

**Report of Shri Chaman Lal Special Rapporteur on his visit to
Kanpur on 5-6 November 2004 to review the Bonded
Labour/Child Labour situation in UP**

I visited Kanpur on 5-6 November 2004 for a meeting with the Labour Commissioner, UP to review the Bonded Labour and Child Labour situation in the State. Besides Shri Sharda Prasad, IAS, Labour Commissioner, UP, Shri A.N. Siddiqui, Director (Factories) UP, Shri Shriram Singh, Additional Labour Commissioner (Child Labour/Bonded Labour) and Shri U.P. Singh, Deputy Labour Commissioner (CL/BL) attended the meeting. The last review of the Bonded Labour/Child Labour situations in UP was carried out by me from 12-16 March 2004 which included visits to all the Districts of the Carpet Belt. My report was considered by the Commission on 27.5.04 and a copy of the same was forwarded to the Chief Secretary, Government of UP vide JS DO No. 2/1/2003-PRP&P dated 23 June 2004. Action Taken Report is still awaited from the Government of U.P. "

Shri Sharda Prasad, Labour Commissioner made preliminary remarks about his assessment of the Bonded Labour/Child Labour situation in the State after he joined as Labour Commissioner, UP on repatriation from Government of India two months back. He seemed well aware of the important and crucial aspects of these issues and the administrative problems they are posing to the Labour Department. Shri Shriram Singh, Addl. Labour Commissioner, Child Labour/Bonded Labour presented the following picture of the Bonded Labour and Child Labour situation in the State.

BONDED LABOUR

The last review revealed that Vigilance Committees have been constituted in all the 70 Districts and 290 out of a total of 297 Sub Divisions of the State. Vigilance Committees are now in position in all the 70 Districts and 292 Sub Divisions. As regards the remaining 5 Sub Divisions namely Chakia and Sakaldaha of Distt. Chandoli, Kannauj Cantt. of Chandauli Distt. Kannauj, Gautam Budh Nagar Cantt and Zaver of Distt. Gautam Budh Nagar, the proposals for the constitution of the Committee have been received from the DMs concerned in all these cases and the matter is pending for notification by the Government. I drew the attention of the Labour Commissioner, UP to the orders dated 5.5.2004 passed by the Supreme Court in Writ Petition (Civil) No. 3922 of 1985 - PUCL vs. State of Tamil Nadu and others requiring all the State/UT Governments to confirm constitution of the Vigilance Committees in all the Districts and Sub Divisions within 6 months i.e. by 5 November 2004.

Labour Commissioner UP has again written to all the Regional Labour Officers on 11 August 2004 and DMs on 7.10.04 reiterating the earlier instructions to regularly hold the meetings of the Vigilance Committees and involve them effectively in identification of Bonded Labour in their respective areas.

The last review report had mentioned the pending rehabilitation of 395 bonded labourers as of 31 January 2004. The figure rose to 398 at the end of the year 2003-04. The receipt of the Central share in two instalments of Rs. 25 lakh and Rs. 14.80

lakh was also mentioned in the review report after collecting up to date information from the Ministry of Labour. Rehabilitation in 325 cases including partial rehabilitation in two cases was effected in 2003-04. In the year 2005, the matching grant of Rs. 14.80 lakh has been made available by the State Government. This has completed full rehabilitation in 73 and partial rehabilitation in two cases. As such rehabilitation has been completed in all the 398 cases of previous year. The Labour Commissioner confirmed that the rehabilitation has been done as per the directions of the Union Labour ministry and the beneficiaries have been given benefits under various poverty alleviation schemes. The attention of the Labour Commissioner was drawn to the orders of the Supreme Court dated 5.5.2004 requiring all State/UT Governments to formulate a model rehabilitation plan involving the NGO sector by applying the principle of convergence of existing schemes of Rural Development Department.

Only 7 bonded labourers have been identified in UP in 2004-05 (till 30 September). All of them are migrant labourers and are reported to have left for their native places. The Labour Commissioner was requested to ensure that the release certificates issued by the DMs concerned are sent to the DMs of the native Districts for taking up their rehabilitation under the Centrally sponsored scheme.

In the last review report, receipt of Rs. 10 lakh released by Government of India for awareness generation was mentioned. Rs. 2.50 lakh out of this, was distributed at the rate of Rs. 15,000 per district among the 17 Districts selected on the basis of the past

identification of bonded labour. Rs. 1,29,600 was spent on Vinyl hoardings and Rs. 88,800 on publishing a Booklet on Bonded Labour. A total expenditure of Rs. 4,68,400 has so far been incurred leaving a balance of Rs. 5,31,600. The Labour Commissioner informed that it is proposed to utilise Rs. 5 lakh on preparing a TV script and 31,600 on Nukkad Nataks as per the Guidelines of the Ministry of Labour.

A grant of Rs. 10 lakh received for 5 surveys has been distributed equally among the Districts Mirzapur, Allahabad, Meerut, Gautam Budh Nagar and Kannauj. An expenditure of Rs. 3,97,709 has actually been incurred leaving a balance of 6,02,291 only. The Labor Commissioner U.P was requested to ensure that these surveys are completed and reports are ready at the time of the annual review which will be held in March 2005.

Union Labour Ministry has been approached for additional grant to carry out the surveys in Districts Sonebhadra, Banda, Sant Ravi Das Nagar, Sidharth Nagar and Basti. The Labour Commissioner U.P was advised to incur this expenditure after evaluating the results of surveys in 5 districts currently in progress.

A grant of Rs. 5 lakh was received from the Government of India for evaluation studies in Varanasi and Chitrakoot by Giri Vikas Adhayan Sansthan Lucknow, in Meerut by Academy of Management Lucknow and in Sonebhadra and Mirzapur by Institute of Tourism Study, Lucknow University. The Labour Commissioner U.P was requested to ensure that these studies are completed and their findings are furnished to the Commission at the earliest.

CHILD LABOUR

I had mentioned in the last review report the single line directive issued by the UP Govt. on 29 August 2003 declaring the end of the "Inspector Raj" in the State. The directive had the effect of suspending not only the visits/raids on the industrial units but also the mandatory inspections under various Labour laws. This has seriously affected the process of identification and rehabilitation of child labour which was being carried forward enthusiastically in UP. The current review revealed that detection of child labour, a rampant evil in some of the districts of the State, has been totally stopped. There has been no detection of child labour in the hazardous category anywhere in the State after 29 August, 2003. The last review had reported detection of 858 children from hazardous and 3022 from non-hazardous categories during the period 1.4.03 to 31.1.04. The Additional Labour Commissioner, UP informed that the total figures of detection for 2003-04 came to 860 in the hazardous and 3020 in the non-hazardous category. It means there has been no detection in the months of February and March 2004. 2 children were earlier wrongfully shown in non-hazardous category, which would explain the discrepancy in figures. In the year 2004-05 (till 30 Sep.) only four children have been detected in the non-hazardous category. The following table will graphically demonstrate the effect of the Govt. directive on the process of identification of child labour emphasized by the Supreme Court of India:

achievement of 20.5% in terms of rehabilitation. After excluding the migrant families, already implied/unwilling families, this leaves a balance of 1328. It is worth noting that the figure was 2303 families at the time of the last review. This is thus seen that rehabilitation of the families related to previous detections have also received good attention.

Recoveries from offending employers

As brought out by the previous review reports, UP is the only State where the Supreme Court's directions regarding the recovery of Rs. 20,000 per child withdrawn from hazardous work from offending employers have been implemented effectively. The last review had mentioned realization of a total amount of Rs. 95,19,849 till 31 January 2004. This figure has now gone upto Rs. 99,49,579. As such Rs. 4,29,730 have been realized from the offending employers after 31 January, 2004.

Prosecution

The last review had mentioned disposal of 146 cases and pendency of 8698 in 2003-04. All the 146 cases decided in 2003 had ended in acquittal. In 2004-5 (till 30 Sep. 04) 38 cases have been decided - 36 in acquittal and 2 in conviction (fine only). A total of 8720 cases are now pending trial.

NCLP Schools

11 districts of UP are presently covered under the National Child Labour Project. A total of 530 schools with a capacity of 26,500 have been sanctioned. At present, 456 schools with the

total strength of 20,327 children is in operation. Some schools have to be closed in Ferozabad, Allahabad, Kanpur, Moradabad and Aligarh where the switch over from NCLP to INDO (US-DOLL) Project is being affected. 15 more districts, namely, Sonbhadra, Mau, Deoria, Banda, Jaunpur, Rampur, Bareilly, Lucknow, Meerut, Mathura, Ghaziabad, Gazipur, Basti, Agra and Etawa have been sanctioned NCLP in February 2004. The grant for survey in these districts has not yet been received. However, survey work has been taken up with the help of credible institutions and NGOs. Survey has already been completed in Sonbhadra, Jaunpur, Agra, Mathura, Gazipur and Ghaziabad. The Labour Commissioner expressed the hope that survey work would be completed in the remaining districts also by 31 December, 2004. It is hoped that these schools will start functioning from session 2004-05 onwards.

INDO-US DOLL Project

As mentioned in the last review report, 5 districts of UP, namely, Moradabad, Ferozabad, Aligarh, Allahabad and Kanpur have been selected for this project. The Project envisages detection of 4000 children in each district – 1000 in the age-group of 5 to 8 years, 2000 from 9 to 13 years and 1000 from 14 to 17 years. The period of INDO-US Doll Project is from 1.11.2003 to 30.4.2004. Office of the Labour Commissioner, UP has been made the Nodal Agency for the implementation of the Project. The Labour Commissioner explained the progress of the Project, which is being operationalised under the overall monitoring by a State-level Committee headed by the Principal Secretary, Labour. The survey work has been entrusted to reputed institutions like Aligarh Muslim

University for Aligarh, Ferozabad and Moradabad, Lucknow University for Kanpur City and Govindbalabh Pant Institution of Social Sciences for Allahabad. The Labour Commissioner informed that the first phase of the survey has been completed in Moradabad, Ferozabad, Aligarh and Allahabad. Although survey has been completed in Kanpur also, the report is still awaited. Results of these surveys are tabulated below:

Child Workers Identified					
District	Boys	Girls	Total	No. of Child workers who are not attending schools.	
					Percentage
Moradabad	7905	5526	13431	11001	82
Aligarh	9828	4154	13982	11042	79
Ferozabad	11,990	10,628	22,618	13,507	59.7
Allahabad	3,616	5,596	9,212	4,291	46.6

In the second phase of the survey, detailed information about the socio-economic status of the family will be collected for final selection of the beneficiaries. Children in the age-group of 5 to 8 years will be admitted to formal or non-formal schools for primary education. Children in the age group of 9 – 13 years will be educated in 40 Transitional Educational Centres (TECs). Children in the age group of 14-17 will be provided employment oriented vocational training. Siting work of the TECs is in progress. With the assistance from the ILO, a State-level seminar on "Communication Strategy Development" was organised on 22 – 24 September, 2004 for training the Project Directors and officials of the State Resource Cell (SRC).

Enforcement of Labour Laws in the State of UP

The Mandatory inspections of industrial units in UP provided under various Labour laws, such as, the Factories Act, the

Minimum Wages Act are not being carried out in view of the directions issued by the Govt., vide order No. 2776/36-3-2003-11 (SA)/98 dated 29 August, 2003 wherein the State Government had declared the suspension of "Inspector Raj".

It is learnt that the Labour Department has also stopped carrying out the statutory inspections of "hazardous factories" defined under the manufacture, storage and import of hazardous chemical rules 1989 (amended 2000). Inspections/surveys of Child Labour/Bonded Labour for identification and subsequent rehabilitation are not being carried out which is being closely monitored by the Supreme Court of India through the NHRC.

In my opinion, the above mentioned order of the State Govt. is statutorily not maintainable because the inspection of the industrial units is an essential part of present form of Labour laws which has been provided to effectively ensure compliance of various provisions relating to working conditions working hours, service conditions, social security and other financial benefits stipulated in various Labour laws which have a bearing on the human rights of the workers. The enforcement of the Bonded Labour Act and Child Labour Act depends entirely on inspections and periodic visits of the Enforcement Officers to factories/work sites. The good results shown by the Labour Department in UP since NHRC's intervention in 1997 are largely the outcome of the vigilance of the Labour Officers. It is worth mentioning that no case of detection of bonded labour in UP or elsewhere can be credited to the District Vigilance Committees. Since Labour laws are enacted by the Parliament and State Legislature, the mechanism

of inspection for the enforcement of these Labour laws cannot be suspended by administrative orders of the State Govt.

It is learnt from the Labour Commissioner that he had, after examining the implications of the said order, written to the Chief Secretary, Govt. of UP suggesting a modest and transparent mechanism of enforcement of Labour laws. He has proposed a system wherein an entrepreneur is required to submit a written declaration based on compliance of Labour laws in respect of its enterprise to the Department once a year. The entrepreneur should also maintain Attendance-cum-Wages Deduction Register in a simplified form and shall provide an identity card to the workers. Only those enterprises/industrial units which comply with the above requirements shall be exempted from the inspections. If any misrepresentation is found in written declaration of the entrepreneurs, the legal action according to law will be taken. Enterprises/industrial units which do not submit the aforesaid written declaration shall be subjected to an inspection of joint team of officers once a year. The joint inspection team shall consist of the concerned Regional Assistant Director of Factories and Regional Assistant Labour Commissioner along with a senior representative of industrial unit and a unanimously accepted representative of workers.

Since implementation of the Bonded Labour Act is a specific responsibility entrusted to the Commission by the Supreme Court of India and most of the child workers are found to be bonded labourers as well, the Commission is required to strive for a strict enforcement of Bonded Labour and Child Labour Act in all States. The performance of Labour Department, UP has been particularly good in this regard. The Commission has not received any

complaint of abuse of powers or corruption against the officers of the department. I would, therefore, recommend that the Commission may examine the legality of the order issued by the Govt. of UP and give appropriate directions for visits/inspections to industrial units by the officers of the Labour Department to detect cases of violation of the provisions of these Acts. While the concern of the State Govt. to liberalise the industrial atmosphere and make it more investment friendly is appreciated a just balance has to be struck between this objective and the mandatory requirements of enforcement of Labour laws, which are meant to protect the rights of workers. The current situation in UP presents, in my opinion, a State of *no enforcement of labour laws* by any means.

Clal 2.12.04

(Chaman Lal)
Special Rapporteur
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