer. He further pointed out that there lack of awareness about the provisions of the legislation, scheme and SOP among the implementing/concerned authorities while dealing with cases of bonded labour.

10. **Dr. Sampurna Behura, Director, Bachpan Bachao Andolan**, stated that bonded labour is a violation of the fundamental right to life under Article 21 of the Constitution of India. Thus, filing FIR is necessary for the matter. She further opined that the Central SOP strengthens the BLSAA and does not have conflicting roles of the police, as they are under the District Magistrate i.e. implementing authorities in the legislation.

11. Speaking on the issue of filing FIRs, **Shri Sudhir Katiyar, Prayas Centre for Labour Research and Action**, claimed that the criminalization of bonded labour is a step in the right direction as the prosecution at the Executive Magistrate level is low. Further, while BLSAA is a robust legislation, he expressed concerns regarding lack of completion of processes such as providing RCs, summary trials and prosecution after the release of bonded labour.

12. Before asking the representative of MoLE to react to the above discussion and the agenda, **Shri Surajit Dey, Registrar (Law), NHRC**, informed the gathering that the Commission has already referred the issue in powers under Section 21, which have been declared *ultra vires* by the High Court of Madhya Pradesh and Haryana to the MoLE.

13. **Shri Surendra Patel, Deputy Secretary, Ministry of Labour and Employment**, enumerated the three main documents in the issue of bonded labour, i.e., BLSAA, CSS, and Central SOP. He stated that by the definition of bonded labour in the BLSAA, the number of bonded labour has reduced significantly in the country. States report a very low number of bonded labour each year. With regard to rehabilitation, the Ministry receives very few proper proposals seeking funds while the Ministry has no dearth of funds for it. He further stated that the issue of powers in Section 21 of the Act is under consideration of the Ministry and legal advice is being sought from the Ministry of Law. Even though the BLSAA is a robust legislation, the Ministry is open to deliberate on gaps in the same as it is committed to eliminate the system of bonded labour from the country.

14. **Dr. L. Mishra, IAS (Retd.)**, could not attend the webinar but had shared his written inputs on the issue; the same was also circulated with the Core Group a day before the meeting. On the issue of interpretation of powers under Section 10-12 and Section 21, he opined that while there is a close relationship of powers in the aforementioned Sections, the framers of the law visualized the urgency and seriousness with which all cases relating to rescue/release,

rehabilitation of victims of bonded labour system had to be dealt with on one hand and prosecution and conviction of all offenders on the other. This special arrangement was both approved and reinforced by the Hon'ble Supreme Court in Bandhua Mukti Morcha judgement (WP No. 2135 of 1982 disposed on 16.12.83). The Hon'ble Supreme Court also categorically held that rescue/release and rehabilitation of the victims of bonded labour system must receive the highest primacy and centrality and are not to be linked with prosecution and conviction of the offenders of the law. Regretfully, the Hon'ble High Courts of Madhya Pradesh (Jabalpur), Bombay and Madras, have struck down Section 21 in its entirety on the ground that it violated Article 21, 14 and 50 of the Constitution of India even when the provisions led to i) comparatively simpler warrant procedure, ii) expeditious trial and conclusion of the proceedings, and iii) less expensive trials for the victims of bonded labour.

15. On the issue of the role of police in cases of bonded labour, **Dr. L Mishra** recalled Sections 60 A of the Criminal Procedure Code (CrPC), 1973, which states that "*No arrest shall be made except in accordance with the provisions of the Code or any other law for the time being providing for arrest*". Further, Section 41 which empowers a police officer to arrest without a warrant or an order from a Magistrate, has laid down the guidelines for such arrest. The said guidelines can be interpreted in cases of bonded labour in the following manner:

- i. Arrest if there is credible information that a trafficking/bonded labour offence has been committed;
- ii. If the police officer has reason to believe that a trafficking/bonded labour offence has been committed;
- iii. Additionally, the offender of the law can be apprehended when the police officer is present during the rescue/release operation;
- iv. There is resistance from the employer/bonded labour keeper to release the victim from the captivity;
- v. The employer concerned refuses to return the mortgaged property to the released bonded labourer;

16. On the scope of filing, an FIR under Section 154 of CrPC, 1973, can be filed and entertained under the following circumstances in case of bonded labour:

- If the physical release of the victim of the bonded labour system does not take place in a normal and natural manner and there is resistance to such release from the side of the employer/bonded labour keeper, FIR under the relevant section as above should be filed and entertained;
- If the accused is un-lawfully compelling any person to work against his wishes (u/s 374 Indian Penal Code);
- Whoever not being a member of Scheduled Castes (SCs) or Scheduled Tribes (STs) compels or entices a member of SC or ST to do beggary or any other similar form of forced labour other than any community service for public purposes imposed by Government, such action would warrant filing an FIR.

Agenda II: Discussions on the implementation of Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016

17. **Shri Indrajeet Kumar, Assistant Registrar, NHRC**, who moderated agenda II, initiated the deliberations by informing the Core Group about the following issues that emerged when the Commission organized a series of meetings with the State Governments for the disposal of cases of bonded labour pending with the Commission: i) non-creation of corpus fund under CSS, 2016; ii) lack of survey for identification of bonded labour; iii) pending summary trials.

18. **Dr. Tina Kuriakose, Head, Central Government Partnerships, International Justice Mission (IJM)**, stated that the Commission's National Seminar on Elimination of Bonded Labour System held in November 2019 had pushed some States to provide bonded labourers RCs and immediate cash assistance. As a result of the National Seminar, the Minister of the MoLE had also written to all States directing them to: i) maintain corpus funds, ii) complete summary trials quickly and iii) focus on both cash and non-cash assistance while rehabilitating the bonded labourers. According to Dr. Kuriakose, writing to the States from time to time pushes the States towards the implementation of the CSS, 2016. She further submitted that during this pandemic, there is a greater need for convergence among Ministries and their schemes in the rehabilitation of released bonded labourers. The said convergence has also been emphasized by the Ministry of Home Affairs (MHA) in its directions.

19. **Shri Kiran Kamal Prasad, Secretary, Jeevika/Vimukti Trust,** pointed out that the Scheme remains unutilized and most bonded labourers await receipt of cash assistance. Many States end up exhausting the corpus funds and do not get the renewed funds from the Union Ministry. He suggested that the Scheme also needs to focus on the non-cash rehabilitation aspects. He further stated that the Commission has written to the MoLE delinking rehabilitation from prosecution, but the same still awaits action from the Ministry.

20. **Shri Sudhir Katiyar, Prayas Centre for Labour Research and Action,** reaffirmed the opinion of Shri Kiran Kamal Prasad that rehabilitation needs to be delinked from prosecution as currently, the rehabilitation rate is low. To see the actual rate of rehabilitation, he suggested that NHRC may direct the MoLE to send data of the number of bonded labour released and fully rehabilitated after the amendment in CSS in 2016.

21. **Dr. Pravin Sinha, Executive President, National Labour Law Association,** pointed out that the issues that emerged concerning the implementation of CSS during the series of meetings on pending bonded labour cases by the Commission and Shri Surendra Patel's statement that there is hardly any reporting of bonded labour cases by the States indicates that there is a problem with the definition of bonded labour. There is a need to redefine bonded labour keeping in view the existing realities. Further, in a majority of the cases, when the State authorities go to identify bonded labour, the employers (especially in the garment sector) try to cover the situation up. Thus, there is a need for unannounced inspection so that employers do not have the scope to cover the existence of bonded labour.

22. **Dr. Helen R. Sekar, Senior Fellow (Faculty), Coordinator, National Resource Centre on Child Labour (NRCCL), V.V. Giri National Labour Institute,** opined that the issues in the implementation of the BLSAA and the CSS, 2016 arise primarily because the stakeholders, specifically the implementers, are not sensitized about the various provisions of the legislation and the Scheme. In this regard, the V.V. Giri National Labour Institute had started a sensitization programme on Bonded Labour and Child Labour for the Members of the VC from all the districts and not a single nomination was received. She reiterated that for proper implementation of the Scheme, the implementer needs to be sensitized about its provisions.

23. **Dr. Sampurna Behura, Director, Bachpan Bachao Andolan,** shared her organization's observation about the implementation of the Scheme in the field. She stated that the CSS, 2016,

has low outreach; in the past 3 years, 1406 child labourers were freed by Bachpan Bachao Andolan and none received RCs till date. Most districts do not have VCs and even when it is constituted, they are not proactive. Non-constitution of VCs is also a major reason for gaps in the implementation of CSS, 2016, as there is nobody to take follow-ups with the released labourers. She further opined that there is a low rate of rehabilitation under CSS because summary trails are rarely completed. She questioned the delays in the summary trails by positing that when a bonded labourer is given a RC within 24 hours of rescue, the trials should be disposed within a week. She submitted that there is a need to establish a monitoring mechanism on the identification, rescue, and rehabilitation of bonded labourers as done in the case of missing children and Child Welfare Committee cases.

24. **Shri Indrajeet Kumar, Assistant Registrar, NHRC**, then invited the representative from MoLE to give his opinion on the matter and respond to the issues faced by the States in seeking reimbursement of funds for the rehabilitation from the Ministry.

25. **Shri Surendra Patel, Deputy Secretary, Ministry of Labour and Employment**, clarified at the beginning that there is no complete proposal for funds pending with the Ministry. Most proposals received by them are either incomplete or improper. He further informed that several States, including Uttar Pradesh, have not sent the requisite revised proposals despite several reminders and intimations by the Ministry. He stated that the format/guidelines to be followed are fairly simple, but States send improper or incomplete proposals.

26. Reacting to Shri Surendra Patel, **Shri Surajit Dey, Registrar (Law), NHRC**, stated that while there may be bureaucratic lethargy, the marginalized labourers are the ones who are at a loss when the reimbursements are not made. Thus, he suggested that the MoLE may consider simplifying the process of sending proposals even more so that the States can receive the funds at ease.

27. **Shri Md. Alam Ansari, Research Officer, NHRC**, added that the Commission has already written to Secretary MoLE recommending them to compile a booklet on the various provisions of BLSAA, CSS, SOP and other orders. This would become a resource to the implementing authorities at the State level. He further urged Shri Surendra Patel to kindly take up the matter with the higher authorities of the Ministry and expedite the process.

28. **Dr. L. Mishra, IAS (Retd.)**, could not attend the webinar but shared his written inputs on the issue. In his written submission, he has informed that the CSS, 2016 has some major flaws which he had intimated NHRC about when the Scheme was notified in May 2016. From his vast experience in the matters of bonded labour and being the former Joint Secretary and Secretary, MoLE, prescribing a condition of prosecution/conviction of the offender before the request for sanction of grant-in-aid under the CSS is a violation of the spirit of several judgments of the Hon'ble Supreme Court. This, according to Dr. Mishra, is one of the major issues that make the authorities incapable of implementing the Scheme.

Agenda III: Clarifications on Central Standard Operating Procedure (SOP) for Identification and Rescue of Bonded Labourer and Prosecution of Offender, circulated by Ministry of Labour and Employment, Government of India on August 17, 2017

Agenda IV: Observations on State Standard Operating Procedures on Bonded Labour brought out by the State Government of Karnataka on 10 February 2020: Issues of concerns raised by Shri Kiran Kamal Prasad, Member of the Core Group

29. Due to paucity of time, **Shri Md. Alam Ansari, Research Officer, NHRC**, suggested that the Agenda III and IV be combined as both pertain to the SOP for Identification and Rescue of Bonded Labourer and Prosecution of Offender.

30. **Dr. Pravin Sinha, Executive President, National Labour Law Association**, said that the Central SOP is very elaborate but there is lack of guidelines for the reporting process as after identification of bonded labour there are 3 months for the completion of the summary trial. Further, the SOP also specifies that the rescue team should include one member from NGO, which is hardly implemented.

31. **Shri Sudhir Katiyar, Prayas Centre for Labour Research and Action**, expressed that the Central SOP is comprehensive, but there is a need to simplify it and the State Governments must ensure that a copy of the SOP is at each Sub-Divisional Magistrates office so that they follow it whenever a rescue is carried. He further stated that there is a lack of awareness about the SOP and NGOs working in the grassroots often find themselves sensitizing the officials about the provisions.

32. **Dr. Sampurna Behura, Director, Bachpan Bachao Andolan**, shared that Central SOP is silent on the issue of accommodation of the released bonded labour during the period of summary trial which is 3 months as per the SOP. While children can be accommodated in Child Care Institutions and Women in Special Homes, there are no facilities for the men who are released. Thus, she emphasized that the SOP needs to provide guidelines on where the released bonded labourers are to be accommodated during the period summary trials and who is to assist the released labourers about the procedures after release and the status of the Trial.

33. **Dr. Tina Kuriakose, Head, Central Government Partnerships, International Justice Mission (IJM)**, stated the procedures undertaken after the release of the bonded labour depends largely on the sensitivity of the State officials. She gave the instance of the State of Tamil Nadu where, as per experiences of IJM, the State is very proactive and minutely looks into the release process, the allowance and police protection required by the labourers for their journey back home. The State also provides accommodation to the labourers until they receive their release certificates. While agreeing that there should be speedy trials, she posited that the time of three months is mainly because the labourers released are often sub-contracted and it takes time to trace their employers.

34. **Dr. Pravin Sinha, Executive President, National Labour Law Association**, submitted to the Core Group that there needs to be a separation in guidelines and the course of action to be taken for the bonded labourers who are released in their home state and the labourers released in the destination state. According to him, this separation of guidelines would provide clarity to the State officials and fast track the process.

35. **Shri Kiran Kamal Prasad, Secretary, Jeevika/Vimukti Trust**, through his written submission stated the following in the matter of Central SOP:

It is not a question of harmonization between the Central SOP with BLSAA. Since most of the stipulations in the SOP are inconsistent with the provisions in BLSAA, the SOP must be withdrawn altogether and a new one [should be] issued in its place. Only the few positive elements could be retained. They are:

- i. Stipulating a time limit of just 24 hours from the time of receiving a complaint to carrying out the rescue; conducting the inquiry within 24 hours of the rescue; issuing the RC within 24 hours of the inquiry; and*

commencing the Summary Trial not later than 24 hours of the identification or rescue, whichever is later.

- ii. Declaring that the procedure for criminal trials does not apply to an inquiry under BLSAA and the inquiry is not an adversarial inquiry.*
- iii. Clarifying that it shall not be necessary to question the offender at the time of the inquiry.*
- iv. Indicating that filing of FIRs is not necessary for commencing Summary Trials of bonded labour offences.*
- v. Stipulating a time period of three months for a Summary Trial, though the three month period should rather be shortened to three weeks.*

Regarding rehabilitation, the SOP takes care only of the issuance of the immediate cash grants along with the issuing of Release Certificates and of providing various identity and entitlement cards like Aadhar Card, Ration Card, MGNREGA Card, Voter ID, Caste Certificate, Land Patta, Govt Health Insurance and so on. No procedures are given for working out the rehabilitation provisions and training skills as stipulated in s. 5 of the CSS.

36. On the Standard Operating Procedures on Bonded Labour by the State Government of Karnataka (GoK), **Shri Kiran Kamal Prasad, Secretary, Jeevika/Vimukti Trust**, submitted in writing that several provisions in the GOK SOP are patterned mostly on the Central SOP and are in clear violation of the well-accepted jurisprudential principles and rights of bonded labourers. While the GoK's SOP has several positive aspects, the following are some of the specific concerns in the matter:

- i. Police have been given a role in ss. 1 (Complaint) and 2 (Rescue) along with and equivalent to that of District Magistrate and Sub Division Magistrate.*
- ii. While collecting evidence during Rescue, the focus is that of criminal investigation (2.6). Whereas the collecting of evidence and conducting of inquiry in BLSAA are not criminal in nature but are social. Even the Central SOP seems to accept this; under Inquiry (3.3) it is clearly stated that "Such an inquiry is not an adversarial inquiry, and the procedures for criminal trials do not apply to such an inquiry." This is preceded by*

another sentence: “It shall not be necessary to question the offender or any of his associates.” These two sentences in the Central SOP are omitted in the GoK SOPs.

- i. GoK SOPs in s. 6 state that filing of FIRs is mandatory immediately after granting Release Certificates (RCs), though Central SOP indicates in S. 6.1(ii) that Summary Trial for bonded labour offences does not require filing of an FIR. But this sub section, which also stipulates that Summary Trial should commence not later than 24 hours from the date of identification or rescue, is summarily omitted in the GoK SOPs as also s. 6.2 which stipulates a period of three months for Summary Trial.*
- ii. The Central SOP itself may lead to this interpretation because in it S. 4 (First Information Report) dealing with offences other than BLA comes before s. 6 dealing with Summary Trial of bonded labour offences only. S. 4 should logically come after s. 6 or should be omitted altogether because it is outside the scope of BLSAA. Also, since the mechanisms and procedures for filing FIRs and conducting Summary Trials are simple and clearly given in the CrPC, they need not be unnecessarily duplicated or misconstrued in the SOPs. The wrong application of the theory of ‘Double Jeopardy’ to BLA seems to have led to formulation of s. 4 and sub ss 6.1(iii) and (iv).*
- iii. The GoK SOPs make unnecessary elaborations by providing 21 sub sections in s. 6. They have relied heavily on the two Judgments of the Karnataka High Court. One of these Judgments was at the instance of a landlord and the other at the instance of the State Government. Both the Judgments clarified that the original jurisdiction of Judicial Magistrate was not taken away. They do not say that cases have to be taken to the Judicial Magistrates directly. Their primary focus was not to uphold the rights of the criminal courts but to see that justice to bonded labourers was not denied.*
- iv. Regarding Double Jeopardy, we can say that in respect of a breach of a legal norm, two kinds of proceedings are possible and each may give*

different kinds of reliefs which are independent of each other and capable of separate enforcement with their respective jurisdictions. E.g., in the case of a workman attacking a manager, two proceedings are set in motion. A domestic inquiry by the management for misconduct and an inquiry under IPC for assault. The outcome of any one does not affect the outcome in the other. Even if the offender is acquitted in the criminal inquiry, the punishment of offender through the domestic inquiry is not affected, since both are independent processes. Hence applying the principle of double jeopardy for BLA does not hold good.

37. **Shri R.K. Khandelwal, Joint Secretary (Administration & Research), NHRC**, stated that it is often found that labourers repeatedly get into bondage. To eradicate the issue once and for all, the root cause of bonded labour needs to be attacked and rehabilitation should be such that the released labourers do not have to go back to situations of bondage. Responding to the concerns regarding delayed trails, he stated that the period of 3 months is provided because the employer is also supposed to be given time for proving that the credit was not debt bondage by the principle of natural justice. And lack of manpower also delays the process of summary trails.

Agenda V: Rights of migrant workers in the context of COVID-19 pandemic

38. **Shri Surajit Dey, Registrar (Law), NHRC**, informed the Core Group that the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 503 of 2020 has directed the Commission to “*consider issuing guidelines for protection, release and rehabilitation of the bonded labourers during this unprecedented pandemic*”. In this regard, he requested the Members of the Core Group to kindly provide the Commission with their suggestions.

39. **Dr. L. Mishra, IAS (Retd.)**, through his written inputs, which was also shared with the Core Group before the meeting, posed the following question which could be deliberated upon to reach practical solutions on the rights of migrant workers during COVID-19:

- i. Whether the reverse migration, which happened under the tragic circumstances, was inevitable and inescapable? Was there any other alternative option or discretion to this course of action?

- ii. Could the destination State Governments have played a more positive and pro-active role in persuading and retaining the inter-State migrant workmen?
- iii. Having reached the source States, have the migrant workers been provided with adequate wherewithal for biological survival?
- iv. What needs to be done as a long term measure(s) to ensure:
 - permanent rehabilitation- physical, economic and psychological of the victims of reverse migration
 - prevent them from falling in to the false promises, allurements, deceit and fraud of mal-functional and dysfunctional middlemen/recruiting agents and eventually land up in the grisly spectre of misery, suffering, bondage and death.

40. Citing the Supreme Court directions on payment of wages to the migrant workers during the pandemic, **Shri Chandan Kumar, *Working Peoples' Charter***, stated that the Government has been unable to follow the guidelines, leaving several workers vulnerable to bondage. As a solution to the issue, he submitted that the Government may provide subsidies to the industries running out of working capital to facilitate the employers for payment of minimum wages to their workers.

41. **Shri Sudhir Katiyar, *Prayas Centre for Labour Research and Action***, emphasized that the COVID-19 outbreak has created precarious conditions for the workers of the informal sector. While the migrant workers did go back to their native villages, they are bound to come and many of them are already returning, especially in the agricultural sector. The migrant workers returning to the cities are worried about their health and the employers must be urged to provide for the worker's health security. He suggested that keeping in mind the fear psychosis, the Commission must recommend for COVID insurance (costing around Rs. 600-700) which employers can provide health insurances to all the workers and the Centre/State Governments can promote it by contributing to such insurances.

42. **Dr. Pravin Sinha, *Executive President, National Labour Law Association***, submitted the following two factors which have left the migrant workers in an extremely precarious situation during the pandemic and accordingly made suggestions:

- i. *Lack of income and social security*: After the imposition of lockdown, all the economic activities were shut and income sources of workers stopped. It is interesting to note that

while the migrant workers who had no income or social security left for their home States, the ones who had some security in the form of housing, saving etc. stayed back. Thus, he recommended that there is a need for universal social security, in the form of basic income, which would provide some form of income security to the poor.

- ii. *Lack of income security:* Dr. Pravin Sinha stated that even the workers who have been employed during the pandemic have not been able to provide sufficiently for their family due to insufficient income. The solution to this problem is linking the calculation of minimum wages with consumer price index which would take care of income requirements even when there is inflation.

43. **Dr. Tina Kuriakose, Head, Central Government Partnerships, International Justice Mission (IJM)**, shared some of the instances where the pandemic has impacted the implementation of BLSAA and the CSS, 2016. She stated that various complaints related to the bonded labour were submitted to the district authorities, but the officials were very busy with COVID relief. She did admit the pandemic has led to unprecedented situations and extreme pressure on the administration, but the fact remains that even during a pandemic, the grievance redressal can neither be denied nor delayed. She also highlighted that the issues of migrant workers during this pandemic need to be looked from a source-destination perspective. As bonded labour legislation is applied at the destination States, the Government of destination States needs to emphasize the need to proactively provide for social securities during the pandemic. The source States need to be equipped to deal with the livelihood and skills gaps and streamline the cash transfers. She further pointed that while MoLE has directed States to use the Cess Funds and the Building and Other Construction Workers (BOCW) funds, many migrant workers are unable to get the benefits because of lack of proper identification, bank accounts etc. Thus, the States also need to streamline the process for creating bank accounts and identification cards to enable the workers to get social security benefits. She further urged the Commission to prepare guidelines towards greater convergence among Ministries to tackle the unprecedented situation created by the COVID-19 pandemic.

44. Keeping in view the reverse migration due to the pandemic, **Dr. Helen R. Sekar, Senior Fellow (Faculty), Coordinator, National Resource Centre on Child Labour (NRCCL), V.V. Giri National Labour Institute**, opined that there is a need to do a vulnerability mapping of the

migrant workers so that no worker is left behind. At first, the vulnerable migrant workers need to be identified at the level of hamlets and their potentials mapped, through coordinated efforts between the Government (including Panchayati Raj Institutions) and the civil society. Then, the Government will need to promote rural industrialization to generate employment in rural areas and alleviate the issues of employment and income insecurity for the workers returning to rural areas.

45. **Dr. Sampurna Behura, Director, Bachpan Bachao Andolan**, brought to Core Group's notice that while there has been reverse migration, many are now being trafficked back to the cities. Bachpan Bachao Andolan has rescued 38 such trafficked children with adults in Bihar. Thus, she emphasized that there is a need to map the families that are vulnerable to trafficking and bondage, the children who are out of school and susceptible to child labour. Once such categories are mapped, they will need to be provided social security under various schemes, and given employment under Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). The State Government should also promote small scale industries in rural areas and utilize the skill sets of the returnee migrant workers.

46. **Shri R.K. Khandelwal, Joint Secretary (Administration & Research), NHRC**, shared with the Core Group that a scheme of inter-state and intra-state portability of ration cards has been started by the Department of Food and Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution. As per the data available in the public domain, 10 States have implemented the portability scheme and 3 States have partially implemented it. He stated that this scheme is extremely pivotal in providing food security to the migrant workers during this pandemic, thus the Commission must recommend all State to expedite the process of implementing this scheme.

47. **Dr. Sampurna Behura, Director, Bachpan Bachao Andolan**, informed that as result of the organization's petition, the Supreme Court has directed the National Disaster Management Authority (NDMA) to prepare guidelines for the protection of children during the pandemic. Similarly, the NDMA can be recommended to prepare a safety guideline for the prevention of bonded labour during the pandemic. She further stated that MHA's notification to States to maintain migrant worker's register at the Panchayat level need to be promoted and pushed forward as it will act as a safety net in case of trafficking of migrant labourers.

48. **Dr. Pravin Sinha, Executive President, National Labour Law Association,** brought to the Core Group's notice that MHA issued an order on 29th March 2020 directing all employers to pay wages to the workers during the pandemic. Thereafter, when non-payment of wages was taken to the Court, it advised that the matter is between the employer and the workman. Thus, there needs to be an assessment of the implementation of the MHA orders as a contravention of the same can create conditions conducive for bondage among workers.

49. **Shri Sudhir Katiyar, Prayas Centre for Labour Research and Action,** pointed out a new form of bondage, during the pandemic, which does not fall into the legislative definition of bonded labour. Most migrant workers in the brick kiln, construction and agriculture are employed for seasons and paid wages only at the end of the season. Here, the bondage is not because of advance payment, but because the wages have not been paid and the workers are bonded to the employer until the payment is made. Thus, non-payment of wages or holding back of wages is a new kind of bondage.

50. **Shri Surendra Patel, Deputy Secretary, Ministry of Labour and Employment,** informed the panel that even before the lockdown was imposed by Government, the Ministry issues orders to States and Union Territories to make use of Cess Funds and BOCW Funds. Till date rupees five thousand crores have been disbursed in the accounts of building and construction workers. The Ministry, during Unlock 3, has issued guidelines to ensure that all migrant workers receive their due wages and are properly rehabilitated. He further stated that during the lockdown, no cases of bonded labour have come to the Ministry's notice. He assured that if any such complaint is received in future, it will be speedily redressed.

51. **Shri R.K. Khandelwal, Joint Secretary (Administration & Research), NHRC,** opined that the MoLE should regularly report the general trends of bonded labour in the country with special focus on information related to States where there is a greater prevalence of bonded labour and the States where there are more incidence of relapse of bondage among workers. Such data would help in devising the strategy and attacking the bonded labour system at the root causes.

52. In the end **Shri Md. Alam Ansari, Research Officer, NHRC,** requested all the Core Group Members to submit concrete and feasible action point. While there are many things which

can be done and should be done, the need of the hour is that the recommendations should be such that can be implemented.

53. Delivering the vote of thanks, **Shri Sudesh Kumar, Senior Research Officer, NHRC**, expressed gratitude to all the participants for taking time out and providing their valuable inputs. He said that the participation in large numbers by the Members of the Core Group and Government authorities have led to very fruitful deliberations.

54. **After due deliberations, the following recommendations emanated from the meeting:**

- I. **Redefinition of bonded labour:** With the changing context, the nature of bonded labour has also changed. Thus, the Ministry of Labour and Employment, in collaboration with the V.V. Giri National Labour Institute, may assess and study the scope of such changes in the nature of bonded labour and then take necessary action towards amendment.
(Action: Ministry of Labour and Employment & V.V. Giri National Labour Institute)
- II. **Capacity building of implementing authorities:** The Ministry of Labour and Employment, in collaboration with the V.V. Giri National Labour Institute, to undertake sensitization and capacity building programmes for the State Authorities responsible for discharging duties under Bonded Labour System (Abolition) Act (BLSAA), 1976, about the various provisions under the legislation, Central Sector Scheme for Rehabilitation of Bonded Labourer (CSS), 2016, Central Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017 and other orders.
(Action: Ministry of Labour and Employment & V.V. Giri National Labour Institute)
- III. **Awareness generation regarding provisions:** Awareness generation initiatives need to be undertaken by bringing out simple leaflet highlighting main provisions and procedure for getting benefits under the Bonded Labour System (Abolition) Act (BLSAA), 1976, and the Scheme. The same be brought in local languages and be distributed extensively.
(Action: Ministry of Labour and Employment)

- IV. **Directions for creation/filling corpus funds and speedy disposal of Summary Trails:** The Ministry may direct States to create/fill up corpus funds under Central Sector Scheme for Rehabilitation of Bonded Labourer (CSS), 2016, and speedily dispose the Summary Trails. Past experiences show that such intimations persuade the State authorities to dispense their duties expeditiously.

(Action: Ministry of Labour and Employment)

- V. **Simplification of reimbursement procedure for getting corpus fund under Central Sector Scheme for Rehabilitation of Bonded Labourer (CSS), 2016:** As States have been facing issues in sending proposals in the correct shape, the Ministry of Labour and Employment may consider simplifying the process and perform for submission of fund proposal.

(Action: Ministry of Labour and Employment)

- VI. **Convergence among Ministries and their schemes for rehabilitation of released bonded labourers:** In view of the pandemic, where the vulnerabilities have increased manifold, the Ministry of Labour and Employment may assess the scope of convergence between various benefits of development programmes and poverty alleviation schemes for the rehabilitation of bonded labourers and thereafter prepare necessary directions indicating the areas of convergence.

(Action: Ministry of Labour and Employment)

- VII. **Sharing of data:** The Ministry of Labour and Employment to share a state-wise break-up of data on rehabilitation (cash assistance and non-cash rehabilitation) and prosecution since the revised scheme of 2016 to 2020.

(Action: Ministry of Labour and Employment)

- VIII. **Dissemination of the Central SOP:** The Central Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017, needs to be disseminated widely. The Ministry of Labour and Employment may ensure that it directs the State Government to circulate it among all the concerned State Authorities and also direct them to translate it into local languages.

(Action: Ministry of Labour and Employment)

IX. **Unannounced inspection for identification of bonded labour:** There is a need for unannounced/surprise inspection by State authorities so that employers do not have the scope to cover the existence of bonded labour.

(Action: All State Governments)

X. **Ensuring inclusion of a member from the civil society or a social worker in the rescue team:** Point 2.2(i) of the Central Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017, states that the Rescue team should include a representative from a civil society organization or a social worker. The State must be directed to ensure that this guideline is adhered to at all times.

(Action: Ministry of Labour and Employment)

XI. **Revisiting the Central SOP:** The Central Standard Operating Procedure for Identification and Rescue of Bonded Labourer and Prosecution of Offender, 2017, may be revisited with emphasis on the protection, release and rehabilitation of the bonded labour victims. There should be guidelines for the reporting process during the period of 3 months, within which a summary trial is to be completed. Further, it must also clarify where the labourer is to be accommodated during the trial period.

(Action: Ministry of Labour and Employment)

XII. **COVID-19 insurance for workers in industries:** The Ministry of Labour and Employment may explore the possibility of issuing directives to employers to provide COVID-19 health insurance to remove fears of COVID-19 among workers and encourage migrant workers to return to the cities for work.

(Action: Ministry of Labour and Employment)

XIII. **Encourage States to implement One Nation One Ration Card plan:** The concerned Ministry may write to States encouraging them to fast track the implementation of Integrated Management of Public Distribution System (IM-PDS) Scheme. Implementation of this Scheme will ensure food security of migrant workers, especially during the time of this pandemic.

**(Action: Department of Food and Public Distribution, Ministry of Consumer Affairs,
Food & Public Distribution)**

XIV. **Maintaining database of migrant workers:** The concerned Ministry must promote and pursue States to maintain migrant worker's register at the Panchayat level which will act as a data pool in case of trafficking of migrant labourers. This data will also facilitate authorities to provide migrant families with sustainable livelihood opportunities, adequate wages, social security, proper housing facilities, safe drinking water, sanitation, education, and health facilities. This is also in line with Ministry of Home Affairs' advisory issued on 6 July 2020 (No. 24013/4/2020-ATC)

(Action: Ministry of Labour and Employment)

XV. **Charter of rights of workers:** A charter of the rights of the working population should be prepared to serve as guiding principle in ensuring the right to their livelihood, food, security and above all dignity of labour.

(Action: Ministry of Labour and Employment & NHRC)

LIST OF PARTICIPANTS

NHRC Officials

1. Justice Shri P.C. Pant, *Member*
2. Shri Jaideep Govind, *Secretary General*
3. Shri Surajit Dey, *Registrar (Law)*
4. Shri R.K. Khandelwal, *Joint Secretary (A&R)*
5. Shri Indrajeet Kumar, *Assistant Registrar*
6. Shri Sudesh Kumar, *Senior Research Officer*
7. Shri Md. Alam Ansari, *Research Officer*
8. Ms. Tania Chatterjee, *Junior Research Consultant*
9. Ms. Lakshmi Kumari, *Junior Research Consultant*

Members of the Core Group/Nominated Members

1. Shri Surendra Patel, *Deputy Secretary, Ministry of Labour and Employment*
2. Shri M. Arun Rasith, *Deputy Director, Ministry of Labour and Employment*
3. Dr. Helen R. Sekar, *Senior Fellow (Faculty), Coordinator, National Resource Centre on Child Labour (NRCCL), V.V. Giri National Labour Institute*
4. Shri Chandan Kumar, *Working Peoples' Charter*
5. Shri A. Mahaboob Batcha, *Managing Trustee, Justice Bhagwati Bhawan*
6. Shri Sudhir Katiyar, *Prayas Centre for Labour Research and Action*
7. Shri Kiran Kamal Prasad, *Secretary, Jeevika/Vimukti Trust*
8. Dr. Pravin Sinha, *Executive President, National Labour Law Association*
9. Dr. Sampurna Behura, *Director, Bachpan Bachao Andolan*
10. Dr. Tina Kuriakose, *Head, Central Government Partnerships, International Justice Mission*

PHOTOGRAPHS FROM THE MEETING



Image 1: Justice Shri P.C. Pant, Member, NHRC, delivering inaugural address



Image 2: Shri Jaideep Govind, Secretary General, NHRC, addressing the gathering

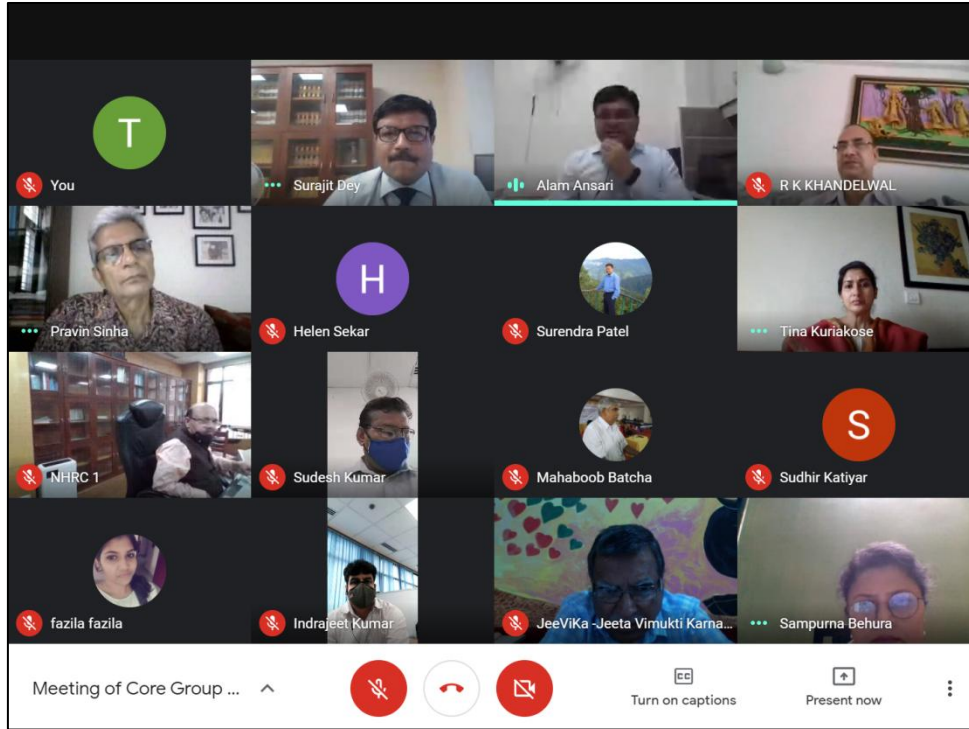


Image 3: Participants deliberating on the agenda items of the meeting



Image 4: Proceedings of the meeting