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④ 136

Review Report of Dr. L. Mishra, Special Rapporteur, NHRC on measures taken for (a) Elimination of Bonded Labour System and (b) Elimination of Child Labour by the State Government of Haryana.

Date of Review: 22.11.2006 to 24.11.2006

I visited Haryana State from 22.11.2006 to 24.11.2006 with a view to reviewing efforts made by the State Government and District Administration for proper implementation of Bonded Labour System (Abolition) Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986. To make the review meaningful I had adopted a threefold strategy such as:-

I Two questionnaires - one on elimination of Bonded Labour System and another on elimination of Child Labour covering all the basic and relevant questions on both at the macro as well as the micro level had been prepared by me and circulated in advance with a view to eliciting the desired response from the State Government and District Administration.

II Two separate texts - one on elimination of Bonded Labour and another on elimination of Child Labour had been prepared by me for making a power point presentation to the senior functionaries of the concerned departments of the State Government with the following three objectives:-

- Familiarizing them with basic facts and establishing complete conceptual clarity;
- Sensitization of all concerned.

III To undertake field visits to study the ground level realities and to compare the same with the responses to the questionnaire received from the State Government and the District Administration to establish total factual accuracy and authenticity.

Accordingly and soon after my arrival at Chandigarh, I proceeded with the two power point presentations at the Conference Room of Haryana Panchayat Bhawan for which necessary arrangements had been made by the State Government. Names of officers present at the State Level Presentation as well as review meeting are given in Annexure-I. Names of officers who attended the Presentation and review meeting at Ambala, Karnal and Kurukshetra on 23rd and 24th November, 2006 are given in Annexure-II, III and IV. The Presentation covered the following:-

Bonded Labour -- a few basic facts:

- Why at all we talk about Bonded Labour System despite clear Constitutional and legal Provisions, Provisions of 2 ILO Conventions (No. 29 of 1930 and No. 105 of 1957) which have been ratified by Government of India and judgements of the Supreme Court (about 30)?
- Definition of Bonded Labour System as contained in Section 2(g) of Bonded Labour System (Abolition) Act read with the subsequent broad, liberal and expansive interpretation by the Supreme Court made in the Bandhua Mukti Morcha case on 16.12.1983;
- List of occupations where Bonded Labour System has been found;
- Elimination of Bonded Labour System as a human rights issue and not a trade related issue;
- Identification of Bonded Labour System;
- Release of bonded labourers from captivity;
- Concept of summary trial;

- Physical, economic and psychological rehabilitation of released bonded labourers; how to make the same meaningful, effective and permanent;
- Special problems of inter-State migrant workmen and child bonded labourers;
- A perspective plan to eliminate Bonded Labour System in India covering 10 priority steps.

Child Labour – a few basic facts:

- Definition of child, childhood and Child Labour – need for adoption of a holistic approach;
- Rationale behind a minimum age of entry to the world of work;
- Magnitude of the problem – a comparison between 1991 and 2001 Census;
- State-wise and occupation-wise break-up of working children;
- Why Child Labour – mindsets of parents, employers, working children and those of the civil society;
- Constitutional and legal provisions;
- Forms of hazardous occupations and processes in which children are employed, consequences of such employment;
- Worst forms of Child Labour;
- National policy and programme of actions for withdrawal of children from hazardous work and their rehabilitation through special schools of NCLPs;

- Sharing a success story of MV Foundation, Hyderabad, Andhra Pradesh;
- International instruments and initiatives;
- A few reflections on a few feasible solutions to the problem of elimination of Child Labour.

The Presentation which was well received was followed by a question answer session. The questions which were raised and subsequently clarified by me related to:

- (a) How to resist protectionist interests while dealing with the two social scourges of bonded labour and child labour at home?;
- (b) Source from which the immediate subsistence assistance of Rs. 1000/- would be paid by the District Administration and its subsequent reimbursement;
- (c) How to carry out surveys for identification of Bonded Labour System and working children in the face of serious problems posed by employers who generally withdraw children from work and send them underground as the Inspectors approach the establishment for inspection?;
- (d) Problems associated with determination of the age of the children.

During lunch break on 22.11.2006 special problems in operationalization of the 3 NCLPs at Faridabad, Gurgaon and Panipat which have been sanctioned by the Ministry of Labour three years back (2003) were discussed with the representatives of the Deputy

Commissioner concerned and Labour Department. This has been dealt elaborately under an appropriate heading subsequently.

In course of visit to Ambala, Karnal and Kurukshetra districts on 23.11.2006 and 24.11.2006 detailed oral presentations were made by me to familiarize the functionaries of departments at the district level (education, health, agriculture, animal husbandry and veterinary, forest, fisheries, industries, rural development, women and child development) with the following:

- Pledging of Children (Labour) Act, 1933;
- Child Labour (Prohibition & Regulation) Act, 1986;
- National Policy on Children, 1974;
- National Policy on Child Labour, 1987;
- National Programme of Action on Rehabilitation of Children released from hazardous work;
- Bonded Labour System (Abolition) Act, 1976;
- Provisions of centrally sponsored scheme on rehabilitation of released bonded labourers (May, 78 as reviewed and revised up-to-date);
- Judgements of the Supreme Court on elimination of Bonded Labour System and Child Labour;
- International instruments and initiatives for elimination of child labour and bonded labour.

Implementation of Bonded Labour System (Abolition) Act, 1976

Historical Background:

In February, 1982, Swamy Agnivesh, President, Bandhua Mukti Morcha filed a petition before the Supreme Court alleging the following:-

- BMM had carried out a survey of some of the stone quarries in Faridabad and found that a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan were working in these quarries under inhuman conditions;
- Many of them were bonded labourers bonded to the quarry contractors and their minions (munshis, jamadars, sardars and khatedars).

The letter dated 25.2.1982 of Swamy Agnivesh was treated by the apex court as a writ petition under Article 32 of the Constitution.

Along with issue of notice to all concerned 2 advocates of the apex court namely Shri Ashok Panda and Ashok Srivastav followed by a Professor, IIT, Delhi namely Dr. Patwardhan were appointed by the apex court as Socio-legal Investigating Commissioners to visit the quarries, interrogate the quarry workers whose names were mentioned in the letter of the petitioner and submit a report to the court. While these Commissioners in their report to the apex court depicted the harrowing working and living conditions of the quarry workers they did not specifically mention ^{came to any conclusion if} about these workers in quarries and crushers ^{were} working under bonded conditions. A Division Bench of the apex court comprising of Justice Shri P.N. Bhagwati, Justice Shri R.S. Pathak and Justice Shri Amarendranath Sen disposed of the writ petition on 16.12.1983 and issued 21 directives meant for the Central Government, the State Government of Haryana, Central Board of

Worker's Education and National Labour Institute. The spirit and substance of these directions relevant to Bonded Labour System (Abolition) Act were:-

- The Government of Haryana should without any further delay and within six weeks from 16.12.1983 constitute a Vigilance Committee in each sub division of a district;
- The Government of Haryana will instruct the District Magistrates of all the districts in the State to take up the work of identification of bonded labourers in right earnest as one of their top priority tasks and to map out areas of concentration of bonded labour to be found mostly in stone quarries and brick kilns and constitute task forces for identification of Bonded Labour System;
- Periodic camps should be held in these areas with a view to educating the labourers inter-alia with the assistance of National Labour Institute;
- The State Government, the Vigilance Committees and the DMs will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of Bonded Labour System (Abolition) Act;
- The State Government will draw up within 3 months from 16.12.1983 a scheme for rehabilitation of the freed bonded labourers in the light of the guidelines set out by the Secretary, Ministry of Labour in his circular letter dated 2.9.1982 addressed to the all State Governments/Union Territories;
- The Central and State Government will take all necessary steps for the purpose of ensuring that minimum wages are paid directly

to the workmen employed in the stone quarries and stone crushers and not through middlemen;

- If payment of wage is made on truck carrying chips outside the quarry area the Central Government will direct an appropriate officer of the Central enforcement machinery to determine how much cubic feet of stone the truck can contain and print on the truck itself the rate of wages that the workmen should receive for loading the chips on the truck up to that permissible height;
- Surprise inspections should be carried out atleast once in a week for the purpose of ensuring that the trucks are not loaded beyond their true measurement capacity;
- ✓ • Any instance of a truck being loaded in excess of the true measurement capacity should be brought to the notice of the competent authority for necessary legal and penal action;
- Inspecting Officers of both Central and State Government should carry out periodic checks in order to ensure that payment of stipulated wage is made to the workmen.

The apex court had made certain specific observations on the implementation of Bonded Labour System (Abolition) Act and these were:-

- Government of Haryana had contended that the workmen in the stone quarries and crushers might be providing forced labour but they were not working under the bonded labour system. The apex court rejected this contention on account of the following:-
 - It would be extremely difficult for the labourers to establish that they are bonded as they would have no evidence at

all to prove that any advance or economic consideration was provided to them by the employer;

- The employers would also disown having given any advance or economic consideration to the labourers;
- Government of Haryana had taken a stand that there were not at any time any bonded labourers within its territory;
- The apex court felt that without constituting Vigilance Committees u/s 13 of the Bonded Labour System (Abolition) Act such a stand could not be taken;
- The apex court further observed that the State Government should not have insisted on a formal, rigid and legalistic approach in the matter of implementation of a statute which is an important instrument for ensuring human dignity;
- According to the apex court, a bonded labourer can never stand up to the rigidity of the legal process due to his/her poverty, ignorance, illiteracy, social and economic backwardness;
- There would be no occasion for a labourer to be placed in a situation where he/she is required to supply forced labour for no wage or for nominal wage unless he/she has received some advance or other economic consideration from the employer;
- Whenever it is shown that a labourer is made to provide forced labour the court would raise a presumption that he is required to do so in consideration of an advance or

other economic consideration and he is, therefore, a bonded labourer;

- This presumption may be rebutted by the employer and also by the State Government if it so chooses but unless and until satisfactory evidence is produced for rebutting this presumption the court must proceed on the basis that the person is a bonded labourer entitled to the benefit of the provisions of the Act.

- Implications of these directions and observations are as under:-

- The judgement of the apex court is the law of the land and is binding on all concerned regardless of whether they are parties to the dispute or not (Article 141 of the Constitution);
- The directions and observations are of universal import and relevance and their validity does not cease to exist merely because they were made at a particular point of time;
- They are applicable to all occupations and processes even though they were made in the context of stone quarries and stone crushers of Faridabad.
- The apex court has given a broad, liberal and expansive interpretation of the law relating to elimination of Bonded Labour System; it has not changed the law at all.

- In terms of action or implementation Government of Haryana, should have initiated the following:-

- The judgement as a whole and the directions (21) and observations of the apex court should have been translated into colloquial Hindi and disseminated widely among DMs, SDMs, all Executive and City Magistrates, all Tahasildars, all BDOs and functionaries of all other development departments for their information and guidance;
- To enable them to understand and internalize the implications of the various directions, orientation and training programmes should have been undertaken with the help of professional experts. This would have set at rest all doubts, misgivings, reservations about bonded labour, child bonded labour, ^{and} bonded labour system etc, which persist even today;
- Vigilance Committees should have been constituted and reconstituted after an expiry of 2 years;
- Clear guidelines should have been formulated for their effective functioning;
- Orientation and Training Programmes should have been organized for the members of these Committees;
- All DMs, SDMs, Executive Magistrates, City Magistrates, Tahasildars and other Senior Officers of DRDA should have been notified as Magistrates competent to try all offences under the Bonded Labour System (Abolition) Act and vested with powers of a Judicial Magistrate, Ist or IInd Class;

- They should have been imparted orientation and training about (a) concept of summary trial (b) how and when to issue a release certificate to the victim;
 - In all meetings of DRDA, Police Magistracy Coordination Committee, Lead Bank Coordination Committee, Institutional mechanisms to prevent atrocities against members of SC and ST identification, release and rehabilitation of bonded labourers should have invariably been included and discussed as an important item;
 - Mobility of Magistrates, Chairperson and Members of Vigilance Committees, all officers of Labour Law enforcement machinery should have been enhanced with a view to exercising complete vigilance and surveillance over occurrence and recurrence of the social scourge of Bonded Labour System.
- The Government of Haryana in response to the directions and observations of the apex Court have initiated the following actions:-
 - The Vigilance Committees stand constituted in all the districts and sub divisions of the State except in the newly created district of Mewat.
 - All DMs, SDMs and City Magistrates have been notified and vested with the powers of Judicial Magistrates, first or second class, as the case may be, for trial of all offences under the Act.

- A State Level Screening Committee has been constituted for devising ways and means of preventing occurrence and recurrence of Bonded Labour System.
- The State Government has taken the assistance of NGOs in conducting surveys for identification of Bonded Labour System.
- The Government of Haryana have, however, failed to comply with the following directions and observations of the Court:-
 - According to the repeated directions of the Court, the Central and State Government will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen and not through middlemen; Even though this direction was made in the context of workers in stone quarries and crushers, in spirit it is relevant for workmen engaged in all occupations and processes which have been notified as schedule employments by the State Government under Minimum Wages Act. A perusal of Notification No. 3/101/84-3 Labour dated 10th June, 2003 issued by the Labour Department of the Government of Haryana goes to confirm that the practice of payment of commission to middlemen (Jamadar) is being encouraged by the State Government in brick kiln and tile manufacturing units. This is a flagrant violation of the spirit of direction of the apex court. The rationale for encouraging payment of such commission is not clear;
 - Even though Vigilance Committees have been constituted in respect of all districts and sub divisions except the newly carved out district of Mewat no information is

available at the state headquarters about (a) frequency of their meetings (b) whether the Chairman and members are going out to make field enquiries or whether they have constituted a small sub-committee of the Vigilance Committee for this purpose (c) the problems and constraints (including resistance from bonded labour keepers) faced by the Vigilance Committees in discharge of their statutory responsibility (d) whether they are placing reports of their enquiry before the Magistrate notified by the State Government u/s 21 of the Act (e) whether approval and rejection of their reports and findings by the Magistrates are being transmitted to the State level for discussion in the State Level Committee;

- Proceedings of the State Level Screening Committee held on 13.6.2006 indicate that the functioning of Vigilance Committees has not received the type of attention of the State Level Committee that it deserved;
- No detailed guidelines have been issued by the State Government to DMs or to Vigilance Committees as specifically directed by the apex court;
- Similarly DMs are yet to map out areas of concentration of bonded labourers which according to the observation of the apex court are to be found mostly in stone quarries and brick kilns;
- No camps seem to have been organized in these sensitive areas with concentration of potential bonded labourers for promoting the awareness of labourers about labour laws;

- Very few inspections/checks have been carried out by the officers of the State Government of the establishments which have been included in the schedule employments and in respect of which minimum wages have been fixed. This is a clear violation of the direction of the apex court. This was confirmed in course of my visit to a brick kiln at Mathana in the outskirts of Kurukshetra where the workers themselves observed that this was for the first time, that they saw a senior functionary of the State Government (DM) visiting them and enquiring whether the stipulated wages are being paid to the workmen;

Performance of the State Government in release and rehabilitation of bonded labourers in the past and now:-

Initially and without even constituting Vigilance Committees the State Government had taken a stand that there were not at any time any bonded labourers within its territory. There was a shift in this stand after the writ petition No. 2135 filed by Bandua Mukti Morcha was allowed by the apex court and on the strength of the report of the Socio-legal Investigating Commissioner, 300+ bonded labourers were released and repatriated to their native States as Government of Haryana had expressed its inability to rehabilitate them in Haryana. Despite the clear and decisive directions of the apex court on 16.12.1983 when the writ petition of BMM was disposed off there were serious problems in issue of release certificate in favour of bonded labourers so identified. By way of illustration, Prof. Sheotaj Singh of BMM filed a complaint on 26.7.1997 that 24 workers with 103 family members employed in a quarry at Tiwala in Charkhi Dadri in Bhiwani district were bonded to the quarry contractor and should be released forthwith. The SDM Charkhi Dadri, however, took a stand that it was not a case of bonded labour and, therefore, no release certificate could be issued to them. The workers along with their family members

somehow managed to escape from the clutches of the quarry contractor and came to take shelter in 7, Jantar Mantar Road which is the headquarters of BMM. The Union Labour Minister and Union Labour Secretary met them after they had escaped to Delhi and arranged in consultation with the Chief Minister, Madhya Pradesh and DM, Guna (the district they had originally come from) their repatriation and rehabilitation. Prof. Sheotaj Singh complained to the NHRC vide letter dated 11.8.1998 that it was a clear case of bonded labour but the SDM Charkhi Dadri was not issuing the release certificate. The NHRC vide its letter date 14.8.1998 directed the DM, Bhiwani to investigate and submit a report in this regard before 28.8.1998. The DM got the matter investigated through the same SDM who had refused to issue the release certificate. The SDM did not involve the complainant in the process of investigation. On the basis of the report of SDM, the DM reported to NHRC that the workers were working and living in Charkhi Dadri of their own accord and were not bonded. Not being satisfied with the report of DM, the NHRC deputed its own investigating team of officers which reported that 103 persons who had escaped from Charkhi Dadri were bonded. NHRC accepted the report and vide its order dated 7.9.1999 directed issue of release certificates to 24 workers with their families consisting of 103 persons. The orders were complied with and reported to NHRC vide letter dated 1.10.1999.

The above episode calls for a little reflection. The Bonded Labour System (Abolition) Act is more than 30 years old. It is a short and simple legislation. There are no patent or latent ambiguities in it. India has ratified both the ILO Conventions on forced labour namely Convention No. 29 of 1930 and Convention No. 105 of 1957. The Supreme Court has delivered clear and decisive verdicts in as many as 29 cases on interpretation of bonded labour, bonded labourer, bonded debt and bonded labour system. All these judgements have been published by the All India Reporter. After the issue of bonded labour

was remitted to NHRC for monitoring by the apex court while disposing off civil writ petition No. 3925/85 dated 11.11.1997, NHRC has intervened in a number of cases and provided through its timely intervention relief to the aggrieved. NHRC has organized eleven workshops in different parts of the country (including Haryana) for sensitization of DM and other district level officials apart from carrying out indepth reviews on implementation of Bonded Labour System (Abolition) Act, state-wise and district-wise. These review reports have been shared with the State Governments concerned.

It is, therefore, not clear as to why there should be any scope or occasion for doubts, misgivings and reservations. Is it definitional? Is it perceptual? Is it related to mindsets? The functionaries of the State Government and District Administration need to think, reflect, introspect, critically analyse and internalize as to what is missing, where have they gone wrong and what further needs to be done to correct negative mindsets. Unless the functionaries who are responsible for implementation of the law do this the law will, as late Shri K.V. Raghunath Reddy had said while introducing Bonded Labour System (Abolition) Bill in Parliament on 27.1.1976, remain a dead letter.

Co-relation between Bonded Labour System (Abolition) Act, Contract Labour (Regulation and Abolition) Act and Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act.

The primary objective of the Contract Labour (Regulation and Abolition) Act is abolition of contract labour on the recommendation of Central or State Contract Labour Advisory Board, as the case may be, in any process, operation or other works in any establishment on certain norms and criteria as laid down in Section 10(a),(b),(c) & (d) of the Act. It is only when it is not possible to prohibit employment of

contract labour that the Act seeks to regulate terms and conditions of their employment in relation to their health, safety and welfare through a system of licencing of the contractors and registration of Principal employers (Section 7 and 12 of the Act). The Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act seeks to regulate the terms and conditions of service and employment of inter-state migrant workmen who are recruited through recruiting agents from one part to another part of the territory of India and provides for a set of benefits such as journey allowance, displacement allowance, payment of wages during the journey period, suitable residential accommodation, prescribed medical facilities, protective clothing and reporting of fatal accidents on serious bodily injury to such workmen etc.

While contractors recruiting persons from one State for employment in any establishment situated in another State are required to be licensed by the appropriate Government (in case of State Government it will be the originating State) (Section 8 of the Act) the Principal employer of the establishment which recruits such persons (through contractors) is required to be registered by the appropriate Government (in case of State Government it will be the destination State). The Act is very clear and specific that no contractor can recruit a person from one State to another without a valid licence (Section 8) while no Principal employer can employ inter-state migrant workmen without a certificate of registration (Section 6).

There is a commonality in both the Acts in regard to the responsibility of the Principal employer. It is this. In the event of failure on the part of the contractor to provide certain statutory facilities and amenities, the responsibility to so provide these facilities and amenities will devolve on the Principal employer.

In April, 1985 an explanation was added to Section 2(g) of Bonded Labour System (Abolition) Act to the effect that contract labour and inter-state migrant labour as defined in Sub Section (1) of Section 2 of Contract Labour (Regulation & Abolition) Act and Sub Section (1) of Section 2 of Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act respectively would also come within the purview of Bonded Labour System if they fulfil the conditions in Section 2(g) (Sub Clauses 2 to 4) of Bonded Labour System (Abolition) Act.

This makes it imperative for officers of the labour law enforcement machinery to have a clear understanding of the provisions of all the three laws as also be correct in their application on the ground so that the victim/aggrieved can get the relief through the beneficial provisions.

It was reported in course of discussion that Haryana has about 900 brick kilns located in the 20 districts of the State with concentration in Ambala, Karnal, Kurukshetra, Bhiwani, Hissar, Fatehabad, Mahendergarh, Panchkula and Sirsa. While no precise estimate about the number of workers is available and the number fluctuates year after year, majority of the workers are inter-state migrant workmen who are recruited by recruiting agents primarily from the States of Bihar, Rajasthan and Eastern U.P. Most of these workers travel with their families i.e. husband, wife and children. For the said recruitment the following statutory conditions need to be fulfilled:-

- The contractor must obtain a licence from the licensing authority of the originating State (Section 8 of ISMW (ROE & COS) Act);

- The owner of the brick kiln located in Haryana must obtain a registration certificate from the registering officer within Haryana State (destination State) (Section 4 of ISMW (ROE & COS Act).

Unless these 2 conditions are fulfilled no recruitment can take place and employment of migrant workmen would be deemed illegal. Besides, in the absence of a valid licence and a registration certificate it will be impossible to pinpoint the statutory responsibility which is required to be discharged by the contractor in the matter of provision of

- Journey allowance;
- Displacement allowance;
- Wages during the journey period;
- Suitable residential accommodation;
- Prescribed medical facilities;
- Reporting all cases of fatal accidents/bodily injury to the competent authority.

Impressions emanating from visit to brick kiln at Mathana in Kurukshetra district:-

I visited a brick kiln at Mathana in the outskirts of Kurukshetra along with the District Magistrate, Kurukshetra on 24.11.2006. It was a surprise visit without any prior intimation to anyone. What we found in the brick kiln office and at the work site was intriguing and at the same time distressing. The impressions may be summed up as under:-

Licencing

Workers have been recruited from Latehar, Nawada and Lakhisarai districts of Bihar but there is no evidence of grant of any licence by the competent authority. The recruitment is clearly illegal.

Registration

The brick kiln owner being the Principal employer should have obtained a registration certificate from the competent authority in Haryana without which he could not have employed inter-state migrant workmen. He has neither applied nor obtained the RC so far.

Recruiting Agent

Fifty families have been recruited by a Jamadar called Nandu. There was, however, no track of this person without which it is not possible to know if journey allowance, displacement allowance and wages during journey period have been paid by Nandu to the workmen.

Maintenance of Accounts

The maintenance of registers is extremely crude. First at the time of visit, the munshi stated that all the registers have been kept at the residence of the owner. Later, on our insistence when the registers were brought it was found that there was no proper head of any entry. One register showed the names of heads of migrant families but not the names of all family members, the tools supplied to the workmen (head of the family) and the amount advanced to him from time to time. The purpose for which advances are obtained range from personal, consumption and ceremonial needs to purchase of cart, shovel etc.

Corelation between wages entitled and advances paid

The wages are piece rated. Government in Labour Department of Haryana has fixed minimum piece rates of wages for various categories of workers such as Pathera, Bharaiwala, Chunaiwala, Kariwala, Nikasiwala, mistri/coalman/jalaiwala and daily/monthly rates of wages for driver, cleaner, chaukidar, munshi, jamadar etc. In this report one is primarily concerned with the first five categories as above.

The notification is flawed in as much as it specifically provides for payment of Jamadari Commission contrary to the directions of the apex court discouraging payment of such commission while disposing off the writ petition No. 8143 in PUDR Vs. Union of India (Asiad Worker's case) on 18.9.1982 and writ petition No. 2135 Bandhua Mukti Morcha Vs. Union of India and Others dated 16.12.1983. What is the quantum of commission has, however, not been spelt out. In any case if commission amount is deducted the amount payable the latter will fall short of minimum wage. Going by the spirit of the logic advanced in the same judgement denial of minimum wage amounts to existence of forced labour which is only a variant of bonded labour. In this case, a case of bonded labour system is clearly established as there is the element of advance coupled with denial of minimum wage notified by the State Government. To probe the matter of correlation between advances and wages further we investigated into the case of one Ram Parvesh who has been recruited by the Jamadar from Nawada in Bihar on 28.9.2006. Ram Parvesh, a Pathera has obtained the following advances from the contractor on the following dates with the purpose for which advance has been obtained against each:-

28.9.2006	-	Rs. 350/- (for purchase of cart & shovel)
		Rs. 250/- (for personal computer)
30.9.2006	-	Rs. 100/- (for personal consumption)
1.10.2006	-	Rs. 800/- (sundry expenditure)
16.10.2006	-	Rs. 700/- (personal consumption)
21.10.2006	-	Rs. 100/- (personal consumption)
26.10.2006	-	Rs. 300/- (ceremonial expenditure)
31.10.2006	-	Rs. 800/- (personal consumption)
16.11.2006	-	Rs. 800/- (personal consumption)

In other words, Ram Parvesh has incurred a sum of Rs. 4200/- between 28.9.2006 and 16.11.2006.

On 25.10.2006 he delivered 6500 bricks for which he is entitled to a payment of Rs. 1040/- (@ Rs. 160/- for 1000). Between 25.10.2006 and 1.11.2006, he has further delivered 3800 bricks for which he is entitled to receive a wage of Rs. 608/-. Information relating to the number of bricks delivered after 1.11.2006 was not available. However, going by the massive amount advanced (Rs. 4200/-) and the amount earned towards piece rate wages (Rs. 1040/- + Rs. 608/- = Rs. 1648) the gap is huge. We met the worker (Ram Parvesh) and asked him as to (a) why he is incurring so much of advance? (b) how does he propose to liquidate the advance with his limited earnings? We could not get a convincing reply. All that Ram Parvesh said, "Do not worry, I would be able to go back home at the close of the season with not less than Rs. 15000/-". The worker is not literate and numerate and it is understandable that he does not know how much advance he is incurring from time to time, how much is getting adjusted with his earnings and how much is left as surplus with which he can look forward to sunnier days ahead. It is the responsibility of the State and District Administration to impart legal literacy and spread awareness about statutorily fixed minimum wage to all workers.

There is yet another dimension of the correlation between payment of advance and payment of wages. To put it in the words of Justice Sri P.N. Bhagwati: 'Ordinary course of human affairs would show, indeed judicial notice can be taken of it, that there would be no occasion for a labourer to be placed in a situation where he is required to supply forced labour for no wage or for nominal wage unless he has received some advance or other economic consideration for which he is required to render service to the employer...'. The judgement in Bandhua Mukti Morcha case (16.12.1983) establishes a vicious

correlation between payment of advance and payment of wages and between payment of advances and deprivation of freedom, the most precious birth right of every human being. The extent to which enjoyment of such freedom is bartered away or otherwise compromised on account of receipt of advance is a matter to be established through a thorough and discrete investigation but the fact remains that payment of advance to a labourer in an alien soil and in a distress situation does create a potential for forced labour or bonded labour which cannot be disputed.

System of Payment of Wages

Piece rated wages should be paid fully and accurately on the basis of rates laid down. Our interaction with workers revealed that workers do not want to collect full wages but collect as much as they need. Since there is no arrangement by which they can keep the amount earned towards piece rate wages either in a post office or in a bank they prefer to take as much as they need for their day to day expenditure and keep the balance amount with the owner. Human memory being fragile it is not easy to remember (a) how much the worker was entitled? (b) how much advances he has received? (c) what is the balance – plus or minus? If workers could be made literate and numerate and if facilities for opening of an account and deposit of the cash in post office/bank could be made it would promote thrift, discourage lavish spending which leads to indebtedness and make the workers self reliant.

Yet another observation made by us at the time of field visit is quite disturbing. Husband and wife are both working as patheras, putting raw earth into the frame, taking out raw bricks, putting them in the open in the sun for drying and turning sides of the raw brick for even drying. They constitute what is called in bolchal Hindi as 'Jod'. In the register, in whatever crude form it may have been maintained the

name of the husband only has been mentioned and name of the wife is not to be found anywhere. It is not clear if she is being completely denied her entitlement to minimum wage by piece rate to which she is entitled.

Implementation of Minimum Wages Act

Government of Haryana has brought 47 schedule employments within the purview of the MW Act and have fixed minimum wages for unskilled, semi-skilled, skilled and highly skilled and clerical categories of workmen in respect of each schedule employment. For time rated employees, it ranges between Rs. 2000/- to Rs. 2900/- per month. For a schedule employment like 'agriculture' or 'irrigation' or 'building and construction operations' there are a number of sub-categories of workers for whom minimum rates of wages per day (all inclusive) ranging between Rs. 87/- to Rs. 108/- have been fixed.

Denial of minimum wage is one of the consequences of bonded debt and bonded labour system as in Section 2(g) of Bonded Labour System (Abolition) Act. Enforcement of minimum wage depends on (a) number of inspections conducted; (b) detection of instances of short payment; (c) filing of a claim for recovery of such short payment (d) adjudication of claim u/s 20 of MW Act and (e) actual recovery of the amount under the Public Demands Recovery Act of the State concerned in the event of non payment. It is not possible to assess the extent of compliance with the provisions of MW Act read with judgement of the Supreme Court in W.P. No. 8143 PUDR Vs. Union of India (18.9.1992) without having access to information under all the four heads as above.

It transpired that the DMs have been authorized by the State Government to fix minimum rates of wages in respect of establishments which fall outside schedule employments. To illustrate,

Dy. Commissioner, Ambala has fixed minimum rates of wages in respect of 96 categories of employees (both unskilled, semi-skilled, skilled and highly skilled employees) on 15.5.2006 which ranges between Rs. 110/- daily to Rs. 3000/- monthly. In fixing such wages, the Dy. Commissioner has kept the following aspects of wage fixation in mind:-

- Rates fixed by the Department in respect of the same category of employees in a schedule employment;
- Rate of increase over the years;
- Comparison with neighbouring districts.

It is necessary to clarify by issue of an executive order that denial of this wage i.e. minimum wage fixed by the Deputy Commissioner under authority of the State Government would also be a case of forced labour in the same manner as denial of minimum wage under the MW Act and recourse should be taken to the remedies available under Section 20 of MW Act as in other cases of non payment or short payment.

Administrative Mechanism:

State Level Screening Committee

A State Level Screening Committee has been set up under the Chairmanship of Financial Commissioner and Principal Secretary, Labour and Employment Department, Government of Haryana. In the first meeting of the Committee held on 13.6.2006, a number of important decisions has been taken and a number of useful directions given such as :-

- Payment of advance results in creation of bonded conditions. The members were advised to use their official influence to prevent the creation of such bonded conditions. The advances should not exceed 2-3 months average earnings so that it could only be timed as advance against wages.
- Vigilance Committees in the districts need to be activated to prevent this basic cause of existence of bonded labour.
- Proceedings of Vigilance Committees be obtained from all districts and regular records be maintained for monitoring the efforts made in this regard.
- There is the inter connected problem of child labour in brick kilns and dire need for making available educational facilities for them and the adults employed therein. An interaction with the Associations of brick kiln owners should be organized in the immediate future for prevention of child labour and provision of non formal education for them. Education Department should make efforts for setting up schools in clusters of brick kilns in various districts under Saksharta Abhiyan.
- Education of workers employed in the brick kilns regarding their rights under various Labour Laws and especially the Bonded Labour System (Abolition) Act was emphasized. A wide publicity in the media regarding the issues relating to indebtedness and bonded conditions is necessary because people are either unaware of or insensitive to the provisions of the law and the problem.
- Officers of Labour Department should be more vigilant on complaints relating to non-payment of wages or delayed

payment at the end of the season in brick kilns which would prevent bonded conditions.

The decisions taken by the Committee are steps in the right direction and they reveal the depth of understanding and sensitivity of the Chairperson and the members with which the problems associated with bonded labour system need to be approached. The pace and progress of implementation of the decisions/directions do not, however, appear to be as encouraging as the soundness of decisions.

Survey for identification of bonded labour system and outcome thereof:-

A survey was conducted in 2004 in six districts of the State (out of 20) namely Panchkula, Bhiwani, Hissar, Fatehabad, Sirsa and Mahendergarh. The survey was conducted with the help of NGOs and funds received (@ Rs. 2 lakh per district) under the Centrally Sponsored Scheme for identification of bonded labourers. The final survey report was prepared in 2005 by Dr. Manjit Singh, Professor, Sociology and Coordinator and Sri Joginder Lal, Research Officer, Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh. Another survey has been conducted on the extent of bonded labour in Faridabad by Jay Shankar Memorial, another NGO of repute though the year of the survey has not been mentioned anywhere in the survey report. Around the same time (December, 2005) prevalence of bonded labour system in Haryana has been evaluated by South Asian Foundation for Human Initiatives (SAFHI), Calcutta and the evaluation report has been submitted to the Labour Commissioner, Haryana. Placed below are some of the findings of the survey conducted by the Ambedkar Centre, Punjab University in relation to working conditions in brick kilns and agriculture which are relevant to an understanding of the bonded labour system:-

Brick Kilns:

- In all there are 368 bricks kilns in the 6 districts surveyed out of which only 249 (66.7%) were studied;
- Total number of households and total number of family members working on the brick kilns are 2267 and 4312 respectively;
- Workers are recruited by an agent called Jamadar who is a middleman between the employers and workers. All the advance debt and later on wages to the workers are paid through the Jamadar. He is responsible both for recruitment of labour as also for management of the work force recruited by him for which the workers pay a small share out of their wages to him;
- Out of total 4312 earners, 766 (17.1%) earned not more than Rs. 12000/- a year while 764 (17.7%) earned between Rs. 12001-15000 per annum;
- At the rate of minimum wage fixed by the State Government in June, 2003 for an unskilled worker i.e. Rs. 2140/- per month effective from 11.10.2002 a worker should be in a position to earn more than Rs. 25000/- per annum;
- The survey, however, reveals that 90% of the workers are earning less than Rs. 24000/-. This is on account of the seasonal nature of the industry and the fact that a large number of workers remain out of employment for at least 4-5 months in a year. Only 4% workers get work for more than 8 months during the year;
- Nearly 60% of workers were employed for 6-8 months even though full work may not be available. During the lean period when work is not available the employer keeps on advancing

107

loans through the labour contractor. This eats into the savings of the workers and makes them economically vulnerable. The conditions under which loans are advanced eventually leads to a situation where a worker falls into the debt trap pushing to bondage;

- If a worker wants to quit work at his own will, he can do so after paying penalty in the form of payment for the accommodation, cess for the electricity used and also for the water if it is supplied from the water tanker. He would be charged interest @ 24% per annum on the entire amount of debt taken right from the beginning. Consequently, the worker would be left with half the amount of normal wage after making all the deductions;
- 95.41% of the workers have no knowledge of the existence of Bonded Labour System (Abolition) Act;
- 28.8% of workers were additionally indebted at their respective place of origin in a much larger way;
- On the whole nearly 30% workers indebted for more than Rs. 20000/- each were highly prone to bondage. Most of them were Scheduled Castes.
- Expenses on marriage of children and medical treatment are the two most important reasons of indebtedness;
- While 50% of the indebted workers pay 24% rate of interest, 32% households pay more than 24%.

Attached Agricultural Labour:

There is nothing objectionable in a system of attached agricultural labour perse if the following 2 conditions are fulfilled namely:-

- The contract which is entered into between the landlord and the agricultural labourer does not deny the latter minimum wage as notified by the appropriate government for agriculture with provision for spread over, payment of over time and weekly off (payment of wages for 7 days for 6 days of work);
- The agricultural labourer has the freedom of choice of employer and choice of alternative avenues of employment even during the period of contract for valid reasons.

The survey team in case of the 6 districts of Haryana as mentioned earlier identified the broad categories of labourers from rural Haryana namely attached agricultural labourers, siris, casual labour in agriculture and casual labour in non agriculture. The following are some of the major findings in the survey:-

- The total estimated number of attached labourers in rural Haryana is 1,41,473 and that of Siris is 2,33,738. 88.56% of the total labourers under study belong to SC community.
- Both attached labourers and Siris are the most prone to bondage.
- A large Percentage (63.35) of labourers earn less than Rs. 24000/- while the rest earn more than Rs. 24000/- per annum. An overwhelming percentage (67.6) of labourers earn less than Rs. 15000/-.

- 61% of the labourers are burdened with debt i.e. the amount which is over and above the regular advance taken in lieu of earned advance wage. The debt ranges between Rs. 10000/- to Rs. 20000 (25.70%), Rs. 20000/- to Rs. 50000/- (32.22%) and Rs. 50000/- (13.32%).
- The rate of interest attached to the debt is 24% (annual).
- The debt has been obtained partly from the employers and partly from the professional money lenders.
- The number of days worked ranges between 120-180 days (12.16%), 180-240 days (14.26%) and 365 days (42.39%).
- An attached labourer cannot take off from work without producing a substitute worker failing which his wage would be deducted at double the rate he is paid for a day's work.
- An attached labourer cannot quit his job without clearing his debt advance including the amount borrowed in lieu of wages.

The survey team has covered a few other categories of workers in non-agricultural employment namely poultry farms, stone crushing and washing and stone mining. I am not going into the details of the findings of the survey in relation to these categories of workers except broadly stating that indebtedness appears to be a striking commonality in respect of these categories of workers as much as it emerges in case of brick kiln workers and attached agricultural labourers. Both in response to the point No. 16 in the questionnaire formulated by me as also in course of discussion at Chandigarh it was stated that no bonded labourer has been reported in the above mentioned survey. It needs to be clarified that the survey which was conducted by the Ambedkar Centre, Department of Sociology, Punjab University,

Chandigarh was not required to identify and enumerate bonded labourers by name. The survey team was professionally mandated to assess the magnitude of the problem by carrying out indepth studies on the terms and conditions of service and employment of workers in 6 districts. While they have attended to this work with professional acumen and historical insight, there are a few areas in the survey report which need clarification by the survey team. These are:-

- I At Point No. 9 of the executive summary (page iii of the report) it is observed that there is no failure of implementation of the statutory minimum wage. It needs to be clarified that MW Act is not only about fixing, reviewing, revising and implementing notified minimum wage rates. The Act also provides for (a) weekly off (b) spread over and payment of OT (c) adjudication for short payment or non payment. Point No. 10 gives an impression that hours of work exceed 9 hours but there is no indication about spread over and payment of overtime. There is no indication about weekly off either.

- II At Point No. 48 of the report it has been acknowledged that workers pay a small share of their wages to Jamadar. This means that there is a cut from the minimum wage by the unwritten law laid down by the middlemen. The apex court had taken strong exception to this practice while disposing off the writ petition No. 8143 in PUDR & Others Vs. Union of India and Others (AIR 1982 SC 1473) dated 18.9.1982. To quote from the judgement:-

"whatever is the minimum wage for the time being shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover any

amount from the minimum wage payable to the owner as and by way of commission or otherwise”.

III At Point No. 16 of the executive summary (page V of the report) it has been clearly observed that 67.6% of the agricultural labourers are not able to earn even Rs. 15000/- annually (which is much lower than notified minimum wage). At Point No. 19 of the same page it has been observed that the exploitation of attached labourers is not as much on account of refusing to pay the agreed wages as in extracting extra work out of them. While this establishes an element of force or coercion it does not say anything about the quantum of compensation.

IV The attached agricultural labourers do not enjoy any paid holiday, cannot take time off from work without producing a substitute and wage being deducted at double the rate for a day's work and cannot quit the job without clearing the debt advance including the amount borrowed in lieu of wages. All these go to establish are element of coercion or force in the terms of employment. What then is the problem in not terming this as forced labour? The survey team has established beyond doubt that in all such situations the workers are prone to or vulnerable to bondage. Without categorically stating who is a bonded labourer and who is not the team has vividly and succinctly analysed the setting in which the inter-state migrant workmen in brick kilns or attached agricultural labourers, casual labourers or share croppers (Slris) in agriculture are working and living and which makes them potential bonded labourers. It is left open to the Vigilance Committees at the district and sub divisional level as also the field functionaries of revenue and other departments who come in close inter-face with these workers to identify the names and whereabouts of these persons

who may be living in bonded conditions by making discrete enquiries through field inspections and by canvassing information through a simple and non-threatening questionnaire. By and large the Vigilance Committees and field functionaries have failed to discharge their responsibility to this extent.

The bonded labour survey to study on the extent of bonded labour system in Faridabad and evaluation of bonded labour in Haryana are also flawed in as much as:-

- They have not made any reference to the relevant provisions of the Bonded Labour System (Abolition) Act, Contract Labour (Regulation & Abolition) Act, Inter-State Migrant Workmen (Regulation of Employment and Conditions of service) Act or Minimum Wages Act and the judgements of the Supreme Court relevant to identification of Bonded Labour System.
- They have adopted a sample approach to the study and on the basis of the sample selected arrived at certain formulations like source, extent, factors, duration of indebtedness, rate of interest, terms of repayment, working hours, terms of payment of wages etc. which may have a bearing on bondage but may not necessarily establish beyond doubt who is a bonded labourer and who is not.
- In the survey conducted by Jaishankar Memorial Centre, New Delhi (no year and month of the survey has been mentioned) the report has concluded without reaching any specific conclusion/recommendation while at the end of the evaluation the South Asian Foundation for Human Initiatives (SAFHI) has reached certain conclusions that heavily indebted persons can become bonded on account of high rate of interest on the debt (which makes repayment extremely difficult) vulnerability to

101

exploitation and lack of individual and collective bargaining capacity. The specific conclusion recorded by them in the fifth para of their concluding chapter (Chapter V page 29) in the year 2005 is reminiscent of what I had seen and reported to the Supreme Court as a Socio-legal Investigating Commissioner in March, 1984 (22 years before). The SAFHI has succinctly brought out why inter-state migrant parents are forced to send their children to work in a distress situation at an alien point - what I had seen and observed in my report 22 years ago. More than 2 years and 1 year respectively have passed since the survey and evaluation studies were conducted. It may be appropriate if the reports and findings of both are placed before the State Level Screening Committee for a discussion and appropriate follow up action.

Child Labour

Magnitude of the Problem

The total number of working children in Haryana according to 1991 Census was 1,09,691 which has gone up to 2,53,491 (more than double). As against this, the State in response to the questionnaire circulated by me has quoted a figure of 72,738 working children which does not appear to be borne by facts. This appears to be an under estimation which is not in the interest of working children themselves.

While the break-up of the above figure between urban and rural areas, between boys and girls is available, no such break-up between number of children engaged in hazardous and non-hazardous work is available. According to the existing national policy on elimination of child labour, children employed in hazardous work are to be withdrawn from work and rehabilitated through education, nutrition, skill training and check up of health. Such a policy cannot be translated to action

unless the State Government conducts a district-wise survey, identifies the number of working children in hazardous work and withdraws them for rehabilitation through schooling, nutrition etc. Any Action Plan (the State Government have none at the present) for implementation of the national policy is a must and the first step in that action plan should be to have a clear and precise information about the number of children who are engaged in hazardous work.

It is imperative that a survey be conducted to identify the number of children engaged in hazardous work, enumerate them, withdraw them from work and have them rehabilitated through the special schools under the NCLPs in conformity with the National Policy and Programme of Action.

Administrative Infrastructure:

Department of Labour, Government of Haryana is responsible for overall planning, implementation and monitoring of the provisions of the Child Labour (Prohibition and Regulation) Act. There are in all 158 officers of the department (which includes 7 Presiding Officers, Industrial Tribunal-cum-Labour Court as also officers responsible for observance of industrial health, hygiene and safety) but no details could be furnished about (a) the number of establishments registered under different laws (b) number of inspections which are required to be conducted in respect of such registered establishments (c) number of inspections actually conducted under different laws (d) average number of establishments to be inspected per Inspector per month (e) time available for inspection vis-à-vis other items of work (conciliation, court attendance, office work etc.), span of supervision and control (f) general trend in number of prosecutions launched and convictions secured etc.

Determination of the age of the child:

Section 10 of Child Labour (Prohibition and Regulation) Act provides that all disputes regarding the correct age of a child who is employed in an establishment shall be adjudicated by the same medical authority as one who is competent to grant a certificate about the age of a child. This provision is to be read with Rule 4 of Child Labour (Prohibition and Regulation) Rules which provides how a certificate of age is to be obtained, by whom, from whom and how the appropriate medical authority is to be appointed. According to Rule 4 such an authority shall be a government medical officer not below the rank of an Assistant Surgeon of a district or a regular doctor of an equivalent rank employed in ESI dispensaries or hospitals.

In course of field visits to Ambala, Karnal and Kurukshetra it transpired that officers of the Health Department functioning under the Civil Surgeon are not aware of such a provision of law. Neither any formal notification nor any executive order has been issued by the State Government to this effect which would have imparted that awareness. The State Government is under an impression that since Provisions of Rule 4 are very clear there is no need to issue any further notification or order.

It is an established fact that employers of establishments invariably take a position that the age of a person is over and not below 14 and, therefore, they cannot be held liable for infringement of the relevant provisions of Child Labour (Prohibition & Regulation) Act or any other similar law in force. Besides, in a situation of acute malnutrition and stunted growth (50% of the total number of children in 0-14 age group in India are victims) where a boy or girl of 18 may look like one who is 12 or 14 determination of the age of children is generally difficult.

It is in the larger interest of children below 14 years for whose benefit Child Labour (Prohibition & Regulation) Act has been enacted that the State Government in exercise of the powers vested in them under Section 10 read with Rule of Child Labour (Regulation & Abolition) Rules should issue a formal order notifying every Assistant Surgeon at the district or sub divisional level as the competent certifying Surgeon.

Compliance with the directions of the Supreme Court in Civil Writ Application No. 465 in M.C. Mehta Vs. State of Tamil Nadu & Others dated 10.12.1996.

A survey was conducted in the wake of the judgement and completed by 31.5.1997. According to the findings of the survey only 6 children in 6-14 age group were found to have been employed in hazardous occupations and 2813 children in non hazardous occupations. The children found in hazardous work were the children of migrant parents who have left for their native place in U.P. They, therefore, could not be enrolled in the formal school system in Haryana. Similarly, a sum of Rs. 1,20,000/- @ Rs. 20000/- per child was recovered from the offending employers, deposited in the Welfare-cum-Rehabilitation Fund and is lying there unutilized as the children have left for their native place along with their parents.

All children (2813) employed in non-hazardous work were required to receive non-formal education for 2 hours in the evening and the cost of that education was to be recovered from the employers of the establishments concerned. This does not appear to have been complied with.

The State Government should have furnished the names of adult parents as well as 6 children (who are engaged in hazardous work) to the originating State Government with a request to provide a job to

each one of the 6 adult parents failing which they should have been requested to contribute @ Rs. 5000/- each to the District Child Labour Welfare-cum-Rehabilitation Fund. Since adult parents and their children (6) have gone back to their respective States it would be appropriate to transfer the entire amount of Rs. 1,20,000/- to the district(5) concerned where the parents have gone back with their children. Since the fund and the accumulations thereunder are meant for the welfare of children it is but appropriate that the fund should operate in that district where the parents and children are located. No action, whatsoever, seems to have been taken by the destination State (Haryana) to this effect.

All Inspectors responsible for carrying out inspections and enforcement of the provisions of Child Labour (Prohibition & Regulation) Act should have been made accountable to the DM of the district concerned. This also does not appear to have been complied with:-

National Child Labour Projects

Normally a State Government should request for sanction of a NCLP to the Ministry of Labour, Government of India on the basis of the findings of a survey in relation to the number of children engaged in hazardous work. Since the State Government have reported that only 6 children could be found to be engaged in hazardous work on the basis of the survey conducted in 1996-1997 (3.5.1997) and that too, they were children of migrant parents who have left for their native place the basis on which 3 NCLPs at Gurgaon, Faridabad and Panipat have been sanctioned by the Ministry of Labour, Government of India is not known.

Even though the sanction was accorded by the Ministry of Labour in November, 2003 and the grant of Rs. 8.59 lakh was fully

released it appears that even three years after the sanction and release of funds the NCLPs are a nonstarter. In response to the questionnaire as also in course of discussion it was reported that only 103 children at Faridabad and 1400 children at Panipat could be found in hazardous work. No survey has been conducted in Gurgaon so far. In respect of the children withdrawn from work only 5 schools have been opened in Panipat although the number of working children (1400) warranted opening up of much larger number of schools (at least 30).

Reasons for non-opening of a single school in Faridabad even though 103 working children were found there to have been employed in hazardous work (which is a gross under-estimation in a city of 1.5 million population) are not known. No satisfactory explanation was forthcoming to this effect.

Not only there has been inordinate delay in operationalization of the projects the whole approach to operationalization appears to have been a casual, stereotyped and routinized one. Such a deadly combination (casual approach and inordinate delay) seems to have completely defeated the central objective of sanction accorded by the MOL more than three years ago. There seems to be no sense of urgency and seriousness of concern about timely operationalization of these Projects.

Executive Summary of observations, conclusions and recommendations:

- Vigilance Committees are the primary statutory and institutional mechanism for identification of bonded labour system. They have been constituted at the district and sub divisional level but are largely non functional. They should be activated.

- Guidelines should be issued by the administrative department (State Labour Department) about functioning of these Committees, where and how they should go out, how they should conduct discrete enquiries in the field and how they should place their reports before the Executive Magistrates appointed u/s 21 of the Bonded Labour System (Abolition) Act and plead for their release to the Magistrate concerned.
- It is urgent and imperative that all members of Vigilance Committees, all Executive Magistrates who have been vested with the powers of Judicial Magistrates and all other officers who have a vital stake in rehabilitation of freed bonded labourers should be provided orientation and training to improve their awareness and professional competence in handling the tasks of identification, release and rehabilitation.
- Institutes of Social Science Research (like Ambedkar Centre, Punjab University) can through their studies / survey indicate broad trends and the extent to which persons could be prone vulnerable to the bonded labour system. Merely because they have not identified bonded labourers (which was not their mandate) by name it does not necessarily follow that there are no bonded labourers in Haryana.
- Instead of labouring under a mistaken impression that there are no bonded labourers in Haryana, the State Government should initiate follow up action on the survey report submitted by the Ambedkar Centre and South Asian Foundation for Human Initiatives (SAFHI) without any further delay.
- After the Bonded Labour System (Abolition) Act was amended and an explanation was added in 1985, contract and inter-state

migrant workmen can come within the purview of bonded labour system if they fulfil the requirements of Section 2(g) of the Act. The State Government are taking a stand that migrant workmen come to work on their own and not through any contractor. This is factually incorrect. My field visits in Kurukshetra had shown that all migrant workmen are being recruited by a recruiting agent and not coming to Haryana on their own.

- The stand that the State Government has not issued any registration certificate to any principal employer as none has ever applied similarly is to be taken with a pinch of salt. Section 6 of the ISMW (ROE and COS) Act makes it abundantly clear that no principal employer of an establishment to which this Act applies shall employ inter-state migrant workmen unless a certificate of registration is in force.
- There are over 900 brick kilns in Haryana which employ inter-state migrant workmen who have been recruited through recruiting agents. Not a single registration certificate has so far been issued by the competent authority under Section 4 of ISMW (ROE and COS) Act as per the own admission of the State Government of Haryana. The question is how are these brick kiln establishments functioning and how are the principal employers (owners) employing inter-state migrant workmen without a valid registration certificate?
- Inspections under the PW Act, MW Act, Child Labour (Regulation and Abolition) Act and ISMW (ROE and COS) Act have been few and far between. Wherever conducted, the intention appears to be more to fulfil the target (of inspection) than to provide any meaningful guidance, advice and relief to the workmen and their family members (electricity and water

connection, issue of ration card, screening of health, medical treatment, worker's education, children's education, prevention of indebtedness etc.).

- A much closer coordination and liaison needs to be kept between the originating and destination States in the matter of proper implementation of ISMW (ROE and COS) Act and in particular with regard to (a) grant of licence to the recruiting agent u/s ⁸⁽¹⁾ of the Act (b) grant of registration certificate to the principal employer ^{u/s 4(2)(a)} under Section of the Act (c) Payment of journey allowance, displacement allowance, wages during journey period (d) no deduction from the wages towards commission of middlemen etc. All these problems can be sorted out through (a) constitution of joint study teams and (b) organizing joint visits. Such coordination and liaison are sadly lacking today.

Child Labour

- Survey is a form of investigation by a person or a team of persons to arrive at certain accurate findings which will go to ease the distress of the victim and provide him timely relief. Conducted with proper planning, imagination and sensitivity they could yield positive and tangible results. This has been lacking in Haryana in regard to identification of working children with a view to securing their withdrawal from work and rehabilitation.
- Series of orientation and training programmes need to be conducted to familiarize field functionaries about the techniques of survey including the methodology, for canvassing certain sensitive informations in less time without offending the recipient.

- The State Government needs to pay much greater attention towards accuracy and authenticity of relevant information to be collected, compiled and analysed. No accurate, authentic and up-to-date data base on working children is in existence. There is no computerized MIS on flow of information from the district to the State level, its analysis and using statistics as a tool for preparation of an action plan for elimination of child labour.
- Preparation of an action plan for elimination of child labour (as has been done by Labour departments of Tamil Nadu and Karnataka) brooks, therefore, no further delay. The components of this would be:-
 - Survey;
 - Collection, compilation, computerization and analysis of stored data;
 - Withdrawal of children engaged in hazardous work from work;
 - Rehabilitation through access to schooling, nutrition, health check up and importing of vocational skills.
- The report on compliance with directions of the Supreme Court contained in its judgement dated 10.12.1996 is not very encouraging. This needs to be reviewed by the Financial Commissioner-cum-Secretary, Labour at his personal level.
- Even if the working children involved are children of migrant parents they are free citizens of a free country and entitled to they same just, fair and dignified treatment as workers who belong to Haryana proper.

- The 3 NCLPs sanctioned for Faridabad, Gurgaon and Panipat 3 years ago deserve to be treated with a lot more urgency and seriousness of concern than what has been the case so far. In future, all such projects should be sanctioned only on the basis of a survey properly conducted and on the strength of children actually released from hazardous work in a particular district.

General

- Convergence of other departments in terms of a permanent, meaningful and effective rehabilitation of all freed bonded labourers and children withdrawn from work is yet another matter which deserves to be viewed with a lot more urgency and seriousness of concern.
- There should be a perspective plan for elimination of both within 5 or 10 years as may be considered possible and feasible.
