

Report of review of the pace and progress of activities pertaining to implementation of Bonded Labour System Abolition (Act), 1976 and Child Labour (Prohibition and Regulation) Act, 1986 for Punjab from 17th to 19th March, 2008 by Dr. Lakshmidhar Mishra, IAS (Retd.), Special Rapporteur, NHRC.

I visited Punjab from 17th to 19th March, 2008 for an on the spot intensive review of the measures taken by the State Government for implementation of Bonded Labour System Abolition (Act), 1976 and Child Labour (Prohibition and Regulation) Act, 1986. The same threefold strategy as has been adopted for undertaking similar reviews on bonded labour and child labour for Haryana (November, 2006), Orissa KBK districts (December, 2006), Madhya Pradesh (January, 2007), Rajasthan (February, 2007) and Karnataka (May, 2007) was adopted for Punjab. The strategy is as under:-

- I Two questionnaires – one on elimination of bonded labour system and another on elimination of child labour covering all aspects relevant for the macro as well as micro level were circulated in advance with a view to eliciting the desired response from the State Government and the district administration.
- II Two separate texts – one on elimination of bonded labour system and another on elimination of child labour were prepared to make a power point presentation to the senior functionaries of State Labour Department and those of other concerned departments with the following objectives:-
 - familiarizing them with Constitutional and legal provisions, judgements of the apex Court, National Policy and Programme of Action;
 - removing doubts, disputes, misgivings and reservations, if any, and establishing complete conceptual and definitional clarity;
 - sensitizing the insensitive.

- III To undertake field visits selectively within the constraints of time to acquaint myself with ground level realities.

The districts of Jalandhar and Ludhiana were chosen for my field visits.

Two power point presentations were made by me at the Conference Hall of State Government Secretariat on 17.3.2008 for which necessary arrangements had been made by the Labour Secretary and Labour Commissioner, Punjab. The presentation covered the following:-

Bonded Labour:

- what makes us talk about the bonded labour system despite clear Constitutional and legal provisions, provisions of the 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 numbering 30+ between 1981 and 2006 which under Article 141 of the Constitution were binding on all Courts;
- elimination of bonded labour system as a human rights issue and not a trade related issue;
- how to identify bonded labourers with reference to interstate migrant workmen working within Punjab;
- release of bonded labourers and issue of release certificate;
- concept of summary trial;
- physical, economic and psychological rehabilitation of released bonded labourers; how to make the same meaningful, effective and permanent;
- identification, release and rehabilitation to be simultaneous;

- prosecution of offenders of law (bonded labour keepers, abettors) to proceed separately but may be simultaneously and independently;
- acquittal of bonded labour keeper not to adversely affect the release and rehabilitation process;
- a perspective plan to eliminate bonded labour system in Punjab.

Child Labour:

- definition of child, childhood and child labour;
- rationale behind a minimum age of entry to the world of work;
- magnitude of the problem according to 2001 decennial census in Punjab;
- why child labour at all despite international treaty provisions and legal obligations arising out of their ratification – mindsets of parents, employers working children and those of civil society;
- constitutional and legal provisions;
- salient features of judgement of the Supreme Court in Civil W.P. No. 465 (1986) M.C. Mehta Vs. State of Tamil Nadu dated 10.12.96;
- forms of hazardous occupations and processes in which children are employed and consequences of such employment;
- worst forms of child labour – ILO Convention No. 182;
- national policy and programme of action for withdrawal of children from hazardous work and their rehabilitation

through education, nutrition, vocational skill training through special schools of NCLPs;

- sharing a success story of MVR Foundation, Hyderabad, A.P.;
- a few reflections on a few feasible solutions to the problem of elimination of child labour.

Each presentation was followed by a discussion in course of which I proceeded to remove various doubts and disputes related to definition and application of law in practice. The central objective of making the 2 presentations to promote depth of understanding, clarity of thought and courage of conviction can be said to have been substantially achieved.

Administrative infrastructure:

Since inception the subject of bonded labour is being handled by Labour Department. The organizational chart of the Department is at Annexure-1.

The Labour Commissioner functions as the Head of the Deptt. under the administrative control of the Secretary, Labour Department. He has an Additional Labour Commissioner, Dy. Labour Commissioner and Assistant Labour Commissioner to assist him at the headquarters. Punjab State has 20 districts and 4 revenue districts with headquarters at Patiala, Faridkot, Jalandhar and Ferozpur. Ideally there should have been a Dy. Labour Commissioner in charge of each zone and each district should have been headed by an Assistant Labour Commissioner with one or more Labour officers and Assistant Labour officers, depending on the industrial and commercial importance of the district. In Punjab, however, there are 13 ALCs posted at the district level in respect of the following districts:-

- | | | |
|--------------|---|---|
| 1. Ludhiana | - | 3 |
| 2. Jalandhar | - | 1 |

3. Amritsar	-	1
4. Hoshiarpur	-	1
5. Gurudaspur (Batala)	-	1
6. Sangrur	-	1
7. Moga	-	1
8. Mohali	-	1
9. Patiala	-	1
10. Ferozpur	-	1
11. Bhatinda	-	1

The remaining districts are having only one Labour-cum-Conciliation Officer to attend to both conciliation and enforcement work.

Their activities and overall performance are being monitored, supervised and coordinated by the Labour Commissioner with the help of one Dy. Labour Commissioner and ALC (since the post of Addl. Labour Commissioner is vacant).

Success in enforcement work in general and with special reference to BLS(A) Act and CL (Prohibition and Regulation) Act is dependent partly on adequacy of man power, partly on ability to interpret laws and regulations in a manner as would make them beneficial to those for whom they have been intended (which can be facilitated through orientation and training) and partly on mobility and indepth familiarization with the geography and topography of the area. In case of labour law enforcement machinery of Punjab the manpower is inadequate, there is no zonal system of monitoring, supervision and coordination and it will be extremely difficult for the Labour Commissioner and Head of the Department to directly monitor, supervise and coordinate the work of all the field level officers numbering about one hundred (ALCs -13, LCOs-11, Field Investigators - 6, Labour Inspectors Gr. I - 41 and Labour Inspectors Gr. II -35).

Besides, none of the field officers except Project Directors of NCLPs at Jalandhar, Amritsar and Ludhiana has been provided with a vehicle making their mobility (so crucial for enforcement) extremely difficult.

The NHRC in collaboration with the Labour and Employment Department, Government of Punjab had organized a Workshop on bonded labour to sensitize the Dy. Commissioners and senior officers of Punjab Government on 20th November, 2003 at Chandigarh. As is evident from the proceedings of the workshop, it had helped in establishing conceptual, legal and definitional clarity about the provisions of BLS(A) Act vis a vis Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, Contract Labour (Regulation and Abolition) Act, Minimum Wages Act and Child Labour (Prohibition and Regulation) Act. Five years later, in course of field interactions with employers, trade unions, NGOs and a large cross section of the civil society at Jalandhar (18.3.2008) and Ludhiana (19.3.2008) it transpired that 'many doubts, disputes, misgivings and reservations about definition of bonded labour system continue to persist. Since officials keep on changing, there is recurrent need for organizing such workshops from time to time so that such doubts, misgivings and reservations could be removed.

Since inception i.e. 25.10.75 when the Bonded Labour System (Abolition) Ordinance was promulgated Government of Punjab has consistently taken a stand that (a) problem of bonded labour in Punjab is not as serious as in some other States and (b) there is a peculiar creditor-debtor relationship between agricultural farm houses/brick kiln establishments and labourers who have migrated from other States and who are working in those establishments and (c) whenever the Labour Department receives any complaint, the same is promptly got investigated through the district administration. The State Government feels and believes that some of the NGOs working in the State have been rather overenthusiastic with regard to the problem of bonded labour. Reference had been made to the role of one Shri Jai Singh,

who had filed 145 cases of bonded labour from Kapoorthala district alone but on investigation most of the cases were proved wrong.

Taking a cue from this reference and with a view to establishing the truth beyond doubt I had an opportunity of interacting with Shri Jai Singh in detail along with others at Jalandhar (where he is based) at the time of addressing the district level conference in November, 2007 (forenoon). Shri Jai Singh had explained his point of view with regard to bonded labourers in Punjab as under:-

Agriculture:

- Agricultural labour or farm hand is called 'Seri' in the Malwa region, 'Athri' in Doaba region and 'Sep' in Gurdaspur district.
- There are more than 5,00,000 'Seri' in the State. They have the status of permanent attached labourers implying that they are attached to the household and farm of the agricultural farmer round the clock. Agriculture being a scheduled employment minimum wages have been fixed for all agricultural workers including Seris. The Minimum Wages Act provides for spread over, overtime and weekly off. Minimum Wages Act permits payment of wages in cash and kind but does not specify quantity and quality of food with the desired nutritive value (kilo calorie). Besides, computation of cash value of wages paid in kind is fraught with problems. The Seris do not receive any overtime for work beyond 8 hours (they work day and night without any spread over). They do not get any wage for their labour and work on account of the advance obtained by them. Living in the same village they cannot go to their home for several days. They can only leave after repaying their bonded debt. In addition to denial of weekly off, spread over and OT, no attention whatsoever has been paid to occupational health and safety of Seris. With a view to verifying the veracity of these complaints/allegations by Shri Jai Singh, I sought the opinion of

a few experts on the subject. I also referred to the report on survey of bonded labour in Punjab prepared by Dr. Manjit Singh, Coordinator, Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh. The year when the Government of Punjab entrusted the survey to Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh is not explicit from the text of the report but there are certain striking characteristics of rural labour (including agricultural labour or Seri) in Punjab which have come out prominently from the report.

Characteristics of rural labour (including agricultural labour) in Punjab:

- 90% of 898 households surveyed are attached labourers.
- However, in Jalandhar, there is hardly any local attached labour whereas in Bhatinda large number of local labourers are working as attached labourers.
- Migrant attached labourers in Jalandhar are working in the range of Rs. 600-1600/- per month depending on the skill and age of the worker.
- Some of them are supplied by labour supplying agencies which maintain a proper record of each and every labourer.
- Local attached labourers in Bhatinda are still trapped into the old Seri System which stands abolished under Bonded Labour System (Abolition) Act.
- There is not a single attached agricultural labourer who was not under debt.
- An attached agricultural labourer would take the entire amount of annual wage in advance over and above the amount of debt which he has to pay to his previous employer before he could join the new one.

- The amount of debt advance ranged from Rs. 20,000/- to Rs. 40,000/-.
- They had to start at an early age at the will of their parents who thought of getting rid of their perpetual state of debt bondage.
- Their experience as grown up labourers shows that it is not easy to come out of the debt trap.
- During the last 50 years of work they were not paid any regular wages and the debt amount increased by 87% over the original amount of debt advance.
- The accounts are maintained by the employers and being illiterate the labourers cannot remember the amount advanced to them.
- It is a hopeless situation of debt trap and the labourers have lost all hopes to come out of this burden of perpetual state of indebtedness.
- The workers are not free to change their employer unless they arrange cash to clear the outstanding debt.
- The only hope of liquidation of debt is the subsequent employer.
- The chain of debt keeps on extending over to the worker's whole life.
- There is a lot of difference between wages promised, wages actually earned and wages actually paid.
- Most of these labourers fall under the definition of bonded labour system.
- The survey team found that there were 4 such labourers in Bhatinda who had to sell their house in order to clear their huge amount of debt.

- In 2 cases houses of attached labourers were attached and in one case a buffalo was attached to recover debt which is a clear violation of the Code of Civil Procedure, 1908.
- The farmers treat attached labourers as day and night labourers and consequently if any labourer is absent from work he is fined at double the rate of normal wage.
- Attached labourers are not being given any paid leave.
- Even in case of sickness, a labourer has not only to bear the burden of all medical expenses from his own pocket he is also required to pay fine for all those days for which he has remained absent from work.
- Labourers have been physically assaulted by the landlords and have been coerced to perform illegal acts such as stealing government wood.
- An attached labourer was reportedly not allowed to attend funeral of his relative.
- One of the labourers was driven to desperation and attempted suicide.
- On the basis of assessment made by the survey team most of the attached agricultural labourers often fall into the trap of debt bondage and nearly 75% of them hail from a single caste named Mazabi Sikh.
- Bondage is primarily perpetuated through heavy advance of debt on which usurious compound rate of interest ranging from 24% to 60% is charged.
- Once indebted it is next to impossible for an attached agricultural labourer to come out of the debt trap; most of them are born with debt and they die in debt.

- The survey team came across 4 labourers who met with accidents while working in the field.
- Two of them inhaled insecticide/pesticide while spraying on the crop.
- Two others got serious physical injuries – one hurt his backbone when he fell down on the electric pole and the other fractured his leg while repairing a tubewell inside the well.
- In none of these 4 cases any workman's compensation was paid.
- The brother of the labourer who died is now working in his place to clear the debt.
- Children of the age 8-10 are also engaged to work with the same employer where the children's parents have also been engaged so that some relief from the debt is secured.
- They are promised Rs. 2000-Rs. 4000/- per annum as wage which they hardly receive as wage is adjusted against the compound interest of the preexisting heavy debt accumulated against their parents.
- 73.5% of attached labourers belonged to SC and 5.1% of ST.
- 4.23% were working children below the age of 14 years.
- In rural areas there is no fixed schedule with definite daily working hours.
- The working day is stretched as per the demand of the labour, contingencies of the very nature of the labour process, timing of supply of electricity used for irrigation etc.
- Only 2% workers fall within the category of the statutory limit of 8 hours.

- Attached labourers work for much longer hours compared to casual labourers.
- Of the total number of attached labourers 79% work for more than 15 hours a day.
- Of this 55% labourers are such who daily work for more than 18 hours which itself is indicative of the element of bondage involved in the attachment.
- Among the casual labourers, on the other hand, only 7.6% labourers daily worked for more than 18 hours.
- As far as earnings are concerned 17% labourers earned not more than Rs. 12000/- a year. They are the most poorly paid agricultural labourers.
- 64.37% of the workers earn between Rs. 12000/- to Rs. 18000/- per annum.
- Only 18.6% of the workers earn beyond Rs. 18000/- per annum.
- These labourers also work for 16-18 hours a day. If overtime which is required to be paid at double the rate of normal wages (and which is not paid) is to be taken into account it is easy to reach the conclusion that statutory minimum wages are not being paid.
- The survey has come to the conclusion that if the working hours are adjudicated to 8 hours, the respective deficit in the payment of minimum wage comes between – Rs. 635/- pm and Rs. 461/- pm.

Indebtedness among agricultural labourers:

- Out of total 898 households 70.8% were found free of debt.

- Among the 262 indebted households, only 11% were such whose debt amount was upto Rs. 5000/-.
- Of these 8.8% of the indebted households were such whose debt amount was in the range of Rs. 5-10,000/-.
- The danger mark in the debt trap is Rs. 10-20000/- and 24% of 292 indebted households was in this category.
- For 30% of 292 indebted households the debt amount has piled up to more than Rs. 50,000/-.
- The survey has come to a conclusion that it is almost impossible to come out of this situation of debt trap.
- 88.5% are indebted to non-institutional sources i.e. to money lenders/employer.
- Such debt impinges heavily on the freedom of labourers and pushes them to a bonded status.
- They i.e. money lender/employer tend to extract either unpaid labour or exorbitant rate of interest.
- Marriage and medical treatment account for 70% of the households who incur the debt; only 5.6% households used debt for productive purposes.

Right and predicament of workers in the brick kilns:

There are 2 reports on this. One is 'bonded labour in Punjab' – a study of Amritsar, Ludhiana and Patiala districts carried out by the Centre for Research in Rural and Industrial Development (CRRID), Chandigarh and the other is 'A report on survey of bonded labour in Punjab' by Dr. Manjit Singh, Coordinator, Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh. There are a few commonalities in terms of findings but the differences are more glaring.

Findings on the basis of the study conducted by CRRID:

- On an average a brick kiln employs 100 workers registered on the muster rolls in different operations in brick making. There are about 2500 brick kilns in Punjab.
- The number of inter-state migrant labourers working in the brick kilns in Punjab is 2 lakh (approximately).
- Of the total number of labourers surveyed in brick kilns 76.59% belongs to Punjab, 12.47% came from U.P., 8.73% from Rajasthan, 1.66% from Bihar and 0.10% from Haryana.
- Over 90% belong to SC community.
- Over 90% are illiterate.
- Over 50% were in 10-15 age group and over 45% to 50% were in 15-20 age group.
- Educational level of workers employed in brick kilns is quite low. Over 80% of them are totally illiterate with a low level of awareness.
- Over 80% of the workers are married.
- About 60% of the workers started working when they were below 15 years. Brick kilns constitute a hazardous category of occupation where employment of children has been prohibited.
- Majority of the workers were working for more than 15 years with the present employer which implies that they must have been reasonably happy with the working conditions.
- Shelter to migrant labourers engaged in brick kilns is largely provided by the employers free of rent even though the housing conditions are generally very poor.

- Majority of the labourers did not have toilet facility in the accommodation provided by the employer.
- Majority of them use electricity for lighting, drink water from the hand pumps, use wood as fuel for cooking and ease themselves in the open.
- They go to private practitioners in case of any illness and pay from their own pocket for treatment.
- While 27% of the workers had taken advance from the employers, the amount ranging between Rs. 10,000/- to Rs. 15,000/- in case of 25% of the workers the advance amount ranged between Rs. 5000/- to Rs. 9000/-, in case of 48% it ranged between Rs. 2000/- to Rs. 4000/- and in case of 17% it was less than Rs. 2000/-.
- There have been instances where some brick kiln workers have run away without settling the huge advances given to them. Being migrants it becomes difficult to follow them and bring them back to work.
- The advances are taken to meet consumption needs, marriage in the family, illness, paying back debt (incurred from the village moneylender prior to their proceeding to work in brick kilns in Punjab). In addition to the advances, the workers keep on borrowing small amounts from their employers whenever they are in need once, twice or even more than twice.
- The employers do not charge any interest for the advances given to the labourers at the time of joining. The small amount of advance given to the labourers during the season is also interest free. However, employers may charge interest ranging between 18% to 30% over and above a specified amount such as more than Rs. 2000/-.

- Irrespective of the adverse working conditions the average earnings of a brick kiln worker are much higher than those of agricultural labourers. The wage structure for these workers is as under:-
 - 5.54% less than Rs. 2000/-;
 - 9% between Rs. 2000 – Rs. 2500/-;
 - 11.9% between Rs. 2500 – Rs. 3000/-;
 - 47.65% between Rs. 3000 – Rs. 4000/-;
 - 27% above Rs. 4000/-.
- The working hours range from 10 to 14 hours. The workers avail more than 4 holidays in a month.
- The brick kiln season commences in September and goes upto June. When the kilns remain closed for a few months the labourers have to look for work somewhere else. Most of them work as casual daily wage workers in farm or non farm activities.
- The workers get below minimum wages during off season.
- Certain categories of workers such as patheras work and move with their family members including women and children.
- The treatment of the workers by the employer concerned by and large was reported to be good.

An overall assessment of the situation in brick kilns as reported by the CRRID survey team:

- All labourers take advance and mortgage their labour power to work for their employers. The former voluntarily agree to work for the latter after taking advance.
- As they start working they keep on borrowing during the working season to meet various requirements.
- The system is mutually advantageous for both the parties.

- For the labourers there is no other easy source of finance available even at a higher rate of interest.
- For the farmers and the brick kiln owners they get labour for the entire season.
- There is no system of usury in the State under which the debtor or his descendant or dependant is forced to work for the creditor without minimum wages notified by the State Government or without any wages whatsoever in order to extinguish the debt.
- According to the report brought out by CRRID not a single labourer complained about denial of wages or use of force to get work or being in captivity. Labourers are free to join alternative employment if the treatment by the employer is found to be not good but only after settling the accounts of the present employer.
- Some labourers had run away without repaying the huge advances taken from the employer. The latter had pursued to bring them back to work and settle the accounts. This sometimes is highlighted as a case of bondage on account of use of force to extract work or to settle accounts.
- According to the report and over a period of time following changes have come in employment of agricultural labourers:-
 - the number of labourers working in the farm sector as attached labour (naukers) has come down substantially;
 - labourers prefer to work in non agricultural enterprises;
 - the youth prefer to work in wage employment and not as attached labourers;
 - majority of labourers working against advance especially in agriculture are of higher age;

- farmers have started employing labourers on wages especially the migrant labour which costs much less compared to local labour;
- migrant labourers are much better off socially as well as economically on account of the following reasons:-
 - many of them leave their native state due to maltreatment on the basis of caste system; they want a breather from the caste ridden suffocating the whole environment in the village;
 - they earn better wages in Punjab;
 - they were working and living in worse conditions at their native places;
 - they clear off the debt incurred by them at their native place with the help of higher earnings in Punjab.

CRRID, Chandigarh has carried out similar studies in respect of Ludhiana and Patiala districts and the observations are almost identical with those in Amritsar study except that in Patiala it was found that Siri System or System of attached agricultural labour has almost vanished and has been replaced by a system of regular wage based work.

In sharp contrast are the observations contained in another report captioned, 'Survey of bonded labour in Punjab' prepared by Dr. Manjit Singh, Coordinator and Shri Joginder Lal, Research Officer, Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh. The report has covered operations in both brick kilns and agriculture and has also brought out the characteristic features of both. The summary of the findings is placed as under:-

Brick Kilns:

- | | | |
|---|-------------------------------|---|
| I | <u>Period of work:</u> | October (after Diwali) and end of June. |
|---|-------------------------------|---|

ii **Process:**

- some trusted old labourers are elevated to the rank of jamadars;
- the latter act as mediators between the brick kiln owners and labourers who are already in their villages of origin during the rainy season;
- in the first round, the jamadars approach their known labourers and distribute small amounts of cash in return for the promise from the labourers to work through him for the particular brick kiln owner;
- the promise is extracted on payment of a token money which may vary between Rs. 1000/- to Rs. 5000/- per household;
- the jamadars take big cash advances (which may range between Rs. 1 lakh to Rs. 2 lakh) once again in October, proceed to the same village which they had visited earlier during the rainy season and advance this cash to different labourers who had given a word earlier to the said jamadar during the rainy season;
- the labourers are already indebted to various persons or shopkeepers from whom they would like to get relief by taking advance debt from the jamadar;
- this advance which may range between Rs. 10,000/- to Rs. 15,000/- per household is used towards clearing the pending debt as well as towards bearing the cost of journey for going to the worksite from their place of residence at different places;

- the following operations are carried out after the labourers have reached the site of the brick kiln:-
 - preparation of the ground;
 - making water channels from the source of water to the brick moulding floor (for which they are not paid);
 - brick moulding requires a lot of sun and since there is very little sun in winter, brick moulding slowly comes to a grinding halt (as bricks do not dry up for days together);
 - brick kilns stop from the middle of December to middle of February;
 - during these 2 months already indebted labourers do not have anything with them for survival and they depend on the cash advanced to them by the employer every fortnight;
 - the work piles up from the middle of February and continues till the end of June;
 - the labourers do not know at what wage rates they would be paid at the end of the season;
 - fixation of wage rates (minimum wage rate fixed by the State Government notwithstanding) depends on the outcome of negotiations between trade unions, administration, employers and labour department;
 - during this period till wage rates are finally determined the labourers are paid no wages but

are given advance fortnightly for the maintenance of family members;

- brick kiln industry is a seasonal one and the labourers work like bonded tenants to the landlords;
- the contract of the labourers is not per month but per season and payment of wages is made on the basis of bricks moulded, removed or placed in oven by the workers;
- it is akin to the contract of a tenant with the landlord where by they share the produce at the end of the harvesting of the crop;

Living conditions:

- living conditions of workers are extremely unsatisfactory;
- the workers do not have access to electricity in their dwelling;
- they live in a temporary hutment with a very low roof and each family is given a small tenement of the size 10'X12' (no rent is charged for these tenements by the employers);
- brick kiln labourers mostly being migrants do not continuously stay at one place and cannot send their children to regular schools whose timings do not tally with the timing of busy and lean period of brick kilns; thus children of brick kiln workers remain the worst victims of educational deprivation;
- barring Nikasiwala workers, no workers from any other category received even the statutory minimum wage fixed by the State;

- when the piece rate wages are commuted to 8 hours a day this falls short of minimum wage;
- the very nature of labour process of the industry is such that the workers are not ready to work without taking advance wage;
- once the advance wages are taken for more than 2 months, the wage and work contract slip into the purview of BLS(A) Act;
- there is, however, no bondage of the type where by work is taken forcibly from the workers even against their wish;
- out of total 83 brick kilns there was only one with public water supply;
- more than 87% are still dependent on the hand pump for drinking water;
- out of total 249 brick kilns surveyed, 2/3rd had access to medical aid in a radius of 2 kms.

Origin of workers:

- nearly 50% of the workers hail from U.P., 21.6% from Rajasthan and only 23% from Punjab;
- nearly 50% of the Patheras belonged to Punjab;
- most of the firing workers (jalaiwala) are from U.P. while Nikasiwala workers are from Rajasthan;
- Bharaiwala workers, beldar and drivers were local in origin.

Employment Working Conditions and Wages:

- out of a total 3550 family members surveyed 36.5% were gainfully employed and 19.4% were rendered unemployed for want of work;
- 36% of the family members were earners while 64% were dependent on them;
- the dependants included children, students, handicapped and the elderly etc.;
- 16% were women workers among the earners;
- 62% were members of SC/ST;
- 9% worked upto 8 hrs every day while 91% were working for more than 8 hours;
- 64.5% workers worked daily for 13-15 hrs, 3.13% for 16-18 hrs and 1.08% for more than 18 hrs;
- those labourers who are working as Nikasiwalas, Patheras and Beldars are receiving wages at a higher wage rate than the minimum wage fixed by the State Labour Department;
- in case of bharaiwala, jalaiwala and drivers the wage rate received is slightly lower than the notified minimum wage;
- on the whole, as far as wage rates in brick kiln industry are concerned, workers do get minimum wage; this is on account of trade unions of brick kiln workers.
- Having said this is one breath, the report contradicts it is another breath when it says:-
 - if actual monthly wages earned by the workers who extend their working day to 11-12 hours are to be calculated and then to be adjusted to the normal 8 hour daily work, no worker in the brick kiln industry would

receive wages even upto what is prescribed for an unskilled labourer;

- Pather workers who constitute the major chunk of the brick kiln work force are not paid even half of the minimum wage of an unskilled labourer;
- even firing workers (jalaiwala) whose job is the harshest are under paid;
- out of the total 3550 workers 94% told the survey team that they bear their own medical expenses in case of need for any medical treatment;
- in response to a question as to whether workers can quit their job at their own will if they find some better alternative job, 17.45% responded affirmatively and remaining 82.55% told that they are not free to quit their employer at their own will;
- 83% of the workers told that they have to forego part of their earnings that are still due with the employer if they still insist to quit despite the refusal of the employer;
- throughout the working season which is spread over 7-8 months in a year no wages are paid to the workers and they live by the cash advance extended by the employer every fortnight;
- the full and final earnings are settled only at the end of each season;
- 17.45% workers did contribute unpaid labour (making water channels from the source of water to the brick moulding floor);

- Workers do not know and are not able to recollect the amount of loan/debt advanced to them at the time of recruitment;
- Statewise breakup of the number of indebted workers shows that most indebted workers are from Rajasthan followed by Chattisgarh, Punjab and U.P.;
- In both Rajasthan and Chattisgarh prospects of good agriculture are bleak and workers seem to be hard pressed for survival by incurring debt in their respective villages.
- 75% of indebted workers are members of SC community and 23% are members of Other Backward Classes (OBC).

Characteristics of rural and agricultural labour in Punjab as brought out in the study conducted by Ambedkar Centre, Department of Sociology, Punjab University:

- 90% of 898 households surveyed are attached labourers;
- However, in Jalandhar there is hardly any local attached labourer whereas in Bhatinda large number of local labourers are working as attached labourers;
- Migrant attached labourers in Jalandhar are working in the range of Rs. 600/- to Rs. 1600/- per month depending on the skill and age of the worker;
- Some of them are supplied by labour supplying agencies that maintain a proper record of each and every labourer;
- Local attached labourers in Bhatinda are still trapped in to the old Siri System which is a variant of bonded labour and which stands abolished under BLS(A) Act, 1976;

- There is not a single attached agricultural labourer who was or who has never been under debt;
- An attached agricultural labourer would take the entire amount of annual wage in advance over and above the amount of debt which he has to pay to his previous employer before he could join the new one;
- The amount of debt advance ranged from Rs. 20000/- to Rs. 40000/-;
- They had to start at an early age at the will of their parents who thought of getting rid of their perpetual state of debt bondage;
- Their experience as grown up labourers shows that it is not easy to come out of debt trap;
- During the last 50 years of work they were not paid any regular wages and the debt amount increased by 87% over the original amount of debt advance;
- The accounts are maintained by the employers and being illiterate the labourers cannot remember the amount advanced to them;
- It is a hopeless situation of debt trap and the labourers have lost all hopes to come out of this burden of perpetual state of indebtedness;
- The workers are not free to change their employer unless they arrange cash to clear the outstanding debt;
- The only hope of liquidation of debt is the subsequent employer;
- The chain of debt keeps on extending over to the worker's whole life;

- There is a lot of difference between wages promised, 'wages actually earned and wages actually paid';
- Most of these labourers fall under the definition of bonded labour system;
- The survey team found that there were 4 such labourers in Bhatinda who had to sell their house in order to clear their huge amount of debt;
- In 2 cases houses of attached labourers were attached and in one case a buffalo was attached to recover debt which is a clear violation of the Provisions of Code of Civil Procedure, 1908;
- The farmers treat attached labourers as day and night labourers and consequently if any labourer is found absent from work, he is fined at double the rate of normal wage;
- It has also been observed that attached labourers are not being given any paid leave;
- Even in case of sickness, a labourer has not only to bear the burden of all medical expenses from his own pocket he is also required to pay fine for all those days for which he has remained absent from work;
- Labourers have been physically assaulted by the landlords and have been coerced to perform illegal acts such as stealing government wood;
- There was one labourer who was not allowed to attend funeral of his relative;
- One of such labourers was driven to desperation and attempted suicide;

- On the basis of assessment made by the survey team most (75%) of the attached agricultural labourers who have fallen into the trap of debt bondage hail from a single caste named Mazhabi Sikh;
- Bondage is perpetuated primarily through heavy advance of debt on which usurious compound rate of interest ranging from 24% to 60% is charged;
- Once indebted it is difficult to come out of the debt trap; these labourers, it is said, are born with debt and die with debt;
- The survey team came across 4 labourers who met with accidents while working in the field;
- Two of them inhaled insecticide/pesticide while spraying on the crop;
- Two others got serious physical injuries – one hurt his backbone when he fell down from an electric pole and the other fractured his leg while repairing a tube well;
- All these four cases come within the purview of accidents in course of employment and arising out of employment as defined in Workmen's Compensation Act, 1923;
- And yet, in none of these 4 cases either the accident was reported or the compensation was paid;
- The brother of one of the labourers who died is now working in his place to clear the debt;
- Children of the age 8-10 are also engaged in work with the same employer where their father has been engaged so that some relief from the debt is secured;

- They are promised Rs. 2000 – Rs. 4000 as wage per annum which they hardly receive as wage is adjusted against the compound interest of the pre-existing heavy debt accumulated against their parents;
- There are still 1 lakh attached labourers in Punjab and not less than 1/3rd are migrants;
- 73.5% of attached labourers belong to SC and 5.1% to ST community;
- 4.23% were among working children below age of 14 years;
- In rural areas there is no fixed schedule with a definite daily working hours;
- The working day is stretched as per the exigencies of the situation;
- Half the attached labourers work for more than 18 hours a day; 79% work for more than 15 hrs a day and only 2% workers fall within the category of statutory limit of 8 hours;
- 17% earned not more than Rs. 12000/- annually; only 18.6% labourers have an annual income beyond Rs. 18000/- per annum.

Both Centre for Research in Rural and Industrial Development (CRRID) and Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh are agencies of repute and standing with a long track record of credible and creditable social work. Both have conducted a survey of bonded labour in Punjab around the same time. While the universe of survey in the latter is 249 brick kilns in Bhatinda and Jalandhar, rural and agricultural labour in Punjab is the commonality in domain of both the surveys. The whole of Punjab represents a major portion of vast Indo Gangetic Plain which is highly irrigated, fertile with a high production and productivity of paddy, wheat,

other cereals and pulses. Migrant workers in both agriculture and brick kilns constitute major percentage of the total workforce. They are being recruited with payment of advance. Despite these established facts and commonalities the differences in terms of findings of both the surveys are striking as would be evident from the following:-

Findings emanating from the survey conducted by CRRID	Findings emanating from the survey conducted by Ambedkar Centre, Department of Sociology, Punjab University
1. Majority of the workers earn more than minimum wage;	1. If actual monthly wages earned by the workers who extend their working day to 11-12 hours are to be calculated and then to be adjusted to the normal 8 hours daily work no worker in the brick kiln industry would receive wages even upto what is prescribed for an unskilled labourer;
2. The treatment by the employer towards their labourers has, by and large, been reported to be good;	2. Labourers have been physically assaulted by the landlords and have been coerced to perform illegal acts. There are umpteen number of cases of harassment of the workers;
4. There is no mention about unpaid labour;	4. 17.45% workers did contribute unpaid labour (beggar) which is forced labour prohibited under Article 23 of the Constitution;
5. Labourers are free to join alternative employment after settling the accounts of the	5. In response to a question as to whether workers can quit their job at their own will, if they find some

<p>present employer if the treatment by the employer is not good;</p>	<p>better alternative job 82.55% told that they are not free to quit their employer at their own will;</p>
<p>6. Some of the trade union office bearers reportedly force the owners for favour by threatening to disrupt the work;</p>	<p>6. wherever workers are getting minimum wages it is on account of existence of trade unions of brick kiln workers;</p>
<p>7. Migrant workers earn much better wages in Punjab; they clear off the debt incurred by them at their native places with the help of higher earnings in Punjab. They were working and living in much worse conditions at their native places;</p>	<p>7. No such comparison has been made but it has been clearly stated that living conditions of workers are highly unsatisfactory. They live in a temporary hutment with a very low roof and each family is given a small tenement of the size 10'X12';</p>
<p>8. Majority of the migrant workers use electricity for lighting;</p>	<p>8. The migrant workers do not have any access to electricity in their dwelling;</p>
<p>9. Working hours range from 10 to 14 hours;</p>	<p>9. 64.5% workers worked daily for 13-15 hours, 3.13% for 16-18 hours and 1.08% for more than 18 hours.</p>
<p>10. One holiday is given to agricultural labourers in a month. In case of brick kilns, however, labourers usually avail more than 4 holidays in a month.</p>	<p>10. Even in case of sickness a labourer has not only to bear the burden of all medical expenses from his own pocket, he is also required to pay fine for all those days for which he has remained absent from work.</p>

11. No system of usury exists in the State under which debtor or his descendant or dependent are forced to work for the creditor without reasonable or with no wages in order to extinguish the debt.

11. The very nature labour process in the brick kiln industry is such that the workers are not ready to work without taking advance wages. Once the advance wages are taken for more than 2 months the wage and work contract slip into the purview of BLS(A) Act.

There is, however, no bondage of the type whereby work is taken forcibly from the workers against their wish.

In case of rural and agricultural labourers and in particular, the attached labourers in agriculture the experience shows that it is not easy to come out of debt trap.

During the last 50 years of work they were not paid any regular wages and the debt amount increased by 87% over the original amount of debt advance. The accounts are maintained by employers and being illiterate the labourers cannot remember the amount advanced to them. It is a hopeless situation of debt trap and the labourers have lost all hopes to come out of this burden of perpetual state of indebtedness.

My own comments on both the surveys:

While the Ambedkar Centre, Department of Sociology, Punjab University, Chandigarh is far more explicit than CRRID in its observations and assessment and is also far more detailed in terms of study of the work/labour process in brick kilns, both have not come to terms as far as understanding, interpretation and conclusion about status of a worker (be it in brick kiln or in agriculture) as bonded labourer within the meaning of Section 2(g) of BLS(A) Act are concerned.

Bonded Labour System is an unequal exchange relationship between a creditor and a debtor. In a situation where the debtor turns up to a creditor for loan/debt/advance for ceremonial and consumption needs, the loan/debt/advance has a price tag and the debtor mortgages his services or services of any or all of his family members to the creditor for a specified or an unspecified period and certain consequences follow, one of those consequences is enough to make the debtor a bonded labourer. The consequences, stated in simple language, are:-

- denial of wages or denial of minimum wages fixed and notified by the appropriate government (where no minimum wages have been fixed/notified, wages for same or similar nature of work which are paid to workers in the same locality);
- denial of freedom of choice of the employer or choice of alternative avenues of employment;
- denial of the right to free movement as free citizen of a free country in any part of the territory of India;
- denial of the right to appropriate or sell at market value any of his property or product of his labour or labour of a member of his family or any person dependent on him.

In this particular case the following have been proved beyond doubt:-

- I There is a creditor and debtor relationship;
- II The debtor has mortgaged his services to the creditor for a specified period;
- III The following consequences have followed the creditor – debtor relationship :-
 - denial of minimum wage;
 - denial of freedom of choice of employer or choice of alternative avenues of employment.

Since it is enough, if one of the consequences is proved, to arrive at the conclusion about the status of an individual worker being a bonded labourer, both CRRID and Ambekdar Centre should, on the basis of available evidence, come to specific conclusions about the status of workers in agriculture and brick kilns. They have clearly failed to do so. Whatever conclusions they have reached are not convincing on the basis of facts and materials on record.

The reports on the survey conducted by CRRID and Ambekdar Centre were submitted to Government of Punjab about 2 years ago (no date and time have been mentioned in either of the reports) according to the representatives of these 2 agencies with whom I had opportunity to interact at Punjab Bhawan at 5.30 PM on 19.3.2008. I had also the opportunity of interacting with Mr. Rachpal Malhotra, Director, CRRID in his office for about an hour. I would on the basis of these interactions suggest the following action for the Government of Punjab:-

- Organize a meeting with representatives of both the agencies for a thread bare discussion on the findings of both the surveys.
- Arrive at specific conclusions about the status of persons working in agriculture and brick kilns coming within the purview of Section 2(g) of BLS(A) Act.

- Take executive action for their release, repatriation and rehabilitation if their status conforms to the definition of bonded labour system as in Section 2(g) and if they so wish to be repatriated and rehabilitated at their originating point.

Role of Vigilance Committees in identification of bonded labour system:

Vigilance Committees are required to be constituted u/s 13 of BLS (A) Act, reconstituted after expiry of their term under Rule 3 and Rule 4 of BLS(A) Rules and reactivated in terms of discharge of their mandate as under Section 14 of BLS(A) Act. Mere holding of meetings of VCs at the district and sub divisional levels is not enough. What is more important is that members either individually or collectively must go out to the field, identify pockets which are prone to debt bondage (dry, drought prone pockets as also pockets prone to migration) and conduct surveys as is expected of them u/s 14 of BLS(A) Act to arrive at conclusions which are just, fair, rational and convincing.

This regrettably does not happen; it has not happened so far in Punjab. As Union Labour Secretary (1995-2000) I had the occasion to express my unhappiness while addressing in December, 1996 Secretaries of State Governments concerned with identification, release and rehabilitation of bonded labourers in the following words:-

'Regrettably, what is not clearly forthcoming from the State Governments is whether the members of the Vigilance Committees have been able to undertake field visits, whether they have been able to conduct field enquiries and whether they have been able to arrive at certain conclusions regarding a few categories of people whose working and living conditions under abject poverty and economic deprivation along with denial of the basic right of human freedom would bring them within the purview of bonded labour system.'

As far as Punjab is concerned Vigilance Committees at the district and sub divisional level are reported to have been constituted u/s 13 of BLS(A) Act. They have completed their life of 2 years long back but the process of reconstitution has started only recently.

At the meeting of district level officials and non officials (NGOs, trade unions etc.) held at Jalandhar on 18.3.2008, it transpired that :-

- VCs have not been constituted properly in conformity with guidelines of Government of India and provisions of the law i.e. BLS (A) Act;
- The VCs comprise mostly of political workers who do not have any understanding of the provisions of the law and the procedure established by law, far less any empathy and sensitivity towards bonded labourers who constitute the poorest of the poor and weakest of the weak;
- No programme for orientation and training of the members of Vigilance Committees has been drawn up and conducted so far;
- During 32 years after enactment of the law not a single campaign for generating awareness of both landlords and labourers about provisions of the Constitution, those of the law and judgements of the Supreme Court has been conducted. Consequently a lot of doubts and disputes, misgivings and reservations persist on the law and procedure established by law.
- In the initial years after the Ordinance was promulgated (25.10.75) which was later replaced by the law (9.2.76), DMs and SPs used to conduct joint raids of establishments and release bonded labourers from captivity. Today more than what happened in yesteryears it is necessary to organize such raids at sensitive pockets to unearth bonded labour system. For this

proper orientation and training of police and administrative officials through workshops at all levels is imperative.

- State and District Legal Aid Authorities have been constituted. They are meant for launching a dynamic and activist legal service programme which can help in building up participatory organizations of the rural poor what Prof. Upendra Baxi calls PORPS. Individually the poor lack material means and often stay poor, to endure long drawn out litigation or other proceedings entailing recourse to law. Large groups can, however, aggregate more financial resources and also provide greater confidence and security against threats of retaliation. Moreover, by seeking to enforce their legal rights through group action people are likely to gain access to legal information and to develop capacities to use law. As Shri P.N. Bhagwati, ex CJI has put it so succinctly:-

'we must, therefore, help the poor to build up PORPS and prepare them for confrontation against unjust practices, unjust rules and unjust institutions and help them to fight exploitation and injustice and work for basic institutional changes in the social and economic forces which tend to make poverty self perpetuating'.

- Panchayats at the village, block and district level have also a role and responsibility in disseminating central messages relating to prevention of debt bondage. They have miserably failed in visualizing the origin of social evils like bonded labour and child labour and the contributing factors thereto and creating a climate which will counteract these forces.

The following 4 cases registered under BLS(A) Act in Jalandhar district were examined by me:-

Case No. 1:

FIR No. 256-99 C/o Pendu Mazdoor Union, Nakodar Vs. Surinder Mohan Singh S/o Darshan Singh, Village Parjian Kalan, Tehsil Shahkot District Jalandhar for releasing 65 workers (Section 16 and 17 of BLS(A) Act, 1976 and Section 342/354/323 IPC). The case was decided by SDM, Nakodar on 21.3.2005 where the accused has been acquitted.

Case No. 2:

FIR No. 189/06-12-98 C/o Ram Lubaya S/o Swaran Ram Adharmi Resident of Mehta Colony, Sadar Phagwara Vs. Mohinder Singh Khurana brothers, BKO Sarhali, Tehsil Phillaur for releasing 2 workers (Section 16 and 17 of BLS(A) Act and Section 3(6) SC and ST (Prevention of Atrocities) Act, 1989. The case was decided by Judicial Magistrate, 1st Class on 28.11.2005 and the accused was acquitted.

Case No. 3:

FIR No. 463-01 C/o Karamjit Singh S/o Harbhajan Singh, resident of village and P.O. Salema, Tahasil Shahkot, District Jalandhar, Sukhdev Singh S/o Gulzari Lal of Bandala Vs. Mohinder Singh Jat Sikh, resident of Mandiala (Section 16 and 17 of BLS(A) Act). The case was decided by Judicial Magistrate, 1st Class, Nakodar on 1.10.2003 in which the accused have been acquitted.

Case No. 4:

FIR No. 55/18-03-99 C/o Dhanbir Singh S/o Simru Singh, resident of village Banti Khera, Tehsil Khumara, district Muzaffarnagar Vs. Nirmal Singh owner of Johal Bricks, Taiwan (Section 16 and 17 of BLS(A) Act and Section 3(6) of SC and ST (Prevention of Atrocities) Act, Nirmal Singh, owner of the brick kiln had expired and, therefore, the case was filed.

On examination of these cases the following deficiencies were noticed in the manner in which they have been processed.

- Labour is not a commodity – so runs the Philadelphia Declaration of 1944. No employer can indulge in commodification of labour. When labourers are being recruited for work, it is the bounden duty and obligation of the employer to provide them with work. No employer can afford to make the workers sit idle on the ground that no earth was available for starting the operations in a brick kiln; even if the workers are made to sit idle, it is the moral and ethical duty and obligation of the employer to pay them wages to enable them to keep their body and soul together.
- The employer cannot also make the workers wait indefinitely to receive their wages. The employer cannot take a plea to withhold the wages till such time when the labourers will be ready to leave the worksite.
- Every worker has the freedom to work or not to work for a particular employer. If workers do not feel quite at home at the work place due to non payment of wages as also on account of the callous and insensitive handling of workers as human beings and they express a desire to leave the employer such a desire must be respected.
- Every worker is primarily a human being and is entitled to be treated with dignity, decency, equality and freedom. Use of physical force coupled with hurling indignities on the person of any worker is reprehensible and revolting to civilized human conscience and violative of human rights.
- Inter-State migrant workmen (from U.P. and Bihar) who have been recruited to work in brick kilns of Punjab will not be quite at home in an alien environment to ventilate their grievances. They will generally be shy, introvert, withdrawn, whom Rabindranath Tagore describes as 'dumb, mute and expressionless' sections of humanity. Relying on statements of

lower echelons of bureaucracy, statements like 'I do not know the labourers nor I can identify them' 'labourers belong to Bihar and U.P. and have not given any complaint in writing' is totally an infructuous and unproductive process and it is a pity that such statements have been relied upon in course of trial of cases.

- Section 21 of BLS(A) Act speaks of summary trial. Such trial warrants that all cases u/s BLS(A) Act be processed with expedition and speed and be disposed off in a manner which is beneficial to those victims of social injustice and exploitation for whom the law has been enacted. This principle which has also been reiterated by the Supreme Court has been completely disregarded when it is found that a bonded labour case has dragged on for 4 years entirely defeating thereby the cardinal principle behind summary trial.
- The accused have been given the benefit of doubt and acquitted while no decisive verdict about status of persons as bonded labourers has been forthcoming. According to the spirit of several judgements of the Supreme Court conviction or acquittal of the accused should not stand on the way of determination of status of persons as bonded labourers; it should not inhibit the process of their release and rehabilitation.
- It may be appropriate to refer to a couple of seminal judgements of the Supreme Court on eradication of bonded labour system and to come to a conclusion as to how all the 4 cases as cited above have been violative of the principles laid down by the apex Court in a number of their judgements. These are:-

I **Denial of minimum wages tantamounts to forced labour:**

'Any factor which deprives a person of the choice of alternatives and compels him to adopt one particular course of action may be

regarded as force. If labour or service is compelled as a result of such force it would be forced labour'.

'the word force must be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leave no choice of alternatives to a person and compel him to provide labour or service even though the remuneration received for it is less than the minimum wage'.

'Article 23 is of the widest amplitude. It covers every possible form of forced labour. It makes no difference whether the person forced to give his labour or service to another is remunerated or not. No one ordinarily and willingly would supply labour or service to another for less than the minimum wage when he/she knows that under the law he/she is entitled to get a minimum wage for the labour or service provided by him.'

'when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he/she is acting under the force of some compulsion which drives him/her to work and, therefore, any such labour/service would constitute forced labour'.

II When forced labour tantamounts to bonded labour system:

- In AIR 1984 Supreme Court 802 W.P. No. 2135 of 1982 Bandhua Mukti Morcha Vs. Union of India and Others the 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 of the State Government on account of the following reasons:-

- it would be extremely difficult, if not impossible, 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 labourers.
-
- '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 a 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.
 - Under Article 141 of the Constitution, the law declared by Supreme Court is to be binding on all Courts within the territory of India.
 - Under Article 144, all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.
 - Despite such clear Constitutional provisions and despite the fact that the apex Court of India has in over 30 judgements

set the pace and tone of interpretation of BLS(A) Act, has given a broad, liberal and expansive interpretation of the law without changing it, despite the fact that the Court of Judicial Magistrate, 1st Class, Jalandhar is a court subordinate to the apex Court, wittingly or unwittingly it has committed flagrant violation of the directions given by the apex Court and principles laid down by the latter.

- As one goes round from Chandigarh to Ludhiana, Ludhiana to Jalandhar and Jalandhar to Amritsar, traverses across the length and breadth of this beautiful Indo Gangetic fertile plain and raises queries, 'what is the status of bonded labour system in your district?' one receives a cold and negative response, 'there is not a single bonded labourer in my district'. If one further quips, 'How do you know?' the response gets reiterated, 'we have not received any complaint from any quarter, far less from the bonded labourers themselves'. If one presses further, 'what is your perception of bondage?' the typical response which comes is as under:-

'if a labourer is not allowed to move around freely and is made to work under surveillance and can be assaulted by the employer at the slightest defence, the labourer is clearly a bonded labourer'.

This shows a pathetic ignorance of the concept of debt bondage as it occurs in BLS(A) Act. This notion of bondage at the level of officers and particularly, the lower echelons of bureaucracy is what they have received from the books of history about chattel slavery or indentured labour of Mauritius, Trinidad and Tobago, Fiji, Madagaskar, Papua New Guinea and so on. Most of them were either not aware of the clear, precise and scientific definition of bonded labour system given in Section 2(g) of BLS(A) Act or were not convinced about the clarity of the said definition or were going by their own notions of

bondage. This rather ambivalent and not a very happy situation is determined partly by their own convenience and path of least resistance and partly by their own social and economic position vis a vis labourers – indigenous or migrant which was the safest from their own stand point.

The stand taken by administration at a few levels reminded me of the film 'Gandhi' directed by Sir Richard Attenborough and what happened at Jalianawallan Bagh on 13th April, 1919 (Baisakhi) the bloodiest day in pre-independent Indian history. Over 379 people were killed in cold blood and over 1200 were grievously injured, their only offence being that they had come out, assembled at one point and were staging a non violent non cooperation struggle against imperialism and colonialism. A Commission of Enquiry (Hunter Commission) was set up with one Indian member for trial of General Reginald Dyer, the Governor of Punjab and the key architect of this massacre. On being asked as to whether injured children and women were offered and provided any medical help as they were dying, General Dyer said, 'None solicited this help; none made any complaint'. The Indian member quipped, 'How do you expect injured children to solicit help from their killers in that horrendous situation?'. There was no response.

General Dyer had demonstrated a callousness, insensitivity and brutality which have a few parallels in world history. The district administration of Punjab needs to draw lessons from history that those who are poor, deprived and disadvantaged and whom Rabindranath Tagore has described as 'dumb, mute and expressionless sections of the humanity' are not in a position to file complaints or solicit help from district administration. They have fatalistically resigned themselves to this situation and are attuned to a culture of silence and dependence. We need to put ourselves in their situation with a reflection or introspection 'this could have happened to us as well'. Taking cognizance of bonded labour system will not be a slur on administration; it will not bring any discredit to administration as well. Instead, if through our action and conduct – both individual and

collective we are able to bring a little cheer and relief to the cheerless faces of mute millions we would have taken our place in history; that will amount to redeeming even one millionth part of our pledge to society and to those unfortunate sections who through their 'blood, sweat and tears' have given us so much beyond our imagination.

Elimination of child labour:

- In response to the questionnaire circulated by me, it has been pointed out that 1,77,268 children are working in Punjab according to the findings of decennial census, 2001. The Department of Labour, Government of Punjab, however, is not in a position to provide the break up between urban and rural areas, boys and girls, children employed in hazardous and non hazardous work.

Comments and Suggestions:

- Statistical data base is a tool Planning.
- Such data are available in the decennial census.
- They should be culled out and disaggregated district-wise.
- The database should be created and stored in the computer in the office of Labour Secretary, Labour Commissioner, Director of Factories and Offices of all other subordinate field formations.
- The database could be used for the following purposes:-
 - there are children of indigenous population; there are also children of migrant workers. Access to free and compulsory education for all children of the age of 6 to 14 years is a fundamental right guaranteed by Article 21A of the Constitution. Article 21A refers to all citizens of India and does not draw any line of distinction between indigenous population and migrant

population. Access to free and compulsory education for all children in 6-14 age group (of indigenous as well as migrant parents) is the direct responsibility of the State Government. It is reported that on an average 2 lakh migrant workers are entering Punjab every year. If we have access to disaggregated data in different age groups belonging to both the categories of population it will be useful to plan 100% enrolment of all working children in 5-8 age group in the schools funded by Sarva Shikshya Abhiyan while the remaining working children in 9-14 age group may be enrolled in special schools which are being run under NCLP. Since instructional lessons will have to be imparted in the mother tongue of the migrant children, such data will facilitate production of teaching learning materials and teacher's training in the said language.

- Such disaggregated data of the working children in rural and urban areas, boys and girls, hazardous and non hazardous work will also be useful in undertaking massive check up of health of children particularly engaged in hazardous work so that corrective and preventive measures could be taken to deal specially with those children whose health has suffered due to exposure to dust, fume, heat, gaseous and toxic substances involved in hazardous work.
- As and when migrant children are found employed in hazardous work, they have to be released and repatriated to their native places and restored to the custody of their parents. The data will also be useful for this purpose.

Administrative infrastructure:

The Department of Labour is responsible for implementation of Child Labour (Prohibition and Regulation) Act, 1986. The following represents the structure of the Labour Department and office of the Labour Commissioner which functions as a Head of the Department under that Department:-

1. Ludhiana	-	3
2. Jalandhar	-	1
3. Amritsar	-	1
4. Hoshiarpur	-	1
5. Gurudaspur (Batala)	-	1
6. Sangrur	-	1
7. Moga	-	1
8. Mohali	-	1
9. Patiala	-	1
10. Ferozpur	-	1
11. Bhatinda	-	1

It has been consistently held that elimination of child labour is not and should not be the responsibility of one particular Ministry or Department or Agency; it has to be the concern of the whole nation. As a matter of fact it is a global concern. At the level of the Ministry of Labour, Government of India, a National Authority on Elimination of Child Labour with Union Labour Minister as the Chairman and Secretaries to Government, Education, Health, Labour, Information and Broadcasting, Home, Law, Rural Development, Women and Child Development, SC and ST Welfare as members. The authority was constituted in the wake of recommendation of a Collector's Conference held in September, 1994 convened by Late Shri P.V. Narasimha Rao, former Prime Minister of India (who incidentally is the first Prime Minister to have given a clarion call on 15th August, 1994 to withdraw 20 lakh workers from hazardous occupations/processes and rehabilitate

them through education, nutrition and skill training). has met a number of times by now, has been transacting useful business and has taken a number of seminal decisions. In Punjab a State Level Monitoring Committee is in existence to monitor, supervise and coordinate all matters pertaining to elimination of child labour. It was constituted in 2001 and is under reconstitution. Since inception it has met only once (November, 2001).

Comments and Suggestions:

- Since the State Level Monitoring Committee is being reconstituted, it may be appropriate to re-designate it as the State Level Authority on Elimination of Child Labour with State Labour Minister as the Chairman and Secretaries of Labour, Health, Education, Rural Development, Women and Child Development, Industry, Law, Home, SC and ST Welfare as members. The Authority should be fully empowered to take all decisions and issue executive directions (as against making recommendations) in the direction of elimination of child labour for strict compliance by all Departments/Agencies. The Authority can also enlist involvement and support of NGOs which are good, reliable and committed in (a) conducting surveys (b) running special schools under NCLPs and (c) providing feedback to enforcement agencies about violation of provisions of law.
- There are a couple of silver linings in the administrative structure of Labour Department in Punjab. There is a single filing system under which the Labour Commissioner who is the Head of the Department submits all files directly to the Principal Secretary, Labour. This saves a lot of time and adds speed to the decision making process. There are a couple of grey areas as well. The Labour Commissioner is also the Director of Factories. This is a formidable combination – a combination in effect of 2 major Heads of Departments (one responsible for conciliation, arbitration and labour law enforcement and another for

enforcement of provisions of Factories Act, 1948) which will make management of time extremely difficult. The following are some of the other grey areas which will inhibit the effectiveness of the State Labour law enforcement machinery:-

- there are a large number of vacancies of Addl. Labour Commissioner, Asstt. Director of Factories, Field Investigators, Labour Officers, Labour Inspectors Gr. I and Gr. II etc.;
- most of the officers (except the Labour Commissioner) have not been provided with any vehicle; this would adversely affect mobility and inspection of establishments;
- considering the increase in a plethora of Labour Laws and increase in attendant responsibilities vis a vis vast geographical area, high density of population with large number of establishments (both in the organized as well as unorganized sector), the existing labour law enforcement machinery is not considered to be adequate;
- the effectiveness is further reduced due to want of basic tools and equipments (fax, personal, telephone, personal computers etc.).

Determination of the age of the children:

With a record of high production and productivity in both agriculture and industry, a high GDP percapita and comparatively less number of families below poverty line, the task of determination of age of the children is not a formidable one as in most other States (except Kerala and Tamil Nadu). There is a system of statutory registration of births and deaths in place (under Births and Deaths Act, 1969) and a

good number of children (17,11,031 upto January, 2008) are being looked after in terms of health and nutrition through anganawadis under ICDS. There are certain redeeming features emanating from the findings of National Family Health Survey-III (2005-2006) in which Punjab features well in comparison with other States. These are:-

- the proportion of under weight children below 3 years is less than 30% (28% stunted and 9% wasted);
- the rural urban differential in terms of child malnutrition is much less (8 points) compared to other states;
- the provisioning of health services, care of children especially new born and nutritional status of women is better in Punjab;

Thus, Punjab is regarded as a better performing State in terms of health and nutrition of children and it has shown substantial improvement between NFHS-II (1998-99) and NFHS-III (2005-06) except in the arena of anaemia where the percentage of children in 6-35 months has remained high at 80. The problem of determination of the age of children in Punjab, however, remains as a sizeable percentage of the working children would belong to the category of migrants from Bihar, Jharkhand, Madhya Pradesh and Chattisgarh where the extent of malnutrition and under nourishment of children is very high which compounds the task of linking growth with age as would be evident from the following:-

- PC of underweight children in Bihar, M.P., Chattisgarh and Jharkhand over 50%;
- PC of stunting and wasting of children in Bihar, M.P., Chattisgarh and Jharkhand is 42, 40, 45 and 41 respectively;
- PC of children fully immunized in Bihar, M.P., Chattisgarh and Jharkhand is 33,40,49 and 35 (very low) respectively;
- PC of children in Bihar, M.P., Chattisgarh and Jharkhand in 6-35 months who are anaemic is 88,83,81 and 78 respectively.

- Except Chattisgarh, Bihar, M.P. and Jharkhand are very poor performers in reducing child malnutrition.
- Children are children anywhere and everywhere, the most precious object in creation, representing the most tender, formative and impressionable stage of development in the life of a woman and man. Since they are migrating to Punjab on account of social and economic compulsions along with their parents, their growth in terms of health, nutrition and education becomes the added responsibility of Government of Punjab. This important aspect cannot be lost sight of on the grounds of equity.
- Since age is related to growth and growth is closely related to nutrition problems of determination of age of migrant children will always arise. There is provision for appointment of a prescribed medical authority u/s 10 of Child Labour (Prohibition and Regulation) Act. This is to be notified by the State Health Department. Since the decision of the prescribed medical authority is final and irreversible, the decision will have to be reached with a lot of care and caution in a manner as would be beneficial to the working children for whose welfare the law has been enacted.
- In Punjab no such prescribed medical authority has so far been constituted. This is a gross deviation from an important statutory requirement for which no explanation was forthcoming.

Suggestion:

- Appointment and notification of the prescribed medical authority in Punjab should not, therefore, brook any delay.
- Simultaneously there should be an institutionalized arrangement for imparting orientation and training to the authority to make it more responsible, responsive and sensitive.

Prohibition of employment of children:

The Ministry of Labour has so far issued 72 notifications prohibiting employment of children in respect of 15 occupations and 57 processes. Of these occupations and processes which are relevant for Punjab are brick kilns, sports goods industry, domestic workers, building and other construction operations, agriculture and motor transport undertakings/operations in garages. In pursuance of the directions of the Supreme Court contained in the judgement dated 10.12.96 in Civil Writ Application No. 465/1986 a survey was undertaken in respect of all establishments in 17 districts of the State (then) in the whole of Punjab in February – March, 1997. A total number of 3614 working children were detected working in 1681 establishments with the following breakup:-

Brick kilns - 1906

Hotels/restaurants/dhabas/tea stalls – 936

The demographic breakup of these children is as under:-

Boys	-	2802
Girls	-	812
Illiterate	-	2952
Engineering Workshops	-	152
Auto repair shops	-	124
Engineering Industry	-	101
General Kiraya shops, Cycle repair shops, tailoring shops, meat shops, book sellers	-	304
Total	-	3523

The break up of children employed in hazardous processes is as under:-

Textile	-	63
Chemical	-	2
Construction	-	10

Petrol Pump -	3
Saw Mill -	3
Printing Press -	1
Battery -	1
Chromium Plating -	6
Soap Manufacturing -	2
Total -	91

- Children working for a period ranging from 0-6 months – 2474
- Children found to be working for more than 6 hrs a day – 2761
- Children getting wages below Rs. 500/- pre month – 1752

At the relevant point of time when the apex Court ordered the survey on child labour to be conducted by all States/UTs and submit a detailed report to the Court within 6 months from the date of issue of direction i.e. by 31.5.1997 employment of children in brick kilns, hotels, restaurants, dhabas and tea stalls was not prohibited. These have been subsequently prohibited vide notifications issued by the Ministry of Labour.

Now that all these and a few more occupations and processes have been brought within the purview of Prohibitory notifications, more than 10 years have passed since the Supreme Court had directed all States/UTs to conduct the survey and a sea change has taken place in the liberalized economic environment giving a pride of place to outsourcing of most of the occupations and processes it may be useful to repeat a survey for identification and enumeration of working children. The following would be the striking features of the proposed survey:-

- it should be both a household and establishment wise survey (household survey is necessary as large number of children of migrant parents are employed in agriculture and brick kilns as also in domestic help and it will not be easy to identify and enumerate them without going to the households);

- survey teams should be formed corresponding to the number of households and number of establishments;
- since Labour Department has got a small manpower strength of 129 in various categories of posts, officers from various other departments such as agriculture, animal husbandry and veterinary, education, health, industry, revenue, rural development, SC and ST welfare, women and child development, Food and Civil Supply etc. should be drafted. Even in 1996 when the Supreme Court had directed all State Governments/UTs to conduct a country wide survey it had desired that considering the small complement of staff in Labour Department, services of officers from other departments of Government should be dovetailed into the survey process;
- each survey team should comprise of 2 officers, one to address the questions in a simple and informal manner and another member to record/collect the responses;
- a questionnaire which should be simple and intelligible and non threatening/non intrusive should be designed with a lot of care and should be used to elicit relevant information from every household/establishment;
- a brief non residential orientation and training should be imparted to all members of the survey teams. They should be told and retold to be as unorthodox and non threatening in interrogating households/establishments and canvassing information as possible;
- the findings of the survey should be compiled to bring out the following informations:-
 - break up between male and female working children;

- break up between working children in urban and rural areas;
- break up between children employed in hazardous and non hazardous occupations and processes;
- working hours;
- wages;
- levels of literacy.

The findings of the survey could be used for drawing up a perspective plan for withdrawing all children from work and for rehabilitating them through education, nutrition, check up of health and vocational skill training programmes.

Enforcement of Provisions of Child Labour (Prohibition and Regulation) Act, 1986:

Child Labour (Prohibition and Regulation) Act, 1986 was enacted on the recommendation of M.S. Gurupadswamy Committee constituted in 1979. The Committee had come to a conclusion that child labour per se is not objectionable; what is objectionable is exploitative child labour. It had advocated a dual approach in as much as it recommended prohibition of employment of children in occupations and processes which are considered hazardous to life and limb while permitting children to work in non hazardous occupations and processes. This dualism was reflected in the text of Child Labour (Prohibition and Regulation) Act in 1986 as also in the National Policy on elimination of Child Labour a year later in August, 2007. This principle was also carried forward and reflected in the judgement of the Supreme Court on 10.12.96 in Civil Writ Application No. 465 of 1986 M.C. Mehta Vs. State of Tamil Nadu and Others.

Subsequently in J.P. Unnikrishnan and others Vs. State of A.P. and others (1993) SC 645 the Supreme Court gave a broad, liberal and

expansive interpretation of Article 21, 19(g), 41, 45, 46, 14 and 15 while disposing off 23 WPs under Article 32 of the Constitution. The directions issued by the apex Court provided the first impetus to free and compulsory education as the fundamental right of all children in 6-14 age group. To quote from the judgement:-

'the citizens of the country have a fundamental right to education. The said right flows from Article 21 i.e. right to life. Every child/citizen of this country has a right to free education until he/she completes the age of 14 years. Thereafter his/her education is subject to the limits of economic capacity and development of the State'.

The apex Court for the first time held that the right to education was not a mere Directive Principle (as it existed earlier in Article 45). Instead, it lifted the States' obligation to provide primary education from Part IV and installed it in Part III (Fundamental Rights).

The apex Court's directive in 1993 was officially recognized by Parliament in 2002 when the right to education was inserted as a fundamental right by amending the Constitution for the 86th time. Article 21 A which was inserted as a result of the amendment says: 'The State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the State may by law determine'. With this Constitutional amendment, Child Labour (Prohibition and Regulation) Act, 1986 has become an anachronism. It should as a matter of fact be re read, 'Child Labour (Prohibition and Education) Act'. This is on account of the following reasons:-

- Access to free and compulsory education for all children in 6-14 age group means 100% enrolment, 100% retention, 100% participation in the formal school system and 100% achievement of minimum levels of proficiency in mother tongue, arithmetic, social sciences and environment etc.;

- This means full time schooling for all children in 6-14 age group;
- It does not and should not mean that children should be permitted to work for 4-6 hours a day and should receive non formal education for 2 hours in the evening (as has been observed by the apex Court in M.C. Mehta Vs. State of Tamil Nadu);
- Any combination of learning with earning, education and paid employment will not achieve the desired result; such a retrograde step will take us neither here nor there;

Ideally, therefore, the basic Constitutional mandate for all officers of labour law enforcement machinery in Punjab and elsewhere should be to withdraw all children from work (not necessarily only children employed in hazardous work) and enroll them in free and compulsory schooling. The existing National Policy on Elimination of Child Labour [August, 1987], Child Labour (Prohibition and Regulation) Act and the judgement of the Apex Court in M.C. Mehta Vs. State of Tamil Nadu and Others dated 10.12.96 (which is in sharp contrast with the spirit of the earlier judgement in J.P. Unnikrishnan and others Vs. State of A.P. and others (1993)) does not give them that freedom to do so.

The officers of Labour law enforcement machinery, Punjab have been carrying out inspection of establishments to identify and enumerate working children within this fractured mandate. The following 3 tables given below indicate yearwise breakup of number of inspections conducted during the last 5 years, number of prosecutions launched against offending employers and number of convictions secured against the number of prosecutions launched :-

Table - I**Yearwise breakup of number of inspections conducted:**

S.No.	Year	No. of inspections conducted
1.	2003	3490
2.	2004	5093
3.	2005	4351
4.	2006	6680
5.	2007	12,728

Table -II**Yearwise number of prosecutions launched:**

S.No.	Year	No. of prosecutions launched
1.	2003	19
2.	2004	28
3.	2005	05
4.	2006	52
5.	2007	21

Table - III**Number of convictions secured:**

S.No.	Year	No. of Prosecutions disposed off	No. of prosecutions pending	Convictions secured
1.	2003	11	37	10
2.	2004	46	19	29
3.	2005	17	07	06
4.	2006	22	37	15
5.	2007	49	200	32

The following are some of the omissions in the data relating to inspection, prosecution and conviction:-

1. The primary purpose of such inspection should be to withdraw children from work and to rehabilitate them through education, nutrition and skill training and not just to

find out other routine irregularities/violations. The number of children released from work as a result of inspections as above is not forthcoming.

2. The National Policy on elimination of child labour had aimed at bringing the wages of adults and children at par through an amendment to Minimum Wages Act. This has not happened so far. Pending this and under the Central Minimum Wages Rules, children are required to work for 50% of the working hours of an adult and are entitled to receive 50% of the wages of the adult. In actual practice, children work much longer than even adults but what they receive in return is a pittance. One of the objectives of conducting an inspection of an establishment where children are employed is, apart from withdrawing such children for enrolment in formal schools or in special schools started under the NCLP, to ensure that the children are in receipt of the following statutory benefits:-

- their working hours should not exceed 4½ hours a day and 26 hours a week;
- for work in excess of stipulated working hours they should be entitled to receive OT at double the ordinary wages;
- they should be entitled to spread over and weekly off;
- if wages as notified under Minimum Wages Act are not being paid, claims should be filed u/s 20 of MW Act before competent claims authority and adjudicated as early as possible so that wages can be disbursed to the aggrieved at the earliest;

- in case children have been recruited along with adult parents, they are entitled to receive journey allowance, displacement allowance, wages during the journey period and such other benefits to which they are entitled under the ISMW (ROE and COS) Act, 1979.
- If working children meet with accidents causing injury, resulting in death or disablement, they should be fully entitled to receive workmen's compensation under Workmen's Compensation Act, 1923.

It is not clearly forthcoming from the response to the questionnaire as to whether the inspecting staff of the Labour Law enforcement machinery are taking care to ensure realization of these statutory rights for children under PW Act, MW Act, CL (R&A) Act and ISMW (ROE and COE) Act, Workmen's Compensation Act whether children are actually being withdrawn from work or not in case it is found that the nature of occupation or process is hazardous to the life and limb of children.

Compliance with the directions of the Supreme Court in Civil Writ Application No. 465 (1986) M.C. Mehta Vs. State of Tamil Nadu and others dated 10.12.96

I Survey:

Reference has already been made at page 52 of the report to the survey conducted by the State Government in 17 districts of the State involving 28,644 factories/shops and commercial establishments with the help of 170 survey teams, each team consisting of 1 to 3 persons. Considering the fact that Punjab had a strength of 1,42,868 number of working children according to 1991 Census, the number of children i.e. 3614 found at the end of the survey conducted in 1996-97 is a miniscule of the actual number of working children and does not obviously reflect the correct factual position (this number has already

gone up to 1,77,268 according to 2001 Census). A State wide establishment wise resurvey is, therefore, a must to unearth the actual magnitude of the problem. The knitty gritty of this survey has already been indicated in great detail at page 54-55 of the report.

II Aftermath of the survey:

Following the survey conducted in 1996-97 after which 91 children were found to have been employed in hazardous occupations and processes, Show cause notices were issued to the employers of the establishments concerned to deposit @ Rs. 20000/- per child. It appears that despite clear directions of the Supreme Court in 85 cases employers contested their liabilities and orders have been passed in 20 out of 85 cases so far. As against a sum of Rs. 18,20,000/- recoverable from employers in respect of 91 children @ Rs. 20,000/- per child, a sum of Rs. 1,20,000/- only has been deposited by offending employers of establishments to whom notices were issued.

III Seventeen District Child Labour Rehabilitation-cum-Welfare Funds have been constituted with DM of the district concerned as the Chairman. A sum of Rs. 1,20,000/- has been credited to the corpus of the said fund so far.

IV The State Government has failed to provide a job to every able bodied adult member in a family which has sent a child for hazardous work. It has also failed to deposit @ Rs. 5000/- per child to the District Child Labour Welfare-cum-Rehabilitation Fund.

V All 91 children who were found working in hazardous work have since been disengaged but none of them has been enrolled in the formal school system despite clear directions of the apex Court. The names of these children should have been handed over to officers of school education department so that the latter would have completed the process of enrolment. This has not been done.

VI In regard to children who were found to have been engaged in non-hazardous work, the apex Court had observed that while they may be permitted to work for 4 to 6 hours a day, they were entitled to receive non formal education for 2 hours in the evening at the cost of the employer of the establishment concerned.

The State Government has reported that most of the children found working in non hazardous jobs have since been disengaged by the employers even though all of them have not yet received access to non formal education. The Department has not informed employers of all such establishments that it is their responsibility to bear the cost of such education and to provide opportunities of access to such education.

VII A cell has been opened in the Labour Department comprising the Labour Commissioner, Addl. Labour Commissioner, Statistical officer, scrutiny inspector and ministerial staff but no clear and complete picture of activities undertaken by the cell could be made available by the officers of the department.

In particular, the cell could have paid special attention to some of the following areas:-

- it could have maintained a close and constant liaison with the district administration to get accurate information about endemic pockets of child labour, getting task forces or teams of officers constituted with the full knowledge and approval of DM concerned, getting raids conducted in sensitive pockets, tracking and rescuing children who were found employed in hazardous work, removing them to transit camps and later rehabilitating them through education, nutrition, skill training, check up of health - activities which constitute an integral part of those of special schools of NCLP;

- collect, compile and disseminate all important news and views extracted from press clippings, radio and television to Collectors/DMs, NCLPs and other field functionaries of Labour Department;
- take initiative to design a few simple and intelligible messages relating to elimination of child labour and have them broadcast and telecast at prime time through AIR and Doordarshan;
- have the same messages appear as advertisements in all local newspapers published from different parts of the State;
- have the same messages appear as advertisements on all the buses of Punjab Roadways (since these buses go to all villages the messages will also travel to the villages);
- take initiative to organize essay and debate competitions on elimination of child labour as the dominant theme in all schools and colleges affiliated to all the Universities and have trophies/prizes awarded to successful individuals and teams;
- take initiative to flash messages on elimination of child labour in simple Punjabi in all the Panchayat offices for the benefit of parents as also with a view to sensitizing all parents to the effect that what they have been doing so far is wrong, they have no moral and ethical right to push their children involuntarily to work and they must now stop doing what they have been doing all these years.

National Child Labour Projects:

There are 3 options available for rehabilitation of children withdrawn from work. These are as under:-

- children withdrawn from occupations and processes which are in the prohibited category are enrolled in Government schools under the Sarva Shikshya Abhiyan so as to avail facilities of free education, text books, mid day meals etc.;
- children who are not eligible for admission in Government Schools under SSA can be admitted to Special Schools under the NCLP, a scheme conceptualized and funded by Government of India since 1988 under the National Policy for elimination of child labour. The children studying in special schools under the NCLP are required to complete education upto 5th Standard within a period of 3 years. Vocational skill training is also being imparted to children by a Vocational Training Instructor. After completion of 3 years, children are mainstreamed to continue further studies in the formal school system. Each child is given a monthly stipend of Rs. 100/- and Rs. 5/- per child per day is spent on mid day meal.
- Such children who are orphans, destitutes or who have been abandoned by the parents or whose parents cannot be traced can be accommodated in the children's homes run by the social security department and for the purpose of education can be accommodated in any of the schemes under the first and second alternative as above. Currently 3 NCLPs are being managed by the NGO at Amritsar, Jalandhar and Ludhiana. While Amritsar and Jalandhar are having 40 Special Schools (1970 children) and 27 Special Schools (1176 children) respectively, Ludhiana is having 20 Special Schools with 899 children only.

The following table gives a break up of the number of students who have completed the 3 year cycle in the special schools, number of children who have been mainstreamed into the formal system of education and number of children currently studying in special schools:-

S.NO.	Description	Amritsar	Jalandhar	Ludhiana
1.	No. of students who have passed V Standard	1416	973	899
2.	No. of children who have been mainstreamed	1187	761	758
3.	No. of children who are presently studying in special schools.	1916	1350	983

Field Visits and impressions:

Jalandhar:

Initially it was estimated by the Christian Aid Society U.K. that there are 3 lakh people working in sports goods industry of whom 25,000 to 30,000 are children. It was apprehended that this will adversely affect the export of sports goods from Jalandhar as sport goods made by children may not be acceptable to importing countries. Accordingly and on the request of the sports goods manufacturers V.V. Giri National Labour Institute conducted a survey of sports goods industries at Jalandhar and identified the following:-

- there are 10,000 working children engaged in sports goods industries;
- of them, 8500 children were going to school as well as helping their parents in stitching football and other sports goods;
- 1350 children were involved in the job of stitching football whole time.

On the basis of the findings of the survey and the request of the State Government, NCLP Jalandhar was sanctioned by GOI on

9.5.2000. The Project was operational in September, 2000 with the primary object of elimination of child labour engaged in sports goods industry. The Project comprises of 27 special schools with each special school having 50 children. Surveys have been repeated year after year and more and more working children have been found. For example, 3114 working children were found on the basis of the survey conducted in 2001-2002. On the basis of the findings of this survey Government of India were requested to allow continuance of the NCLP during the 10th Plan period. According to the latest survey conducted in 2006, 3720 working children were found of which 1123 children were found working in the sports goods industry.

Even though the Project approach to elimination of child labour which is an integral part of the National Policy has not fully achieved the desired objective, it has created some perceptible impact by way of withdrawing children from sports goods industry and rehabilitating them through education, nutrition (mid day meal), vocational skill training and check up of health of children. This would be evident from the following table:-

Session	Appeared	Passed	Mainstreamed	Not willing for further studies
March 2001	18	17	09	08
March 2002	57	54	38	16
March 2003	155	148	114	34
March 2004	316	309	258	51
March 2005	141	137	126	11
March 2006	208	192	765	208
Total	2024	1830	1478	352

The table shows the following redeeming features:-

- more and more children are being withdrawn from work and are being enrolled in the special schools;
- more and more students are passing from special schools;

- more and more students are being mainstreamed into the formal school system.

The grey areas are the following:-

- all students are not able to pass the examination;
- all students who are being mainstreamed into the formal school system are not willing to pursue further studies.

Suggestions:

- I Parents Teachers Associations should be formed and through the PTA continuous motivation should be provided to children who have been found to be unwilling to pursue further studies not to discontinue studies.
- II The vocational component of the programme has been found to be very weak. The objective of vocational skill training programme is not to induce children to work, having withdrawn them from work. The objective is to enhance their employability through exposure to a variety of skills for which they have the aptitude, preference and interest, for which raw materials are locally available and for which there is an assured market. For this purpose, the GM District Industries Centre should be deputed to study the existing skills/trades which are being imparted, the adequacy and relevance thereof and to suggest introduction of new skills/trades which are more market relevant, which have higher income generation potential and which are in conformity with aptitude, preference and interests of the learners.
- III Check up of health of the students studying in special schools has brought out a number of grey areas in health. Apart from identifying children suffering from colour blindness, epilepsy and cardio vascular complications, most of the children have been found to be anaemic. For such children a sustained drive is required to be launched through counselling so that children get adequate quantity of iron tablets apart from being made to eat a lot of green vegetables which are rich in beta carotene.

NCLP, Ludhiana

Redeeming features:

- Of the 40 special schools sanctioned for one NCLP, Ludhiana 20 special schools are being run by NGOs. Unlike other States where the NCLP as a whole is managed by one NGO, here each school has been entrusted to the care and attention of one NGO;
- The NGOs who are managing these special schools is a composite group comprising of registered societies and trusts, central TU Organizations, Philanthropic organizations like Rotary Club, Lions Club, Chambers of Commerce and Industry;
- On account of such close involvement of NGOs who work and live with the people at the grass root level it has been possible to get good quality human resources as teachers (both general and craft);
- On account of the good quality of such human resource particularly on the vocational skill training side it has been possible to impart instructional lessons on a wide range of skills (doll making, embroidery, painting, jelly candle making, artificial jewellery making etc.);
- the diet chart indicates a balanced combination of carbohydrate, protein, oil/fat, minerals and vitamins. It ensures adherence to the norms of flexibility, cultural acceptability and local availability. Additional Deputy Commissioner (Development), a young and energetic IAS Officer who is functioning as the Project Director has issued strict instructions for adherence to the diet chart. It has also been made clear that diet should be ready to serve the children before the start of the school time.

Grey areas:

- The levels of proficiency and in particular in arithmetic and mother tongue were found to be very low.
- Majority of the students are migrant children who have hailed from Bihar and U.P. Hindi is the mother tongue of such children whereas they are required to learn through Punjabi. Many students have not found this transition to be normal, natural and spontaneous.
- While the space available inside the classroom is adequate, the space has not been properly utilized. No charts, posters and other IEC materials have been displayed. Not a single statement from any of the freedom fighters of Punjab (Sardar Bhagat Singh, Udham Singh, Lala Lajpat Rai) which are pregnant with meaning and which could exert a profound and salutary influence on the minds of young students has been displayed.

Suggestions:

- I Teacher's training has to be very strong. When the teacher's training is strong, the teacher will be able to dictate with proper pause and rhythm, will be able to write lessons on the blackboard clearly, in straight lines, in a proper sequence and the students could follow them, repeat them with understanding and be able to write in straight lines, neatly and flawlessly. This is not happening now. The teacher should have a lot of patience not only to dictate with proper pause and rhythm but should be able to demonstrate on the blackboard as to what were the mistakes on the part of the student in not being able to reproduce what the teacher dictated. The teacher should go on correcting the copy book, should go on explaining the mistakes on the blackboard till such time the students have been able to repeat the dictated messages neatly and flawlessly.

- II Simple additions, subtractions, multiplications and divisions can be taught with the help of simple and inexpensive teaching aids. No such teaching aids have been provided in any of the special schools under NCLP, Ludhiana.
- III Instead of straight away proceeding to impart instructional lessons in Punjabi, bilingual primers should be adopted for such migrant children whose mother tongue is Hindi and who come from a non Punjabi background (from Bihar and U.P.) upto 50% the instructional lessons should be in simple bolchal Hindi with provision for a switch over to simple Punjabi at the appropriate stage. Such a policy needs to be discussed in the State Advisory Board on Education and approved before being introduced.
- IV The Project Director should be an independent and full time functionary. He/she could be a retired person but much more important than that status, he/she should be a good human being, a good organizer and mobilizer, should be a first rate communicator, should be persuasive and be able to carry conviction to others in a normal and natural manner. There is no dearth of such people in civil society but no serious effort seems to have been made in that direction. This is not to be construed as a reflection on the professional competence of the existing incumbents but time management will be a serious problem in combining too many items of work in one functionary and doing justice to all of them at the same time.

Meeting with Minister, Labour

19.3.2008

2.30 PM to 3.30 PM

The Minister Labour, Government of Punjab – Shri T. Sud is currently the Minister, Forest, Medical Education and Parliamentary Affairs. While on the face of it, it's a formidable combination, the

combination could be harnessed and used profitably to our advantage in the following manner:-

- As Minister Forest, a simple appeal could go from him to all officials of Forest Department including contractors and NGOs working for the cause of upliftment of forest dwellers that children constitute our succeeding generation, our most valuable human resource and we need to promote, protect and preserve this precious resource; we can ill afford to damage or destroy this resource by pushing it involuntarily to hard manual labour.
- As Minister in charge of Medical Education, a similar appeal could go from him to Principals of all Medical Colleges and through them to all medical students, house surgeons, interns etc. as to how to promote, protect and preserve this precious human resource.
- As Minister incharge of Parliamentary Affairs he could issue a similar appeal to all MPs and MLAs from Punjab to adopt a proactive and constructive approach to elimination of child labour and to evolution and growth of children as a valuable human resource through education.

Side by side I also drew the urgent personal attention of the Minister to the need for strengthening the Labour law enforcement machinery both by sanctioning new posts corresponding to the need and by filling up existing vacancies also by sensitizing the machinery through intensive orientation and training. The Minister endorsed the suggestion.

Meeting with Chief Secretary, Government of Punjab
19.3.2008
4 PM to 5 PM

In course of this long one hour meeting I raised the following points:-

- We have serious problems of conceptual, definitional and legal clarity even after
 - 32 years since the BLS(A) Act was enacted;
 - Over 30 judgements of the Supreme Court;
 - Over so many directions issued by the NHRC from time to time.
- In Punjab the problem on account of lack of definitional and legal clarity has been accentuated as there is no State level monitoring mechanism which could monitor, coordinate and oversee implementation on the ground.
- Vigilance Committees have been constituted at the district and sub divisional level and are reported to be meeting but that will not produce any result until and unless they adopt a definite strategy of going to the field and, taking stock of the ground level situation and making discrete enquiries by adopting an informal, unconventional and unorthodox approach.
- Once we identify bonded labourers it must be accompanied by their release and rehabilitation. Otherwise, it will belie the hope among the aggrieved victims looking forward to start a fresh lease of life.
- To ensure that identification is accompanied by simultaneous release and rehabilitation, a sound and sensible methodology will have to be adopted, simple questionnaire is required to be drafted, interactions should take place with the potential bonded labourers in a friendly, informal and convivial manner and just and fair conclusions should be reached in time on the basis of analysis of responses received.
- What is happening in Punjab today is largely an illogical and infructuous process in as much as:-
 - identification process is complete;

- demand draft is released by the State Government;
 - SDM to whom directions are issued for compliance carries to a strange conclusion without any rhyme or reason that they are not bonded labourers.
- According to a very broad, liberal and expansive interpretation of the law given by the Supreme Court rehabilitation process should have been initiated and should have been carried to its logical conclusion regardless of the fact that the accused has not been found guilty. There is no need to refund the amount sanctioned for rehabilitation.
 - Advance perse is not objectionable. It is the payment of advance leading to exploitative practices by way of denial of one of the freedoms listed u/s 2(g) which makes it objectionable. Through a strong package of IEC employers of brick kilns should be told and retold not to induce workers to come from villages of other States (U.P., Bihar) and work in brick kilns on payment of advance debt which leads to bondage. Similarly workers through mass media should be told and retold about the pernicious effect of advances leading to economic bondage and to refrain from receiving such advances. The emphasis should be on timely payment of need based minimum wages without any deductions substantially in cash and not in kind (as computation of cash value of wages paid in kind becomes extremely difficult).
 - A State level monitoring mechanism like the Central Steering Committee is to be created. It may be headed by the Chief Secretary and may have among its member Secretaries to Government of Home, Law, Labour, Women and Child Development, Rural Development, Industry, Cooperation, Health and Education as members. This must meet minimum once in a quarter to monitor, coordinate and supervise the activities which are taking place at the district level and levels down below. It must have full authority to issue directions.

- A repeat survey is to be undertaken with the financial assistance being made available by Government of India.
- On the basis of the outcome of the survey a perspective plan listing out the number of NCLPs and special schools which need to be opened should be put in place and financial assistance sought for from Government of India.
- It should be ensured that funds not being unlimited the desired objective of withdrawing children from work and securing their rehabilitation through education, nutrition, check up of health...etc.' should be achieved during the life of the project and as soon as the objective has been fulfilled, the special centre should close down and the project should also shift to an alternative location.
- It will be desirable to appoint a full time Project Director for each Project for concentrated time, energy and attention which could be bestowed on the project. He/she should be a man/woman of character and integrity, dedication and commitment, professional ethics and competence.
- The Project Advisory Committee should meet under the Chairmanship of DM once a quarter (and not like the one at Ludhiana where the last meeting had taken place in 2002) to take a complete stock of all activities of the Project and take all necessary preventive and corrective measures to ensure optimal results in less time and cost.
- The Project Advisory Committee should meet at regular intervals under chairmanship of DM and should take stock of pace and progress of various activities taking place with maintaining undiluted transparency and quality in all transactions/operations as the single most important objective.

- The DM and Chairman of Project Advisory Committee should bring all instances of delay in release of funds for NCLP to the notice of Principal Secretary, Labour who in turn should bring them to the notice of Secretary, Ministry of Labour for immediate corrective action.
- For migrant children a new strategy of bilingual literacy could be adopted as they are finding it difficult to straightaway switch over to State Standard Language (Punjabi) which is different from the language spoken by them at home.
- The nutritive value of food (mid day meal) served at the special school should be got fully tested and confirmed by a nutritionist or dietician to be drawn from one of the medical college hospitals.
- The Civil Surgeon or Chief Medical Officer of the district should monitor the manner in which the check up of health of students is being conducted by the MC – serving or retired. Such check up should also be an exercise in complete growth monitoring (height, weight, circumference of forehead, armpit etc.).
- Similarly the GM, DIC should make it convenient to visit and see the manner in which the vocational skill training programme is being implemented from the following points:-
 - marketability;
 - income generation;
 - conformity with aptitude, preference and interest of the learners;
 - harnessing the locally available raw materials.

- Compliance with the directions issued by the Supreme Court in M.C. Mehta Vs. State of Tamil Nadu has been half hearted. The State Level Monitoring Committee under Chairmanship of Chief Secretary should review and take appropriate decisions to ensure full compliance.

ORGANISATIONAL CHART OF LABOUR DEPARTMENT

