

Workshop of the State Level Sensitization Workshop for familiarization and sensitization of DMs, SPs, Executive Magistrates and Members of Vigilance Committees of Madhya Pradesh held at the auditorium of State Institute of Public Administration, Bhopal

Dr. Lakshmidhar Mishra, IAS (Retd.) and Special Rapporteur, NHRC introduced the theme of the Workshop. He referred to three concepts which are inter related and which are crucial to understanding the concept of bonded labour system. The three concepts are 'Bandhan', 'Bandak' and 'Bandhit'. The first rests on love and affection and binds the family, community and society together; there could be nothing wrong or objectionable about it. The second one i.e. Bandhak is a little more complicated. We live in a highly stratified society which is sharply divided on the basis of caste, creed, colour, faith and belief, gender, social origin, political ideology and so on. There are principally 2 sections of the society namely one who are resourceful, affluent, prosperous, influential and dominant and the second who are poor, landless, assetless and without resources. The second approach the first for loan/debt/advance for their ceremonial and consumption needs. Such loan/debt/advance always carries with it a price tag. The poor and the resourceless who have no land and any other collateral mortgage their services or services of any or all of their family members to the landlord or the moneylender who give them the loan/debt/advance. Rendering of such services could be for a specified or unspecified period. Advance perse is not objectionable but a system of advance which leads to bonded labour or bonded labour system undoubtedly becomes objectionable.

Four consequences flow out of the practice of bonded debt. These are:-

- denial of wages or denial of notified minimum wage or denial of wages obtaining in the market for same or similar nature of work;
- denial of the freedom of movement from one part of territory of India to another;
- denial of the freedom to change ones employer and to go in for another employer or alternative avenues of employment and livelihood;

- denial of the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him.

Thus bonded labour system is essentially an unequal exchange relationship between a creditor and a debtor which gives rise to four consequences as above. It is not necessary that the above four consequences should exist together and will have to be proved together; it is sufficient if one of the four consequences is in existence.

Referring to different forms of debt bondage as were in existence in undivided Madhya Pradesh such as Kamiya, Saroriya, harwaha, bethu, barondiya etc., Dr. Mishra clarified that these were all variants of bonded labour system which were in existence prior to 1920. The Kamiya or harwaha system is an attached agricultural system which was in existence in Raigad, Bilaspur, Rajnandgaon districts (now in Chattisgarh) and is nothing but an old version of bonded labour system as defined in Section 2(g) of Bonded Labour System (Abolition) Act. A lot of efforts were made to do away with this pernicious system but it continued for several years after 1920. All these remnants of the system continue till date and therefore, many of them figure in the 'Explanation' which occurs immediately after Section 2(b) of Bonded Labour System (Abolition) Act. It should be the united endeavour of all of us present in this workshop to do away with such remnants of the past instead of unnecessarily delving deep into the history and sociology of bonded labour system in the past, he emphasized.

The Bonded Labour System (Abolition) Bill was passed by both Houses of Parliament on 9.2.1976 but its application given retrospective effect from 25.10.75, the day the Bonded Labour System (Abolition) Ordinance was promulgated by the President of India. Abolition of bonded labour system figured in the old 20 point programme announced to the nation by late Srimati Indira Gandhi, the then Prime Minister of India. It also figured in the subsequent 20 point programme announced to the nation by her on 14.1.1982. There are certain unique features in this legislation which make it one of the most progressive and unique in post independent India. To start with, despite separation of the executive from the judiciary as under Art. 50 of the Constitution

of India, powers of a Judicial Magistrate 1st or 2nd Class have been vested in the Executive Magistrate so that he/she can try all offences under the law. Secondly, it provides for an exemplary punishment to all offenders of the law by imposing three years of rigorous imprisonment and a fine of Rs. 2000/-. Thirdly, it provides for summary trial of all offences. Fourthly, along with exemplary punishment to the offenders of law it also speaks of exemplary relief and succour to the victims of bonded labour system such as:-

- no suit or proceeding shall lie in any civil court or before any other authority for the recovery of any bonded debt or any part thereof;
- every decree or order for the recovery of bonded debt passed before the commencement of this Act and not fully satisfied before such commencement shall be deemed, on such commencement, to have been fully satisfied;
- every attachment made before the commencement of this Act, for the recovery of any bonded debt, shall, on such commencement, stand vacated;
- where in pursuance of such attachment, any moveable property of the bonded labourer was seized, removed from his custody and kept in the custody of any Court or other authority, pending sale thereof, such movable property shall be restored, as soon as may be practicable, after such commencement, to the possession of the bonded labourer;
- if restoration of the possession of any property referred to in sub section (4) or sub section (5) is not made within 30 days from the commencement of this Act, the aggrieved person may, within such time as may be prescribed, apply to the prescribed authority for the restoration of such property;
- the prescribed authority may, after giving the creditor a reasonable opportunity of being heard, direct the creditor to restore to the applicant, the possession of the concerned property within such time as may be specified in the order;

- where any suit or proceeding, for the enforcement of any obligation under the bonded labour system, including a suit or proceeding for the recovery of any advance made to a bonded labourer, is pending at the commencement of this Act, such suit or other proceeding shall, on such commencement, stand dismissed;
- every bonded labourer who, on the commencement of this Act has been detained in civil person, whether before or after judgement, shall be released from detention forthwith.

Since majority of the victims of debt bondage may, on account of their poverty, illiteracy and socio-cultural backwardness find it difficult to seek legal/judicial redress from the competent authority as above, the District Legal Aid Society under the Chairmanship of the District Judge should come forward to provide free legal aid so that the freed bonded labourer can be properly represented, his claim can be effectively adjudicated and he can get the desired relief in time.

Dr. Mishra suggested for consideration of the DMs a few initiatives which need to be taken with a view to preventing occurrence and recurrence of the bonded labour system. These are:-

- all freed bonded labourers need to be mobilized and organized into Self Help Groups (SHGs);
- once this is done and a viable corpus is formed from out of the contribution made by the members, they can meet their ceremonial and consumption needs from the said corpus;
- the members over a period of time will become self reliant and will not be required to look upto the money lenders as has happed in Gujarat in the wake of the white revolution launched through Amul at Anand in Kera district by Dr. Verghese Kurien in early 50s;
- as the members rigorously adhere to the culture of repayment, the corpus will grow and a number of other economically worthwhile and

viable programmes including literacy, skill training etc. can be taken up for the larger benefit of the members;

Dr. Mishra gave the example of Prof. Mohammad Yunus of Bangladesh who had pioneered the Grameen Bank experiment and who later received Nobel Peace Prize for his outstanding contribution to bring about economic development through peaceful and constitutional means by mobilizing and organizing the rural poor into cooperatives and Self Help Groups/MFIs.

Referring to the excellent work done in the South (A.P., Karnataka, Tamil Nadu) and progress achieved in mobilization and organization of the rural poor through SHGs he exhorted that similar experiment may be replicated in the North where the traditional moneylenders even today continue to hold their sway over life and economy in the villages. Similar changes and improvements in the rural economy of the North can be brought about as in the South only if the DMs of the districts in the North could evince a little more interest in this than now.

Land reforms and land development are yet another 2 core areas through which bonded labour system can be eliminated. A beginning was made in 1957 with abolition of zamindari system which was unethical and oppressive but the process of reforms which was to follow by abolition of tenancy (mostly oral and informal) and complete restoration of land to the tiller is still incomplete. Despite introduction of ceiling laws, very limited quantity of ceiling surplus land could be distributed so far. Successive surveys conducted by the NSSO and the Agricultural Census have confirmed beyond doubt that there are over 50 million families who are completely landless, most of whom are agricultural labourers belonging to SC and ST community. Laws have been enacted like prevention of tribal land alienation, restoration of tribal land which was usurped and occupation of non tribals, and for entitlement of forest land in favour of the forest dwellers (most of whom are members of ST community). Such laws need to be enforced with utmost stringency and rigour by the DMs.

The next important way of preventing the poor from getting into the status of debt bondage is provision of avenues of full, freely chosen and productive

employment and enforcement of minimum wage notified by the appropriate government under Minimum Wages Act.

Mahatma Gandhi National Rural Employment Guarantee Act and the programme of provision of gainful employment to the unemployed are highly progressive measures which should come quite handy in this direction. The programme with an annual central outlay of Rs. 40,000/- Crores and with complete decentralization to Village Panchayat level for its implementation is, however, not free from infirmities in as much as (a) all eligible families have not been registered (b) even after registration job cards have not been issued (c) fictitious entries have been made in the muster rolls and (d) there is dispute about applicability of Minimum Wages Act to MGNAREGA works. The DMs have to ensure that there are no leakages and wastages, no manipulation and fictitious entries and that people who are at work are assured of a guaranteed minimum wage.

Linking minimum wages with the public distribution system is yet another important measure by which the poor are enabled to buy foodgrains and other commodities essential to their life and through which occurrence and recurrence of debt bondage can be prevented. DMs who are responsible for enforcement of Essential Commodities Act have an important role to create and maintain an efficient PDS which is also transparent. This is all the more relevant at a time when both general inflation and food inflation have touched on all time high, adversely affecting the earning and spending of the poor and driving them from one debt trap to another without any hope of redemption and beyond their imagination and control.

Dr. Mishra emphasized the point that minimum wage is the rock bottom and irreducible barest minimum below which no employer can go although nothing prevents the employer to go beyond.

Referring to the judgement of Hon'ble Supreme Court in Crown Aluminium Works in 1958 he reiterated the observation of the apex Court that an enterprise has no right to exist if it cannot ensure payment of a guaranteed minimum wage under the Minimum Wages Act. Keeping in view the current trends of spiralling

of prices, the apex Court in Reptacos Brett case had exhorted the appropriate governments to add 25% over and above what the 15th Indian Labour Conference at Nainital in 1957 had recommended as the norms for fixation of minimum wage towards children's education, medical treatment, family ceremonies etc.

The officers of Labour Law Enforcement Machinery had an important obligation to live upto the seminal directions given by the apex Court. It was their bounden duty to ensure that both through persuasion as well as filing of claims u/s 20 of Minimum Wages Act minimum wages notified by the appropriate government are enforced for the benefit of the poor and deprived sections of the society.

Dr. Mishra expressed his deep personal concern about constitution and functioning of Vigilance Committees on the ground. As a socio-legal investigation Commissioner of the Supreme Court he had observed that (a) Vigilance Committees at the district and sub divisional levels do not comprise of women and men of character, integrity and dedication to the cause of elimination of bonded labour system (b) they are not reconstituted in time (c) the members seldom go to the field to carry out a survey or enquire into complaints; they mostly meet and disperse at the headquarters without transacting any worthwhile business.

The DMs and SDMs being Chairpersons of VCs at their respective levels have a very important responsibility in this regard. They have to ensure that not only the Committees are constituted properly and reconstituted when due but they function in a manner which is purposive, effective and transparent. Instead of taking a stand that there are no complaints on prevalence of bonded labour system, the VCs should function as an outlet for ventilation and redressal of all types of complaints from the aggrieved labourers as well as from a few sections of the civil society.

Dr. Mishra thereafter proceeded to place a few salient principles enunciated by the Hon'ble Supreme Court through its 23 judgements on

eradication of the vice of bonded labour system over a span of 25 years between 1981 to 2006 as under:-

- Bonded Labour System and victims thereof should be identified through unconventional and unorthodox means. NGOs and social action groups should be fully involved in this process.
- Identification, release and rehabilitation should be simultaneous. Any delay in release after identification and any delay in rehabilitation after release is likely to result in a situation of relapse of debt bondage.
- When a person provides labour or service to another for a remuneration which is less than the minimum wage, the labour or service provided by him falls within the scope and ambit of forced labour under Art. 23 of the Constitution.
- 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 until and unless 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 benefits under the law.
- The Central and State Government will ensure that payment of wages is made directly to the workmen by the mining/stone quarry lessees and stone crusher owners in the presence of a representative of the lessee/owner and inspecting officer of Central Government.
- No deduction from the wages except those authorized by the law i.e. Payment of Wages Act should be made.

- Officers who are posted at different levels to deal with the problem of bonded labour should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor.
- There should be constant check and supervision over the activities of the officers charged with the task of securing identification, release and rehabilitation of bonded labourers.
- There must be a sense of urgency and seriousness of concern in regard to the speed of rehabilitation among the officials responsible for the same.

Other seminal observations of the apex Court:

- Judicial redress is sought when legal wrong is suffered by a person. Such a person can always directly approach the Court but when he is unable to do so by reason of poverty or disability any other member of the public can approach the Court by addressing a letter drawing the attention of the Court to such legal injury/wrong.
- Labour laws are enacted for improving the working and living conditions of workers. Employers cannot violate these laws and be allowed to escape with impunity. Laws would be reduced to a nullity if violations of labour laws are punished only by meagre fines. Offences involving violation of such laws must be penalized with the judicial severity they deserve.
- Constitutional provisions, even if not followed up by appropriate legislation must operate proprio vigore.
- Officers who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition should be encouraged and their efforts appreciated/commended so that they may become exemplary models for other officers.

Dr. Mishra threw light on the manner in which inquiry into complaints of the victims of bonded labour system is to be conducted. U/s 10 of the Bonded Labour System (Abolition) Act, the DM may specify the officer, subordinate to

him who shall exercise all or any of the powers and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer so specified. U/s 12 of the said Act, it shall be the duty of every DM and every officer specified by him u/s 10 to inquire whether, after the commencement of the Act, any bonded labour system or any other form of forced labour is being enforced by or on behalf of any person resident within the local limits of his jurisdiction and if as a result of such inquiry, any person is found to be enforcing the bonded labour system or any other system of forced labour he shall forthwith take such action as may be necessary to eradicate the enforcement of such forced labour.

Regretting the actual manner in which inquiry into the complaints of the victims of bonded labour system is being conducted, Dr. Mishra stated that DMs depute an officer of the Home (Police) Deptt. or Labour Deptt. who are not the officers who can exercise 'all or any of the powers and perform all or any of the duties of DM'. These officers so entrusted with the responsibility for conducting the inquiry sub delegate their power and authority to officers further below them like a SHO of a Police Station or a Labour Inspector.

The officers who are sub delegated the power and authority to conduct the inquiry go to the field, contact the employer and record his statement which will always be against the victims of bonded labour system. They do not examine the registers and records required to be maintained by the employer under relevant provisions of Payment of Wages Act, Minimum Wages Act, Contract Labour (Regulation and Abolition) Act and Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act. They do not examine the complainants and do not record their statement. They submit their one sided report to the DM and the latter mechanically accepts these reports without any application of mind. Thus the inquiry report is not based on facts and if accepted will lead to travesty of justice.

The DMs should build up a network of their own intelligence through which they are able to have access to information about prevalence of bonded labour system which is accurate, credible and up-to-date. This will depend on an objective and dispassionate assessment of the ground level realities which calls

for a lot of hard work, patience and resilience. This also calls for a lot of empathy and sensitivity on the part of officials investigating into complaints under Bonded Labour System (Abolition) Act. He referred to the example of Shri J.M. Lyngdoh, IAS (Retd.), who was Divisional Commissioner in one of the Revenue Divisions of Bihar in 70s (who later became the Chief Election Commissioner of India), how he used to get inquiries conducted and how he got justice built into the system of field inquiry, how through such inquiries he used to deliver justice to battedars or share croppers (in his revenue division) who are one of the worst exploited in Bihar.

Dr. Mishra concluded his statement by stating that when a law or ruling is capable of being interpreted differently, the same should be interpreted in a manner which makes it beneficial to the person or persons for whom the law has been enacted.

Shri Suraj Bhan, Economic Adviser, Ministry of Labour, Government of India threw light on the various components of Centrally Sponsored Scheme for rehabilitation of feed bonded labourers. Launched in May, 1978 the scheme has undergone a lot of change both in regard to the components as also in regard to the percapita rehabilitation assistance. The percapita rehabilitation assistance which was Rs. 4000/- in 1978 has been reviewed and revised thrice and has been raised to Rs. 20,000/- w.e.f. 1.5.2000. Of this a sum of Rs. 1000/- is required to be paid to the released bonded labourer towards his immediate subsistence allowance and the balance amount is required to be spent either in land based or non-land based or art/craft/skill based programmes. The components of grant-in-aid under the Centrally Sponsored Scheme include, in addition to rehabilitation assistance to freed bonded labourers, assistance under the following heads:-

- assistance for conducting survey @ Rs. 2 lakh per district once in every 3 years for identification of bonded labour system;
- assistance for awareness generation;
- assistance for conducting evaluation studies.

The provision of funds under the Centrally Sponsored Scheme has been substantially raised in successive Five Year Plans such as:-

<u>Plan period</u>	<u>Outlay</u>
Ninth Plan (1997-2000)	Rs. 35.81 Crores
Tenth Plan (2002-2007)	Rs. 44 Crores.

He regretted to observe that the outlay has been brought down to Rs. 10 Crores in the Eleventh Plan Period (2007-2012) as the outlay provided in the previous plan periods could not be utilized and sizeable amount had to be surrendered. Reduction of the outlay is not indicative of number of bonded labourers going down; it is simply reflective of lack of interest, enthusiasm and commitment on the part of the State Governments and District Administrations in taking timely and appropriate steps for identification, release and rehabilitation of bonded labourers.

Justice Shri B.C. Patel, Hon'ble Member of the National Human Rights Commission and Chief Guest of the Workshop extended at the outset his greetings and best wishes to all participants of the workshop. He regretted that a discussion is taking place through a workshop on bonded labour system at a point of time when we are in the 21st Century, we have completed 60 years after independence and when so much of advancement has taken place in the field of science and technology, planned progress and development. He requested all participants in this setting to introspect as to what could have given rise to such a pernicious practice as bonded labour system, what are the contributory factors to this evil, what are its consequences, who are responsible for its occurrence and recurrence, what are the constitutional and legal provisions, what is the national policy and programme of action and impact thereof on eradication of the system, why is it that we have not been able to eradicate this age old social evil despite years of planned efforts, what should be the strategy and programme of action for its eradication in future, what each one of us individually and all of us collectively need to do to put an end to this evil now or in future.

Justice Shri Patel observed that existence of bonded labour system has been viewed by the National Human Rights Commission as one of the worst

violations of human rights. It has also been viewed as a violation of the right to life as enunciated in Art. 21 of the Constitution. Respect for individual dignity and decency is the sheet anchor of that right which is taken away by recourse to forced/bonded labour. Every one at the work place has the volition to work or not to work according to his/her ability; everyone is entitled to remuneration according to the work performed; everyone is entitled to be treated with dignity and decency at the work place regardless of the nature of work. This is the basic unexceptionable principle which should be accepted by one and all. He asked the participants to search within and ask the question, 'Am I paying the right remuneration to the person whom I have engaged as a domestic help at my residence?' Is he/she within the permissible age i.e. 14? If your conscience tells you that the remuneration paid is lower than the minimum wage notified by Government and the person employed is below 14 years of age then we do not have any moral right or authority to engage such a person. The mistake committed should thereafter be immediately corrected.

Justice Shri Patel thereafter referred to the Preamble to the Constitution which states the following:-

- India is a sovereign socialist democratic republic;
- All citizens are entitled to justice, social, economic and political;
- They are entitled to liberty of thought, expression, belief, faith and worship, equality of status and of opportunity.

From a bare reading of the provision contained in the Preamble it is evident that if laws are implemented properly the promise which is given by ourselves in the preamble will be fulfilled. Transgression of duties and responsibilities bestowed on individual officers would tantamount to breach of these provisions and the cardinal principles inherent in them.

Highlighting the essence of certain cardinal principles like social, economic and political justice, equality of status and opportunity Justice Shri Patel stated that these are of paramount importance for people coming for services where such equality of opportunity was the sine qua non of justice and fair copy. Equality of status implies that everyone regardless of rank, status,

calling and profession is to be treated with dignity and decency and there cannot be, other things being equal, any discrimination against anyone merely on the grounds of caste, creed, colour, faith and belief, gender, social origin and political ideology.

Justice Shri Patel emphatically stated that bonded labour system is a crime against humanity. It is anathema to civilized human existence. It is negation of inalienable human rights. It is the very antithesis of decent work. It is a blot on civil society and conscience of the Nation and States. It is but natural that the NHRC since its inception on 12th October, 1993 has been deeply concerned about eradication of the vice of bonded labour system throughout the length and breadth of the country. While disposing off the WP No. 3922/85 PUDR Vs. State of Tamil Nadu and Others the Supreme Court of India entrusted the responsibility of monitoring the pace and progress of effective implementation of the provisions of Bonded Labour System (Abolition) Act and the results achieved by different States/UTs. Since then Chairpersons, Members and Special Rapporteurs of the Commission have been visiting different States/UTs which have reported existence of bonded labour system and conducting indepth reviews of the pace and progress of implementation. The review reports are first placed before the Full Commission and thereafter the findings in the review reports are shared with the State Governments concerned and an Action Taken Report (ATR) obtained.

Justice Shri Patel regretfully observed that there is always a marked difference in reporting by the team of officers deputed by the NHRC and that by the District Magistrate of the district concerned. The general impression of the Commission has been that the District Magistrates concerned are not observing the procedure established by law in conducting inquiry into complaints which are forwarded to them and not sending comprehensive reports after completing the inquiry. This is true of not one district but as many as eight districts. While the DMs maintain a stand that there are no bonded labourers, the team deputed by NHRC invariably finds the existence of bonded labourers at the very same point. This gives rise to a lot of disappointment in the minds of the people who would like the offenders of law/bonded labour to be taken to task as early as possible but that does not always happen.

To correct the imbalance, to familiarize and sensitize the Collectors/DMs and to place the entire issue of elimination of bonded labour system in a proper and holistic perspective, the NHRC has been organizing State level sensitization workshops. Thirteen workshops have been held so far and the current workshop at Bhopal was the fourteenth in series. A manual on human rights for DMs was prepared by the Commission and has been circulated among all the DMs and SDMs for better understanding of the provisions of law, policy and programme of action. Detailed guidelines on the subject have also been issued to all the State Governments after the one day national level sensitization workshop which was held at India Habitat Centre on 27.6.2007.

Justice Shri Patel observed that despite these proactive measures the experience of the Commission on the whole with the States/UTs has not been quite encouraging as would be evident from the following:-

- According to some States, eradication of bonded labour system is either a non issue or a non-priority issue;
- They maintain a stand that this was a one time problem and with enactment of the law in 1976 bonded labour system has been abolished lock, stock and barrel;

Expressing his strong disagreement with such ill perceived notions Justice Shri Patel maintained that existence of bonded labour system is not a thing of the past; it can occur and recur at any point of time. It is not confined to any particular occupation or region, it can be found in any occupation or region. It is neither the occupation nor the region nor the nature and character of employment but the nature of work relationship between 2 human beings i.e. the employer/contractor and the employee which is key to understand the incidence of bonded labour system. If the relationship is one of respect for human dignity and decency, there is no cause for worry. If instead, the relationship is exploitative where respect for human dignity and decency is at stake it becomes a matter of deep concern.

Justice Shri Patel further observed that as long as there is poverty, unemployment, under employment, landlessness and assetlessness these will lead people to indebtedness and bonded labour system becomes inevitable.

Similarly as long as there is human instinct of one man exploiting another, bonded labour system will be the inevitable outcome. The only way by which good and positive results can be achieved is that officers responsible for enforcement of law go down to the ground, meet the aggrieved people, talk to them in the language intelligible to them, understand their plight and predicament and try to alleviate the same. Officers who are responsible for enforcement of the provisions of law should find out in course of their inspection of the establishment concerned as to whether the terms and conditions of service and employment are being complied in a just and fair manner.

Justice Shri Patel clarified that law alone cannot abolish individual and social aberrations. Bonded Labour System cannot come to an end merely because a law is there on the statute book in the same sense as heinous crimes like rape, abduction and kidnapping have not ceased to exist because of Indian Penal Code, 1860. The need of the hour is that people must know, they must see things for themselves and that will be possible only with the education and awareness of people whose lives are affected on account of the presence of a social evil like bonded labour system.

Giving a brief history of the enactment of the law, Justice Shri Patel observed that Bonded Labour System (Abolition) Bill was passed by both Houses of Parliament and received the assent of the President soon thereafter but was given retrospective effect from 25.10.75, the day the Bonded Labour System (Abolition) Ordinance was promulgated by the President of India. Since then a number of positive developments both on the legislative and administrative front have taken place. In April, 1985, an explanation was added to Section 2(g) of the Act to the effect that contract labour and interstate migrant labour would also come within the purview of the law if they fulfilled the ingredients of that section. The Centrally Sponsored Scheme for rehabilitation, of freed bonded labourers which was launched in May, 1978 has since been reviewed and revised 3 times and the per capita assistance to every freed bonded labourer has been

enhanced from Rs. 4000/- in 1978 to Rs. 20,000/- w.e.f. 1.5.2000. The revised scheme also provides for financial assistance at prescribed scales for States/UTs for survey, awareness generation and evaluation of the content, process, quality and impact of the programme.

Between 1981 and 2006, the Supreme Court of India has pronounced as many as 23 judgements through as many public interest litigations under Art. 32 of the Constitution. Various High Courts have also entertained similar public interest litigations under Art. 226/227 of the Constitution and have delivered judgements.

Justice Shri Patel regretted that so many progressive rulings of the apex Court notwithstanding, the experience of the Commission has not been very happy. States have availed of financial assistance @ Rs. 2 lakhs per district, carried out surveys for identification of bonded labour system but have reported nil bonded labourers. No proper strategy and methodology has been adopted while conducting such surveys. Despite a very broad, liberal and expansive interpretation given by the Supreme Court on various aspects of the vice of bonded labour system the States/UTs have been expressing doubts, disputes and reservations on the legal definition and concept. Bundles of mindsets persist both among the law enforcement officers as well as among the bonded labour keepers. This goes to show that we have not done enough as far as generation of a positive awareness is concerned.

Justice Shri Patel referred thereafter to a very important role of Vigilance Committees under the statute. These Committees are the principal watchdogs against occurrence and recurrence of the bonded labour system. The manner of their Constitution, composition and functions have been clearly laid down in the framework of the law. They would have definitely created a perceptible impact if they would have been properly constituted and reconstituted wherever due; if proper orientation and training would have been imparted to the members, if the VCs would have gone to the ground for conducting surveys as mandated by the law and if there would have been a State level monitoring mechanism to monitor their functioning.

Justice Shri Patel highlighted the importance of character and integrity of members of this very important institutional mechanism by citing an example from Gujarat. There was an NGO in Gujarat who was looking after the problem of pollution; it was simultaneously represented in a Committee at the taluka level for prevention of air pollution. Under orders of the Court, the factory of the NGO was raided and it was found that the NGO was substantially contributing to pollution. In a situation like this where the fence starts eating the crops, where the promoter and protector of law becomes its devourer, nothing much can be expected even if institutional mechanisms are in place.

Justice Shri Patel emphasized that a lot of care, discretion and circumspection was called for on the part of authorities concerned in appointing members of certain statutory or non-statutory Committees. Such members must be women and men of character, integrity, dedication and commitment to the cause for which they have been appointed to a body.

Justice Shri Patel regretted that the ground level scenario is quite contrary to our expectations. Referring to some of the review reports of Dr. Mishra, the Special Rapporteur of the Commission, he stated that the functionaries at the district and sub divisional level were not even aware that (a) these bodies i.e. VCs need to be reconstituted once every 2 years and (b) they can continue to function till the reconstituted body comes into effect. The members of the VCs seldom go to the field, seldom meet and interact with people who may be working and living under conditions akin to debt bondage, conduct discrete enquiries and come to definite conclusions. They meet and part in a ceremonial manner at the district and sub divisional level after conducting some routine business but without achieving anything worthwhile. They are appointed to assist officers of the Government but they fail miserably in drawing the attention of the officers to the wrongs which might be committed on the ground against certain individuals who are simple, innocent and guileless but who suffer in the hands of others as they have eyes to see and ears to hear but no tongue to speak. In such cases action which is urgently required to be taken against the wrong doer is not taken and no relief and succour is given to the aggrieved or the victimized.

Justice Shri Patel thereafter threw light on the essence of the summary trial procedure which is required to be followed u/s 21(2) and on which a lot of emphasis has been attached by the Supreme Court. He observed that in a summary trial, the trying Court is not required to record the evidence in detail. It is required to briefly record the substance of the evidence and the judgement itself is also required to be very brief.

The ground level situation, however, is quite different. The apex Court while disposing off WP No. 2135 of 1982 in Bandhua Mukti Morcha Vs. Union of India and Others has adversely commented on the rigid and legalistic procedure which is being followed by the Magistrates while trying offences u/s 21(2) of Bonded Labour System (Abolition) Act. In Neerja Chaudhury Vs. State of M.P. and Others it came to the notice of the apex Court that while bonded labour keepers were made to sit on a platform, bonded labourers were made to sit on the floor and asked a number of inconvenient and uncomfortable questions to which they can never respond in presence of their oppressors. If the Magistrates trying offences u/s 21 (2) of the Bonded Labour System (Abolition) Act remain insensitive to the culture of silence and dependence and the situation of helplessness in which the bonded labourers are placed the latter may never be able to see the light of their deliverance. Proceedings which are long drawn out and which are conducted to the total exclusion of special needs of the poor, deprived and disadvantaged will never succeed in securing for the bonded labourers what the framers of the law had envisioned.

Justice Shri Patel expressed his regret over the manner in which the trying Magistrates refuse to issue a release certificate even after there was enough evidence that the aggrieved person was a victim of the abominable bonded labour system. In July, 1997 the DM Bhiwani refused to issue release certificate to 150 women, men and children who were working for years in stone quarries of Charkhi Dadri under bonded conditions, who could not put up with the tortuous and oppressive treatment meted out to them by the employer/contractor and who, therefore, escaped from the quarry – their death pot and took shelter at 7, Jantar Mantar Road, New Delhi which is the headquarters of Bandhua Mukti Morcha.

The NHRC had to intervene in this case and eventually release certificates were issued by the DM, Bhiwani as a result of such intervention.

Justice Shri Patel also deplored the stand taken by some DMs that a bonded labourer should not be released and rehabilitated until and unless the bonded labour keeper has been convicted. This is an absurd and ill perceived notion. Both the trials are different – one is civil and the other is criminal. The two cannot be mixed up. The person who is acquitted in a criminal trial can be dismissed from service but that finding may not be binding on the civil code. The apex Court has clarified this issue beyond doubt. According to the apex Court Bonded Labour System (Abolition) Act is a fine piece of social welfare legislation in the post independence era which is meant for protecting and safeguarding the interest of bonded labourers who constitute the poorest of the poor and weakest of the weak. The apex Court had clarified that while criminal proceedings against the bonded labour keepers may be launched separately and simultaneously, it should not and cannot withhold the process of release and rehabilitation. The same observation has also been made by the apex Court with regard to release and rehabilitation of working children in M.C. Mehta Vs. State of Tamil Nadu CWA 465 of 1986. The two proceedings are quite different and this difference must be borne in mind.

Justice Shri Patel also expressed reservations over the quality of rehabilitation of freed bonded labourers. According to him, the aptitude, preference and interest of freed bonded labourers are seldom taken into account while formulating rehabilitation proposals. The result is counter productive. There is a huge time gap between release and rehabilitation which is bound to result in relapse of a freed bonded labourer back to bondage. No vigilance or surveillance is ever kept of this process nor any documentation on the extent of relapse and any attempt to prevent the same. Rehabilitation cannot be meaningful, permanent and effective unless the limited outlay of Rs. 20,000/- per capita under the Centrally Sponsored Scheme is supplemented and complemented by pooling resources from a variety of sources and integrating them imaginatively and skilfully.

Justice Shri Patel also regretted over the fact that registers required to be maintained under Rule 7 of Bonded Labour System (Abolition) Rules are not maintained by the district level Vigilance Committees which gives rise to serious difficulties in accounting for the total number of bonded labourers identified, released and rehabilitated. He observed that even now according to the information furnished by the States to the Ministry of Labour and Employment, Government of India 2.86 lakh bonded labourers have been identified and released and 2.66 lakh bonded labourers have been rehabilitated while the whereabouts of 20,000 bonded labourers are not known. One is not sure whether they are alive or dead or whether they have migrated to other States. Such a situation would not have arisen if Vigilance Committees would have maintained the 4 registers under Rule 7 of Bonded Labour System (Abolition) Rules and if release and rehabilitation would have been simultaneous, he maintained.

Justice Shri Patel deplored the plight and predicament of interstate migrant workmen who are recruited by recruiting agents from one part of the territory of India to another on payment of advance which drives them to a situation of bondage. Being ignorant, non-literate and non-numerate they cannot easily remember or recall how much advance was taken, at what rate of interest and with what schedule of repayment. The documentary evidence in support of the said advance remains with the recruiting agents and the migrant workmen will all along be told by the employer/contractor that they cannot leave the worksite until and unless advance amount was not fully liquidated. In case of seasonal units like brick kilns, workmen are not paid any wages but only recurring advances to enable them to keep their body and soul together. The process of adjustment of advance with wages payable is often unilateral and arbitrary and much to the disadvantage of the workmen.

Justice Shri Patel concluded his address by stating that (a) this is a sensitization workshop intended to promote better awareness and critical consciousness about the provisions of the Constitution, of the laws, of the judgements of the Supreme Court, of the national policy and programme of action (b) bring out the role of the government, government functionaries

including enforcement functionaries, central employers and trade union organizations, NGOs and voluntary social action groups and so on.

He emphasized the point that eradication of bonded labour system is not utopian; it is very much possible, feasible and achievable if the following points are borne in mind by one and all including the participants of the workshop:-

- The problem should not be perceived to be non-existent merely because of Constitutional and legal provisions or international treaty provisions; it is very much existent despite these provisions;
- It can occur and recur at any point of time;
- It is not confined to agriculture; it is prevalent in brick kilns, stone quarries, leather tanning and flaying, salt manufacturing in any other industry, occupation and process;
- Vigilance Committees should be Constitutional and reconstituted whenever due by women and men of character, integrity, dedication and commitment to the cause of identification, release and rehabilitation of freed bonded labourers; they should go out to the field to conduct surveys, to investigate into complaints by adopting unorthodox and unconventional means;
- A mechanism for ventilation and redressal of grievances of potential bonded labourers must be in place at the district, sub divisional, taluk and block levels;
- A State level monitoring, supervision and coordination mechanism should be in place to monitor the performance of Vigilance Committees;
- Massive programmes of orientation, familiarization and sensitization of enforcement officials, police, magistracy judiciary and all those who are concerned with the identification, release and rehabilitation of bonded labourers should be launched and professionally executed with the help of knowledgeable and professionally competent resource persons and impact of such programmes should be evaluated by Institutes of Social

Science and Research; such programmes should be repeated as long as the desired objectives have not been achieved;

- All released bonded labourers should be rehabilitated within the prescribed time frame failing which they will lapse back to debt bondage which must be prevented at all costs; all rehabilitation proposals must be formulated only after ascertaining the preferences, felt needs and interests of the beneficiary in view;
- All pending cases at the level of Executive Magistrates vested with judicial powers must be disposed off by fixing a dead line in a positive and constructive manner by keeping the directions of the apex Court in view;
- A complete dossier or documentation of all bonded labourers identified as such should be in place. This is a statutory requirement which must be completed;
- Success stories on identification, release and rehabilitation should also be compiled. Such a compilation can be made use of at the time of training of all enforcement officials (including police and magistracy and officials of other departments) who are involved with the process of identification, release and rehabilitation;
- Fresh initiatives for identification of bonded labourers should be launched keeping the guidelines of the apex Court in view;
- Voluntary social action groups who are non political or apolitical, who have the urge, inclination and commitment should be spotted by the district administration and be fully involved in the process of identification.

All public servants including DMs are no longer parts of a steel frame as was the perception prevailing in the colonial era. They are humble servants of the people in general and of the poor, deprived and disadvantaged in particular. They must continuously think, reflect, critically analyse and introspect as to what

was their mandate, what they have done so far and what are the unfinished tasks for the future. They should remember that alike in the lives of institutions as in lives of individuals there is always scope for correction and improvement. This will be possible only with acknowledgement of mistakes and by adopting a humane, kind and compassionate approach to all social issues, so concluded Justice Shri B.C. Patel:-

Shri K.P. Singh, Principal Secretary, Labour, Government of M.P. gave the welcome address while Shri R.K. Pande, Addl. Labour Commissioner who also compeered the proceedings of the workshop gave the vote of thanks.

To make the discussions more meaningful the workshop was divided into the following technical sessions:-

- Technical Session No. I :** Conceptual and definitional clarity
- Technical Session No. II :** Identification of bonded labour system:
Modalities of conducting a survey
- Technical Session No. III :** Release of identified bonded labourers: issue of release certificates: filing of prosecution and trial of offenders of law.
- Technical Session No. IV :** Rehabilitation of freed bonded labourers – physical, economic and psychological
- Technical Session No. V :** Special problems of migrant bonded labourers and those of working children – identification, release, repatriation and rehabilitation.
- Technical Session No. VI :** How to handle complaints being forwarded by the NHRC to DMs.

The Special Rapporteur of NHRC introduced the theme of each technical session which was thereafter thrown open for a general discussion. The Special Rapporteur clarified all the doubts of the participants.

The Special Rapporteur summed up the conclusions and recommendations of the workshop. Quoting from a saying in Hindi he observed that we should move step by step if we want to reach the last step i.e. the pinnacle of success. He further observed that (a) it has been a participative and communicative workshop (b) a lot of insight has been generated in course of presentations made by the Labour Commissioner, DMs as also through deliberations in the workshop and (c) the workshop has helped in removing a lot of doubts and misgivings about the definition of bonded debt; bonded labour, bonded labourer and bonded labour system.

(4) (Some of the redeeming features which have come to notice are (a) customary bondage is on the decline (b) a number of new innovative schemes in the domain of social security such as national health insurance scheme, health card for all, schemes meant for artisans, schemes meant for unmarried girls, welfare schemes for building and construction workers etc. have been introduced by the Central and State Government.) These schemes will undoubtedly create a positive impact on the lives of millions of citizens and industrial and non industrial workers. There is considerable force behind the statement made by the Principal Secretary, Labour, Government of M.P. that once the foundation of social security is strong, that will pave the way for a new social order, people will be assured of their right to employment, livelihood, income, health and medical care, dignity and decency and bonded labour system will disappear.

Referring to the days (1982-85) when he was DG(LW)/JS in the Ministry of Labour, the Special Rapporteur observed that winds of change have started blowing in many directions. The minimum wages in M.P. have been reviewed and revised and even though they are lower than those of Kerala and NCT of Delhi; they are better than many other States. Commending initiatives like 'Hearing People's grievances in a campaign mode' launched by Collector Raisen which was reminiscent of late Chief Minister, Rajasthan – Shri Shiv Charan Mathur's 'Administration to Villages' in 80s he felt that this should be replicated in

all the districts. If such positive, constructive and timely steps are initiated they will benefit a very large number of labourers, positively affect their livelihood and income and bonded labour system could then be a thing of the past. While replicating good and replicable models of development we have to fight mindsets of people with a negative orientation. Many of these mindsets are a hang over of the feudal past. There are people among us who still think, feel and believe that bonded labour system is not something very wrong. These mindsets need to be removed without ifs and buts. DM Tikamgarh had raised a very valid point as to how to generate an autonomous status for the poor, deprived and disadvantaged. Mindsets can be removed through preparation and dissemination of information, education and communication packages. Some of these packages were released by the Chief Guest today. Through such packages we have to generate the feeling among the people that bonded labour system is something very wrong, highly abominable and objectionable and must be nipped in the bud.

Referring to migration which extensively figured in the discussions of the workshop as an issue, the Special Rapporteur gave the example of Jhabua. In this otherwise predominantly tribal district in M.P., the incidence of migration has come down from 4 lakh to 75,000. Still migration is an important issue which often adversely affects the lives of the poor in more ways than one. To start with, it causes dislocation of home and family life. Secondly, children who accompany the migrant parents are the worst victims of education deprivation. Thirdly, women become victims of sexual harassment at the work place. Fourthly, families who migrate on receipt of advances from the recruiting agents get into a debt trap and become bonded labourers and find their liberation rather difficult. Fifthly and this is relevant in case of migrants from Jhabua, the migrant families become victims of occupational diseases like silicosis, numoconiosis, asbestosis, pleurosy, TB, asthma bronchial asthma and bronchitis. Some of these diseases like Silicosis are deadly and incurable (like HIV/AIDs). The Special Rapporteur referred to his extensive tours in Chattisgarh and Jharkhand where the dry and drought prone areas provide a major source of migration and regretted to observe that malfunctional and dysfunctional middlemen approach the rural poor at odds hours like dead of night, hold out promises and allurements of better

employment, higher wages and better quality of life and recruit them to unknown destinations. Even the Village Panchayats are not kept informed of such recruitment. No sooner the migrant workmen reach the destination site than all the hopes, promises and allurements are belied and they are subjected to a chain of ruthless exploitation. Working hours are unduly long, the workplace is unclean, unhygienic and unsafe and basic minimum entitlements (journey allowance, displacement allowance, wages during journey period, residential accommodation, free medical aid etc.) are not met.

Apart from measures such as intensification of public works, enforcement of minimum wages and linking wages to a functional PDS to prevent and minimise the incidence of migration, we need through an appropriate information, education and communication package to inform the intending migrants about the disastrous consequences of migration itself and leave them to think, reflect, critically analyse as to whether they should at all migrate or it. A system of registration of all migrants with the GPs should also be introduced.

The Special Rapporteur referred to the importance of fixation, review, revision and enforcement of minimum wage in respect of all scheduled employments by the appropriate government and suggested that if notified minimum wages are enforced along with creation of stable and durable avenues of employment, there will be no occasion for migration of families which is often linked to disparity in wages across regions and scheduled employments. The endeavour should be to reduce such disparity in wages to discourage migration.

The Special Rapporteur concluded his summing up statement by referring to his experience as DG (LW) in 80s when rehabilitation of freed bonded labourers was one of the points in the 20 Point Programme of Government of India. He was mandated by Government to review the position across the length and breadth of the country. Subsequently and on 2 successive occasions he was appointed as socio legal investigating Commissioner of the Supreme Court to-investigate into the sorry state of affairs in stone quarries at Vijayawada and Faridabad. The National Human Rights Commission also deputed him as leader of a team to Vijayawada 30 years later to investigate into complaints of prevalence of bonded labour system in the quarries. He regretted that the

situation even 30 years after very much remains the same which goes to establish that both the milieu and system have been rather callous and insensitive towards this issue. Hence the importance of sensitizing the insensitive and hence the 14th workshop. The outcome of the workshop can be said to be fruitful only if all the participants go back to their respective destinations doubly sensitized to work for the cause of eradication of the social evil with renewed vigour and commitment.
