

**National Convention-cum-Training
Programme
on
Bonded Labour**

Date: 28.7.2018 to 29.7.2018

Venue: Vishwas Sansthan, Udaipur (Rajasthan)

Organized by:

**Centre for Constitutional Rights India, Human Rights
Law Network, Action Aid India, National Campaign
Committee for Eradication of Bonded Labour, National
Foundation for India, Aajeevika Bureau, Prayas Centre
for Labour Research & Action, JRNRV University,
Udaipur.**



Inaugural Session-Marked by The Lighting of The Lamp:





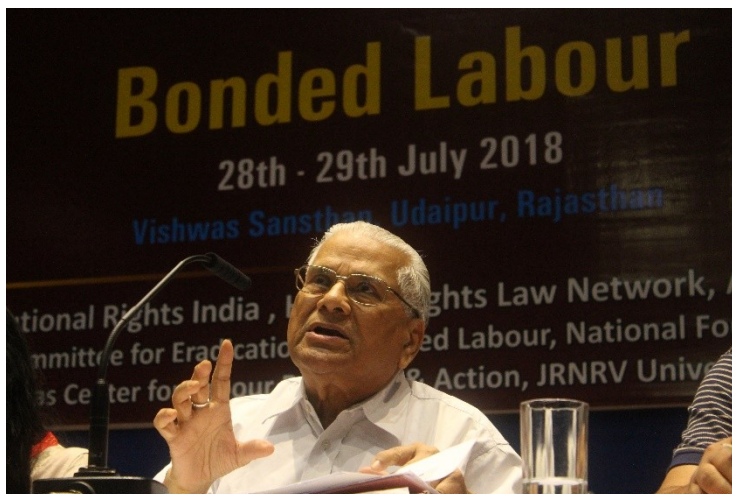
The event began with an enthusiastic singing of the song 'sathiyo salam hai' by agriculture worker and social activist, Mr. Subhash Singh. The song reflected the grave problem of bonded labour which still exists in our country in many forms.

Pursuant to this, Mr. Nirmal Gorana invited the panelists on stage for commencing the proceedings of the session. He invited Mr. Jai Singh, who works for Dalit Rights in Punjab; Mr. L.D. Mishra, Former Union Labour Secretary and Ms. Laxmi Naik, from Mumbai who works for the rights of domestic workers. He introduced Mahajbeen, who was rescued from Malaysia and is now living freely in Gujarat after passing through many crises. He also invited Mr. Rajiv Khandelwal, who works in Aajeevika Bureau, Udaipur.

This was followed by another song 'Baghat Singh tu zinda hai' by National Campaign Committee for Eradication Bonded Labour's convener and social activist Mr. Nirmal Gorana.

Mr. Gorana, then requested Mr. Subhash, as well as all the above-mentioned panelists to come on stage for the lighting of lamp, which would be an auspicious mark of the beginning of the National Convention- cum training program.

Speaker: Shri L.D. Mishra, Former Labour Secretary



In the inaugural session, Mr. L.D. Mishra took pains to explain the implications of Section 21 of the Bonded

Labour System (Abolition) Act (hereinafter, “The Act”), being struck down by Bombay High Court (28.09.95), Madhya Pradesh High Court (25.09.91) and Madras High Court (03.06.3014). The reason: Article 50 of the Constitution, which talks about separation of powers of the executive from the judiciary is being violated by Section 21 of the Act. While the Judgement of the Madhya Pradesh High Court has struck down the Constitutionality of Art 21. However, no appeal has been made yet against the decision of these Hon’ble High Courts. Entirely, the Judgements of the Bombay and Madras High Courts have struck down the Constitutionality of Art 21 selectively. The Judgements may be analyzed from the following angles :

1. An executive magistrate is being empowered by the state government and vested with the powers of the judicial

- magistrate, 1st or 2nd class for a specific purpose for a specific period
2. He does not become a judicial magistrate for all time to cause but he ceases to be as such after the specific mandate has been discharged.
 3. The whole arrangement was set in motion by the framers of the law with a sense of urgency and seriousness of concern to expediate the proceedings under BLS(A) Act, 1976 to secure early release of the victims of bonded labour system by following a summary procedure as under section 21(2) of BLS (A) Act read with section 260 to 265 of CrPC, 1973, without which cases will drag on for years and the victims will never see the light of liberation in their lifetime.
 4. Taking recourse to summon/ warrants procedure and following provisions of Indian Evidence Act, 1872, of examination and cross examination of witnesses would defeat the central objective of speedy release and faster rehabilitation.

Keeping these considerations in mind, the framers of the Constitution gave the executive magistrate the powers of judicial magistrate 1st and 2nd class under the Act. However, this has been struck down by Hon'ble High Courts of Mumbai, Chennai and Madhya Pradesh. It is imperative that these judgments are challenged by way of appeal before the apex court so that the principles of immediacy and simultaneity laid down by the apex court are complied with. The apex court must, therefore, be moved praying that the orders passed by

the abovementioned Hon'ble High courts being not in conformity with the intent of the legislature as also not in the interest of furtherance of speedy release and fast rehabilitation of freed bonded labourers, prone to be set aside.

Speaker: Mr. Rajiv Khandelwal, Aajeevika Bureau



Mr. Rajiv Khandelwal, welcomed everyone to the session. He highlighted the current scenario of labour. He pointed out that in the

name of employment and new job creation, there are many who are misleading the people into jobs which neither offer neither stability nor job security, but traps the workers in new forms of slavery disguised as skilling or new job creation.

Through media, TV channels and other sources, there is a false notion which is being spread that there is employment but people are not interested in taking up the jobs. Thus is contrary to the truth and reality. During the course of the Convention we should also discuss the above-mentioned issue.

Speaker Jai Singh, Dalit Dasta Virodhi Andolan

Mr. Jai Singh introduced himself and thanked the audience for participating in the proceedings of the Convention. He brought the focus of the Convention to brick Klin workers. He highlighted the fact that brick Klin workers are paid wages



according to piece-rate and not according to time rate. He suggested that the system of payment by piece rates in vogue

shall be replaced by daily rates of wages for regular employees. This was also the observation of Hon'ble Supreme Court in a number of judgments.

Speaker: Ajit Singh, Gudiya Sansthan



Mr. Ajit Singh highlighted the issues related to sex trafficking in the country, a field in which he has been

working for the past 30 years. He also talked about the role of NGOs in the current scenario. He stated that it is very important to identify to which side of the fence an NGO belongs. He put forth the suggestion that an organization should keep the terminal object in mind that they want to achieve and strategize.

Speaker: Ms. Laxmi Naik, Domestic Workers Union

The Speaker thought, felt and believed that being a woman, she should highlight the issues faced by women as victims of



bonded labour system. Therefore, she brought into perspective the untold humiliation, harassment and suffering faced by

women victims of bonded labour system. We should focus on how can we eradicate this evil faced by women. In this, women can also play a part, by becoming aware and organizing themselves into an association or a union. All the women need to come together and discuss about these issues on a united front to stop current and further abuse and exploitation. She suggested that women need to embolden themselves and stand up for their rights. It is only then that this issue will come to forefront.

Speaker: Mr. Subhash Lomte



He was of the opinion that in the coming two days, not only should we talk about the issues faced by the victims of bonded

labour system, but also the issues faced by the other marginalized and deprived sections of the society. He encouraged the various stakeholders from different organizations present in the Convention to put forth their point of view so that a discussion on diverse topics can take place and a positive perspective may emerge, which will facilitate such future Conventions. Mr. Lomte thanked the organizers Mr. Gorana and others working with him in organizing the two days Convention cum training workshop. According to the decennial Census of 2011, 93% of labour in our country are scattered and fragmented in numerous unorganized rural groups. He advised all the organizations present in the Convention to put forward their views on bonded labour so that they can make this issue as an integral part of the national agenda of action.

Following the remarks by Mr. Subash Lomte, the participants were allowed to ask questions. One of the participants introduced herself by stating that she works for labour education and development society and she shared some

insights on the nature and character of bonded labour system. Another participant added that the people from most marginalized societies like Dalits had been migrating to other States and that a tracking plan is being implemented since last year. Through such tracking one can identify the presence of inter-state migrant workmen and the problems of dislocation, deprivation and exploitation faced by them. The primary issue of concern was the issue of their rehabilitation. Government and many other agencies of government have been working on it but they are unable to provide any long term solution to the lingering problems of these exploited sections of the society. Another participant introduced himself as Neeraj Kumar. He rescued many working children in the NCR of Delhi. He cited that when he visits SDM office or DM office after rescuing working children, the authorities in question pleaded ignorance about existence of law relating to Child labour and bonded labour. The issue, therefore, was one of promoting awareness about existence of social elements like Child labour and bonded labour system among all concerned including officials. He added that there is some confusion about the issue of rehabilitation of Children released from work.

Another participant introduced himself as Lal Mohan from Bihar. He cited that many regular jobs in government are now being parceled out to contract system of engaging workers, such jobs are given on contract for eleven months before

being terminated. They are being subjected to a lot of exploitation, misery and suffering.

Another participant introduced himself as Savikaran from Tamil Nadu. He observed that even though the law was on the statute book for more than 42 years, the track record of implementation relating to rescue and rehabilitation was not satisfactory.

Intervening in the debate, Dr. Mishra clarified that the issue of advance should not weaken the track record of implementation. While disposing of WP No. 2135 of 1982, filed by Bandhua Mukti Morcha on 16.12.83, a division bench of the apex court comprising Justice Shri P.N. Bhagwati, Justice Shri Amarendra Nath Sen and Justice Shri R.S. Pathak, was of the view that while dealing with the bonded labour system, the element of loan/debt/advance should always be presumed to be in existence. It was left open to the employer concerned and even to the State to rebut such a presumption but until and unless the rebuttal was to the entire satisfaction of the court, the victim shall be treated as a bonded labourer entitled to all the benefits of the law. The rationale behind such a presumption of the apex court is that when a poor man serves a rich person, he does so not for any charity or but for certain economic considerations.

Another participant introduced himself as Karuppuswamy added that situation in Tamil Nadu context is quite different. There is a post lump-sum payment and the freedom of

movement is restricted in the wake of receiving such payment. After 3 years they are assured some Rs. 5, 0000.As per law we could not take action against the particular person. We are in a process of establishing a helpline for the migrant bonded labour”, he stated.

The anchor stated that the issues raised by Mr. Karuppuswamy are relevant but can be discussed at a later stage. The observations made by the Hon’ble Supreme Court in Bandhua Mukti Morcha Case (WP No. 2135 of 1982) on 16.12.83 and the directions issued thereinunder constitute the Law of the land and are binding on all subordinate Courts under Art 141 of the Constitution of India.

Mr. Gorana then invited Mr. Santosh Punia from Aajeevika Bureau to enlighten the audience about the objective and aim of the convention.

Session 1:

“Introduction to the Convention and Introducing the Agenda”

Speakers: Santosh Punia from Aajeevika Bureau :



In the first session of the two-day Convention in Udaipur, **Mr. Santosh Poonia** emphasised that The Bonded Labour

System (Abolition) Act,1976 was enacted 42 years ago but regretfully has not yet been fully enforced.

He said that there are nearly 1.5 crore bonded labourers in India and it is a serious problem for the whole of South Asia. Taking data from a research paper by Harvard University's Professor Siddharth Kara, Poonia said, "there are 2.8 crore victims of bonded labour system in the whole of South Asia and 1.5 crore of them are from India alone."

Mr Santosh Poonia said that, according to Professor Sidharth Kara, the reason why such a system still exists in our country, *which should have been eradicated long ago are poverty, corruption and casteism.* Most victims of the bonded labour system come from marginalised sections of the society such as Schedule Caste/ Schedule Tribe (SC/ST) etc. And very few of them belong to the dominant caste. Therefore, caste composition is one of the major contributory factors.

Mr. Santosh Poonia emphasized that first we need to understand the nature of bonded labour system and factors which contribute to the creation, sustenance and perpetuation of the oppressive system. Bonded labourers are not those who are under shackles and fetters but the conditions and circumstances in which they are placed, the nature of work which they do and the human relationship which are obtained at the workplace are the determining factors of human bondage.

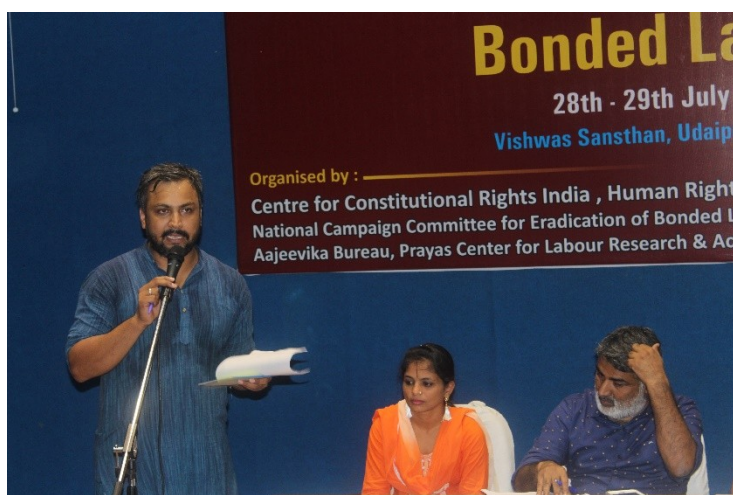
On how to take cases to court, Mr. Poonia said that labourers need to be made aware of such laws. Migrant labourers are the most vulnerable as they are the victims of both trafficking and bonded labour system. Rehabilitation of such victims is most important. The two-day Convention was not a mere Convention but a training programme too, to facilitate sharing of experiences and there was space for discussion raising questions and obtaining answers as well.



Session 2:

“State of Bonded Labour in India”

Speaker: Chandan Kumar, Labour Rights Activist, NCCEBL



Following this was **Chandan Kumar** who explained the composition of different groups participating in the

Convention which have come from from different parts of the

country. The Convention had a happy blend of participants such as Survivors, Activists, Human Rights Lawyers and Government officials etc. He traced the history of Bonded Labour System (Abolition) Act, 1976 when it was promulgated first as an Ordinance (25.10.75) at the time of national emergency (26.06.75). He proceeded to narrate how these four decades since then the whole system changed from traditional agriculture to vibrant modern industrial economy, how such a change took place, how an informal flexible labour market developed, how the corporate world developed and how migration and globalization followed in close tandem with each other due to which an unprecedented inequality has come into force today. In the current scenario, 70% of global wealth is owned by barely 1-2% of its people. In such a scenario a new government was formed in May 2014 which said that it had two main items of the agenda which were to be fulfilled. A spate of events followed since the BLS (A) Act was enacted in 1976. India is considered to be a progressive country as far as labour rights are concerned because no other country has a law that made non-payment of wage to a labourer a crime and India is the only country where non-payment of wages creates a criminal liability.

Regretfully; however, the new government wants to reduce the number of these laws by combining them because so that the country will be able to compete with economies other neighbouring Countries like China and Bangladesh by

promoting 'Make in India' a success, promoting 100% FDI and improving the ranking of India in ease of doing business. This will be possible only when there are no new laws which will be a hindrance in attracting foreign direct investment. The new four laws which will emerge as a result of combination of 44 laws are related to:

- a) Labour code on wages
- b) Labour code on industrial relations
- c) Labour code on social security
- d) Labour code on occupational, health and safety

He further observed that these 4 laws in combination are completely in favour of the corporate world and it is going to change the colours of the entire labour market. He further observed that instead of working on the core issues of unemployment, poverty and safety/security of women the emphasis is on non-issues. He said that there is no discussion on genuine issues involving the life and destiny of people in Parliament. He further referred to the Hon'ble Supreme Court's judgement in WP No. 3922/85 PUCL Vs State of Tamil Nadu finally disposed off on 15.10.2012, that Bonded Labour System Act (Abolition) cannot be seen as a separate law as it has a much under framework and a number of issues like migration, trafficking, caste system and poverty which are closely inter-related. He emphasised that labour laws need to be implemented and enforced if we want to eradicate bonded labour system.

Highlighting a few important questions which were raised by other participants related to items in the agenda, he was of the view that we need know as to how we can connect technology to work to achieve the goal of eradication of bonded labour system. As new labour laws are being formulated to reform the existing laws on labour, he added that it can be taken up in the latter part of the session. He mentioned that the word aggregator was being used all over the world. He cited by way of an illustration, that a mobile application was made in which one can use anyone as one's worker anywhere in the world. This results in a highly inequitable situation in which a company in USA could make thousands of dollars but their workers here in India could only make barely 6-7 thousand rupees for livelihood. It was concluded from this illustration as to how technology has paved for a new form of slavery. He referred to companies like Uber, Ola, Flipkart, Amazon etc. barely five years ago, nobody heard of the CEO of Amazon but five years later he is the richest man in the world. There is no magic behind the emergence of a vibrant economy in the global market. He mentioned that everybody was using Ola and Uber. The technology is simple to use and convenient too as much as on a click there is a cab in front of you but has anyone ever cared to ask about the driver of the cab, in which condition he is working, how many hours he is working and how much loan he has taken etc. It was said in many cities all over the world that the employee drivers constitute the workers of Uber and it was

the responsibility of Uber to provide them various forms of social security. However, uber maintains a stand that it is not the responsibility of Uber, that the drivers are connected with them through technology and they are their aggregator and are not the employers. The Uber cab drivers went to a union Court in London which observed the Uber cab drivers are workers/employees of Uber". This Resulted in the cancellation of licence of Uber by the Mayor of London because it was thought to be believed that this is a new form of slavery. Since India was placed in the same situation, these big sharks are playing their games, which needs to be viewed with seriousness concern and challenged in the appropriate court of law.

Migration was yet another issue which was emphasized it was to be discussed in a separate session with Mr. Rajiv Khandelwal. We could see the Xenophobia over the world as to how we treat our workers, non-local workers and how we control them. We can now conclude migration as a major political issue. In a situation where Governments and societies do not view migrant workers, as a part of bonded labour system.

He further stated as to how government was involved in promotion of bonded labour system. The labour reforms which government will be introducing in shape of "wage code" will lead to removal of all labour laws concerned with wages. On one side there is talk on eradication of bonded labour system

and on the other side, by the wage code, an attempt is being made to maintain a stand that if a person takes advance or loan, he must have to pay it back. Non-compliance with this requirement will result in reduction of wages/salary. Therefore, there is an attempt to promote bonded labour system. There is no clarity as to what will happen when and how payment of advance which results in Bonded Labour System will be named [S.4(2)] of the existing BLS(A) Act, wage code will be tabled in Parliament. This evidently introduced the concept of double jeopardy. He also raised the question of rehabilitation of forced bonded labour. It was observed that as a core group member of NHRC on bonded labour he had raised his concern about the gap between identification, release and rehabilitation but no satisfactory solution has emerged as yet.

It was observed that one of the most important questions would be the caste system, no discussion on the elimination of bonded labour system will be meaningful without there being a fulllength discussion on the caste system. He observed with both dismay and anguish as to how how our country is suffering in name of both caste and religion.

Session 3:

“Journey of NCCEBL- Since Its Inception and Progress So Far”

Speaker: Nirmal Gorana, Convener of NCCEBL



Mr. Nirmal Gorana narrated the journey of NCCEBL (National campaign committee for eradication of bonded labour). In

2012 he got a call regarding a programme on eradication of bonded labour system. Being unaware of any further information, he decided to attend the meeting. Before this, he was working with Swami Agnivesh since 2008 on the issue of elimination of with bonded labour system. A number of programmes at the relevant times were under implementation but were limited in scope and extent. A need therefore was felt to organise a nationwide integrated campaign for total elimination of bonded labour system. He took this issue at a personal level with a lot of seriousness and concern. NCCEBL's vision and goal are very clear, these are directed towards total eradication of bonded labour system. In 2012, the ambit of the campaign was limited to raising of awareness. Within one year of NCCEBL coming into being, they succeeded in rescuing about 500 victims of bonded labour system, and with hard work, passion and determination the number went on

increasing to 900 victims of bonded labour system being rescued in 2017.

Gradually they came to confront a vicious cycle where in a case of one bonded labourer rescued, four others get involved, reason being lack of post rescue channels of rehabilitation & re-settlement. Mr. Gorana, in order to follow the democratic values and principles within the network, requested the selection of a convener for NCCEBL. Mr. Gorana briefly explained the various provisions of Bonded Labour System (Abolition) Act, 1976. He also discussed the judgement of Hon'ble Supreme Court on bonded labour where the burden of proof was on the bonded labour keeper. He made a power point presentation & highlighted as to how the agriculture sector was engaging maximum number of victims of bonded labour system and how other sectors of economic activities such as stone mining work, stone crushers, brick kiln, carpet, poultry, zari work, glass ceramics and bangles manufacturing, building and construction, hotels and dhabas, had a concentration of victims bonded labour system. He also talked about the new forms of bonded labour system which obtained within the government like Asha and Anganwadi workers, mid-day meal workers. Referring to an incident of an employee in Alwar, Rajasthan he highlighted the point that services were rendered in a government department but no wages were paid. He also explained how bonded labour system is a

violation of human rights and fundamental rights under Article 14,19, 21 & 23 of Indian constitution.

Supreme Court judgment in Asiad worker's case (WP No. 8431 of 1981) says that anyone who receives wages lower than the notified minimum wage, would be treated as a victim of forced labour and forced labour is a variant of bonded labour system.

Bonded Labour Act discards all the agreements for payment of advance which result in bonded debt. Whenever there is an issue like taking of advance as a consequence of which one is forced to work, it will attract S 2(g) of BLS (A) Act. He further observed that 90% of victims of bonded labour system who have been rescued/released were from SC/ST communities. It was unfortunate that there were notions in the society that a poor man was destined to lead a life of destitution and bondage. Often bonded labourers were subjected to extensive physical and mental harassment. He referred to a case of Aajeevika Bureau at HRLN Bombay and Mumbai Labour Line, where a girl was rescued from domestic bondage. Even though it was acknowledged that the girl was working under bonded labour system, no release certificate was issued by the competent Authority in the DM u/s 10 of BLS(A) Act. He stated that the option to leave one employer and go in for an alternative employer and alternate livelihood would attract S.2(g) of the Act. Similarly, if a man is unable to sell his product at a remunerative price, it becomes a case of bonded labour. He referred to the case of Rohingya refugees in

Mathura, who were rag pickers but they cannot sell their rags (products) in market by their will or volition. A case was filed and government eventually acknowledged that they are all victims of bonded labour system.

Instances of migrant workers or the seasonal workers who are constantly on the move on receipt and payment of advance but are unable to payback their advance also come within the purview of bonded labour system as defined under S 2(g) of BLS (A) Act. There is a term called "*wage hunter*" which means that a man who can do any work because he is in such a desperate situation. Mr. Gorana gave an example that an eye specialist was once asked to do heart operation and he refused as he could not indulge in that type of absurd luxury. Mr. Gorana thereafter shared a few specific provisions of BLS(A) Act with the participants.

- 1.** Section 4: This section talks about abolition of all types of bonded labour system and the victims of bonded labour system being freed and discharged from any obligation to render any bonded labour. It also deals with prohibition of payment of advance under or in pursuance of the bonded labour system.
- 2.** Section 5- This section states that all agreements, customs, traditions etc., under which a person is required to do any work or render any service as a bonded labourer, shall be void and inoperative.
- 3.** Section 7- This section discusses how the Property of a bonded labourer to be freed from all types of mortgage

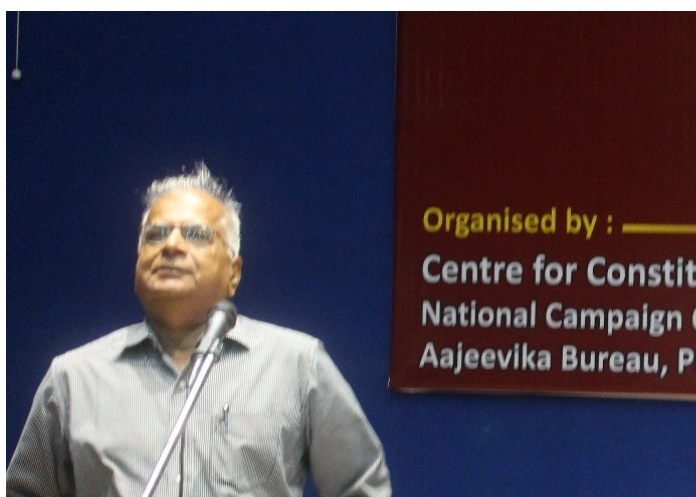
such as mortgage, charge, lieu, other encumbrances, etc.

4. Section 8- A landowner cannot be evicted from his home or other residential premises which was occupying immediately before commencement of this Act.
5. Sections 10-12: deals with duties and powers conferred by the State Government on the District Magistrate to ensure that the provisions of this Act are properly carried out by him or an officer who is subordinate to the DM and who has been authorized to exercise all or any of the powers and functions.
6. Sections 13 and 14: deals with constitution and reconstruction, due, Powers and functions of the Vigilance Committees in each district and sub-division for the purpose of eradication of bonded labour.
7. Section 15: whenever any debt is claimed by a bonded labourer or a vigilance committee to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.
8. Section 16-18: These sections deals with punishment for advancement of bonded debt and Punishment for extracting bonded labour under the bonded labour system which may extend to imprisonment for a term of Three years and also a fine which may extend to Rs. 2000/-.

Technical Session 1:

“Bonded Labour in current socio-economic framework and how it is placed in Indian Legal Framework?”

Speaker: Mr. Mahaveer Jain, Ex-Fellow, V.V. Giri National Labour Institute.



Mr. Mahaveer Jain said that he has been an integral part of the campaign for eradication of bonded labour system for four decades and is

still in the midst of it. He said he was part of V.V Giri National Labour Institute from where it became a national issue. He was a part when for the first time in history, a survey on bonded labour was conducted in 1978-79, camps were being held (in the 70's and 80's), a number of rescue missions were constituted to rescue and release the victims of bonded labour and freed bonded labourers were rehabilitated while many offenders of the law were put behind the bar. He said it gives him energy to do more and he is still doing it. He recalled when Swami Agnivesh started the mission to eradicate bonded labour system, some work was started in Faridabad stone quarries of Haryana and now it has become part national campaign. He stated that he has contributed substantially in

eradicating bonded labour system in Nizamabad in Andhara Pradesh and parts of Tamil Nadu. He had submitted a detailed report to the Hon'ble Supreme Court and regretted that ignorance of law was pervasive. There is a world of difference between what Hon'ble Justice P.N. Bhagwati of Supreme Court had observed by way of the interpretation of the law and what obtained on the ground today. Bonded labour system has now spread from agriculture to small scale industries. This problem will not be solved just by enacting a new legislation. It needs proper understanding of the law and socio-cultural-economic milieu to work and live and procuring overseas help effective implementation.

Speaker: Mr. Jai Singh, Dalit Dasta Virodhi Andolan

Mr. Jai Singh said that when there was no law on elimination of



bonded labour system, the employer not only took the ownership of the properties and belongings of

labourers but also their wives and children too. The employer had full authority and control over the lives and destinies of the labourers including those of their family members. He stated that law came into force during emergency and IPC section 370 to 374 dealt with slavery and on unlawful compulsory labour came subsequently in 2013 with the

enactment of Criminal law (amendment) Act. He further observed that we can see many work situations where women, Dalits and members of the minorities are involved, all their work are on contract basis so that they can be used and abused accordingly. He referred to the provisions of inter-state Migrant workmen (Regulator of Employment and Conditions of Service) Act, it was a local legislation in Orissa before it became a central law. He told that no recruiter pays the travel and accommodation expenses contrary to the when they go provisions of some other State to recruit migrant labour. He narrated a case which he fought when he was at NHRC. In this case, brick owners went on a strike for 6 months and the workers thereof were neither left free to work at other places. The workers did not get paid for 6 months because they had not done any work. The court had passed an order that they were victims of bonded labour system and that they must get paid the minimum wage of 9500 rupees per month as brick kiln workers are considered as skilled labour in Punjab. There should be pay on work hours basis and not paid on number of bricks manufactured because labourers get paid less approximately one fourth, when it comes to payment.

“Sharing of Challenges and Concerns of New Rehabilitation Policy”

**Speaker: Shri Bagambar Pattnaik, Goti Mukti Andolan
Madan Vaishnav, Int Bhatta Mazdoor Union**



Mr. Bagamber Pattnaik was part of Goti Mukti Andolan, that fights bonded labour system on the basis of caste system in the State of

Odisha. He has worked for years on the issue and made the NHRC recognise the fact that the practice comes under section 2(g) of the Bonded Labour System Abolition Act. He began his presentation by mentioning the practice of (Bartan system) which is equivalent to caste based bonded labour system in Odisha which has different connotations in different States across the country but is prevalent all the same. He recognised this system and worked towards eliminating it. Dr. L. Mishra also happened to be a Special Rapporteur in NHRC during the relevant period (2006-2011) and was instrumental towards the eradication of the caste based bonded labour system in Orissa. This system promotes not only bonded labour system but also caste-based discrimination, exploitation and untouchability. Since 2011 around 2040 victims of bonded labour system have been identified and released but out of these only 100 of them have received assistance for rehabilitation assistance. He added that, in the year 2012 the Supreme Court of India while disposing off a Writ Petition No.3922/85 PUCL v/s State of Tamilnadu and Ors. Had issued a serious of directions towards identification, rescue and release and rehabilitation of bonded labour system. Shri Pattnaik himself filed a petition in the High

Court of Odisha to enhance the number of personnel assigned to this task. Thereafter, the Government of India implemented the Central Sector Scheme for the rehabilitation of victims bonded labour system who have been rescued. The government of Odisha has sanctioned the release of rupees two crores to thirty districts under this scheme. However, it has been suggested that to begin with the programme may be implemented in ten districts. He said that in spite of the enhanced provision in the current scheme of rehabilitation the condition of freed bonded labours did not improve because no steps were taken to create a distinct level contingency fund. When it comes to distribution of these funds to those who have been identified by government which was somewhere around 2000 people at the relevant time in Odisha, only a handful of people receive the assistance. This is how only 100 people got the rehabilitation assistance. Government measures have made it even harder to deal with this problem, such as requiring the Aadhaar card number of the released victim. He added that the process of receiving rehabilitation assistance is very tedious and complicated requiring formal prosecution and court action.

Speaker: Mr. Madan Vaishnav, Bhatta Mazdoor Union:

Mr. Madan Vaishnav:

Bhatta Mazdoor Union representative- Mr. Madan Vaishnav said that there are at least 50,000 brick kilns all over the country in which about 50 Lakh workers are engaged in a variety of



operations (Converting raw earth to mud and converting mud to raw bricks, drying bricks, burning bricks, etc) and majority of them

work under conditions of bonded labour system. He added that when the core issue is of social and economic inequality, rehabilitation of just 800 to 900 victims of bonded labour system is not going to work. Besides, their working and living conditions were not going to change substantially with denial of notified minimum wages on the one hand and partly rehabilitation assistance on the other. They will be forced to migrate to a worksite at the destination point unless conditions at the originating point by way of creation of awareness of stable and durable and payment of need based living wages through employment registered radical and qualitative improvement.

After getting rescued the released labourers need to get a release certificate which serves as a basis for commencement of the rehabilitation process. He or she has to move from pillar to post to get this certificate which is not issued in a normal and natural course and it takes around one to two years for him or her to get rehabilitated. In the meantime, the labourers look for some other job to sustain themselves when they are left with no other alternative except to work in the

unorganized/ informal sector. Most of the labourers are homeless and unemployed. What do they do? Who do they turn to? They migrate from one State to another State. This is why in his opinion rehabilitation serves no purpose at all. He was firstly of the view that revolution similar to the one in various phases history is required in various parts of the globe is the only answer to bring about a genuine change. Rehabilitation is a myth, he said. He further developed that the fact that so much psychological slavery has been engraved in the worker's mind that he or she cannot muster enough courage to speak out in front of his or her master. No matter how much of rehabilitation is done nothing will happen until and unless the labourers muster enough courage to articulate their concerns with strength, courage, resilience and self-confidence.

They should talk about their working hours and wages. True rehabilitation will be done only when the worker will know his or her right and will be able to stand up for it and fight. The oppressed working class need to unite. Mr. Madan quoted Babasaheb Ambedkar "Be organized and be agitated". He added that rehabilitation is a tedious process, time consuming, expensive and often not permanent, meaningful and effective. It is said that in India everyone has equal rights but the scenario changes when one visits the unorganized sector such as a brick kiln. There are labourers who work for 15 to 16 hours a day. Even then the employers expect them to work beyond 8 p.m. sometimes going up to midnight. Mr. Madan

narrated the story of a labourer in Haryana who kept his wife as collateral to get a loan. When she was asked to return to her home, she refused saying that even she has self-respect and that so she would never return and would remain in whatever condition it was ordained for her till such time her husband came and released her from human mortgage. To a query as to how and which revolution Mr. Madan is talking about, the latter replied that with the example of Kashmir, where land reform was implemented very effectively, Sheikh Abdullah had introduced a Charter along the same lines. Bengal has done the same. Those areas which failed to establish such facilities have large number of bonded labourers, for instance, Odisha, Bihar, Uttar Pradesh, Chhattisgarh, Central Rajasthan.

He added that these land owners have the law and its machinery in their pockets. One can talk but if we want to make a difference, we have to unite and raise our voice as one because that is the only solution.

On the question as to why no one is raising doubts about the structured anomalies recurring under MGNREGA, Dr. L Mishra clarified the position under MGNREGA was launched on 6.2.2006 at Anantapur district of AP, jointly by Smt Sonia Gandhi, then President, INC(I) and Prof Manmohan Singh, then PM.

Of all grass root level programmed, this is one programmed which affects the livelihood, income and biological survival of millions of landless agricultural labourers and share croppers. Today the programmed is passing through a deep crisis of delayed and failed payments.

It appears that the crisis has 4 dimensions namely;

1. Delayed payments
2. Rejected payments
3. Diverted payments (wages are paid into accounts that workers know nothing about)
4. Locked payments (inability of payees to withdraw wages from bank accounts)

The system of payment and the modalities of payment are also being constantly redesigned such as

1. Cash payment
2. Post office payment
3. Bank payment
4. National electronic fund management system
5. ADHAR payment bondage system

The last two are largely responsible for rejected/ diverted payments.

Name of these innovations has so far been able to ensure payment within 15 days of work as prescribed in the law relating to MGNREGA.

There are innumerable problems arising out of linking bank accounts of MGNREGA with ADHAR.

More than Rs. 500 crores worth of claim were rejected during 2017-18.

When the workers get fed up with the system, corrupt middle men step in.

In other words, MGNREGA has promoted large scale corruption apart from causing enormous hardship to MGNREGA workers.

As against 100 days of work to be provided as under the scheme barely 25-30 days of work is available.

The notified minimum wages are not being paid.

Migration becomes the only alternative to this episode of corruption, falsehood and misrepresentation of facts.

Responding to a query raised by a participant from Maharashtra regarding the legal obligations of the Principal employer visa-vis the contractor/ sub-contractor. Dr. Mishra clarified as under:

1. The definition of a contractor in CL (RL A) Act includes a sub-contractor.
2. On the date and time of payment of wages to concerns by the contractor concerned, the principal employer is required to depute a representative to remain present and certify that payment of wages as are due to the concerns has been made.
3. In the event of failure on the part of the said contractor to discharge his statutory obligations, they will befall on the principal employer to be discharged.

4. The principle employer may later deduct the amount paid (towards discharge of the statutory obligation) by him from the bills of the contractor.
5. Contract labour system and the system of payment of piece rate wages are the two major banes of the system and are responsible for emergence of bonded labour system.

Referring further to the process involved in manufacture of bricks and the various exploitative practices associated with the process, Dr. Mishra stated as under:

1. Most of the concerns engaged in manufacture of bricks in Punjab, Haryana, Delhi, Jammu and Kashmir etc. are inter-state migrant workmen recruited by middlemen from the States of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, U.P.
2. They are recruited with payment of advances ranging from Rs 10,000/- to Rs. 50,000/- as also with a lot of false hopes, promise and allurements.
3. All these are beleived as the workmen arrive at the worksite of the destination point.
4. The work begins at 0500 hrs. in the morning and goes past midnight.
5. The workmen do not get any spread over having a weekly off nor of wages for work in excess scheduled working hours (9 hrs. a day and 48 hrs. a week).
6. Brick manufacturing has a number of stages such as:

- a) The area to be leased by a distinct administration,
- b) Digging the earth,
- c) Converting the earth to through sprinkling of water,
- d) Carrying the mud to the open field,
- e) Putting the mud inside a wooden frame and converting the same into raw bricks (the process is called 'Jodh' and is performed jointly by women and men)
- f) Taking the raw bricks out of the wooden frame after sometime when water has evaporated,
- g) Carrying the raw bricks to be dried up in hot sun,
- h) Women continuously changing both sides of the raw bricks for even drying,
- i) Carrying of dried up bricks for burning in the kiln under a temperature ranging between 1000 & 1800 Celcius, (children usually do this operation even though employment of children has been prohibited in brick kilns)
- j) Taking burnt bricks out of the kiln for loading in the trucks for transportation.

Thus, in all there are 10 stages in manufacture of bricks. Minimum wages, however, have not been notified for each step. They, instead have been fixed by piece rates which is one of the primary contributory factors for exploitation.

**Speaker: Mr. L D Mishra, Former Labour Secretary,
Government of India**



Mr. L D Mishra added some points that to what Aditi and Chandan have presented their words in detail like

contractualisation, casualisation and informalisation after reciting a poem name “the song of freedom” by a Marathi poet Ajit Siralkar.

He observed that about 50% of the total economic operations as also work force which is about 500 million has come today within the purview of contract labour system which in many situations is co-terminus with bonded labour system or slavery. He added that contract labour is highly insecure and unstable. In the event of an accident taking place in course of or arising out of employment (which are seldom reported) causing injury resulting in death or disablement, the employer neither reports the accident nor deposits the employees compensation with the Commissioner, Employees Compensation.

He further observed that Hon’ble High court of NCT of Delhi had formed a committee in Feb 2010 on the eve of the Commonwealth games, in Oct 2010 with him and late Arundhati Ghose as members. The committee visited over 60

worksites between Feb-March, 2010 and submitted a comprehensive report in the court which was drafted by him.

Mr. Mishra introduced the issue of Jogini, and Devadasi system and cited that the cruel and inhuman custom of Jogini is still practised in Nizamabad district in Andhra Pradesh while the Devadasi custom is practiced in Karnataka and Maharashtra. A Jogini has to remain unmarried and sing & dance for having been consigned to some unseen supernatural force called Yellamma since early childhood the god or goddesses for her whole life. These are the worst form of forced bonded labour which is immoral, unethical and totally unacceptable. He said that he has written a book name “human bondage” published by sage publication 5-6 years back in which there’s a graphic element of Devdashi in the Yogin system.

He then highlighted the issue of scavengers who carry human excreta on their heads.

2nd Technical Session

“Inter-sectionality of bondage in the current policy discourse”

The session started with an enthusiastic singing of the song Ae aazadi door hai mazdoor ajj Ghulam hai by Mr. Nirmal Gorana who sang it while playing his drum.

“New trafficking bill and bonded labour”

Speaker: Mr. Jitendra Chaturvedi, DEHAT



The panelist Mr. Jitendra Chaturvedi from DEHAT foundation, which works in Uttar Pradesh and Bihar region

addressed the audience on human trafficking. Mr. Chaturvedi works on human trafficking of girls, boys and women which is being practiced at Indo- Nepal border region and victims of bonded labour system who reside in tribal areas of that region. He started his presentation by reciting 2 lines about the importance of labour for the world. He presented a data which shows that over a period of 34 years since 1987 the government has only spent an average of Rs.1708 per person over. He talked at length about reasons for human trafficking, prostitution, religious tradition, labour exploitation, organ trade, begging, entertainment, adoption, pornography etc.

“Minimum Wages, working condition and bonded labour”

Speaker: Mr Subhash Lomte, Social Activist



Social Activist Mr. Subhash Lomte from Aurangabad, Maharashtra, has been working for 40 years for development of

workers in rural areas and for the unorganized labourers and with rag pickers union, domestic workers union, Hamal worker's union etc. He has been associated with Hind Majdoor Sabha for a long time. Speaking on various provisions of BLS (A) Act, he asked people if they consider the issues as their own and how they are willing to work for them. He spoke about minimum wages. He told that our country runs on a Constitution and the same Constitution allows for a huge pay gap between jobs for a handful of people who are in power and the jobless. According to him the organized sector represents barely 7% of the total work force of 500 million and the remaining 93% is unorganized and predominantly in rural areas. He questioned the propriety of schemes of government which are under implementation since last 70 years. He demanded equal wages for equal work. He observed that the peon of any office works less than a blue-collar worker but he gets sufficient pay while the workers are still deprived of it. A class IV employee earns a basic salary of Rs. 17000 and also Rs. 7000 towards social security. The government has made it mandatory to pay this amount to any class 4th employee but the unions for bonded labourers are still stuck in the cage of minimum wages. He cited the reasons for this as lack of understanding on the part of bonded labour unions because they can't decide on fixation, renew and revision of minimum wage, not to speak of fair and living wage for the labourers. When such a situation arises, the government takes it upon itself to decide the wages. Denial of minimum wage is the root

cause of exploitation of labourers. Like the government took the decision on fixation of minimum wages for class IV employee, they should do in the same way for rank and fate of the working class.

“Minimum Wages, working conditions and bonded labour”

Speaker: Mr. Tulsi Das, Jai Bhim:



Mr. Tulsi Das started with presentation of the statistics of purchasing power of people in our country. According to the

National Commission for Enterprises in the unorganised sector (2004-05), 77% of people in our country can't spend Rs.20 on themselves and the same 77% people contribute 65% to our GDP. But what do we give them on return? We don't provide them proper wages and expect them to develop. He added that before 15 years the number of registered trade unions in our country was more than 70,000 but today there are more trade unions as well as NGO's and panchayats. Each one of them claims that they are working for the wellbeing of the rural people, Dalits, workers and poor, but there are conflicts between trade unions and NGOs too. This is the reason why the government exploits the conflict to its advantage. He said that if the objective and motive of trade unions and NGOs are one and the same they should come together and work so that the desired results can be achieved on a solid foundation of workers unity and solidarity.

“Migration and Bonded Labour “

Speaker: Rajiv Khandelwal, Aajeevika Bureau



Mr. Rajiv Khandelwal stated that, when our Prime Minister goes abroad, he speaks about Indian diaspora, he meets

businessmen and requests them to invest in India but he doesn't think for a moment that the businessmen outside India do have or will ever have any concern about the plight and pre-displacement workers in India. He said that Udaipur city has been named as the three most beautiful cities in India. However, if we look at the working and living situation of the worker's, we find that more than a million people move outside the State in search of work to Mumbai, Ahmedabad and other Indian cities. It is a matter of deep concern that so many labourers migrate to other States and cities. But it is just an approximation and there is no accurate data available because most of these workers are employed primarily in the unorganized/ informal sector where proper accounting is not easy.

He suggested that only Aadhar card or social security card cannot solve problems obtaining in the labour market. We have to set up different kinds of Services and provide different

kind of rights which have now been called intersectionality and which can affect bonded and migrant labourers.

Mr. Khandelwal emphasizes on two major issues i.e. housing and other public utility services. He gave the example of Mumbai where workers from other States come and are forced to live in work site, who provide 12 to 16 hours of their time, energy and resources but are themselves denied these basic services, facilities and amenities.

Mr. Khandelwal gave an example of textile industry in Ahmedabad. He said that there are many small shops in which 15 to 20 labourers work. Many of them don't have a proper shelter. Mr. Khandelwal said that the same is the case in Surat which has a concentration of power loom units. About 8 lakh migrant labourers work in the power loom sector and they are mostly from Ganjam district of Odisha. Many of them live in power looms in the midst of unbearable noise. They don't have any other option to go outside the power loom. He mentioned another example of Mumbai repairing and recycling units where lakhs of labourers from Bihar work and nobody cares when any deaths occur by fire or on account of any other accident.

Mr. Khandelwal was of the view that there should be a change in policy making in regard to housing and town planning in which Special attention should be paid to the migrant labourers. He added that migrant labour is also in need of a dignified life with basic facilities.

Another point Mr. Khandelwal emphasized was extension of legal aid to migrant labourers. The inter-State migrant labourers are the worst explored and hence in the most need of legal aid. He further observed that the law on migrant labour is most anti-migrant unlike other the labour laws which regulate the working and living conditions of workers in the form of economic activity sector. When there is an accident or in a situation is such the migrant labourers have been reduced to the levels of victims of bonded labour system, they deserve the most humanitarian treatment. The attitude and approach of people regarding extension of legal aid to interstate migrant workmen and victims of bonded labour system must undergo a positive change. It is imperative that a legal aid system shall be created which can provide them legal security. Mr. Khandelwal suggested that the MANREGA program needs to be strengthened so that no migrant labour don't go outside their state.

“Migration and bonded labour”

Speaker: Mr. Kurrappa Swamy



Mr. Swamy from Tamil Nadu, who works for abolishing human trafficking, addressed the issue of labour working in textile

industries in Tamil Nadu. Approximately 10 lakh workers work

in textile industries and 40 PC of them are migrant workers. These migrate from Jharkhand, Odisha, Chhattisgarh, Assam, Bihar, West Bengal etc. They are not treated fairly and are made to work for long hours without proper payment of wages in time. The agents who recruit them are not at all concerned about their health, freedom, dignity and security. Their movements are restricted and they are not allowed to go back home even after completion of work at the destination site.

As per NCRP data of 2016, 4.8 lakhs crimes involved victims of bonded labour system. He referred to section 370 of IPC, 1860 which criminalises human trafficking. But this law is not comprehensive and does not cover various aspects, so there is a need for a new comprehensive law so that every kind of trafficking could be covered. Mr. Swamy talked about a bill for Aggregative Trafficking punishment. In the proposed law, there are institutional mechanisms from district to national level. The law proposes a time bound trial of perpetrators of the crime of bonded labour system and also talks about setting up a rehabilitation fund for labour. The bill talks more about witness protection, prosecutor etc. it is not, however, so much victim centric as was expected to be.

Audience Interaction

Shri Khandelwal invited questions from the audience. A boy from the audience stood up and asked about the chances of betterment of living and housing conditions for migrant workers.

He questioned primarily about what steps government is willing to take on providing rental accommodation for the migrant workers because the condition of such workers in our country in general and in the worksites in destination states is the worst and a matter of deep concern.

Another person from the audience raised the same issue. He asked why there are low maintenance allowances for workers in our country and negligence on the part of trade unions when it comes to providing proper accommodation to the workers. He also added in his question the importance of casting a vote by the labourers. Workers do not cast their votes and hence nobody pays attention to their needs, and they are otherwise voiceless to raise demands about their genuine needs and interests.

Speaker: Rajiv Khandelwal



Responding to these questions, Mr. Rajiv Khandelwal (social activist) told that there is no land allocation from

government to support the trade unions in their demand of making rental housing for labourers. He highlighted the living conditions of bonded labourers and said that they adjust themselves to the environment of factory or any small place where they live. But it becomes the duty of government and

unions to ensure a healthy living for all workers with provision of basic amenities for the migrant workers of the country.

“Migration and Bonded Labour “

Speaker: Father Jason Vadssery, CBCI



Father Jason raised the question of international trafficking of labour. He felt that the problem of bonded labour is a global and not merely a local issue. To this end, he stated that India has one of the largest diasporas in the world with more than 50 million Indians living overseas. There are bonded labourers in India and bonded labourers of Indian origin in overseas as well. It is a matter of concern that such a large number of people live under bonded conditions overseas. He pointed out that not enough attention is paid to bonded labourers of Indian origin who are trafficked abroad and work in bonded which invoke anxiety and concerns.

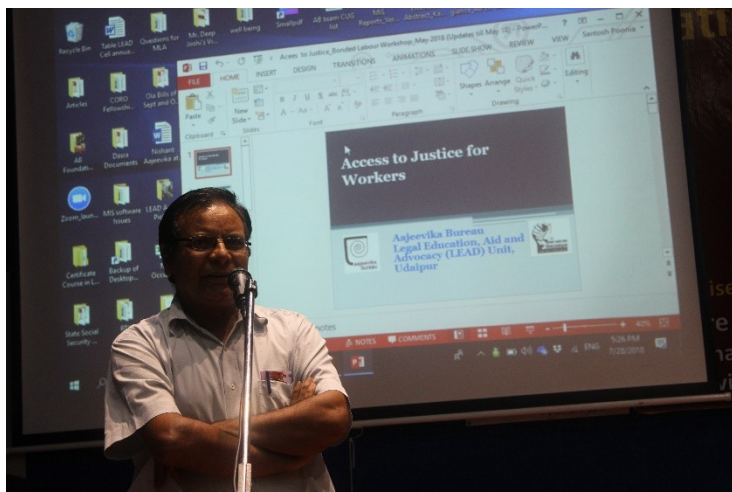
3rd Special training session

(“Rehabilitation Model, Section 21 and Challenges to its application and Legal Intervention”)

“Rehabilitation Model”

Speaker: Omkar Sharma, Deputy Labour Commissioner

(C)



He highlighted the issue of regional presence of bonded labourers. He talked about 3D jobs which elaborated would

read as Difficult, Dirty and Dangerous jobs. The recruiting agents cannot easily find labour to work for this 3D. They therefore lure the labourers by giving them some cash advance and other hopes and promises and take them to work sites at destination parts and make them work under bonded and slave like conditions. He talked about moving from 3d jobs to single D jobs, that is, decent job. In a decent job, everybody works unwillingly and there is no need or scope for coercion or regimentation. Shri Sharma next spoke on minimum wages.

Many jobs in India have just double-digit wage for workers. Minimum wage is applicable only to scheduled employments and not to all employments. According to the new bill which has been introduced in the Lok Sabha on 07.08.2016 and which is awaiting passing by both houses of Parliament, the minimum wage would be applicable to one and all and the proposed wage code has removed scheduled employments from the Bill. He also referred to the concept of national minimum wage which will be applicable uniformly to all in the country. On the implementation of BLS(A) Act,1976, he was of the view that Vigilance Committee constituted by government u/s13 of the act are non-functional and, therefore, there was need for greater vigilance on the part of the volunteers. NGOs can form vigilance committees at the block level and make people aware of the dangers of the system. He motivated the audience take up the cases of bonded labour and report them. He spoke on economic rehabilitation of victims of bonded labour system who have been rescued and released and how it is less helpful because once the money is spent by released bonded labourers, he will get trapped in to bonded work and life. As mentioned earlier by one of the speakers, government has paid on an average a sum of Rs. 1708 per person in 50 years. Proper funds have not been distributed by the central government and half of the money goes waste due to corrupt practices. He also shared his experience about working on increasing the wages for adult workers. He stated that under the new central scheme for rehabilitation of freed bonded

labourers there was a provision of Rs. 4.5 lakhs per district for conducting survey. Once in the year the state government can these funds available to conduct such surveys. h. Awareness programs are being conducted to make at the disposal of good NGO's who have experience and expertise to conduct surveys and educate the victims of bonded labour system, the people currently understand the definition and areas of prevalence of victims of bonded labour system. A sum of 1 lakh rupees is also made available to conduct an evaluation of the content, process and impact of various activities associated with rehabilitation of freed bonded labourers. The central government has approved all these proposals which form a part of the 100 PC funded Central Scheme w.e.f. 17.05.16. This overall attitude of the States and UTs was, however, was casual. He, therefore, appealed to the audience to make sincere efforts in getting funds sanctioned and spent for the welfare of the victims of bonded labour system. Apart from getting rehabilitation and assistance under the Central Scheme from the Ministry of Labour and Employment, the States should make sure that the employer gets the most stringent and deterrent punishment by way of imprisonment and fine as provide in S16 of the act.

“Section 21 and challenges of its application”

Speaker: Adv. Aditi Gupta, HRLN, Delhi

She talked about the Bonded Labour System (Abolition) Act. She was of the view that this was a unique legislation as it makes existence of bonded labour system a cognizable and



bailable offence. Other countries just see this as a civil issue. Regretfully however, in our country, there is no proper utilization of

the provisions of the law because of pervasive ignorance of workers. She emphasized the need for educating the labour about this so that they can fight for their rights. She introduced the salient provisions of the law. The unique feature of the law lies in the state government vesting the Executive Magistrate with the powers of a Judicial Magistrate, first or second class. Section 21 of the BLSA was struck off on very frivolous grounds without considering the essence of the Act. The Act was meant to ensure speedy trial of the cases but rather the courts believed that delegated jurisdiction would be against the spirit of separation of powers as provided under Article 50 of the Constitution. She said that rather than setting the section aside on the ground that it is unconstitutional, it should be modified and made more appropriate.

If section 21 is struck off as unconstitutional as the Hon'ble High Court of MP, Mumbai and Chennai have done, there will be no disposal, cases will pick up, victims of bonded labour system will not see the light of deliverance and the original legislative intent will be defeated.

Speaker: Mr. Varun Pathak, World for Equality



He talked about the change which has taken place through social activism on bonded labour and trafficking. The social

authorities worked tirelessly for making funds available to every State. Every district in Delhi has a corpus fund for rehabilitation. Regular meetings of vigilance committees take place and training is imparted to the members of these committees. A sum of 1.5 crore rupees has been sanctioned by government for rehabilitation. He emphasised on generation of awareness of the basic provisions of the law so that the basic information about the law reaches people in time and in less cost. He then talked about limitation of section 21 of BLS (A) Act. The government officials who go for rescue often take the side of the employer concerned by stating that the employer is giving proper wages to the employees and we should not punish him, but the fact is to the contrary in as much as, the employer makes the whole family work and pays only to one person. After rescuing people, the vigilance committee realized that rescuing the victims is not enough, we also have to provide them instant rehabilitation so that they don't migrate elsewhere and do not lapse back to bondage. He emphasized the importance of section 21 and said that it is vital in the larger interest of victims of bonded labour system

to conduct speedy trials, undertake timely rescue and release of the victims and awarding the most stringent and deterrent punishment to the guilty. Regretful, most of the SDM and magistrate displayed utter ignorance of the provisions of the law in general and importance of section 21 in particular, such ignorance on the part of law enforcement agencies, those who are expected to be promoters and protectors as also delivering of justice was highly undesirable and was not in the interest of the victims.

“Labour Helpline and Legal Intervention”

Mr. Santosh Poonia, Labour Helpline, Rajasthan



Mr. Santosh Poonia talked about the urgency and importance of generating awareness among all concerned

in from the Magistrate to the Collector to the worker. It is essential to educate people about this because they can not avail the provisions of the law automatically and will keep suffering. It was encouraging to note that 68% of labourers have claimed wage as one of the major issues at least once a year. Other issues like medical aid have not been considered as major issues. Issues like weekly off, spread over overtime work, work place facilities, etc also need attention. He talked

about the helpline run by them for answering the queries of people like

- a) what is the minimum wage?
- b) how can a person avail of it fully?
- c) how can they get compensation in case of accidents or injuries at workplace? This helpline was afterwards taken over by the State government. In all a total no. of 12000 grievances/complaints have been redressed by them till now. He then talked about the case of a girl from Dungarpur, who worked in a hospital. A couple who came to the hospital lured her for more wages and took her home and after a few months of making proper and regular payments, she was beaten and was made to work at least 18 hours a day. She escaped but was captured and not allowed to move out of the facility. She contacted one of her friends and she suggested her to call the helpline. She called the helpline at 3AM in the early hours of the morning and Ms Dimple who is an advocate, asked her the address and its correct geographical location. She was then rescued. Bonded labour certificate and from the employer a statement indicating the amount paid and the amount yet to be paid are yet to be issued. Another boy faced the same problem. It is, therefore, necessary and desirable to punish the exploiter and show that they won't be excused. He ended his speech by asking everyone to spread the awareness among workers as well as civil society.

Vote of thanks at the end Day 1 by Nirmal Gorana

Mr. Nirmal Gorana gave a vote of thanks to all the speakers. He also shared his experience of dealing with rescue/release of victims of bonded labour system since the last one year. He talked about creating a strong union of people who could stand up in any contingency for the cause of freedom, dignity and security of the working class. He also appealed to people by citing the example of people who helped and rescued labourers, gave them justice, and facilitated their early proper rehabilitation. He urged for creating a network and asked people to give their view on this. He introduced the items and the agenda for the second day i.e. 29.7.18. He praised the audience for patiently sitting throughout the day to understand the multi-faceted character of the issue of bonded labour system and find plausible and united solutions.

Day 2 of the Convention

4th Technical session

"42 years of BLS (A) Act-introspection in hindsight."

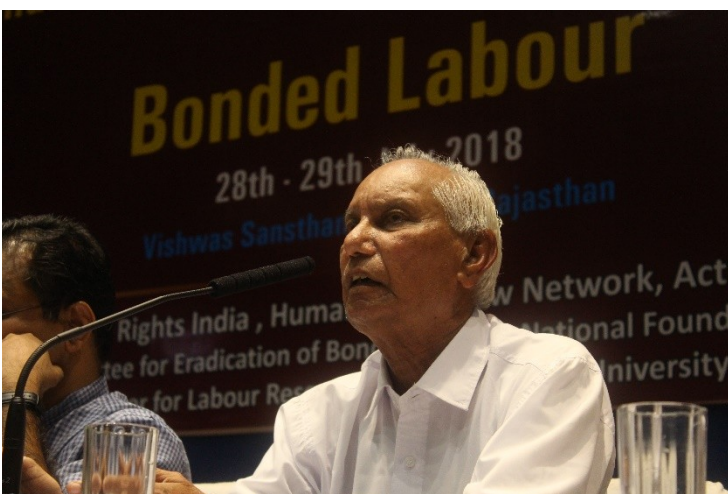
Speaker: Shri L.D Mishra, Former Labour Secretary and NHRC Special Rapporteur on Bonded Labour



The day 2 of the National convention cum training programme on bonded labour, started with an enthusiastic song by

Mr. K. Swamy. He sang a song reflecting that equality to our birth right, but which gets corroded by vested interests by using castes and other extraneous factors for exploitative purposes.

Speaker: Mr. P.L Mimroth, Centre for Dalit Rights



Mr. P.L Mimroth spoke about the relation between caste and victims of bonded labour system. He said that caste and labour

always had and have even now a nefarious nexus. The discrimination on the basis of caste system is not fair. In all the occupations which involve working hard day and night, the Dalits and the other members of of caste hierarchy are the

worst sufferers. A Dalit or lower caste person is not expected to do a high-profile job. He shared with the audience three facets of bonded labour system.

1. acute poverty,
2. social exclusion and
3. discrimination and resultant degradation

According to him all the three facets are products of forced labour. He gave an example of manual scavengers and the story of their discrimination, exploitation and degradation. According to him with introduction of mechanisation and globalisation, the traditional jobs have ended. Few sections of the society took advantage of this change. Middle class who are earning well, who maintain a decent livelihood are in need of domestic help. Such domestic helps work hard day and night but their earning is not sufficient even for their own biological survival. If they ask for their wages to be paid in time, they are subjected to a lot of humiliation and harassment. We have a plethora of laws with a poor track record of implementation. To illustrate untouchability stands abolished under Art 17 of the Constitution and is an offence under SC and ST (Prevention of Atrocities) Act, 1989 as amended in 2015 but untouchability continued to be practised in multiple forms in many parts of the country. He also talked about the plight and predicament of women in the State of Rajasthan. The laws which are on the Statute book for protecting the women dignity and decency as human beings are to be effectively implemented and yet no action is being

taken against the offenders of the law. He further referred to the movement launched by the Communist Party of India for equal distribution of land and other resources in 1970 and 1980. The need for restoration of such equality is imperative as inequality in distribution of land and assets is pervasive and creates a situation which is not in the larger interest of the poor in general and members of the SC & ST in particular.

Speaker: Mr. Nitin Pawar, Trade Union Leader



Before starting the convention, Mr. Nitin Pawar narrated an incident from yesterday's proceedings.

According to his concern persons who came to attend the convention were afraid to participate as they feared that their statement on bonded labour may go against them and therefore, they did not want to speak on this subject. He was therefore, of the view that we should remove this fear and make them feel fearless so that they can articulate their concerns without fear. Mr. Nitin Pawar talked about Anna Bhausaathe. He has written a lot on the working conditions of labour. He quoted Anna Bhausaathe and said that the world rest on the support of a labours' hand. They are the real creators of the world. He then spoke about today's topic of

Bonded Labour System (Abolition) Act, 1976. The Act has completed 42 years but is mostly on the Statute book as the country is in a denial mode as far as existence of bonded labour system is concerned.

Speaker: Mr. L D Mishra, Former Union Labour Secretary and NHRC Special Rapporteur:



Dr. Lakshmidhar Mishra IAS, former Union Labour and Parliamentary Affairs Secretary, Government of India

(1995-2000) in his address covered the following points:

1. his perceptions about variants of Bonded Labour System prevailing in different parts of the country in different names.
2. Historic backdrop of a number initiatives which have been taken for eradication of bonded labour system
3. Why was enactment of BLS (A) Act considered necessary?
4. What were the Central and subsidiary objectives behind enactment of the law?
5. To what extent these objects have been fulfilled?
6. Where do we stand now?
7. What more is required to be done?
8. What is the way forward?

The presentation of Dr. Mishra was in a dialectical mode i.e. raising questions and providing awareness. The full text of the address of Dr. L Mishra is at annexure I.

“Bonded Labour and Women”

Facilitator: Mrs. Laxmi Nayak



Women came forward and sang the song “*Le Mashaale chal pade hain log mere gaon ke*”, which means that the common people

are the torch bearers of freedom and human rights and they have started raising their voice to achieve those rights. After singing of a group song about their own freedom and their own right they expressed that they have realised the urgent and imperative need for justice and they will fight for it.

Thereafter, **Mrs Laxmi** came up to speak on the topic.

Mrs. Laxmi greeted everyone and said that she is thankful to the team for inviting her to the convention. Mrs Lakshmi talked about the condition of bonded labours in Maharashtra. She said that one cannot easily identify a victim of Bonded Labour System but there is abundance of bonded labour in that State. Maharashtra is an agrarian State. The whole family is employed in farming operations and has to devote full time there to by working on the land of the owners. However, what they receive by way of remuneration is a pittance which comprise of a handful of grains and clothes which received from the owners and which when computed in monetary terms in much lower than the statutory notified minimum wages. After the enactment of the law, some bonded labours have not

been released but the problem very much exists even now and has acquired new forms such as trafficking. Girls from Jharkhand and Nepal come to Mumbai where they are promised high wages but what they get in hand is less than half. It is their helplessness that they agree to such kind of work because it is their sole living support.

She then invited **Ms. Shweta Raje**, from AASHA Worker Union, **Ms. Lila Bai**, from construction workers' union of Maharashtra, **Ms. Vinita** from progressive plantation worker Union and **Ms. Hemlata** from Civil Construction Worker's Union to speak.

Speaker: Shweta Raj, Asha Worker's Union



Ms. Shweta Raje works for the Delhi Asha worker's Union. Shweta presented her views on the injustice which is being meted

out to the students and to the workers all over the country. She narrated how her association with Labour movement started. She used to study at JNU, New Delhi where a few workers, who were employed in a building and construction operation came and complained about less wages being paid to them. The realisation dawned on her that denial of wages as admissible under the law goes beyond the problem of non-payment of wages, it is an important question of denial of human dignity. Soon thereafter, workers formed their Union

and launched a campaign for payment of wages payable under the law but the situation is not the same all over Delhi. Then she realises that this is not only about some amount of money but it is more than that. Now the workers there have created their own union and have created a framework or agency for getting justice but at other places in Delhi the situation is not the same. She stated that in other areas in Delhi, people are not even aware of their rights. She talked about the scheme of ASHA workers whose role is to circulate the information about the government schemes and educate people about them but the salaries for the scheme workers is a partial amount of Rs.1500. While talking about the wages, she said that wages are still a secondary issue, the first concern for them is to get the status of a worker, which is yet not given to them by the government. Our society has a different vision for women. They do not value the hard work rendered by a woman. and think that she is liable to do that in order to serve the society selflessly. The women work much longer and harder than men but regrettably their hard work goes un-noticed, un-recognized, un-appreciated and un-accounted. They are not even treated with dignity. The State Government and the Central Government keep on engaging in a blame game for not discharging each other's obligations which befalls on them but they keep on shying away from them. Recently Delhi government ordered to conduct a survey on the extent of iodine in human body and the scheme workers were asked to conduct the survey. The latter who covered around 500 houses

in the gruelling summer heat of Delhi, just got 50 paisa for each house. Ms. Shweta stated that the plight and predicament of scheme workers have been shared with MPs and they have been requested to raise issues relating to have of work, wages and dignity of the scheme workers in Parliament. She also raised some very important concerns of women such as non-availability of pension. There is no mechanism for lodging a complaint in case of any wrong doing to the field workers. Patriarchy in our society still believes that women should be paid less because they are below men in every sphere of life. She urged everyone to unite against this jaundiced mindset and help the scheme workers to get the status and dignity of labour and get wages as equal to men.



Lila Bai, who hails from Mumbai talked about the struggle waged by her. She explained how women in her area of

operation stand on the roadside and wait for the contractors to come and pick them up for work. The younger women get the work easily and the women who are not fat get the work. Old women are not given any work. This kind of exploitation by way of discrimination is going from bad to worse. Some women go in for sex work as well. Lilabaai shared her problem and said that they should get justice and the government

should find out a solution to this problem. She further mentioned that working women don't get proper facilities at the workplace. She stated that when she started to work as a labourer she used to sleep on the footpath beside the road. Women workers are treated worse than garbage. She demanded some provisions in the existing law or enactment of a new law which could put an end to this form of exploitation going on for years.

Speaker: Sister Rani, CBCI



Sister Rani talked about the situation of working women. There are instances where girls are made

to marry a man migrate to the worksite of a destination. State and are made to work there for long hours without any spread over a day of rest in a week, without wages, payment for the day of rest in a week and substituted the day of rest of one is made to work on the day of rest. She also talked about the condition of surrogate mothers and house maids. She said that women who have been victims of domestic violence do not want to talk about it in the open. There are many videos and books on fundamental rights but the working women are generally not aware of these rights. People who have worked as victims of bonded labour system never realise so as they

have been brain washed to think and believe that they are supposed to do so and there is nothing prima facie wrong in so working. Human trafficking is prevalent these days through various networks. Women who work as maids in the households of NCT of Delhi are sexually abused and harassed. They are victims of physical abuse too. She suggested that we should all work together to raise our concern and protest against such abuse. She thanked the organisers of the convention to provide a platform to numerous stakeholders to speak and raise their concerns individually and united.

Speaker: Vinita Tirkey, Progressive Plantation Workers Union

Vinita,



She shared problems faced by the plantation workers in Assam. She said that they work hard day and night at the tea gardens and get Rs.160 per day. If they do not

work properly, they get half the amount. They don't have any kind of social security. The owner abuses and harasses them physically and sexually. There are almost 350 tea gardens in West Bengal and all the workers faced similar harassment there. There union is working on getting justice for the workers.



Mrs. Hemalata, who works on labour education and development society for 3 states shared her views on caste and

labour relations. She said that 90 % of the bonded labourers are from Dalit castes. Similarly, workers engaged in semi cleaning work, are from a similar caste. Such caste-based division of has prevailed for generations. The labourer is engaged mostly in casual, sporadic and underestimated operations which are full of risks and hazards and are not made permanent even after years of work. Most of them work under bonded or slave like conditions. The wages received by them at Rs.100/- per day is a pittance. Most of the sewage workers are men but women too are occasionally employed and they get afflicted by so many diseases. So many times, unskilled labourers are given the work of cleaning the sewage by providing them some extra money. This often results in deaths but is not reported and no one takes the responsibility for that. Casteism is prevalent in never work. Women who work as cleaners leave their home by morning 4 o clock and hence their children are not able to attend the school. When they grow up, they take the same work as their parents. This vicious circle continues and the whole family is engaged in the similar work. she observed that there has been some

rehabilitation work taken up for these children and they are given skills by government for working in other sectors.

Mrs Hemlata referred to the commendable work done by the Committee on workers of Delhi constituted by Hon'ble High Court of Delhi under Chairperson of Dr. L. Mishra IAS, former

Union Labour Secretary. The committee met 40 times between 2008 and 2011 submitted and as many as 40 reports to Delhi High Court.

5TH TECHNICAL SESSION

Building a Strong Sangathan of Bonded Labour and Influencing Current Policy and Social Discourse

Labourers Accounts

Mr Nirmal Gorana then invited all workers who have come to the convention to share their experiences as victims of bonded labour system.



Roshni, who hails from Damoh, Madhya Pradesh spoke about how she was confined by an employer as a victim of bonded

labour system. She was very young when she initially started working as a maid. She was not able to even study in the

school properly and continuously because her father and mother used to work as seasonal workers and migrated from one State to another State for work and livelihood. She studied upto the first standard and then went to Delhi for work with parents. After some time, she again got a chance to study but economic conditions of the family made her work. She went to Gurgaon once in search of employment and one employer kept her as a maid to cook food but then said that she could earn more by working in his factory site. He used to beat her when she was not able to work properly and lift the pile of bricks. The major question raised here is whether there is an opportunity for such children whose parents work as seasonal migrant labour. Do they have an opportunity to study in their own native's state in their mother tongue as the medium or do they have an opportunity to study in the State to where they migrate? This is a vicious circle and such children who are being trapped in bondage for no fault of their also remain as victims of illiteracy.



Mr Nirmal then invited **Sahodra Bai** to speak about her experience.

Sahodra Bai started working at a very young age. She used

to work at a brick kiln. She got married at an early age and both she and her husband started working in and for the brick

kiln. She did not get proper wages and survived by asking her neighbours to give her whatever food was being cooked in their home. She has four children and all of them work in the same factory. They do not have a proper place to live. They live in a hut. She has not received her wages since the last twenty years and now she wants government to help her get her due wages. She has also not received the pension to which she is entitled. Her family does not get a proper meal and proper shelter and hence they have been living in absolute poverty since inception. The true question here arises of shelter and pension. she got rescued from the site but she has not yet been rehabilitated. She is hopeful still that she would get rehabilitation assistance from the Government. Mr. Nirmal then talked about how they have even protested at Jantar Mantar and also at Jammu Kashmir Bhavan but there was no outcome.



The third speaker was **Gurvaram Baghel**, from Chhattisgarh.

Guruvaram stated that neither he nor any of the family members

had ever been to school. He further stated that both his father and his grandfather used to work in brick kiln and this contributed to their educational deprivation. Since there was no proper shelter where he could be left, his father took him

along for work. On account of the same problem, he also has to take his son to factories. This is a vicious circle where the whole family has no option or discretion other than working in a brick kiln at the cost of education. Gurvaram narrated an incident how once his father was beaten because he demanded the wages from the contractor. Gurvaram says that he is not aware about any law. They have not got any benefits from the law. All that they have is just a small plot of land but they could not accommodate the whole family in that. He also narrated a recent incident where his family was taken to Jammu and Kashmir by a contractor. When the contractor initially came to their village, he promised them a sum of Rs. 30000, once they reach Srinagar. The contractor gave them Rs. 5000 as advance and took them to Srinagar along with him. Gurvaram used to work from morning 5 o'clock till 9 o'clock at night. He just got a sum of Rs 1000 for a family of 5. They could not manage the meals twice a day and they asked for loan from the shopkeepers. The shopkeeper listened to the whole story and told them that this is a case of bonded labour and he informed Gurvaram about Mr. Nirmal Gorana. Gurvaram contacted Mr. Gorana and then got rescued from the site along with 150 people from the clutches of bonded labour keeper. When they came to the office of the District Commissioner, Jammu and Kashmir, told them that there is nothing that he can do and they should go back to the site. They did not go back to the worksite, decided to leave Jammu And Kashmir and approach the Deputy Commissioner in Delhi

and lodge a complaint that the whole family was beaten badly at the brick kiln site and were made to work for long hours. They did not get any relief from DC. Delhi. They approached the National Human Right Commission but could not get any relief from the Commission either. Thus, the vicious cycle of working as a victim of bonded labour system, educational deprivation of children continues when the victim does not have any proper shelter and is unable to send children to school. Gurvaram's case raises a question as to what has government done for the labourers' children? After listening to Gurvaram Mr. Nirmal posed a question to the audience on what should be the proper solution to this problem and how can we help the unfortunate victims of bonded labour system and their children.

After listening to all these cases another worker who was present in the Convention Stood up to speak about his experience. **Narayan Prasad** from Jhabua, Madhya Pradesh stated how he had a huge sum of loan amounting to Rs.25000/- and he could eventually pay it off. He found out about a nearby brick kiln and hence he started working there. While working there on the site his wife passed away and then he moved to Jammu and Kashmir. When he initially went to Jammu and Kashmir, he was promised by a contractor that he would be given work and he will be given both social and economic security. Initially he got a sum of Rs 5000. He stated that he has been working there for 13 years. He never got his

wages and whenever he used to ask for the wages, he would be beaten very badly by 5 or 6 people. Narayan Prasad does not have a land or home in his village. He then contacted Mr Gorana and told him about the whole situation. Narayan Prasad said that he is not aware about the law or elimination of bonded labour system but he knows that he is being exploited and he works hard every day and night and is not getting paid for that.

Rehana Begum from Delhi



Mr. Gorana then put a question to the three survivors as to how bonded labour system can be abolished. To

this Rehana Begum responded that by stating that this requires prolonged struggle together with strong will power and determination. Sharing her story she stated that when she moved to Delhi, her husband used to work as a rickshaw puller and she opened a tea shop. In 2014, she was approached by a person called “Sonu” who offered her a job at DDA. An official from DDA called “Jai” also arranged a *jhuggi* for her in the parking area of the compound. She was told that she would get separate wages for day and night duties. She worked from 6:00AM in the morning till 10:00PM at night. She was under the assumption that since DDA is a government body, her job

is also a government job. She thought that since it is a government job, sooner or later, she would receive her salary. Contrary to her expectations, she was not even allowed to leave to get medicines or another grocery items. When she asked for her salary, she was told that she would get her salary when she would clean both men and women toilets. She worked in desperation so as to earn money and get out of there. After that she met Mr. Gorana, who offered her help. But due to her past experiences she had become cynical and didn't trust him in the beginning. Eventually she reposed trust and confidence in him and came to realize that she was victim of bonded labourer system. Mr. Gorana along with SDM went to the compound where she was employed and called her employers. She came to know that her working hours are 8 hours per day and her monthly salary should have been Rs. 12,500. She says that she was made to work for almost 15 hours and never paid any wages, not to speak of weekly off apart from a few hundred rupees which was given to her to buy equipment needed to clean toilets like brooms etc. SDM reassured her and her husband that he will help them out. After a few days, SDM sent ten policemen, who told her to sign some papers to get her salary released and a house to live in as well. But she was very suspicious and said that till the time her bank account is not opened and salary was not deposited, she would not sign anything.

Local Municipal Corporators of ruling party BJP, namely Vijay and Seema Pandit started threatening her. The corporators

approached her with twenty goons and threatened and pressurized her to start cleaning toilets again. She resisted saying that only when she would earn wages, she will work. The corporator called twenty people (ten male and ten female), some of whom held Rehana and her husband, while the others demolished her house, took away everything which was inside the house and threatened to rape and kill her if she stays in the house. Rehana fought a hard battle with the SDM for her rehabilitation amount of Rs 20,000. She approached the High Court since SDM was not cooperating. High Court also ordered that Rehana must receive Rs. 2,00,000 as rehabilitation amount, but the same has not been made available as yet.

Mr. Gorana believes that Rehana Begum showcased immense strength, and thinks that in near future she can emerge as an activist and rescue other bonded labourers. Her FIR has not been registered yet. Police is not registering FIR as the SHO has colluded with the perpetrators of the crime and has been threatening her to drop the case.

Mr. Gorana says that there are thousands of cases like this. You can do your bit just by writing a letter. You just have to write a letter and the matter will proceed on its own. The question of generating awareness of the provisions of the law both among the victims as well as the perpetrators for which assistance to the of Rs ten Lakhs was available under the Central Scheme of the effective from 17.5.16 was discussed. It was further pointed out that a sum of Rs. 4.5 Lakh assistance was

available for conducting a survey for identification of victims of bonded labour system. Modalities of availing assistance under both the heads were also discussed. The mode of constitution and whenever due with proper representation from reconstitution, members of SC & ST was also discussed. It was felt that whenever and wherever the VCs are not being constituted properly with adequate representation of SC and ST Community, the same should be raised at appropriate fora. It was felt that the struggle for eradication of bonded labour system which was not open ended, should continue through RTI, FIR and representation to both courts as well as the. all possible avenues which were open under the law, directions of the apex court and recommendations of NHRC/SHRc to the State Government concerned should be explored.

Mahajabeen from Gujrat (survivor)



She was trapped in 2011 as a victim of bonded labour system and rescued in 2017. They used to sell her

as a bride, every month. Every night at least 10-15 men raped her. The representatives took her to Malaysia, where she was also sold to customers. By the help of a Pakistani woman, she approached the police, who detained the pimp. From there Mr Nirmal Gorana contacted her and helped her. Before that also in India, she approached the police to register a case/FIR

against the pimp, but the pimp gave police Rs 10,000 and told the police to beat her. Policemen were also “customers” of the pimp. The Gujarat police didn’t help her. When Mr. Gorana called the police, the latter took action and provided protection to her. In total 17 people have been arrested in this case. After Mr. Gorana wrote to the Collector, she was given Rs. 3 lakhs within a year. There was great difficulty in obtaining her release certificate, since it was claimed by the authorities that since she was rescued in Malaysia, the Malaysian authorities should be approached to issue her the release certificate. It was after Mr. Gorana persistent efforts that she was issued the certificate. Thereafter, she received the compensation of Rs. 3 lakhs which in the absence of a plot of land, a living accommodation, an avenue of employment was not adequate for a complete rehabilitation. She should have been provided land, job and minimum wages according to the law. For this, Mr. Gorana suggested that they will approach Gujarat High Court. He also informed the victims/survivors that

- a) the old centrally sponsored scheme has been converted to 100 PC funded Central Scheme of assistance to bonded labourer
- b) the per capita assistance for freed bonded labourer has been enhanced to Rs 1 Lakh- Rs3 Lakh respectively(1 lakh in normal cases, Rs 3 Lakh in case of women, children and physically challenged persons)
- c) provision for awareness generation and evaluation studies has also been substantially stepped up.

Audience Interaction

After all the speakers spoke about their concerns, the audience shared their views on this topic.

Lalumanjhi, from Champaran, Bihar came to the stage and spoke about the need to form unions for fighting against these unprobable crimes against humanity. He also gave some information about the basic rights available to the victims. He talked about the politics involved in welfare and development.

A lady, talked about the growing inequality in the society and the dysfunctional law which could not guarantee the wages and a dignified status to them. She shared her grief and stated that oracles of promises are never the of fulfilment.

An Advocate from Surat, Gujrat who runs a trade union spoke about the conditions of labour in textile industry (including units). He said it is the moral responsibility of trade unions to take up these matters seriously and solve them. He suggested that the trade unions should spread awareness among people about bonded labour system and the story of exploitation through trafficking in human beings.

Devendra Singh (Advocate)

Apart from his practice in courts, he works in field of bonded labour and child labour. According to him, rehabilitation of freed bonded labourers according to the place of their choice and the nature of rehabilitation (land based, non-land base, art/craft/ skill based, individual beneficiary vs group-based approach to rehabilitation) continued to be the main problem.

There is also no security for the bonded labourers once they have been rescued. He narrates an incident where he rescued a few workers, but after that they were left in a shelter home, which had no security. The contractor from whom the labourers were rescued came at night to threaten the released bonded labourers who were lodged therein. In the morning, I took them to the SDM. Therefore, this issue needs serious attention. There should be a shelter home where they can be taken immediately after the rescue operation took place for their safety and security.

Ms. Hemlata



The Speaker observed that we have heard many problems, but if we think of an action plan, she has a few suggestions to make.

She thinks that there is a need to form an association. Regarding this she gives an example, where in Rajasthan, the people who were victims of child labour in their past have come together to form an association. She thinks such associations can be formed and the 200 people who took part in this Convention cum training workshop, can go back to their respective hometowns and make use of the Convention received by way of formation of associations. Such associations can raise issues before the competent authority. Spread awareness and help in redressal of individual

grievances. She also suggests that we can go to nearby villages to identify the victims of bonded labour system spread awareness and give them training for sensitization. She also suggested that regarding the cases which are pending in the court, we can work on them by forming a core team. Until and unless we work on the pending cases through a team with a team spirit, the association won't become strong. She appreciated the efforts of Mr. Gorana, and asks everyone to come up with the solutions.

Adv. Tara Chand (HRLN, Rajasthan Unit)



Taking forward what Hemlata Ji had said, Tara Chand stated that the problems of bonded labour are the same throughout the

country. All the State governments display the very same lackadaisical attitude towards the issue. He suggested that in every State, people and organizations working for human rights should come together and form a committee at the State level. The committee should be made aware of all the developments taking place in the field of elimination of bonded labour system. He gave an example as to how a few organizations are conducting rescue operations in Chittor, few are doing in Bhilwara, few in Baran, but there is no communication or sharing of information or networking taking

place between them. He believes that if there is proper communication, then people who are advocates can help, people who have good relationship with government can help, the people who have a good rapport with court and judiciary, can also help. So, a committee at the State level consisting of advocates, journalists and activists should be formed and share basic information among all the members and take a positive and provocative step for prevention and elimination of bonded labour system.

Mr. Mihir (Assam)

He was of the view that similar Convention of likeminded and progressive elements should be organized at the state level at regular intervals for proper interaction, stock taking and trouble shooting. He believes that over a period of time a good number of laws have been enacted which are pro poor and pro-active like BLS(A) Act but there is colossal ignorance among the officials, people's representatives and even trade Union leaders. An initiative was taken to spread awareness regarding the social security of construction workers in Assam on a very large scale. He believes that there should be a WhatsApp group to train leaders, who can spread awareness in their respective hometowns.

He believes that we have heard and learnt a lot about the problems related to bonded labour, but we haven't talked about solutions. He believes that there is awareness about the issue because of NGOs, but nothing big can be achieved until such the time that all the workers get together and form an

association. Strong association of labour would help in reducing the incidence of bonded labour system. He believes that we need to be alert about existence of such trade unions who are tricking labourers to earn money. Similarly, there are certain NGOs who use the labourers as pawns in their Chessboard of exploitation. He gave an example where they had to sit in protest in the open for 10 days to solicit help of SDM for rescue of a victim of bonded labour system.

Mr. Santosh



One thing which the speaker feels has emerged time and again is that SDM and Collector are not aware of the laws

related to elimination of bonded labour system. Central Government needs to provide repetitive training to SDMs and Collectors, so as to make them aware of such laws. Regarding issue of release certificate, rehabilitation of freed bonded labourers and conviction of offenders of law, the speaker asked as to why there is no monitoring or follow up regarding the same. He believes that it is the duty of central government to monitor all the stages of implementation of rescue/release and rehabilitation of freed bonded labourers.

A person from audience who hails from Tamil Nadu, stated that there is a provision for forming a district level monitoring committee, and urges everyone to become a part of the same for its effective functioning. He suggests that each State government needs to ask the Central government to get the money and other benefits in the Central Government schemes. Recently Tamil Nadu government applied to the central government since they didn't have enough money to rehabilitate victims of bonded labour system who have been rescued/released. He stated that when they rescue victims of bonded labour system who are Dalits, police do not register

the complaint under SC/ST Prevention of Atrocities Act. Similar complaints are also not filed under Section 370 of IPC. It is only filed under the Bonded Labour System (abolition) act. A complaint should be filed in all of these.

Mr. Anwar Ahmed

The speaker observed that before the Convention he did not know much about Bonded Labour system (Abolition) Act, but he has gained sufficient information about the subject in the last two days. There are certain organizations in area which give Rs 4000-5000 as salary to their employees, but take a signature on paper of employees in which the salary is mentioned as Rs 10,000-12,000. He put a question whether such practice would amount to existence bonded labour system? He desired to know as to how to start a movement at the ground level for identification and rescue/release of victims of bonded labour system.

A speaker from the audience rose to share his concerns. He believes one issue which has emerged is how to provide safety and security to human rights defenders. There is no law to provide such security, instead there is a grave threat to their life and limb. He suggested that to keep a check on prevalence of bonded labour system, a record needs to be kept at the Panchayat level on the number of people who left the village, details of who they left with, where they went, for what period, how many of them came back. If a record of the abovementioned effects is kept, then it would become easier to track victims of bonded labour system.

He narrated an incident where in Madhya Pradesh, the State government made a scheme for the disabled persons. In this scheme, the government made an individual plan for rehabilitation of a person from the age of 6 years to 25 years. An individual plan according to age and needs of the rescued person needs to be made. He believes that victims of bonded labour system mostly belong to lower caste and plan can be formulated exclusively for such section of the society keeping in mind the abuse and exploitation they have faced on one hand and their preferences and need / interests on the other.

Mr. Kabir Arora



He suggested to the organizers of the Convention that during the next convention, at least 60% of the members

of panel should be rescued bonded labourers so that they can share their first-hand experience. Women should also be a part of the panel.

He drew attention to the fact that the incidence of bonded labour system has now emerged in a big way in such SEZs in Gujarat. It is a moot question as to how to unionize trade workers there since the same is not permissible under the law setting up the SEZ. Citing the excuse of “ease of doing business”, these are now refusing entry of the activists. He suggests that we should take help of political parties to

facilitate formation of trade unions in these. He also stated that in the “Ashrams” of so-called godmen like Baba Ramdev, there are many who are working like slaves of these godmen. They are paid 50% less than the notified minimum wage. We should do something against such godmen.

6th Technical Session

Developing New Narrative of Bonded Labour Discourse and Moving to Campaign Approach to Address Comprehensive Working Class Demands

Speaker: Mr. Sudhir Katiyar, PRAYAS Centre for Labour Research and Action



He perceived the urgent need for formulation of an action plan on identification, release/rescue and

rehabilitation of bonded labours for every State to take the agenda ahead. A few suggestions have come. One of the suggestions that have emerged is that until the workers come together as an association or Union, we can't move ahead. In places, where there are strong associations/unions of workers, like in Punjab, bonded labour has decreased. Formation of Associations/Unionization is the most fundamental step towards eradication of bonded labour system. More than

advocacy and activism, unionization can act as a potential tool for elimination of bonded labour system.

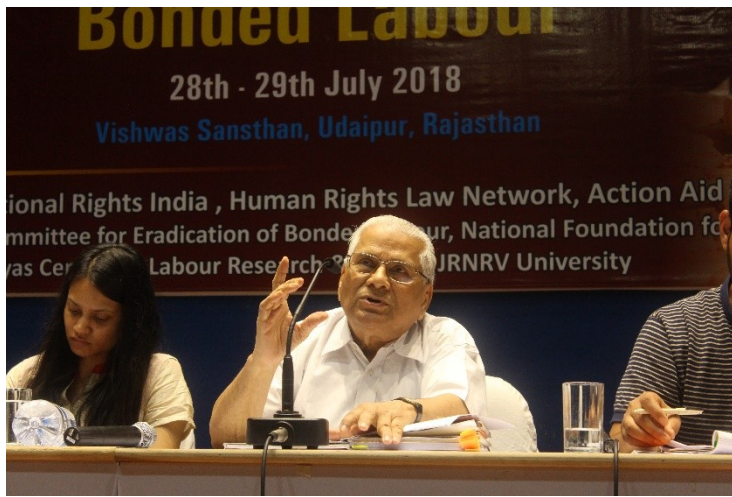
It is an accepted fact that law alone cannot help in eradicating bonded labour system. The provisions of the Act can only be implemented in an ideal and utopian world. This is because the practice of bonded labour is ingrained in the social structure and hierarchy of Indian society. The root cause of this pernicious system is caste-based division of labour and discrimination. Till we have succeeded in striking the root of the problem, the issue cannot be tackled.

The labourers mostly are ignorant and illiterate. When people are literate, they become aware of their rights, and demand their rights and this is how they progress. He believes that the labour class of the society is intentionally kept illiterate by the ruling class, so that they don't raise their voices against abuse and exploitation. So, a common schooling structure should also be in the agenda. The standards of education are falling in government schools and if there is a common schooling system, then everyone can have a fair chance of receiving quality education.

Session 7: Legal Methods to Address Bonded Labour: From Prosecution to PILs

Mr. L.D. Mishra, Former Labour Secretary

Mr. L.D. Mishra started the panel discussion by thanking speakers for introducing themselves. He observed that there are 2 components in every PIL name



a) agenda

b) procedure

He stated that the agenda is to identify the issues on which PIL can be filed. He

identified one issue i.e. Interstate Migrant Workmen (Regulation of Employment and Conditions of Service Act), 1979. To illustrate, a labourer from Barmer, Jaisalmer, Sikar, Jalore, Bikaner and Jhunjhunu migrates to a place like Delhi to work at the destination sites etc, and he died there. Under Employees, 1923 Compensation Act (since amended in 2009), the next of kith and kin are liable to claim and receive compensation. To claim and receive compensation, a case has to be filed, the accident has to be reported under Section 10 (B) of Employee's Compensation Act, 1923. Thereafter, the Commissioner will have to issue a notice to the employer of the establishment. A formal hearing will take place thereafter in accordance with the principles of natural justice i.e. all parties must be given a chance to present their case including the employer in whose establishment the death has taken place in course of employment or arising out of employment. Thereafter, the Commissioner, employees' compensation, will issue an award, awarding "x" amount of compensation. Generally, in cases of death, the compensation can go up to Rs. 5,00,000, if it's a case of incapacitation (temporary or permanent), partial or complete disablement, then also

compensation may be of the same amount. There is a factorization formula given in Schedule IV A the Act. Length of service/employment and wages being crucial to determination of compensation.

But it is not easy for next of kin of the deceased to attend these proceedings in the Court of Commissioner, Employees Compensation since they happen to be in a different State. With the availability of free legal aid, the proceeding can be conducted in the destination State where the accident took place, even if the legal heirs of the deceased are unable to attend the hearing in the Court of the Commissioner, Employees Compensation, the case can be transferred to the originating state. But if the proceedings take place in the destination state, and they don't go in favor of the kin of deceased is less amount is given as compensation or if the procedure adopted by the Employee's Compensation Commissioner is not in conformity with the principles laid down in schedule IV, then we can file a PIL by invoking Art 226/227 or Art 32 of the Constitution, since this is one the most extreme forms of injury.

There can be several other issues like this. The Hon'ble SC has said clearly that survey should be conducted at regular intervals, maybe once in 3 years, but regardless of whether the survey is being conducted or not, the government takes a stand that there is no need for a survey, because there is no such incidence of bonded labour system existing. In such a contingency, this can also be an issue for filing a PIL.

Also, it is seen that there is huge time gap between release of a labourer and rehabilitation. Hon'ble SC had said clearly that simultaneity and immediacy should be the key principles in this regard. If any bonded labourer is rescued and given a release certificate, then ideally rehabilitation (physically and mentally) should follow immediately thereafter. But if this is not happening and it results in a person not being able to achieve economic self-reliance in the absence of which he will be forced to get back into bondage under the master. This can be yet another issue for filing a PIL.

This session is called to identify issues which we can take to the Supreme Court under Article 32 of the constitution, or to the High Court under Article 226 and 227 of the constitution.

The procedure to be followed involves

- a) thorough planning and preparations
- b) making the case fool proof by addressing evidence on the basis of solid facts.
- c) Not learning any loop holes which can be exploited by the respondent etc.

With these remarks, he offered the floor to Aditi Gupta.

Speaker: Adv. Aditi Gupta

She stated by saying that she has filed a few cases regarding bonded labour in the High Court and Supreme Court at Delhi. She stated that she would narrate the same. One thing she saw that is that unions put in so much efforts but often the result achieved is not commensurate with the efforts. She didn't get to hear in the sessions about unions approaching



the High Courts or SC when they didn't receive a favorable judgment at the District Courts. She believes that they can

approach higher courts through the tool of PIL. She believes that PIL is a very powerful tool and if used in a careful manner it can prove to be immensely beneficial for everyone.

She gave an example, in which they have filed a PIL in the Delhi high court regarding bonded labour, another case is pending in SC regarding construction workers, that their wages are not paid in time, the terms and conditions of service and employment are not satisfactory; the law constitutes yet another regulation, but do not deliver and the labourers are abused and exploited.

She talked about equal pay for equal work. A 2016 judgment of SC talks about equal wages to be given to men and women for same or similar nature of or for work of equal value. There should be no discrimination on basis of age, gender, caste, if the value of the work done by them is the same. In all the cases that she has seen, contractors don't kept workers on payroll but keep them as daily wagers or on a temporary contract. As such, not only do they receive less wages, but are also not entitled to other benefits such as PF, gratuity etc. This is despite the fact that the SC has clearly ruled that irrespective of the fact whether a person is a daily wager,

contract labour, or any other worker, the person is entitled to receive equal wages, if the number of hours put in by the worker is the same. Many people are unaware of this fact. People usually assume that a person who is a contract labour will receive less than a person in regular employment, but this is not the case.

Secondly, she talked about the case of tea workers. The case was pending for ten years. Finally, in 2018, they got a favorable order. There is a Tea Act, which is not implemented properly. An order came from the SC in 2008, but no State gave any compensation, so, they again collected data and filed a contempt petition in the SC for implementation of the court's order.

She shed some light on the concept of Contempt of Court. She stated that in cases of contempt of court, the court takes immediate action. If court's order is not implemented by the government or by any other party against whom the judgment is passed, then the Petitioner can again approach the court by filing a contempt petition. The contempt plea was pending for six years, after that an interim order came in 2018. She cited a case in which in the aftermath the contempt petition, the company finally agreed to pay the workers, but they asked them to fill up a form which was very complicated and was in English language. The workers don't understand English because they are illiterate and can't understand such technical and difficult terms.

We should focus on making PIL as a tool, to fight together. If we come together, find data together, and bring out the facts fully and clearly, we can file a PIL. It is not a difficult task to file a PIL. As an activist you can file a PIL, you just have to collect and compile some details like the name of your organization, how long have you been working in this field, how did you get to know about the problem, what are the issues involved and highlight them, put data and facts together in a logical sequence in the annexure and finally your prayer, i.e., what are you asking from the court. When you bring the detailed and relevant data and report to court, the court asks the government to report the latest status of implementation. If used effectively, PIL can be prove as a very effective tool to ensure justice and fair play for the aggrieved /victimized.

She narrated a case where, where two children were working in a fan factory. They were rescued, but even after a year no action was taken, no release certificate was issued. There was another case, where a placement agency was trafficking people. They used to give false assurance to people about jobs and money and they were trafficked as domestic helps, mining workers etc. We rescued some of them, and filed a FIR. We collected all the relevant data, and filed them before the Delhi High Court that since 2016 no action was action, the accused was not arrested etc. The court immediately ordered the government to take action.

The court takes action when full facts and circumstances of the case are provided in the PIL. We can approach the State High

Court at the State level, going to the SC may not be necessary. We should devote some time to find out what issues can be taken up, we should take initiative to file RTIs and bring out facts as accurately and present it as possible of the court.

L.D. Mishra thanked her and summed up her presentation

Speaker: Adv. Tara Chand



PIL is a tool through which we can fight for our Constitutional and human rights. There has been a shift in the mindsets of people

regarding PIL. Whenever we approached a court through a PIL, the court used to ask whether government has been approached first for redressal of the grievance. In other words, all administrative remedies should be exhausted before seeking legal/judicial redress. An order in PIL has the status of law.

In Jaipur, we rescued some bonded labourers. It was SDM's duty to issue the release certificate, sanction and release the rehabilitation amount, but he didn't provide anything. So, we filed a PIL in the High Court Jaipur bench. As soon as notice of PIL was given, they immediately gave the certificate and released the rehabilitation amount of Rs 20,000. The court said that in the light of the provision in S21(2) of BLS (A) Act, the SDM should do a summary trial of the case and dispose of the

same within 6 months to provide timely relief to the aggrieved. Now we will again go to the Collector with that order, and if he does not implement it, then we will file a contempt petition against the Collector. In Rajasthan there are many organizations working in this field. He and Mr. Gorana have together done commendable work in conducting a number of rescue operations. He talked about one rescue operation in Dholpur, which was tricky and dangerous. Sometimes the local authority doesn't help, sometimes there are goons of the contractor. Such a contingency was faced by Mr. Gorana, we made a few calls and reached the Home Secretary, the Chief Secretary and the Collector, then the administration woke up and helped them to leave the place safely. There have been many such rescue operations in Baran, Bundi etc. He believes that they should club all the cases where rescue has been done and file a PIL in the SC to claim rehabilitation assistance in all these cases wherever the same has been denied. There are some provisions of law which have not been implemented by the government. To illustrate, Vigilance Committees, have not been constituted under S13 of the BLS(A) Act as yet. He requested everyone to file an RTI in their districts asking the government whether such provisions are being implemented. He says that law has all the provisions, guidelines have also been provided by the court and that has made both implementation and monitoring easier. We should collect data through RTI and other tools before filing a petition. Help can be taken of organizations like HRLN, and different branches of

different States which can help with the petition. We should use the tools available to us to eradicate this evil.

L.D. Mishra thanked him and summed up the important points in his presentation.

Speaker: Adv. Shanno Khan, HRLN



She started with the topic of fundamental rights. We file a PIL when there is a violation of fundamental rights.

The relevant Constitutional provisions in this regard are Article 19, 21 and 23. Article 19 talks about freedom of speech and expression as also freedom of movement and occupation. Article 21 gives the right to live with dignity. Article 23 is the right against exploitation and abuse. RTI has its genesis in Article 19. Every person can file a PIL. While filing the PIL it is important that there is no element of personal bias or prejudice brought out on the PIL application. PIL is a great tool which is capable of giving immediate relief.

Fact Finding is extremely important. All documents and evidences should be filed in a proper sequence. She was of the view that one should become a party to the petition filed. She insisted that the aggrieved labourers should become the petitioners themselves. If you shift somewhere to work and the petition remains pending, then an interim application is

required to be filed. An attendant is required to be sworn along with the petition. One should be prepared to stay and fight for at least two years. Sometimes cases get disposed and relief is obtained quickly but sometimes it takes time, hence the petitioner should be ready for either of the two contingencies. In HC, it is not necessary for the parties to be present at every hearing. The lawyer mostly takes the case ahead. If you file one petition for one relief, there is much more success. The relief is granted more quickly.

There is a proper format of PIL which is different for each State, this can be obtained from the internet. Representation is also necessary; an advance notice is required to be sent to the parties when the petition is filed. A Petitioner should not get swayed by money. She cites a case in which the respondent was offered two flats to drop the case and the petitioner agreed, which rendered the whole petition as infructuous. Then we made another NGO the petitioner. A PIL is mostly filed against government agencies like the Collector or SDM or Municipality etc. The main party should be made the respondent, otherwise the court sends it back. PIL is a very effective tool. She cited a case in which the court imposed a penalty of Rs 25,000 on the Collector, for the delay caused by him in providing relief and rehabilitation to the rescued labourers. She cited another case in which the court reprimanded the Finance Ministry and the Home Ministry and instructed them to provide the amount to the Petitioners. She believes that High Court is a very powerful institution to help

the victims of bonded labour system. She has 4 PILs on bonded labour in MP High Court. In a PIL in Jabalpur, an order was passed by court that once NHRC is not able to provide any relief, the petitioners should approach the Court. In yet another PIL in Gwalior, a total of 450 bonded labourers are rescued. We have recorded their statements in a CD format, the next date of hearing is about to come and we are hopeful about the outcome of the case.

Speaker: Adv. P.V. Ramesh



The State is failing to protect the fundamental rights of citizens of India. There is an assault on fundamental rights.

There is no equality in trial in the country, when there are cases of big politicians there is speedy trial, but there is no speedy trial in bonded labour cases involving the ones who are the poorest of the poor and the weakest of the weak.

In a recent judgment in which, Justice Goyal and Lalit granted permission to police to register a case under SC and ST (Prevention of Atrocities) Act, 1989 as amended in 2015 which witnessed/ countrywide massive protests. Majority of the victims of bonded labour system are members of SC and ST communities. The exploiters are picking up Dalits in Telangana. He filed two cases, where 18 people were rescued who were

working in MNREGA and they went back to their native land. Even after expiry of one year, they didn't have any rehabilitation. I filed PIL

Section 12 of BLS Act has laid down an important responsibility for the Collector to take such steps as may be necessary to eradicate the bonded labour system. Collector has to take the initiative to form vigilance committees at the district and sub-divisional level. In this case, we got relief, Collector Rs. 1 lakh, simultaneously they provided housing facility to them also. This is due to Nirmal Ji and national campaign Committee to eradicate bonded labour.

He recounts the case of Laxmi temple in Telangana. One Ramadevi, victims bonded labour system called our helpline. We called Collector who rescued her. The traffickers had severely beaten the women. Her husband died because there was no rehabilitation given. He has filed a writ petition in this case, which is pending, he is hopeful of a positive outcome.

L.D. Mishra thanked him and summed up the presentation.

Speaker: Adv. Anupradha, HRLN

She introduced herself and stated that she will tell the steps involved in filing a PIL. The first step is identification of an issue. Second is to find a petitioner who can be a public-



spirited

citizen,

registered/unregistered organization or NGO. The third step is to find out the format of PIL of your respective State. Each State has a different format for a PIL, which is required to be adopted. The next step is to draft the grounds and prepare the petition. The most important thing is fact finding, accuracy and authenticity of statistical and other data which can be put in petition. The laws which were discussed in the meeting, along with case laws can also be put in the petition. She further recounted her experience in rescue operation in Rajasthan where 25 bonded labourers who were working for ten years were rescued. The physical, economic and psychological biggest problem is rehabilitation. Even if they are rescued, they should have a source of income, otherwise they will again fall into the trap of debt. She says that we should come together to do something about eradication of this evil.

L.D. Mishra thanked her and summed up the important points.

Speaker: Adv. Sheikh Shah Nawaz

Before coming here, he didn't have much experience about Bonded labour system (Abolition) Act,1976 as he deals with issues relating to interstate migrant labour and does not deal directly with cases of bonded labour. We need to be positive in all respects. We have to fight on the streets as well as the courts. There are some lawyers who work for no or less fees. When there is a system of relief which can be provided by the court, we have to approach the court so as to pressurize the government to provide us our rights and reliefs. Apart from that we can file a FIR also against the offences in IPC,1860 which are alleged to have been committed.

Regarding PIL, the first thing is identification of issue, and that can be best achieved through the victims of bonded labour system. The ones who have suffered are fully aware of the conditions obtaining at the ground level. They will provide us the data which we can use at court. We can claim for interim relief. He says that if we make a strong case in the PIL, then there would definitely be a favourable order. He has received many favourable orders through PIL.

We need to spread legal awareness among people of their rights. Through media, by making pamphlets road side talk shows, radio, TV etc., about the provisions of Bonded Labour System (Abolition Act). Once they know that they have been abused, then they will approach the court to claim relief. He says that he has filed in 300 labour petitions in 4 years. He cites an example that in his native town there was JK Cements factory, in which many labourers worked. They were not

getting wages for ten years, we approached ALC and obtained their wages of Rs. 1600 crores, along with their pending gratuity.

In western UP, workers are chained, we can file a PIL in this regard in HC or SC along with proof. He recounts how Patnaik ji had identified some issues, prepared a PIL, drafted it himself and now he is fighting it. He is an example for us. I request all social workers sitting here, that please keep in touch with us, apprise us in time, all the issues which you are facing, gather information about it, and then approach us, and we will file a PIL on it.

Mr. L.D. Mishra, Former Labour Secretary



He read out the judgment of Bandua Mukti Morcha (WP No.2135 of 1982 date of judgment 16.12.83). Hon'ble SC

in BMM case shed some light on PIL by Justice Bhagwati. He says that the labourers on account of ignorance, illiteracy and social backwardness cannot bring the case to court, and hence require the help of a public-spirited citizen. An advocate's help is paramount in cases of bonded labour, since it is often the case that labourers often belong to the deprived sections of the society and hence are not able to approach the court directly. To arrive at the right conclusion in a case, legal assistance is extremely important. The Supreme Court had

appointed him as a Socio-Legal Investigating Commissioner Officer to go to the stone quarries and stone crushers at Faridabad and Vijaywada quarries, interrogate over 10,000 labourers and submit a report to the Govt. as to whether they are working under the conditions taken to bonded labour system. Hon'ble SC can be approached selectively, otherwise High Court can be approached under 226, since Article 226 is much wider in scope than Article 32, since under Article 226, High Court can be approached not only for violation of fundamental Rights but for violation of any legal right. Also, now filing PIL has become much easier due to introduction of RTI through which any one can obtain information and build up a case.

Also, the approach of government must change. It has generally been observed that the attitude of law enforcement machinery continues to remain non-compliance, callous and insensitive and this results in non-implementation of the direction of the court. This is an anomalous situation as the directors of the Govt in the wake of disposal of a PIL are sent to the very same officer of law enforcement whose careless and excruciating handling of the case warranted filing of the PIL. Also, contempt of court petitions is not the answer to non-implementation of court's orders. He cites a case of government of Haryana, where even after court's orders, the government didn't implement it and the contempt case went for many years. In the meantime, the labourers who were migrant workers from Rajandgaon, Durg, Raigarh, Bilaspur,

Barmer, Jaisalmer, Sekar and Jhunjhuna etc., went back to their native places, and it became very difficult to track them. He thanked his fellow panelists for their presentations which were informative, relevant and insightful.

Speaker: Nirmal Gorana



Nirmal Ji asks how one should identify a victim of bonded labour system. He says even if a person is willing to work, but

is not getting the State's minimum wage and has migrated to a different State in desperation. This is the first step. The second step is to approach the Collector and state that a certain person is a victim of bonded labour system. The third step is to do a rescue operation which is a tricky process. There are certain organizations devoted to this, and their help can be taken in the matter. The fourth step is rehabilitation. To identify, we need to conduct survey in our districts and states. For this funding is required. We can file an RTI to our respective district Collectors, asking about funds under various schemes, members of vigilance committees, how many workers are rehabilitated etc. It is the responsibility of all concerned to obtain this information through RTIs regarding rehabilitation. He asks for a show of hands from people who are ready to obtain information and go into litigation process.

A number of people raise their hands. He then asked for a show of hands of people who are ready for activism on bonded labour eradication. People raise their hands. He mentions that Interstate Migrant Workers (Regulation of Employment and Conditions of Service) Act 1979 is not being implemented properly. A PIL has been filed in Gauhati High Court regarding this. We can file an RTI to district Collector asking that how many people go to other states to find work, whether there is record kept etc. After obtaining this information, RTI can be filed.

He stated that he would continue to stay connected with everyone who is interested, and they will make joint efforts to file the petition in court. Another meeting is needed to be convened between the interested people so as to finalize the plan of action, in order to do activism as well as to file the petition.

All the people join in singing a soulful song depicting the situation of labour in the country.

After the song, Nirmal Ji introduces Advocate Ramesh Ji, who despite being busy in court where an urgent matter was going on, still helped Nirmal Ji in a rescue operation. He applauds him by saying that we need such lawyers who not only do litigation but also take part in field work. Nirmal Ji wants everyone to be a part of the network for eradication of the evils of bonded labour system. He thanked all organizations, NGOs and other civil society organizations present and requested them to come together. He suggests that from next

Convention onward 70% of the members should be victims of bonded labour system, construction workers, ragpickers should also be a part of such Conventions since they are the ones who are suffering and would be able to shed more light on the issues discussed, the rest 30% should be activists, lawyers etc. He asked if anyone is ready to take responsibility of the network in their own state. He assured that he would give training to such a person. He stated that all States should stay connected to help each other. He asked even if one person from each State agrees to co-ordinate with him on behalf of the whole state, it would create a very strong network and fraternity. People responded most spontaneously and enthusiastically signed up. The list of names of the persons who volunteered to be a part of the network are mentioned below.

Uma Kant from Orissa

Shatrugan das from Bihar

Lakhi ram from Assam

Ravinder from Haryana.

Anwar Hussain From Assam.

Benei Murwa from West Bengal

Lakshmi Naik From Maharashtra.

Manish Danghi From Madhya Pradesh

Shiv Kumar from Punjab

Rizee Ahmad from Jharkhand

Santosh ji from Rajasthan

Laxmin Kuree from Raigarh Chhattisgarh

Suraj lahray from Raigarh

Mushtaq Ahmad from Uttar Pradesh

Subodh from Gujrat

Ram Krishna from Chhattisgarh

Sheikh shahnwaz from Jammu and Kashmir

Rehana begum from Delhi

Ramesh ji from Telangana

Mehir Nandi from Assam

Vote of Thanks by Nirmal Gorana

Nirmal Ji delivered a vote of thanks in which he thanked HRLN for providing great support in conducting the meeting in translating, arranging the boarding and lodging and other paper work.

He further thanked all partner organizations, especially Santosh ji who was of a great help throughout the convention.

He showed his gratitude to Chandan Ji who also played a great role in conducting this meeting.

Nirmal Ji thanked all HRLN state units since they sent lawyers from different states for participating in the meeting.

Finally, he thanked all survivors and other participants who have attended the meeting and shared their experiences.

Annexure I

The full text of the address delivered by Dr. Lakshmidhar Mishra IAS (Retd), Framer Union Labour and Parliamentary

Affairs Dept Secy at the second day national Convention cum training Programmer held at Udaipur under the auspices of

1. Centre for Constitutional Rights, India,
2. Human Rights Law Network,
3. Action Aid, India,
4. National Campaign Committee for Eradication of Bonded Labour System,
5. National Foundation for India,
6. Ajeevika Bureau,
7. Centre for Labour Research and Action,
8. JRNRV University

On 28th and 29th July, 2018

Before me I see a galaxy of honest, sincere and sensitive field workers, like minded persons and activists who have dedicated their whole life to the cause of eradication of bonded labour system in India. The system according to me is repugnant to civilised human existence, negation of inalienable human rights and an outrageous crime against humanity. Whatever may have been the backdrop – social, sociological, economic and cultural of this social scourge or pernicious system, it is most undesirable, highly objectionable and totally unacceptable to a civilised society with a semblance of respect for human dignity and decency.

About three decades ago, Hon'ble Justice P.N. Bhagwati former Chief Justice of India had made certain observations about the continuance of this social scourge which continue to be relevant even today and I would like to share the same with the distinguished audience today.

I quote:

In our national life this system is a highly undesirable, inhuman, painful and shameful hangover of a feudal past which was also status quo est and hierarchical. The system is anathema to civilised human consciousness which is full of empathy and sensitivity for others. It is an antidote to the concept of decent work as also to human dignity and decency.

1. It is a violation of our sacrosanct constitutional values.
2. If we had honestly and sincerely implemented the

Bonded Labour System (Abolition) Act,1976, bonded labour system would have been a figment of our imagination today.

3. Regretfully, this has not been the case.
4. The destination to total abolition of the system continues to be far away.
5. In case we want good and timely results out of the implementation of this progressive law, we have to acknowledge the ground level tragic reality and not to bury our heads like an Ostrich bind in piles of sand to disown the truth, that will not take us anywhere.

Dr. Mishra stated that the subject matter of the workshop was extremely dear to his heart and he has been actively involved with both formulation and implementation of the law in various capacities both at the State and Central government levels such as Labour Commission, Odisha, Director General(Labour Welfare) Director General, CAPART, Union Labour Secy, Sr Adviser International Labour Organisation, National Human Rights Commission (NHRC), and Special Advisor, National Commission on Protection of Child Rights (NCPCR) etc. he had

the occasion to travel across the length and breadth of the country in these capacities and interact with the victims of bonded labour system who are known by different names across different States such as:

1. Jeetam in Andhra Pradesh,
2. Jeeta in Karnataka,
3. Padiyal in Tamil Nadu,
4. Paniya, Adiya and Kattunaicken in Kerala,
5. Haliya, Barmasiya and Gothi in Odisha,
6. Sagri in Rajasthan,
7. Hari in Punjab,
8. Kamiauti or Kamiya in Bihar (undivided),
9. Hali in Madhya Pradesh (undivided),
10. Harwah in Chhattisgarh,
11. Dubla in Gujarat,
12. Kolta in Uttar Pradesh (undivided),
13. Kolta in Uttarakhand

Tracing the genesis of the above variants of human bondage Dr. Mihra stated that on account of poverty, unemployment, landless and assetless character of the household, the victims of poverty unemployment have to approach the money lender or the landlord to take loan/debt/advance only at a price i.e. rendering service to the landlord or the money lender either by themselves or by any or all members of their family for a specified or unspecified period with the consequences as stated in S2(g) of BLS (A) Act. They acquire the bonded labour status if either of the consequences came to be established beyond reasonable doubt.

Similarly, there were instances of landless and assetless persons of rural poor households receiving advances from the recruiting agents and leaving their hearth and home to go in for work at a destination point. The advances bind them to

work for a particular employer in a particular avocation and they cannot leave the said employer and go in for an alternative employer for an alternative livelihood until and unless they have liquidated the advance taken at the time of recruitment as also subsequently. This is how inter-State migrant workers acquire the status of victims of bonded labour system.

Boys and girls, men and women are also trafficked by the same malfunctional and dysfunctional middlemen for forced bonded labour for commercial sexual exploitation, for forced transfer of organs and a variety of other such exploitative purposes (forced domestic help, forced adoption, forced marriage etc)

The victims represent one of the finest specimens of humanity - simple, hospitable and guileless. They sing, dance, rejoice as also mourn and their songs are some of the finest outpourings of human heart.

Dr. Mishra shared with the participants one such song which was originally written in malam dialect used in Ratlam district in Madhya Pradesh and figures in the tearfully pathetic and heartrending story of 2 bonded labourers-Behru and Punyahali written by shri Debabrata Bandhyopadhyaya, a senior bureaucrat who retired as Revenue Secy, Government of India. The English version of the song would read as under:

I go in darkness

I return in darkness

My whole life is full of darkness

There is not a ray of light

Dr. Mishra asked the following questions to the distinguished audience:

1. Who has stolen the ray of light from the lives of these helpless and hapless victims?
2. Can we restore this light in their lives?
3. If yes, how?

In proceeding to provide an answer to the above questions, Dr, Mishra shared the following information with the participants

Art 23 of the Constitution of India deals with prohibition of traffic in human beings, beggar and other similar forms of forced labour.

Any contravention of the provision is an offence punishable in accordance with law.

Art 35 (a)(II) of the Constitution of India says that Parliament shall have the power and the legislature of States shall not have the power to make a law with reference to what is provided for Art 23.

It further says that such a law shall be enacted as soon as possible after the commencement of the Constitution.

The Constitution of India was enacted and adopted on 26.11.49..

The law on abolition of bonded labour system was enacted on 9.2.76 even though it was given retrospective effect from 25.10.15, the day the BLS (A) Ordinance was promulgated by the President of India.

In other words, it took Indian Parliament to enact the law on abolition of bonded labour system exactly 27 years after the commencement of the Constitution.

The moot question to be asked: why did it take such a long time?

Apart from the Constitutional provisions as above, India had ratified the ILO Convention No. 29 of 1930 on abolition of forced labour on 30.11.54.

India is a permanent, founding and non-elective member of ILO. Ratification of every international treaty as above casts an obligation on the member State concerned to enact a law and formulate a national policy and programme of action.

Between the date of ratification and enactment of law it involved as long as 22 years.

No satisfactory answer can be found as to why it involved such a long time to enact the law in deference to the Constitutional provision as also to the fulfilment of the treaty obligation.

Suffice it to state that had there been no proclamation of emergency under Art 352 of the Constitution of India and no announcement of the 20-point new economic programme to

the nation on 1.7.75 by then PM- Srimati Indira Gandhi in which elimination of bonded labour system figured as item no4, there would have been no such law.

That historical reality does not, however, belittle or minimise the importance of the law which continues to be one of the finest and most progressive in the history of post- independent India.

III

Proceeding further, Dr. Mishra shared the following developments in a historical perspective with the participants of the national seminar.

The BLS (A) Bill was introduced in Rajya Sabha on 12/1/76 and Lok Sabha on 27/1/76.

It was passed by both Houses of Parliament and received the assent of the President of India on 9/2/76

It, however, came into force w.e.f 25/10/75 the day the BLS (A) Ordinance was promulgated.

Forty-two years have rolled by since then.

It is fairly a long time in the life of a legislation

It is, therefore, natural to ask a few questions:

- 1) Why was such a law considered necessary?
- 2) What was the central objective and what were the subsidiary objectives?
- 3) To what extent these objectives have been fulfilled?
- 4) Where do we stand now?

- 5) What more is required to be done?
- 6) What is the way forward?

Dr. Mishra shared with the participants the relevant facts by way of response to these questions.

I Why was such a law considered necessary?

Every individual has a right to grow, evolve, rise, prosper, expand and diversity by harnessing his/her imagination, creativity and innovation in a climate of freedom, security and respect for human dignity.

Exercise of such a right cannot, however, be at the cost of others, by demeaning, degrading and dehumanising others and in particular at the cost of other marginalised sections of humanity who for no fault of there have been in the twilight zone of development for centuries.

That would amount to forced labour or extraction of service from someone by force at its worst.

Such extraction of service by force maybe attributed to one human being's voluptuous greed and rapacity to rob others of their basic dignity and rights.

If one set of human beings are robbed of their freedom, dignity and self-esteem by the unions and of other set, by an irrational and unethical exercise of power and authority, the former will cease to be human beings and that will be the end of all development and progress.

Viewed in this sense, bonded labour system

1. Is an ugly and obscene basic human dignity and decency
2. Is an immoral and unethical repudiation of the basic right of every individual to evolve and grow on the ladder of human development according to his potential and to do things in a manner considered beneficial to one's best interest

II WHAT WERE THE CENTRAL AND SUBSIDIARY OBJECTIVES OF THE LAW

As it stands, the central objective of the law was

1. Abolition of bonded labour system, lock, stock and barrel
2. Preventing the economic and physical exploration of the weaker section of the society
3. Matters connected on incidental thereto

The following will come under the third central objective:

1. Physical protection to member of SC and ST from atrocities
2. Allotment of land-both homestead and agricultural to the victims
3. Handing over physical possession and ROR (Record of Rights)
4. Restoration of land of SC and ST usurped by non-SC/ Non-ST
5. Provision of low cost dwelling units
6. Making available cheap households kitchen fuel under the 'ujjwala scheme'
7. Importing functional literacy to the victims and the family members of the victims if the latter happened to be
8. Provisions of unlettered avenues of stable and durable employment-both self-employment and wage employment

9. Enforcement of notified minimum wage
10. Ensuring that wages are paid principally in cash without any deduction
11. Linking wages payable to public distribution system so that the beneficiary is in a position to buy supplies and services essential to his/her life and that of children
12. Facilitating opening of bank accounts for all released adult bonded labourers under the Jan Dhan Yojana
13. Facilitating timely enrolment, retention, participation and achievement of the desired levels of proficiency of all children of bonded labourers in arithmetic, mother tongues, science, social and environmental studies.
14. Facilitating both preliminary and subsequent check up of health of the victims and their children and taking corrective measure for treatment of ailments
15. Promoting, encouraging and facilitating organisations of released bonded labourers through cooperatives and trade union to enable them to reap the fruits of planes progress and development

The subsidiary objectives are:

To extinguish the liability to repay bonded debt

To get every attachment vacated for the recovery of bonded debt

Restoration of any moveable property seized and removed from the custody of the bonded labourer to the possession of the latter

Any suit or proceeding including a suit or proceeding for the recovery of any advance made to a bonded labourer to stand dismissed

Property of a bonded labourer to be freed from mortgage, charge, liens or other encumbrances to be restored to the possession of the victims of bonded labour system

Freed bonded labourers not to be evicted from homestead land

Every bonded labourer who has been detained in civil prison to be released from detention

III TO WHAT EXTENT THE OBJECTIVES HAS BEEN FULFILLED?

In most of the States, notifications were issued conferring powers on DM's as required under S 10,11 and 12 of BLS (A) Act and conferring powers of a Judicial Magistrate I class or IInd Class on the Executive Magistrates as required u/s 21(1).

The Act was amended in April, 1985 to make it abundantly clear that contract labour and interstate migrant labour may as well come within the purview of BLS (A) Act if they fulfil the ingredients of bonded labour systems defined under S.2(g) of the Act.

Dr Mishra clarified that such an amendment was necessary as during his visit to the stone quarries and crushers of Faridabad as DG (W)/ JS, as also a social legal investigating Commissioner of the Hon'ble Supreme Court, a stand was taken by the State Government of Haryana in course of

hearing of WP No. 2135 of 1982 filed by Bandhua Mukti Morcha before the Apex Court that contract and inter-State migrant workmen working in the quarries and crushers are not bonded labourers.

Later these contentions of the State Government were rejected in toto by the Hon'ble Supreme Court.

Between 1981 and 2012, Hon'ble Supreme Court has pronounced as many as 25 judgments on interpretation of what constitutes bonded debt, bonded labourer, bonded labour system, as also how to identify, rescue/release and rehabilitate victims of bonded labour system.

Through these judgments, the apex court has given a very broad liberal and expansive interpretation of the law without changing it.

The apex court has also dispelled series of doubts, misgivings and reservations about various provisions of the law by putting them in a proper and holistic perspective which is totally pro victim.

Some of the redeeming features emanating from these judgements are:

1. It does not do any credit to any state government who disowns the existence of the bonded labour system
2. Instead, it will bring them a lot of credit when they acknowledge its existence and do everything possible for its eradication

3. VCs at the district and sub divisional level should be constituted and reconstituted wherever such re constitution was due
4. Wherever constituted or reconstituted, good and reliable NGOs and voluntary social action groups who are committed to elimination of bonded labour system should be given due representation in these bodies
5. There should be no avoidable time gap between identification, release and rehabilitation. The three processes should be simultaneous to prevent lapse back of released bonded labourers to the bondage of erstwhile bonded labour keepers
6. Release certificates should be issued by the competent authority Suo moto immediately after identification and issue of a speaking order releasing the victim from bondage. Such certificates should clearly establish the identity of the released bonded labourer and should form the basis of subsequent rehabilitation.
7. The Executive Magistrate appointed under S21(1) of the BLS (A) Act and vested with the powers of the judicial magistrate, first or second class should take up summary trial of the proceedings so that while bonded labourers are released, the bonded labour keepers are simultaneously prosecuted and separately convicted
8. The two, however, need not be linked and one need not be made conditional on the other
9. In other words, regardless of whether the bonded labour keepers are convicted or acquitted at the end of criminal proceedings against them, it should not affect the release

and rehabilitation of bonded labourers which should be taken up with the highest priority.

10. It is not necessary to prove the element of loan/debt/advance; the same should be presumed to be in existence
11. This is on account of the fact that a poor man does not render service to a rich person for charity but does so for some economic consideration (like receiving some advance)
12. It is left open to the bonded labour keeper or even the State govt to rebut the said presumption
13. However, 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 statutory benefits.
14. It would be cruel to insist that a bonded labourer should have to go through a formal process of trial with the normal procedure for recording of evidence
15. A bonded labourer can never stand up to the tyranny and rigidity of the legal process due to his/her poverty, ignorance, illiteracy and socio-economic backwardness.

Viewed in this perspective, implications of a summary trial under S21(2) of BLS (A) Act would be:

- a) The victim (s) should not be put in the witness box and asked to depose evidence;
- b) They should not be subjected to inconvenient and uncomfortable questions in presence of their employer

- (bonded labour keeper) which will undoubtedly inhibit them;
- c) There should be no recourse to examination and cross-examination of witnesses;
 - d) The magistrate in question should go through the report of the survey team, constituted by the VC or otherwise come to a quick conclusion about the status of the victims and if found bonded, should issue a speaking order setting the person at liberty;

The apex Court has further observed the following:

- I. When a person provides labour or service to another for a remuneration which is less than the notified minimum wage, the labour or service provided by him would fall within the scope and ambit of forced labour under Art 23.
- II. Every case of release should be followed in quick succession by efforts for effective, meaningful and permanent rehabilitation.

Every such rehabilitation effort has three components such as

- i) Physical
- ii) Psychological
- iii) Economic

It has generally been observed that since inception i.e. May 1978 (when the centrally sponsored scheme was introduced) our primary thrust has been on economic rehabilitation only

Both physical and psychological rehabilitation are considered significant for the following reasons”

- i) Mayor PC of both the potential and freed bonded labourers belongs to members of SC and ST Communities (as high as 86 PC as was evident in course of the joint bonded labour survey conducted in 10 states of Indian in 78-79 by Gandhi Peace Foundation and VV Giri National Labour Institute.
- ii) They have often been a victim of caste-based untouchability, discrimination and atrocities;
- iii) Precisely on account of this reason, their motivation to lead a life of dignity and self-esteem gets reduced;

As a part of the effort to promote psychological rehabilitation of all freed bonded labourers, we need the following to be injected into their hearts and minds:

- i) With loss of freedom, a phase of adversity has undoubtedly engulfed their lives;
- ii) They should not, however, treat it as the dead end of the road and their existence;
- iii) They can undoubtedly and always start a fresh lease of life;
- iv) For this, they need courage, strength, will and determination and self-confidence which they have got in abundant measure;
- v) Even if these are not there or are deficient, we need to infuse them in abundant measure into their lives.

The importance of psychological component of rehabilitation was forcefully brought out in the address of late K.V. Raghunath Reddy, former Union Labour Minister while introducing the BLS(A) Bill in Lok Sabha on 27.01.76 and I quote an extract from the said address:

'A freed bonded labourer will not have inputs for production or any supply of credit; he will neither have any professional skill that would enable him to pursue an independent livelihood. Even where installed in a profitable activity, he will have no income during the period of gestation. The bonded labourer who is used to a world of domination and servitude will not obviously be aware of his rights. At times, he may not even like too undergo the strenuous process of economic rehabilitation and may even prefer reversion to thralldom.

If identification victims of bonded labour systemis like the discovery of a non-being, their rehabilitation is as good as resuscitating them from the morass of poverty, deprivation and subjugation and giving them the status of a full being so that they may be able to integrate themselves into the mainstream of a civilised human society to realise the dignity, beauty and worth of human existence.

For this purpose, the following sequential steps maybe kept in view such as:

1. At the time of formulation of rehabilitation proposals, the strength and weaknesses, the genuine needs, preferences and interests of all freed bonded labourers should be the basis as well as focal point.
2. The interregnum between the date of formulation of rehabilitation proposals, their approval and implementation should be reduced to the minimum, it

should be marked by a large measure of urgency and seriousness of concern

3. Special attention should be paid to the special needs of inter-State migrant bonded labourers. As emphasised by the Hon'ble Supreme Court in all such cases, the preferences of inter-State migrant workmen should always be respected. If they want to go back to their native state, full particulars of the workmen along with copies of relevant release certificates should be sent sufficiently in advance to the concerned DM of the district in the originating State. Thereafter, the inter-State migrant workmen should be repatriated with police escort to their originating point. In case the workmen prefer to get rehabilitated at the destination State itself, the same should be respected and facilitated with provision of all necessary inputs.
4. Necessary budget provision should always be made sufficiently in advance so that no rehabilitation effort is delayed due to constraints of resources and the released bonded labourers are not required to wait for an unduly long period (as the cost of such waiting will be quite heavy)
5. It may always be desirable if the state government and district administration concerned implement the rehabilitation schemes with the State Govts. internal budgetary support and claim reimbursement of expenditure thereof from the central government subsequently under the central scheme for rehabilitation

of all forced bonded labourers approved by GOI and effective from 17th MAY 2016

Additional directions issued by the Hon'ble apex court

1. Political freedom has no meaning unless the same was accompanied by social and economic freedom
2. Conditions need to be created in which everyone (excluding forced bonded labourers) would be able to enjoy basic human rights and participate in the fruits of freedom in an egalitarian socio-economic framework
3. Forced labour is a relic of the feudal exploitative society which is totally incompatible with the new egalitarian order; it is an ugly and shameful feature of our national life
4. National and provisional governments should ensure that the provisions of all labour laws are strictly and uniformly enforced.
5. They need not have to wait for any complaint from the aggrieved workers in regard to non-observance of any such provisions
6. An effective system of periodic inspections coupled with occasional surprise inspections by higher officers should be instituted.
7. If there is an exemption as in Rajasthan Famine Relief Employees (exemption from labour laws) Act 1964 and the same provides that minimum wage may not be paid to workmen employed in any famine relief work, it would be clearly violative of Art 23.
8. When the State extracts labour or service from the affected persons for carrying out famine relief work, there

can be no justification for the state government not to pay minimum wage by taking advantage of the helpless condition of affected persons (Sanjet Bunker Roy Vs State of Rajasthan WP No 6816 of 1981)

9. All of us should think, reflect, intercept, critically analyse as to where we are, who is responsible for such sorry state of affairs when the apex court bemoans that
- Human society has degenerated into a status hierarchical system with little respect for the dignity and decency of the individual and has simultaneously recommended that
 - A sense of purpose and dedication, more than anything else, is necessary to do justice to the most difficult and unenviable task of identification, release and rehabilitation of bonded labourers.

IV Dr. Mishra identified and shared certain grey areas in implementation of BLS (A) Act as under:

- Vigilance Committees are yet to be constituted in respect of all districts of the country (689) and all sub divisions (approximately 3000),
- They are not re-constituted whenever and wherever such reconstitution is due,
- In such a contingency, the existing Vigilance Committees are not being allowed to function contrary to rule 3 and 4 of BLS (A) rules.
- The officers at the district and sub divisional level often display unpardonable ignorance of the provisions of the law relating to constitution and reconstitution of VCs,

- It has been observed that persons have been nominated to be members of VCs under extraneous pressure and undue considerations,
- They do not have the educational qualification, professional experience and expertise, far less the character, integrity and sensitivity to the poor, deprived and disadvantaged sections of society,
- The meetings of the VCs are mostly ceremonial in character; chairperson and members disperse without transacting any worthwhile business related to the ventral objective of the law;
- They do not get to the field, do not collect and maintain a a list of (like brick kilns and stone quarrels/ stone crushers) which are prone to bonded labour system, do not collect any intelligence as to where the system is in existence and where there is a potential of the system thriving.
- Contrary to the direction of the Hon'ble apex court, periodic surveys are not being conducted, wherever conducted, invariably nil reports are submitted;
- Wherever the responsibility for conducting such surveys has been entrusted to NGOs (as it happened in Tamil Nadu and Malkangiri district of South Odisha) and the findings (which are fairly accurate) are placed before the RDO or any other Executive Magistrate, vested the powers of a first and second class Judicial Magistrate, large numbers of names ae dropped from the list on the flimsy ground that the identified victims

do not correspond to the definition given in S 2(g) of BLS(A) Act.

- To illustrate in Tamil Nadu, 25000 names were dropped from a list of 38000 identified bonded labourers rescued in areas of a survey conducted in 1996/97 leaving only 13000 persons to be released and rehabilitated;
- Similar was the situation in Malkangiri district in South west Odisha where 700+ bonded labourers identified after survey in 2001-01;
- All but 19 names were dropped by the Sub-Collector, Markangiri from the list of persons presented on the ground that the persons identified as bonded labourers were related to each other as father in law /son in law /brother in law. The magistrate concerned lost sight of the fact that human relationships do not matter in BLS(A) Act.

Additionally, the entire process is flawed on account of the following deficiencies:

- Surveys are invariably entrusted to the echelons of the bureaucracy i.e. officers of revenue or labour department;
- This is a clear deviation from the provision of S14 (e) of BLS(A) Act which authorises VCs to conduct such surveys only;
- Besides, the lower echelons of bureaucracy do not have the empathy and sensitivity to conduct a fresh survey;

- They always have a collusion with the landed gentry who are mostly the bonded labour keepers;
- They , therefore, make a mockery of the law and procedure established by law;
- There are instances where the DM has summoned the bonded labour keepers and the victims of bonded labour system and attempted to work out a compromise
- There is no provision in the law which provides for working out a compromise between the perpetrator of the crime and the victim
- Any such attempt would amount to abetment of an offence (S20 of BLS (A) Act)

Dr. Mishra emphasised that BLS(A) Act is the only law where for the first time sweeping powers have been conferred on the DM of district u/s 10,11 and 12 of BLS(A) Act

According to him, the considerations which weighed in the mind of the framers of the law to confer such sweeping powers are:

- DM is the chief planner, administrator, supervisor, coordinator and executor of all plans and programmes of government in the district,
- He/she has command over all resources – human material and financial at his/her disposal,
- He/she has been thoroughly trained in LBSNAA, Mussoorie, as a probationer at the district level as an Assistant Collector and magistrate and climbs to the rank of DM after occupying a number of responsible positions in the hierarchy of power and authority in the state

Dr, Mishra explained at length the meaning and implications of S 10,11,12 of BLS(A) Act in the following manner:

S10:

- The SG confers powers and imposes duties on the DM of a district;
- The DM specifies an officer subordinate to him like the ADM, SDM and any other Executive Magistrate including the Tahsildar who has magisterial powers;
- The said officer is authorised to exercise all or any of the powers of the DM;
- The said officer is also authorised to perform all or any of the duties of the DM, so conferred;

S11

- The DM and the officer so specified and authorised by the former should promote the welfare of freed bonded labourers,
- They should secure and protect the economic interest of such bonded labourers,
- The central objective of this provision of the law is to ensure that the victims of bonded labour system do not contract any further bonded debt

S12

- The DM and the other officer (s) specified and authorised by the DM are duty bound to maintain a close vigilance and surveillance over prevalence of bonded labour system and measures taken to eradicate it in their respective jurisdictions;

- The central objective of such vigilance and surveillance is to ensure that bonded labour system or any form of forced labour is not enforced by any person resident within the local limits of DM's jurisprudence
- He shall initiate such action as may be necessary to eradicate the social evil of bonded labour system

Dr Mishra highlighted how the objectives which the framers of the law had in their mind in putting in place these 3 sections have been nullified due to the jaundiced mindsets of the officers of the enforcement machinery as under:

- The framers of the law were clear and conscious in their mind about the primacy and centrality of the DM as the highest statutory authority at the district level
- Since the DM is heavily pre-occupied, the power and authority vested in him u/s 10,11 and 12 of BLS(A) Act can be exercised by the ADM, SDO(Civil) or RDO any other Executive Magistrate by issue of an appropriate order/notification by the State government with adequate arrangements for their orientation/training for necessary familiarisation/sensitisation
- This, however, does not happen

The actual ground level practice obtaining from the case records of NHRC has been quite to the contrary such as'

- A complaint is received by the commission;
- The complaint is forwarded by the commission to the DM of the district;

- The DM concerned passes on the complaint either to the office of Labour Commissioner or the Superintendent of police (SP);
- The office of LC passed it on to the labour inspector while the SP passed it on to the SHO concerned
- Neither the LC nor the SP subordinate to the DM within the meaning of Section 10 of the BLS (A) Act;
- The Labour Inspector and the SHO constitute the labour echelons of bureaucracy;
- They are generally hand and glove with the offenders of the law (landlords, money lender, contractors and other bonded labour keepers);
- They do not go to the complainant/aggrieved first to interrogate him and record his statement;
- Instead they go to the potential offender of the law or the persons complained against and record his statement;
- It is but normal and natural for the potential accused when interrogated to state in defence that there are no bonded labourers working with him;
- The inquiry officer accepts that as the gospel truth and submits the inquiry report to the DM to the effect that
 - a) there are no bonded labourers in the particular area/ establishment surveyed/ investigated;
 - b) The complaint is not established beyond doubt.
- The DM without any further cross verification of facts and application of mind forwards the report to the NHRC;
- The Commissioner is left with no alternative except to reject the findings of the inquiry as the same age is flawed and is against the principles of natural justice.

This is how, Dr Mishra empathetically came to the conclusion that we are in a situation where the fence starts eating the crops it is supposed to guard, the protector becomes the worst devourer throwing all cannons of justice to the wind

IV WHERE DO WE STAND NOW?

Dr Mishra made the following observations

- Barring a few states (Tamil Nadu, Karnataka) there is neither any perspective plan for a 5-10 year period nor any action plan to make the State free from the menace of bonded labour system within a specified period (5-10 year);
- Despite the direction of the apex court in its last judgement dated 15.10.2012 while disposing off the WP No 3922 of 1985 PUCL Vs State of Tamil Nadu and Ors, no fresh surveys are being conducted for identification of victims of bonded labour system by the State government / UTs;
- Between 2000 till date, the state governments/UTs are reporting the same state of figures to the Ministry of Labour & Employment, Govt. of India and the latter on the basis of the reports received from state governments /UTs has placed in public domain the same set of figures i.e. 2,86,000 identified and released bonded labourers repeatedly year after year
- Of the 2,86,000 reported, about 20,000 are reportedly missing i.e., either they have migrated or are dead, the

Ministry of Labour & Employment is clueless about their whereabouts

The moot question: why are the State governments indifferent to the need for undertaking recurrent surveys for identification of victims of bonded labour system?

This is partly on account of mindsets, partly on account of flawed and misplaced priorities and largely on account of absence of empathy and sensitivity for the plight and predicament of bonded labourers who constitute the poorest of the poor and weakest of the weak.

Dr Mishra elaborated the mindset of the State Govts and district administrators as under:

FIRST:

- The State governments think and perceive the bonded labour system as a onetime problem;
'according to them, this is mostly a thing of the past;
- According to them, since there is a central law, bonded labour system as a social evil should have been abolished lock, stock and barrel in 1975-76 itself;
- They refuse to take cognizance of the fact that law alone cannot abolish social evils;
- They further refuse to take cognizance of the fact that a pernicious system like bonded labour system cannot be confined to a particular point of time or a particular sector of economic activity or particular geographical area;
- It can occur and recur at any point of time;

- It can be found anywhere and everywhere-brick kilns, stone quarries and crushers, leather tanning, salt manufacturing, building and construction etc

SECOND

- The State governments think, feel and believe that acknowledging existence of the system will be a slur on the image of the state government;
- It will bring a lot of discredit to local administration;
- Such ill perceived notion persists even now,35 years after Justice P.N. Bhagwati in a landmark judgement dated 16.12.83 in WP No 2135 Bandhua Mukti Morcha Vs Union of India and others had clarified beyond doubt that acknowledging existence of the system will not be a slur on the image of any govt;
- It will not bring any discredit to local administration;
- Instead it will bring a lot of credit to both the State govt and local administration by wiping its tears from the cheerless faces of the dumb, mute and voiceless million and bringing a little cheer to them.

THIRD

The common refrain today is the following assertion such as

- There is a decline in no. of BPL families;
- Real wages of people have gone up substantially;
- Migration has come down on account of MGNREGA workers;
- Infant, child and maternal mortality rates have come down;
- More children (including girl children) are attending school today;

- A number of pf measures have been initiated by Govt for promoting better financial inclusion and security;
- There is less occasion for private money lending at usurious rates and so on;

This is yet another mindset and the myths surrounding it can be easily de-mystified such as:

- The PC of BPL families may have come down but in terms of absolute number is 300 million it is a formidable problem;
- Similarly, there may have been decline in the rate of open unemployment but sizeable number of people continue to be under-employed (phenomenon of disguised employment)
- The unemployment rate among the educated (15-29 age group) who are educated at secondary and above level is much higher
- According to 2016 report of the world bank, automation threatens in 69 PC of jobs in India
- Rationalisation, downsizing, lay off/ retrenchment/ displacement of persons on account of their land being acquired for a project, contract labour rendered jobless on account of abolition of contract labour system without any corresponding provision for their re absorption contribute to the incidence of unemployment and poverty

Today 60 PC of the country's population has right only over 5 PC of the country's total land area.

Ten PC of the population, in sharp contrast, has control over 55 PC of the total land area

Severely 30 PC of the land is owned by 25 PC of the households while the remaining 70 PC of the land area is owned by 75 PC households

These gaps are as formidable as the levels of inequality

Dr Mishra further stated that India accounts for:

- Single largest no. of unlettered persons in the world in the vicinity of 300 million;
- 36 PC of the global poor;
- 20 PC of the global out-of-school children;
- 20 PC of the gender gap in elementary education;
- Only 1.5 PC of the total population and 2.5 PC of the population of 15 years and above is reported to have receive any kind of formal technical education;
- The PC of women to have received technical education is even lower than 1.5 PC
- Out of 33 million youth who received some vocational training, more than 18 million possess low levels of skills as their general educational achievement levels are below middle level;
- More than 76 million with secondary or even higher levels of general education (which includes 15 million graduate) are reported not to have received any vocational training
- Bulk of the employment today is
 - - casual;
 - Sporadic;
 - Inter-mittent

Right to life includes within the meaning of Art 21 of the Constitution

- Right to decent living accommodation;
- Right to work;
- Right to wages;
- Right to food;
- Right to water;
- Right to sanitation;
- Right to health and nutrition;
- Right to leisure and recreation;
- Right to speedy trial;
- Right to information

Hon'ble Supreme Court devoted almost one full decade imparted it an all-inclusive character (right to food, water health (1980-90) to interpretation of right to life as under Article 21 of the Constitution and all its judgements have come like breath of fresh air.

Where are we today as far as these components of right to life are concerned?

Take for example right to work and wages through MGNREGA

It was launched on 06.02.2006 at Anantapur in Andhara Pradesh and was followed by the passage law in Parliament the same year.

The object of MNREGA was three-fold such as

- Provide employment to rural poor during season for at least 100 days a year;
- Prevent incidence of migration;
- Build-up permanent rural assets

This is one programme which extensively affects the livelihood, income and survival of millions of BPL families

Regretfully, today the programme is passing through a crisis of delayed and failed wage payments

S6 of MNREGA Act forbids payment of notified minimum wages

This has already been struck down as unconstitutional by AP and Karnatak High Courts

MORD has taken up the matter with Hon'ble Supreme Court

The matter is sub judice

There is no national minimum wage

The wage level in most states (barring Kerala and NCR of Delhi) are quite low

Denial of minimum wage, according to ruling of Hon'ble supreme Court in Asiad Worker's Case (WP No 8431 dated 18.9.82) is an infringement of Art 23 and amounts to forced labour

If notified minimum wages are not paid, existing wages are quite low and payment is made mostly in kind and not principally in cash is uncertainly in making wage payments (Rs 5000 outstanding towards payment of wages in MGNREGA workers alone) distress migration is the only inevitable alternative-

Distress migration implies:

- False promises/allurements are made by recruiting agents at the time of the recruitment;
- Payment of advances without any written contract;

- A lot of deceit and fraud is associated with the outer process;
- All promises are believed after arrival of migrant workers at the worksite and is followed by ruthless exploitation;
- The entire process leads to forfeiture of freedom to leave the present employer and worksite and go in for an alternative employer and livelihood;

As far as wages are concerned, the scenario is no better in as much as

- Wages are fixed several years ago but haven't been renewed and revised upward for years;
- Existing wages continue to be quite low;
- They are not accompanied by spread over, weekly day of rest of wage etc;
- Wages are principally paid in kind in rural unorganised, informal sector
- Determination of cash value of wages paid in kind (characterised by poor quality of food grains) is extremely difficult;
- Deductions do take place from wages (wherever the same is paid in cash) which is an infringement of Art 23 and amounts to forced labour;
- There is no linkage between notified wage, actual earnings, income and prices;
- According to the CPI compiled by Labour Bureau, Shimla/Chandigarh (an attached office of [MOLiE](#)) it has gone up by 400 PC for rural and agriculture workers and 275 PC for industrial workers (using 186=100 as the base for the first and 2000=100 for the second)

- There is no corresponding increase in wages and increase, if any, falls far short of the increase in the CPI levels

As far as right to health and medical care is concerned 70 PC Indian spend it out of their private income on medicines and health care services in comparison with 30 TO 40 PC in other Asian Countries. Indian population is also deprived of supply of best quality doctors and health care facilities

Excess of expenditure over limited income on medicines and healthcare facilities makes a sizeable no. of BPL house hold get into indebtedness and bondage

Over 30 million of families go to bed hungry every night in India (the global figure being 800+ million) according to the latest global hunger index released recently, India's rank is quite low and is going down year after year

Over 20 PC of the total no. of 600,000 villages do not have access to portable water with high incidence of fluorosis

According to the latest findings of the family health survey, over 40 million children in 0-6 age group are victims of malnutrition, this is followed by a sizeable no. of malnutrition related death of children

Million petals of childhood wither away in wilderness before blossoming to flowers of youth and manhood

As million of working children (there are 10 million working children which is the single largest no. of working children in the world) cross the portals of childhood and enter adolescence/adulthood, there will be no class vital left in them to head a productive adult life which is also responsible and responsive

ILO adopted Convention no 100 on equal employment opportunities and wages in 1951. India ratified the said Convention in 1958 and enacted 'Equal Remuneration' Act in 1976. This notwithstanding, labour participation rate of women is 31 PC which continues to be the lowest in the world. Women continue to work harder and for much longer hours than men but their wages are nowhere the same as men for same or similar nature of work

Keeping the above anomalies in view, Dr. Mishra felt that it is difficult to take a stand that all that was required to be done has been done and nothing more is required to be done.

FOURTH

This mindset rests on discrimination of inter-State migrant workers on the part of the destination States.

According to the version of these States, the inter-State migrant workers come of their own, go back of their own and they (the destination states) have nothing to do with them, the latter are not responsible for poverty, indigence and backwardness of the migrant population

This is flawed mindset in as much as the inter-State migrant workmen by their 'blood, sweat and tears' contribute to the prosperity of the destination State and deserve a much fairer deal than what they receive today

The real problem comes when inter-State migrant workmen and, in particular, victims of distress migration also become victims of debt bondage, the destination State completely disowns its responsibility in regard to identification, rescue/release and repatriation of the victims to the originating state is concerned

FIFTH

Bonded labour system owes its origin to the feudal set up of the society and the reactionary elements of the society do not want to part with the system partly on account of the cheap labour but largely on account of the fact that the feudal order thrives and prospers on the bedrock of the pernicious system

Some of the typical manifestations of a reactionary feudal mindset may be found in the following expressions

- They have been bonded to us in the past;
- Even if they have been released for the time being, they will willingly come back to us;
- They will remain bonded to us even for ever as they do not have any other alternative wherewithal;
- Because they were bonded to us in the past, they have received so many units of assistance which they would not have received otherwise;

- For this reason alone, they should serve us free and not claim minimum wage as a matter of right;

Yet another typical reactionary mindset:

- What will happen to our agriculture if you will release and withdraw all the kamias from agricultural work;

V WHAT MORE IS REQUIRED TO BE DONE/.

Dr, Mishra placed the following suggestions for consideration of the house

- We need to draw up a perspective plan which should have a duration of 5-10 years during which the State concerned should be made substantially free of the scourge

The order of priorities need to be completely listed in a logical and time sequence

The priorities are:

- Rehabilitation of released bonded labourers who are awaiting rehabilitation for a long time and who are likely to lapse back to bondage under the erstwhile masters if the rehabilitation process is delayed further;
- Disposal of all pending cases at the level of executive magistrates vested with the powers of a Judicial Magistrate first or second class by taking recourse to summary trial S21(2) OF BLS (A) Act and ensuring that release certificates are issued individually or favour of these who have been found to have been bonded;

- Formulation of schemes (land based, non-land based and art/craft/ skill based), placing the schemes before the State level screening committee for approval and implementation of the schemes in a timebound manner;
- Complete documentation of all bonded labourers identified and released as well as those who have been fully rehabilitated (name, age, sex details of occupation, remuneration/income), extent of economic self-reliance (rule 7 of BLS (A) Rules);
- Documentation of success stories of rehabilitation
- Meaningful, effective and permanent rehabilitation leading to economic self-reliance which can be used as a model by other States and which can be used for training **onculation** and training for the sensitisation of functionaries at all levels including chairperson and members of all VCs at the district and sub divisional level;
- Identification and enumeration of unfree/potential bonded labourers through fresh surveys to be undertaken in an unorthodox and unconventional manner (S14(E) of BLS(A) Act);
- Launching proceedings (U/s 16,17,18,19,20 of BLS(A)Act) against the bonded labour keepers in separate proceedings and in accordance with the procedure established by law but without linking the same with release and rehabilitation;

VI WAY FORWARD – A FUTURISTIC PERSPECTIVE:

Dr. Mishra further suggested the following for consideration of the house:

- 1) A national policy and programme of cation for eradication of bonded labour system should be put in place.
- 2) The central focus of the policy will be on
 - How to prevent disproportionate spending on festivities (births, deaths and various other customary rights) which would lead to indebtedness and bondage;
 - How to institutionalise availability of interest free consumption loan for meeting certain inescapable social obligations
 - Facilitating access to micro credit and through such credit promote thrift and economic self-reliance;
 - Implementation of land reforms with abolition of tenancy system (as it has been achieved in Kerala) and land to the tiller as its central focus as also preventing alienation of land of SC/ST /OBC which lead to landlessness, asset lessness and bondage and simultaneously restoring such land which has been usurped by non-SC/ST/OBC;
 - Securing full involvement of officers of agriculture , soil conservation, horticulture, animal husbandry and veterinary, forest, fishers, skill training, rural and urban development, labour, women and child development depths in exploiting a group-based rehabilitation by pooling resources from a variety of sources and integrating them in an imaginative manner for a full, meaningful effective and permanent rehabilitation;
 - How to optimise capacity of land through land development;

- How to ensure affordable access to quality seeds, fertiliser, pesticide etc for those who have been allotted government land for cultivation purpose;
- How to facilitate access to full, freely chosen and productive employment;
- How to make employment in agriculture as well as non-farming activities optimally remunerative-enforcement of notifies minimum wage to be payable principally in cash without any deduction except authorised by law;
- How to link wages with public distribution system as that goods and commodities essential to the life of an individual are available within the wages payable;
- How to facilitate access to skill training for both skill formation and skill upgradation;
- How to minimise incidence of distress migration which has a higher potential for debt bondage;
- How to accelerate enforcement of the law on elimination of child labour;
- How to strengthen and activate the labour law enforcement machinery through training and orientation;
- How to strengthen and activate VCs at the district and sub divisional level;
- How to strengthen and activate the grievance ventilation and redressal machinery;
- How to handle effectively issues relating to trafficking of boys, girls, women, adolescents and men for
 - a) Commercial sexual exploitation
 - b) Forced bonded labour
 - c) Forced transfer of organs
 - d) Forced adoption
 - e) Forced marriage
 - f) Forced domestic help



