

<https://nlrd.org/wp-content/uploads/2012/02/NHRC-KNOW-YOUR-RIGHTS-Bonded-Labour-English.pdf>

KNOW YOUR RIGHTS

BONDED LABOUR



National Human Rights Commission

Know Your Rights Series

BONDED LABOUR



**National Human Rights Commission
Faridkot House, Copernicus Marg
New Delhi-110001**

Know Your Rights Series:

Bonded Labour

This publication is intended to assist a wide audience to achieve a better understanding of the basic human rights.

© 2010, National Human Rights Commission, India

Published by : National Human Rights Commission, Faridkot House,
Copernicus Marg, New Delhi-110001

Printed at: Veerendra Printers, Karol Bagh, New Delhi-110005

Bonded Labour

There still exists in different parts of our country a system under which the debtor or his descendents have to work along with one or more than one member of the family for the creditor for a specified or an unspecified period without any market wage or without minimum wage notified by the Government in order to discharge a debt. This system originated from the uneven social structure characterized by feudal and semifeudal conditions. It is an outcome of certain categories of indebtedness, like customary obligations, forced labour, *begar* or indebtedness which have been prevailing for a long time involving certain economically exploited, helpless and weaker sections of society. They agree to render service to the creditor in lieu of a debt. At times, several generations work under bondage for the repayment of a paltry sum, which had been taken by some remote ancestor, often at usurious rates of interest. This is an unequal exchange system which in its totality represents one of the worst violations of basic human rights and a disgrace to the dignity of labour.

Magnitude of the problem:

Labour implies service. A person who renders such service is a labourer. A bonded labourer is one who renders service on account of bonded debt. Such an occasion may arise due to social or economic compulsions which force the labourer to render service to another under terms and conditions of service and employment which are invariably totally disadvantageous to that person.

The terms and conditions under which such service is rendered have been laid down in Section 2(g) of Bonded Labour System (Abolition) Act. The responsibility for identification of bonded labour system through survey has been entrusted to Vigilance Committees u/s 14(e) of the Act.

If Vigilance Committees would have been constituted for all the districts and sub divisions and reconstituted whenever due and would have proceeded to conduct periodic surveys with imagination and sensitivity it would have been possible to arrive at some definite figure about the magnitude of the problem. That regrettably has not been the case so far.

In the absence of an alternative national level household survey (the first such survey was conducted by Gandhi Peace Foundation in collaboration with V.V. Giri National Labour Institute in 1978-79 but the methodology adopted not being scientific its findings were not acceptable to Government) it is not possible to arrive at any definition conclusion about the total number of bonded labourers in the country.

According to the information made available by State Governments/ UTs 2,86,000 bonded labourers have been identified through survey at the initial stage after the BLS(A) Act came into force. In the absence of information about procedure adopted for such survey it is not possible to authenticate the accuracy of such a figure.

Causes of bonded labour system:

Absence of stable and durable avenues of employment leading to unemployment and under employment, denial of minimum wages notified by the appropriate Government in respect of a scheduled employment, the pernicious practice of payment of wages in kind forcing the labourer in a monetized economy to approach a money lender for loan/debt/advance in cash to defray a number of household expenses, landlessness and assetlessness, pernicious caste hierarchy, landless and assetless families being forced to migrate from one part of the territory of India to another in search of alternative or better quality jobs with higher wages at the destination point and getting into bondage at that point due to (a) faulty system of advances (b) usurious rate of interest on the amount advanced (c) faulty system of adjustment of wages with the amount advanced (d) loss of freedom to leave worksite in the face of advance persisting unliquidated (e) pervasive ignorance, illiteracy, social backwardness and (f) lack of organization on the part of debtors to bargain for what is just, fair and equitable, lack of alternative means of cheap credit for ceremonial, consumption and development purposes are responsible for origin, perpetuation and reinforcement of bonded labour system.

The factors that trigger off the pernicious bonded labour system are: crisis and death in the family due to prolonged illness natural calamity/ accident, sudden loss of employment, cheating and loan design by money lender, non-sustainable expenses on wedding and other social functions, alcoholism, migration and trafficking.

In varying degrees the State Govts. tend to ignore or refuse to acknowledge the existence of bonded labour in their respective States on the faulty premise that identification of bonded labour system may bring a slur or bad name on the government and administration. Authorities are found mostly unresponsive to the complaints of bonded labour brought to their notice. Instead of acting promptly on such complaints and initiating the process of identification and release of bonded labourers, they are even found helping the bonded labour keepers to arrange the dispersal of bonded labourers after hurriedly settling their accounts.

Sectors of the Economy where Bonded Labour System is Prevalent

Though the bonded labour system is deeply embedded in feudal and semi-feudal social structure, it is also prevalent in advanced agriculture with landlord serf relationship and in the non-agricultural sectors.

- High incidence of bonded labour system in the agriculture sector is found in the States of Andhra Pradesh, Bihar, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Tamilnadu and Madhya Pradesh.
- In the non-agriculture sector, it is prevalent in brick kilns, stone quarries, beedi manufacturing, carpet-weaving, match and fire works industry, pottery, construction projects and bonded child labour in the sericulture processing industry.
- Migrant bonded labour involving States such as Bihar, Jharkhand, Chattisgarh, Tamilnadu, Madhya Pradesh, Orissa, Rajasthan, present a heightened form of deprivation and exploitation often amounting to bonded labour system;
- Domestic workers, *jogins* and *devdasis* are subjected to exploitation in the form of bonded labour system.

Characteristics of the Bonded Labour System

Bonded Labour System is not a one time or one occupation phenomenon. It may occur and recur at any point of time in any industry, occupation or process. Prevalence of the system is dependent on the relationship which obtains at the workplace between the employer and

the employee. If the relationship is just, fair and equitable based on dignity, decency, equality and freedom there is no cause for worry. If instead the relationship is based on extortion, torture, expropriation and exploitation, all the excitement and joy associated with work is lost and the worker is reduced to the level of a serf.

In other words, existence of a creditor debtor relationship with loss of freedom is the principal characteristic of bonded labour system. Such loss of freedom may be of different forms such as:-

- Loss of freedom of employment or alternative avenues of employment for a decent livelihood;
- Loss of freedom to earn minimum wage notified by the appropriate government in respect of a scheduled employment;
- Loss of freedom to move from one part of the territory of India to another;
- Loss of freedom to appropriate or sell at market value any of his property or product of labour or the labour of a member of his family or any person dependent on him.

Constitutional and Legal Safeguards

The Constitution of India guarantees all its citizens – justice - social, economic and political; freedom of thought, expression, belief, faith and worship; equality of status and of opportunity and fraternity, dignity of individual and unity of the nation.

Article 23

Prohibition of traffic in human beings and forced labour

- 1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- 2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 39

Certain principles of policy to be followed by the States

Article 39(a) provides that the citizens, men and women equally, have the right to an adequate means of livelihood; Article 39 (d) provides that there is equal pay for equal work for both men and women and Article 39 (e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 42

Provision for just and humane conditions of work and maternity relief

The State shall make provision for securing just and humane conditions of work and maternity relief.

Article 43

Living wage etc. for workers

The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work and living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Legal Provisions in the National Context

The issue of 'bonded labour' came to forefront at the national level when it was included in the old 20-Point Programme announced to the nation by the then Prime Minister – Smt. Indira Gandhi on 1.7.75. Thereafter based on the Constitutional provision, '*The Bonded Labour System (Abolition) Ordinance*' was promulgated on 25.10.1975 which was subsequently replaced by *The Bonded Labour System (Abolition) Act, 1976* but effective from 25.10.75, the date when the Ordinance had been promulgated.

Any person who was a bonded labourer on 25th October 1975 stood freed and discharged from any obligation to render bonded service and repay debt with effect from this date. He is to be set at liberty regardless of loans/debts/advances he might have owed to the landlord/moneylender/bonded labour keeper.

The Bonded Labour System (Abolition) Act has a Statement of Objects and Reason, 7 chapters and 24 sections as its substantive content. It can be broadly divided into the following:-

- Definition
- Consequences which follow the date of commencement of the Act.
- Relief to the aggrieved
- Structure of implementing authorities
- Legal and penal provisions.

These are analysed seriatim as below:

1. Definition

The Act defines advance, agreement, ascendant or descendant, bonded debt, bonded labour, bonded labourer, bonded labour system, family and nominal wages.

2. Consequences which follow on the date of commencement of the Act

The following consequences follow:

- With abolition of bonded labour system w.e.f 25.10.1975, bonded labourers stand freed and discharged from any obligation to render bonded labour.
- All customs, traditions, contracts, agreements or instruments by virtue of which a person or any member of the family dependent on such person is required to render bonded labour shall be void.
- Every obligation of a bonded labourer to repay any bonded debt shall be deemed to have been extinguished.

- No suit or any other proceeding shall lie in any civil Court or any other authority for recovery of any bonded debt.
- Every decree or order for recovery of bonded debt not fully satisfied before commencement of the Act shall be deemed to have been fully satisfied.
- Every attachment for the recovery of bonded debt shall stand vacated.
- Any movable property of the bonded labourer, if seized and removed from his custody shall be restored to him.
- Any property possession of which was forcibly taken over by the creditor shall be restored to the possession of the person from whom seized.
- Any suit or proceeding for the enforcement of any obligation under the bonded labour system shall stand dismissed.
- Every bonded labourer who has been detained in Civil Prison shall be released from detention forthwith.
- Any property of a bonded labourer under mortgage, charge, lien or any other encumbrance, if related to public debt shall stand freed and discharged from such mortgage.
- Freed bonded labourers shall not be evicted from the homestead land.

3. Relief to the aggrieved:

- The aggrieved person may apply to the prescribed authority for restoration of possession of property (if it is not restored within 80 days from the date of commencement of the Act).
- The prescribed authority may pass an instant order directing the creditor to restore such property to the possession of the aggrieved.
- Any order by the prescribed authority to this effect shall be deemed to be an order by a Civil Court.
- The aggrieved party may apply to have the sale of his property set aside if the property was sold before commencement of the Act.

- If the mortgaged property is not restored to the possession of the bonded labourer or there is some delay the bonded labourer shall be entitled to recover such mesne profits as may be determined by the Civil Court.

4. Structure of implementing authority:

The law provides for the duties and responsibilities of the District Magistrate and every officer specified by him. They have to ensure that the provisions of the Act are properly carried out (this has been dealt at length in Chapter-VII). The law also provides for the constitution of Vigilance Committees at the district and sub-divisional level, duties and responsibilities of such Committees in the area of identification and rehabilitation of freed bonded labourers.

5. Legal and Penal Provisions:

The Act provides for punishment for compelling any person to render any bonded labour. It also provides for (a) punishment for advancement of bonded debt (b) punishment for extracting bonded labour system (c) punishment for omission or failure to restore possession of property of bonded labourers and (d) abatement. The Act provides for appointment of Executive Magistrates for trial of all such offences and also provides for vesting them with powers of a judicial magistrate, first or second class for summary trial of all offences under the Act. The law also bars the jurisdiction of Civil Courts in respect of any matter to which the provisions of the Act are applicable.

Section 374 IPC

Unlawful Compulsory Labour

Whoever unlawfully compels any person to labour against the will of that person, shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

International Safeguards

- According to the Forced Labour Convention of 1930 (No.29) [Article 2 (1)] – the term “forced or compulsory labour” means all work or service which is extracted from any person under the menace of

any penalty and for which the said person has not offered himself voluntarily.

- The ILO Convention states that member countries are to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. (India ratified the ILO Convention on Forced Labour (No.29) on 30.11.1954).
- Article 4 of the Universal Declaration of Human Rights, 1948 states that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”
- The UN Supplementary Convention on the Abolition of Slavery (1956) – defines debt bondage as “the status or condition arising from a pledge by a debtor of his personal service or those of a person under his control as a security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.”
- In the ILO Report on Stopping Forced Labour (2001) – the term, bonded labour refers to a worker who rendered service under condition of bondage arising from economic consideration, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage, the implication is that the worker (or dependents or heirs) is tied to a particular creditor for a specified or unspecified period until the loan along with the interest which is at usurious rates has been fully repaid.

Ground Level Realities:-

- Many States take a stand that there are no bonded labourers in their States and that all that was required to be done has been done.
- Eradication of bonded labour is not a one-time event. It can occur and recur any time in any industry/occupation/process.
- Though bonded labour is largely found in agriculture, it is also present in several other industries/occupations like brick kilns, stone quarries, rice mills, salt manufacturing works, leather tanning units etc.;

- There could be inter-state migrant workmen who would also come in the category of bonded labourers.
- The problems of bonded child labour are as complex as are those of women bonded labour and migrant bonded labour.
- Issues relating to land, generation of employment which is full, freely chosen and productive (ILO Convention No. 122 which India has ratified) and extension of credit facility are not addressed together in a holistic manner.
- Unless the rehabilitation process is promptly completed there is every likelihood of the released bonded labourer relapsing into debt bondage again.

Safeguards for Release of Bonded Labourers and Prevention from their lapsing into bondage again

- Identification, release and rehabilitation should be simultaneous.
- Between identification and release, there should not be any gap, and in the same way between release and start of rehabilitation process.
- It is important to ensure that release certificates in respect of individual bonded labourers identified as such are issued promptly in the language which is intelligible to the bonded labourer.
- Prosecution of employers must go simultaneously but separately with identification and release of bonded labourers.
- Delay in conviction of the bonded labour keeper or even his eventual acquittal should not inhibit or stall the rehabilitation process.

Scheme for Rehabilitation of Bonded Labour

In order to assist the State Governments in their task of securing physical and psychological rehabilitation of released bonded labourers, the Ministry of Labour launched a Centrally Sponsored Scheme on 50:50 basis in May 1978. The scheme has undergone qualitative changes from time to time and has been progressively liberalized. The rehabilitation assistance has since been enhanced from Rs. 10,000/- to Rs. 20,000/- per bonded labourer w.e.f. May, 2000 and in the case of seven North

Eastern States, 100% central assistance if they express their inability to provide their share.

The modified scheme also provides for financial assistance to the State Governments/UTs for conducting survey of bonded labourers, awareness generation activities and impact evaluation.

Detailed guidelines have been issued to the State Governments for implementing the scheme. The State Governments have also been advised to integrate/dovetail the Centrally Sponsored Scheme for rehabilitation of bonded labourer with other ongoing poverty alleviation schemes such as Swarna Jayanti Gram Swaraj Rozgar Yojana (SJGSRY), Special Component Plan for Scheduled Castes, Tribal Sub Plan etc.

The problems of contract and migrant bonded labour are one of the most complex and sensitive. As a matter of fact, it is this problem which has become the subject matter of large number of public interest litigations before the Hon'ble Supreme Court and High Courts. The Bonded Labour System (Abolition) Act was amended in April, 1985 by adding an explanation to Section 2 and bringing contract and migrant labour within the purview of the Act if such labourers meet the ingredients of bonded labour system as defined in Section 2(g) of the Act. The modus operandi of recruitment of contract/migrant labour is as under:-

- on the eve of the season (say brick kilns) recruiting agents are deputed by the principal employer to recruit contract/migrant labour from one part of the territory of India to another;
- the recruiting agents pay advances to the labourers and bring them to the worksite usually with family members with promises and allurements of good wages and better conditions of work;
- the documentary evidence in support of payment of advances remains with the recruiting agents; the contents are never shared with the workmen;
- the promises are never kept;
- no sooner the workmen arrive at the worksite they are subjected to ruthless exploitation;
- the working hours are unduly long;

- there is no weekly off; no payment of any OT for work in excess of the stipulated working hours i.e. 8 hours a day and 48 hours a week;
- no wages are paid and the workmen continue to incur advances for their day to day biological survival;
- advances paid are adjusted against wages due in a unilateral, arbitrary and unjust manner;
- statutory entitlements like journey allowance, displacement allowance and wages during journey period are never paid;
- the workmen will all along be told, 'you cannot leave the worksite until and unless the advances paid to you are fully liquidated';
- the workmen have no clue as to when the advances will be fully liquidated since they have no access to the documentary evidence in support of payment of advance which is with the recruiting agents only;
- thus the contract/migrant workmen come fully within the purview of bonded labour system as it occurs within the meaning of Section 2(g) of BLS(A) Act.

Accordingly, the rehabilitation package provided by the concerned State Governments for the freed bonded labourers includes the following major components:

- Allotment of house-site and agricultural land;
- Land development;
- Provision of low cost dwelling units;
- Animal husbandry, dairy, poultry, piggery etc.;
- Training for acquiring new skills; developing existing skills;
- Wage employment, enforcement of minimum wages etc.;
- Collection and processing of minor forest products;
- Supply of essential commodities under targeted public distribution system;
- Education for children;

- Protection of civil rights.

Components of the Scheme for Rehabilitation of Bonded Labour

The Centrally Sponsored Scheme for rehabilitation of bonded labour has the following components:

- Each State Government is required to identify sensitive districts where bonded labour system has taken deep roots, find reasons for the existence of the system and suggest remedial measures.
- Conduct surveys on a regular basis – to find incidence of bondage, causes and forms of bondage, etc.
- Government of India provides a sum of Rs. 2 lakh per district to conduct such surveys. This amount is provided to a particular district once in 3 years.
- An annual grant of Rs.10 lakh per State Government is provided for awareness generation purposes.
- Each State Government is required to conduct five Evaluatory Studies in 5 districts/regions of the State every year through reputed research organizations/ academic institutions/ NGOs.
- Rehabilitation grant has been enhanced from Rs. 10,000/- to Rs. 20,000/- per freed bonded labourer, which is to be shared by the Central and State Government on 50:50 basis. Out of this, Rs. 1000/- are required to be paid immediately on release of a bonded labourer as subsistence allowance.

Role of District Magistrates in Rehabilitation

- District Magistrates have to ensure the release of identified bonded labourers on the basis of the reports submitted by the Vigilance Committees after conducting a survey at the district and sub divisional level.
- They would also formulate suitable schemes for the rehabilitation of freed bonded labourers – land based, non-land based and skill/ craft based occupations; keeping in view the preferences, felt needs and interests of the beneficiaries.

The Supreme Court's Directive

Several important judgements have been pronounced at the end of public interest litigations admitted as a Writ Petition by the Supreme Court under Article 32 of the Constitution. Clear, precise and authoritative directions have been issued by the apex Court to competent authorities responsible for the enforcement of the provisions of the Bonded Labour System (Abolition) Act, 1976. Names of the cases in which these judgements were delivered and a gist of the directions contained in them are listed as under:

1. AIR 1984 Supreme Court 802

P.N. Bhagwati, R.S.Pathak and Amarendranath Sen JJ

Writ Petition No.2135 of 1982

Bandhua Mukti Morcha Vs. Union of India and others

Date of judgement - 16.12.1983

Gist of important directions:

- 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 entitled to the benefits under the law.
- Government of Haryana should without any further delay and within 6 weeks from 16.12.1983 constitute a Vigilance Committee in each sub-division of a district.
- Government of Haryana will instruct the District Magistrates of all the districts in the State to take up the work of identification of bonded labour as one of their top priority tasks.
- The State government, the Vigilance Committees and the District Magistrates will take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the provisions of law.
- There is no substance in the contention of the State government that the workmen in the stone quarries and crushers might be

providing forced labour, but they were not working under bonded labour system.

- The State government should draw up within 3 months from 16.12.1983 a scheme for rehabilitation of freed bonded labourers in the light of the guidelines sent by Secretary, Ministry of Labour on 02.09.1982.
- The State government should adopt a non-formal and unorthodox approach in implementation of the law which is an important instrument for ensuring human dignity.
- The Central and State governments will take all necessary steps for the purpose of ensuring that minimum wages are paid directly to the workmen employed in the stone quarries and stone crushers and not through middlemen.

2. AIR 1984 Supreme Court 1099
P.N.Bhagwati and Amarendranath Sen JJ
Writ Petition (Criminal) No.1263 of 1982
Neerja Chaudhury Vs. State of Madhya Pradesh
Date of judgement - 08.05.1984

Gist of important directions:

- Rehabilitation must follow in the quick footsteps of identification and release, if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again.
- Social action groups operating at the grass root level should be fully involved with the task of identification and release of bonded labourers.
- The district and sub-divisional level Vigilance Committees should be reorganized and activated. Their meetings should be held at more frequent intervals than now.
- Officers who are posted at different levels to deal with the problem of bonded labour system should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor.

- 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 commended by way of suitable public recognition.
- An intensive survey of the areas which are traditionally prone to debt bondage should be undertaken by the Vigilance Committees with the assistance of social action groups operating in such areas.
- The pace and progress of schemes under implementation must be evaluated. Such evaluation should be target group oriented.

3. 1987 (Supplementary) Supreme Court cases 141

P.N. Bhagawati, CJ and K. N. Singh J

Santhal Pargana Antyodaya Ashram Versus State of Bihar and Others

Writ Petition No.13450 of 1983

Date of judgement - 19.12.1986

Gist of main directions:

- All persons who have been found to be bonded (2515) by K.B.Saxena Committee should be released within 2 weeks from the date of the order.
- The Collector should issue a release certificate to each of the persons so released.
- Each of the released bonded labourers shall be paid a sum of Rs. 3000-00 by way of interim relief.
- Such payment shall be made in the following manner:
 - Rs. 500-00 simultaneously with release
 - Rs. 2500-00 within 2 weeks from the date of release.
- The released bonded labourers (2515) must be rehabilitated by the State government on a permanent basis.
- Implementation of the rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court.

- The State government will submit within 2 weeks from the date of receipt of the order a report setting out the permanent rehabilitation programme formulated by them for scrutiny and approval by the Court.
- Other recommendations in K. B. Saxena Committee report shall be implemented as far as possible within one month from the date of receipt of order of the Court.

The Apex Court in its order dated 11-11-1997 in *Public Union for Civil Liberties v. State of Tamil Nadu & Others* (Writ Petition Civil No. 3922 of 1985) case directed that the National Human Rights Commission (NHRC) should be involved in monitoring the pace and progress of implementation of the law, national policy and programme of action as also directions of the apex Court issued from time to time. The NHRC is monitoring the bonded labour situation in the country.

In order to ensure compliance of the above directions, the Ministry of Labour constituted a Task Force, comprising officers of the Central Government and the Government of Haryana who are responsible for enforcement of various labour laws. The Task Force is required to undertake periodic visits and inspections of the stone quarries and crushers to ascertain facts about working and living condition of the workers. The task force is carrying out its assignment by meeting regularly and submitting reports to the Central as well as the State Government indicating therein status of compliance on the part of the concerned authorities with the statutory provisions and the directions of the Supreme Court.

Initiatives of the National Human Rights Commission

- The Supreme Court in the Writ Petition (No.3922/1985) – *Public Union for Civil Liberties v. State of Tamil Nadu & Others* – requested the NHRC to get involved in the monitoring of the implementation of the *Bonded Labour System (Abolition) Act, 1976*.
- The Supreme Court stated that the NHRC should follow the manner indicated in the order passed by the Supreme Court on 11-11-1997 in Writ Petition No.1900 of 1981 requesting the NHRC to be involved in the supervision of the working of the Agra Women's Protective Home to "ensure that the Home functions in the manner as is expected for achieving the objects for which it has been set

up” and that “the concerned authorities would promptly comply with the directives given by the NHRC”.

- The NHRC views the responsibility assigned to it from the angle of the Constitutional guarantee [Article 23(1) of the Constitution of India] incorporated in the *Bonded Labour System (Abolition) Act, 1976*.
- The NHRC took up the monitoring of implementation of the *Bonded Labour System (Abolition) Act, 1976* in early 1998. It focused attention on 13 states – Andhra Pradesh, Arunachal Pradesh, Bihar, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and Uttar Pradesh, identified as bonded labour prone areas by the Union Labour Ministry on the basis of several study reports.
- The Commission has been monitoring the implementation of the *Bonded Labour System (Abolition) Act, 1976* through its Special Rapporteurs.
- Several reviews in the States have been conducted by the Chairperson, Members, and Special Rapporteur of the Commission.
- The Commission keeps the Supreme Court informed about the steps taken by it to discharge the responsibility entrusted.
- In the year 2000, the Commission constituted an expert group to prepare a report on the status/improvement of the existing scheme and recommendation to effectively implement laws for the abolition of the bonded labour system.
- The group in its report gave its findings on the present status, the position of the existing schemes and recommendations relating to the law. It also gave an Action plan for the NHRC indicating that the task of monitoring entrusted to the NHRC by the Supreme Court requires the Commission’s involvement in all the three functions, namely **Identification**, **Release** and **Rehabilitation** of bonded labour.

The Commission is pursuing with the States/UT Governments to complete the mandatory measures under the *Bonded Labour Act*, namely–

1. Specifying authorities for implementing the provisions of the Act (Section 10);

2. Constitution of Vigilance Committees in each district and each sub-division (Section 13);
3. Authorizing the Executive Magistrates to exercise powers of Judicial Magistrates for the trial of the offences under the Act (Section 21);
4. Identifying the sensitive districts and industries where bonded labour system is being practised in one form or the other.

Incidence of witnesses turning hostile in cases under Bonded Labour System (Abolition) Act, 1976.

A Group was constituted by the Commission to examine the incidence of witnesses turning hostile in cases against the erring employers under the Bonded Labour System (Abolition) Act. The meeting of the Group was held on 7.7.2005 under the Chairmanship of Member NHRC and it was decided that the Commission would obtain periodical information on persecution of cases from the bonded labour-prone States.

The panel also recommended that the NHRC, in furtherance of its functions under Section 12B of the Protection of Human Rights Act 1993, may intervene in the Special case No.48/200 pending before the Additional District and Session Judge, Mandya after seeking permission of the court. In view of the non-initiative of the District Magistrates & Superintendents of Police and the apathy of the State Government, the Panel suggested that Hon'ble Chairperson may address D O letters to all the Chief Ministers of the States/UTs. It was also suggested that guidelines may be issued to District Magistrates for summary trial under Section 21 of the BLS(A). Hon'ble Chairperson Dr. Justice Shri A. S. Anand wrote to all the Chief Minister/ Administrator on 12.9.2006 regarding non-initiative by the District Magistrates and the Superintendents of Police in discharging their duties under the provisions of the Bonded Labour System (Abolition) Act, which has resulted in a large number of witnesses turning hostile, either due to threat or coercion by the accused or the harassment caused by the inordinate delay in proceedings under the judicial system.

Half Yearly Report from States/UTs

As per the directions of the Commission dated 7th December 2001, two proformae were devised for obtaining the information from the State Governments/UTs on Bonded Labour. Proforma-I is for seeking information

relating to the identification, release, rehabilitation and prosecution of bonded labour status as on 31-12-2001 and proforma-II is for obtaining quarterly reports.

The Hon'ble Supreme Court vide its order dated 5th May, 2004 directed all to the Union and State Governments to file affidavits on the following directions within a period of six months: -

- (a) All States and Union Territories must submit their status report in the form prescribed by NHRC in every six months (*So far the Commission has been seeking reports from States/UTs on quarterly basis*);
- (b) All the State Governments and Union Territories shall constitute Vigilance Committees at the District and Sub-Divisional Levels in accordance with Sector 13 of the Act, within a period of six months;
- (c) All the State Governments and Union Territories shall make proper arrangements for rehabilitating released bonded labourers. Such rehabilitation could be land-based, non-land based and art/craft/skill based, depending upon the preferences and interests of the released bonded labourer and his/her inclination and past experience. If the States are not in a position to make arrangements for such rehabilitation, then it shall identify two philanthropic organisations or NGOs with proven track record and good reputation with basic facilities for rehabilitating released bonded labourers within a period of six months;
- (d) The State Governments and Union Territories shall chalk out a detailed plan for rehabilitating released bonded labourers either by itself or with the involvement of such organizations or NGOs within a period of six months;
- (e) The Union and State Governments shall submit a plan within a period of six months for sharing the money under the modified Centrally Sponsored Scheme, in the case where the States wish to involve such organizations or NGOs;
- (f) The State Governments and Union Territories shall make arrangements to sensitize the District Magistrate and other

statutory authorities/committees in respect of their duties under the Act.

The Commission has organized a National Level Workshop on Elimination of Bonded Labour System and Child Labour in Delhi on 27th June 2007. The representatives from the Central/ State Governments/ UTs took part in the workshop. On the basis of detailed deliberations, the following guidelines emerged for implementation by the concerned authorities of the States/Central Governments:-

1. Art 23 of the Constitution prohibits all forms of forced labour including begar. It makes no difference whether the person who is forced to give his labour or service to another is remunerated or not;
2. When a person provides labour or service to another for a remuneration, which is less than minimum wage, the labour or service provided by him falls within the scope and ambit of forced labour under Art 23;
3. An intensive survey of the areas, which have been traditionally prone to the system of debt bondage, should be undertaken by the Vigilance Committees with the assistance of the social action groups operating in such areas;
4. Officers who are posted at different levels to deal with the problem of bonded labour system should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor;
5. Every officer who is placed in charge of identification, release and rehabilitation of bonded labourers should be made fully conscious of his/her responsibilities. He/she should be imbued with a sense of purpose and dedication, which is necessary for successful accomplishment of the task. There must be a sense of urgency and seriousness of concern in regard to the speed of rehabilitation among the officials who have been made responsible for the same;
6. A release certificate to each of the bonded labourers so released should be issued forthwith by the concerned Collector/DM or the SDM or the Executive Magistrate vested with powers of a judicial magistrate. The certificate should be in the local language and

- should be handed over to the persons so released simultaneously;
7. The State Government must rehabilitate the released bonded labourers on a permanent basis;
 8. Rehabilitation must follow in the quick footsteps of identification and release; if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again;
 9. Adequate funds should be released under the Centrally Sponsored Scheme for rehabilitation of all released bonded labourers;
 10. The Collector/DM/Dy. Commissioner of the district with such other officers who have been assigned the responsibility of supervising implementation of the rehabilitation scheme shall ensure that the full amount intended for the freed labourers reaches them;
 11. Prosecution should invariably be launched in all cases of bondage and pursued vigorously so as to affirm and publicize the determination of the Govt. This need not, however, be linked with release of the bonded labourer from bondage and his/ her rehabilitation which will have to proceed independently as a matter of high priority;
 12. The Bonded Labour System (Abolition) Act, 1976 (Section 16-19) provides for imprisonment upto 3 years and a fine upto Rs.2,000/- to whoever compels any person to render any bonded labour and whoever advances any bonded debt. Every offence under this Act is cognizable and bailable;
 13. Section 21 of Bonded Labour System (Abolition) Act, 1976 provides that the offences under the law to be tried by Executive Magistrates. The State government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of the first class or of the second class for the trial of offences under this Act; and, on such conferment of powers, the Executive Magistrate on whom the powers are so conferred, shall be deemed, for the purposes of the Code of Criminal Procedure, 1973, (2 of 1974), to be a Judicial Magistrate of the first class, or of the second class, as the case may be;
 14. All offences under this Act may be tried summarily by a Magistrate;
 15. The provisions of SC/ST (Prevention of Atrocities) Act, 1989 wherever victims of bonded labour system are SC/STs should be stringently applied;

16. The following registers are required to be maintained under Rule 7 of BLS(A) Rules, 1976:-
- (a) a register containing the names and addresses of the freed bonded labourer (s);
 - (b) a register containing statistics relating to the vocation, occupation & income of every bonded labourer;
 - (c) a register containing the details of the benefits which the freed bonded labourers are receiving including benefits in the form of land, inputs for agriculture, training in handicrafts and allied occupations, loans at differential rates of interest of employment in urban or non-urban areas; and
 - (d) a register containing details of cases under sub section (6) of section 6, sub section (2) of section 8, Sub Section (2) of Section 9, Section 16, Section 17, Section 18, Section 19 & Section 20.
17. Migrant workers, according to the spirit of the directions given by the Supreme Court in series of judgements, are to be asked as to where they would like to be rehabilitated i.e. at the originating point or at the destinations State. They cannot just be dispatched to their native States and left in the lurch there, which would be violative of the letter and spirit of Supreme Court judgement;
18. Vigilance Committees have to go out and conduct field surveys by adopting a non-formal, unorthodox and non-threatening approach and are not required to occupy static positions. They will never be able to identify bonded labourers by sitting in their arm chair offices and not going out and making discrete enquiries;
19. There is a provision for payment of immediate financial relief of Rs.1000/- to each of the identified and released bonded labourer. This financial assistance is most important because it relieves the bonded labourer of his immediate financial hardship. It may be ensured that this immediate financial relief is paid to each of the bonded labourers released.
20. A comprehensive list showing complete details such as residential address in the State of origin etc. may be prepared in respect of

those bonded labourers who were identified in the State, but were sent to their parent State for rehabilitation. A copy of the list may be forwarded to the NHRC as well as to the Labour Commissioners of the States to which they originally belonged;

21. Convergence should be effected between Govt. Departments and also with NGOs. This would mean the following:
 - Pooling of resources from a variety of sources;
 - Integrating them imaginatively and skilfully to achieve the objective of a meaningful, effective and permanent rehabilitation.
22. The Collectors/DMs/Deputy Commissioners would be the Centre of Convergence efforts in regard to all actions relating to bonded labour and child labour;
23. The Constitution of District and Sub-Division level Vigilance Committees will have to be taken up with high priority and sense of urgency wherever those are not in place. Periodic meeting of these Committees should be conducted within the stipulated time frame. The Vigilance Committee should undertake a review of the present status of already-rehabilitated bonded labourers, fresh plan for rehabilitation of identified bonded labourers and close monitoring of the bonded labour-prone areas/ industries etc. Cooperation and participation of NGOs and other social service organizations may also be explored in these Vigilance Committees so that the information received from such organisations may be useful in taking corrective action;
24. District Magistrates have been empowered under Section 10, 11 and 12 of the Bonded Labour System (Abolition) Act, 1976 All the DMs should have positive and proactive attitude and approach towards abolition of bonded labour system and should exercise their powers judiciously, diligently and with empathy and sensitivity;
25. There has to be a periodic review of the actual functioning of the Vigilance Committees constituted and such of those members who are non-functional should be eased out & replaced by new members; this can be done by constituting a State Level Committee.

26. The minimum number of meetings and the format for the VCs, to submit minutes and information on a periodic basis, have to be specified by separate notifications and these must be strictly enforced;
27. To ensure rehabilitation of transferred bonded labour at their native place, the release order should be sent demi-officially to the District Collector of the district concerned with a copy each to DG (Welfare) and NHRC;
28. The important task will be to achieve comprehensive psychological rehabilitation of the families along with physical and economic rehabilitation.
29. Severe punishment must be meted out to all brokers and middlemen who traffic child labour and export children to other States. A dedicated Control Room needs to be set up at the State Headquarters. A flying squad for providing protection to field level functionaries and NGOs engaged in the release operations should also be attached to the Control Room.

The aforesaid guidelines conveyed to all concerned for implementations.

* * * * *

National Human Rights Commission

Faridkot House,
Copernicus Marg
New Delhi-110001

Facilitation Centre (Madad): 011-23385368

Mobile No. : 9810298900 (For Complaints)

Fax: (011): 23386521 (Complaints) 23384863 (Administration)/
23382734 (Investigation)

Email: covdnhrc@nic.in (General) / jrlaw@nic.in(Complaints)

Web-Site: www.nhrc.nic.in