

# **NATIONAL COALITION FOR ABOLITION OF BONDED LABOUR(NCABL)**

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## **JOINT STAKEHOLDERS' REPORT ON SITUATION OF BONDED LABOUR IN INDIA FOR SUBMISSION TO UNITED NATIONS UNIVERSAL PERIODIC REVIEW III**

The Report is the product of three Consultations organized by NCABL on 24<sup>th</sup> May, 29<sup>th</sup> August and 5<sup>th</sup> September in 2016 at Bhubaneswar involving 100 persons representing different organizations, sections and states of India

***Submitted by:***

### **NATIONAL COALITION FOR ABOLITION OF BONDED LABOUR (NCABL)**

National Coalition for Abolition of Bonded Labour (NCABL) – a platform of 22 organizations (involving human rights organizations, CSOs, individual activists, media personnel and associations of bonded laborers ) engaged in identification, release and rehabilitation of bonded laborers from different states of India. It represents the concerns of people victimized as trafficked labourers of inter-state and intrastate migration as well as the victims of debt, hereditary, customary, land-based and caste-based bondage that perpetuates bonded labor system, untouchability and caste in rural areas across the country.

NCABL Formed on 02.02.2016 in a special meeting of 22 CSOs at Hotel Presidency at Bhubaneswar of Odisha

The Report has been endorsed by 31 persons representing CSOs, HRDs, Community Based Organizations, People's Movements.

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## **I. Introduction:**

1. Slavery in ancient India was considered as indispensable characteristic of the unjust social structure. It was associated with birth and social hierarchy. In colonial era the landlord system remained for over 150 years making the bondage system from strong to stronger. In modern era new form of bondage is abundantly seen as human trafficking, forced labour, commercial sexual exploitation, forced begging and debt bondage.

2. Article 23 of the Indian Constitution prohibits trafficking in human beings and forced labour. Bonded Labour System (Abolition) Act has been legislated by the Indian Parliament in 1976. It penalises not only debt bondage but also customary bondage, hereditary bondage, land-based bondage and caste-based bondage. The pernicious bondage system continues to persist in India through different names and forms.

3. As per the latest Global Slavery Index, India ranks fourth in terms of percentage of the population in modern slavery conditions (1.40 per cent). This amounts to over 14 million people—the most in the world and more than the next 10 countries in the index combined.<sup>1</sup> While a 1978 estimate placed bonded labour in India to be 2.62 million,<sup>2</sup> the incidence of human bondage in the non agriculture sector is well spread across all age, sex and ethnicity. Interstate and intrastate migrant labourers or trafficked labourers are often falling into the bondage system and due to lack of inter-ministerial and inter-state coordination, many of the migrant workers engaged in various industrial and non agriculture sectors are unable to be freed. Bondage in industrial sector is rampant in construction, garment industries, cotton ginning etc.

4. The Indian Government's response to address the modern day slavery or the neo bondage is limited to three ministries i.e Ministry of Labour & Employment, Ministry of Home Affairs, and Ministry of Women and Child Development. The criminal justice system has not yet been able to deliver justice to the victims of bonded labour, not only in prosecuting the perpetrators but also in taking a long term measure to prohibit and rehabilitate the victims. There is hardly any inter-ministerial coordination in the direction of working jointly on the issue.

## **II. Inter-state distress migration of labour causes bonded labour:**

5. In India, today, the vicious cycle of inter-state trafficked migration of labour exists which is called “*dadan*”. The marginal farmers, share-croppers, agriculture labourers etc of a position of vulnerability in un-irrigated agriculture areas are trafficked to industry-based states for credit, income, sustenance etc because of their loan taken from money-lenders for agriculture, social customs like marriage etc. The employers in other states collude with middlemen called *Sardar* to exploit the labourers. Such *Sardar* engages agents called *Khatadar* in villages to recruit labourers. They deceive the labourers by luring them with attractive monthly emoluments. The *Sardar* gives advance to labourers and transports them to the employers at the place of destination. The employer gives food, shelter etc to the labourers at the work-place through *Khatadar* for their survival and extract labour from them. No registration of migrant labourers is made at the place of origin and destination. The trafficked migrant labourers are forced to work day and night and even if for years together without minimum wage, Employees State Insurance hospital facilities, insurance and other welfare facilities as applicable under the Inter-State Migrant Workmen Act. In most cases the entire family members including males, females and their children are trafficked in this process. All of them are engaged in brick kilns and other areas without remuneration. Employers engage musclemen to guard them so that they can't flee away. In this way they extract labour that perpetuates trafficking and bonded labour. In cases like that of Dialu Majhi (25) and Nilambar Dhangda Majhi (35) from Kalahandi whose palms were chopped illustrate the extreme brutality that bonded labourers face in India.<sup>3</sup>

6. It is a fact that a large number of labourers are trafficked to other states due to want of work and availability of minimum wages in Odisha. Such migrant labourers are almost physically & economically

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<sup>1</sup>Walk free foundation global slavery index 2016, see link: <http://www.globalslaveryindex.org/country/india/>

<sup>2</sup>Wikipedia doc. Labour in India Link: [https://en.wikipedia.org/wiki/Labour\\_in\\_India](https://en.wikipedia.org/wiki/Labour_in_India)

<sup>3</sup>See Case study: A horrible incident of hand chopping case in Kalahandi district, Odisha, India(See Annexure – Pages 1-2)

exploited. But the registration of the middle men has not been made mandatory at the places of origin and destination of migrant labourers coming under the Inter-State Migrant Workmen Act. Although registration of contractors is taking place at the district office of the Labour & Employment Department, the names of the labour contractors are not available at the office of Labour Commissioner, Bhubaneswar. As a result, no monitoring is taking place at the office of the Labour Commissioner, Bhubaneswar or District office regarding conditions of the migrant workers at the places of origin and destination. There is also not any regulation on the issues of migrant labourers for grievance redress. Similarly there is not any provision for minimum wage, Employees State Insurance hospital facilities, insurance and other welfare facilities for migrant workers. The Memorandum of Understanding has been signed between the Ministry of Labour and Employment, Government of India and Department of Labour & Employment, Government of Odisha and Andhra Pradesh for cooperation of the project reducing vulnerability to bondage in India through promotion of decent work that has been notified by the Labour & Employment Department, Government of Odisha on dt.06.10.2012<sup>4</sup>. But such tripartite Memorandum of Understanding has not yet been signed for other states like Tamilnadu, Chhatisgarh etc where a large number of migrant workers are trafficked from Odisha every year and exploited there. There is no actual data on the number & types of migrant labourers being trafficked from one state to another with anybody including Government. The Minister, Labour and Employment, Govt. of Odisha has shared that total 3113 labourers have been rescued from different worksites of Tamil Nadu, Karnataka, Andhra Pradesh between 2011 to 2014.<sup>5</sup>

### **III. Treatment of forced labourers tantamount to contemporary slavery**

7. In India, today, a practice continues to exist, called "*jajamani*," which constitutes a form of slavery. As established by the caste system prevalent in India, barbers and washer men cut hair and wash clothes respectively in service to upper caste families. This service is expected to be performed throughout their life, and the role is passed on through generations on hereditary basis. This system provides for barbers and washer men to be paid a certain quantity of food grains by upper caste families, once or twice a year, in exchange for their labour. In the eastern state of Odisha, barbers and washer men receive a yearly livelihood called "*bartan*," approximately 15 kilograms of rice per family, customarily paid once a year. Nearly the same quantity of food-grains is paid to barbers and washer men once or twice a year by the upper caste families for their same service throughout the country though the nomenclature of "*bartan*" differs from state to state and language to language. In some cases, these labourers render their services in exchange for permission to cultivate a piece of land that belongs to upper caste families, instead of rice.

8. In addition to their expected services related to cutting of hair and doing washing, barbers and washer men are duty bound to perform additional menial service at the time of marriage and funeral rites observed by upper caste families. These services include washing the feet of guests, clearing left-over after feasts, carrying heavy loads, cleaning utensils and other tasks that members of the upper castes refuse to carry out. They are not empowered to refuse to do this work, nor are they considered to be entitled to receive any additional compensation for these services. In case of their absence or sickness, the obligation to perform this service is transferred to another member or any relative of their family. When labourers die, their descendants are expected to continue rendering such service without any payment for the rest of the year, after which, they would collect the '*bartan*' payment at the same time that their fathers or mothers would have been paid. Both men and women perform their services. But the type of the work differs. Barber women are duty bound to render certain services like colouring the feet, cutting nail etc. whereas the washer women are to collect the old and dirty clothes for washing from each upper caste family. The possibility for the upper caste families to expand the set of duties for which the labourers are responsible, without additional compensation, constitutes a contemporary form of slavery and is fundamentally counter to international human rights standards.

### **IV. Pervasion of debt bondage**

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<sup>4</sup>See MOU between Odisha, Andhra Pradesh & Government of India (See Annexure-Pages 3-8 )

<sup>5</sup>See the sheet of the answer of Odisha Legislative Assembly- Assembly report on Migrant Labour of Odisha(See Annexure, Pages –9-14)

9. There is debt bondage in business supply chains. Bonded labour, it may be noticed, is rampant in brick kilns, stone quarries, crushing mines, beedi manufacturing, carpet weaving, construction industries, agriculture, in rural and urban unorganized and informal sector, power looms and cotton handlooms, fish processing etc.<sup>6</sup>

10. In the areas of indigenous people, the money-lenders lend some money to *adivasi* for liquor and take their land on lien. The *adivasi* can't repay the loan. He works in the same land for years together without minimum wage. The entire produce is taken by the money-lender. In some cases, middleman gives *adivasi* some money in advance before harvesting and in turn takes the entire produce. In cases of forest products and Kendu leaf etc the middlemen take away the products in lieu of advance given by them. In such cases the *adivasi* labourers and farmers forfeit the right to sell at market value the products of their labour for which they become the victims of bonded labour system.

#### **V. Restrictions on the right to peaceful assembly and reprisals against human rights defenders advocating for the rights of bonded labourers**

11. Bonded labourers who have attempted to defend their rights in the face of this discriminatory practice have been repeatedly denied access to justice and subjected to reprisals. The rigid application of the caste system in India today makes it virtually impossible for barbers and washer men to change their status. Refusal to render a service or measures to defend the rights of labourers and their family members often results in them becoming socially and economically ostracized, targets of harassment and looting of their property. When a complaint is filed with the police, the authorities tend to facilitate negotiations that lead to agreement by the workers to continue their foot-washing and other customary service.<sup>7</sup>

12. The authorities in India have also targeted human rights defenders who advocate for the elimination of bonded labour and other labour-related rights for Dalits and other lower caste workers. For example, a defender denouncing bonded labour spent 110 days in jail. <sup>8</sup>

#### **VI. Human rights issues relating to extreme poverty**

13. For compulsion arising from hunger, poverty, want and destitution, the marginal farmers and agriculture labourers are forced to work under '*dadan*' system. And in doing so, he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly forced labour.<sup>9</sup>In the cases of Ranjitha (18) and Pavithra (17), these girls fled from their workplace in Dindigul, Tamilnadu because of poor wages, long working hours, physical and verbal abuse, compulsory overtime and late night shifts.<sup>10</sup>

14. The '*bartan*' payment of approximately 15 kilograms of rice per year is valued far below the minimum income level required for the barbers and washers to provide for their family and enjoy the right to food, adequate housing, health and education. In addition, the ever-present possibility that the patrons of these labourers may require additional services makes it extremely difficult for the workers to undertake additional work which could supplement their income. Therefore the *dadan* system or *jajamani* system is perpetuating barriers confronted by people living in the lowest castes of Indian society, even in conditions of poverty or extreme poverty, from satisfying their basic necessities and living lives of dignity.

#### **VII. Jajamani reinforces caste and untouchability in India, counter to fundamental human rights to equality and dignity**

15. In addition, the relationship between *jajamani* and the perpetuation of the caste system in India should be recognized as a form of institutionalized discrimination. Custom dictates that barbers and washer men by caste must render their services only to upper caste families but not to Dalits.

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<sup>6</sup> See Direction (3) given by the Supreme Court of India in Public Union for Civil Liberties v. State of Tamil Nadu judgment of 15<sup>th</sup> October 2012, in the matter of Writ Petition (Civil) No.3922of 1985 at p.18

<sup>7</sup> See Compromise petition dated February 11,2001 given to the Officer-in-Charge of Brahmagiri Police Station for continuation of foot washing and other customary services attached (See Annexure- Page 16-20)

<sup>8</sup> See A/HRC/19/55/Add.1 para 76

<sup>9</sup> See People's Union for Democratic Rights v. Union of India AIR 1982 Supreme Court 1473 para 15

<sup>10</sup>See Case study: Spinning mills – still a nightmare for girl workers (See Annexure- Pages 20 - 21)

‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law.<sup>11</sup> Notwithstanding this prohibition, the service of these labourers is only enjoyed by upper caste families and no punishment has been issued against an individual pertaining to an upper caste, as a result of their enforcing the *jajamani* system. In this regard, the *jajamani* perpetuates not only bonded labour but also untouchability and caste across India. This system runs counter to the standard which states that all human beings are born free and equal in dignity and rights.<sup>12</sup>

16. Discrimination based on caste increases the vulnerability of affected groups to contemporary forms of slavery.<sup>13</sup> Research indicates that forced and bonded labour is widespread within caste-affected communities, despite legal bans.<sup>14</sup> In South Asia, Dalits comprise the majority of people subjected to domestic bonded labour, and a large number of victims of trafficking in person, sexual slavery and other forms of labour exploitation are members of low caste.<sup>15</sup>

17. Discrimination based on caste and analogous system of inherited status refers to a form of discrimination based on descent.<sup>16</sup> Because one’s caste can be determinative of one’s occupation, it is also referred to as “discrimination based on work and descent”. The term refers to a strict hierarchical social system that is often based on the notions of purity and pollution, in which individuals placed at the bottom of the system, may face exclusion and discrimination in a wide range of areas.<sup>17</sup>

18. In addition, the Sub-Commission on the Promotion and Protection of Human Rights, in its resolution 2000/4, established that discrimination based on work and descent was a form of discrimination prohibited by international human rights law, and requested Governments concerned to put in place all necessary constitutional, legislative and administrative measures, including affirmative action, to prohibit and redress that form of discrimination, as well as to criminally sanction all persons or entities within their jurisdiction who might have engaged in practices of discrimination on the basis of work and descent.<sup>18</sup>

### **VIII. State Response**

19. The Bonded Labour System (Abolition) Act was enacted in 1976 replacing the Bonded Labour System (Abolition) Ordinance, 1975. The Ministry of Labour and Employment launched a Centrally Sponsored Scheme for Rehabilitation of Bonded Labourers in May, 1978. From the year 1978 to 2014-15 the Central Government and State Governments shared equally for providing rehabilitation assistance in respect of 280213 released bonded labourers in the entire country.<sup>19</sup> Government of Odisha record reveals that 2895 labourers have been rescued out of which 708 labourers have been rehabilitated.<sup>20</sup>

20. The implementation of the Bonded Labour System (Abolition) Act has been weak. In Malkangiri district of Odisha an NGO was engaged to conduct the survey of bonded labour in 2004. They identified 728 cases. But regrettably 705 out of 728 cases were dropped by the District authority. It shows that functionaries of the legal system are not sure of their stand in regard to a particular issue.<sup>21</sup>

21. To confront the abuses that have derived from the bonded labour system to which they have been subjected, barbers and washer men and their advocates have undertaken numerous peaceful actions to demand the abolition of this practice but they have not resulted in the necessary changes. A sit-in (dharna) organized by the barbers of Brahmagiri Block of Puri District, for example, took place before the residence office of the District Magistrate and Collector of Puri who, on May 19, 2003, brokered an

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<sup>11</sup> See Constitution of India Article 17

<sup>12</sup> See UDHR Article 1

<sup>13</sup> See A/HRC/24/43, para 15

<sup>14</sup> Bethan Copley, “International consultation on caste-based discrimination” International Dalit Solidarity Network, 2012), p.2 [http://idsn.org/wp-content/uploads/user\\_folder/pdf/New\\_files/IDSN/Consultations/Report/Report\\_IntConsultationOnCBD\\_2011.pdf](http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/IDSN/Consultations/Report/Report_IntConsultationOnCBD_2011.pdf)

<sup>15</sup> See A/HRC/17/40, para 33

<sup>16</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 29 (2002) on article 1, paragraph 1, of the Convention (Descent)

<sup>17</sup> See A/HRC/31/56 para 26

<sup>18</sup> See A/HRC/31/56 para 51

<sup>19</sup> See Government of India, Ministry of Labour and Employment press release link: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=124739>

<sup>20</sup> See report of Odisha legislative assembly attached- Odisha Assembly report on Bonded Labour (See Annexure – Page 22-23)

<sup>21</sup> See National Human Rights Commission D.O. No.2/1/2008-PRP&P dt.04.11.2009 attached (See Annexure – Page 23-54)

agreement to allow for the continuation of the customary service of barbers.<sup>22</sup> On April 8, 2004, the Government of Odisha which established, that barbers and washer men working in rural areas shall not be recognized as bonded labourers.<sup>23</sup>

22. A complaint was subsequently filed with National Human Rights Commission (NHRC) calling for the release of 'bartan'-receiving barbers and washer men from the bonded labour system. Accordingly the NHRC found, on July 15, 2008, that the practice of 'bartan' is a manifestation of the bonded labour system as defined in Section 2 (g) of the Bonded Labour System (Abolition) Act, 1976.<sup>24</sup> Following these findings, the Government of Odisha issued notification on 17<sup>th</sup> February 2011 that extracting traditional service from barbers and washer men in lieu of 'bartan' is punishable under Bonded Labour System (Abolition) Act, 1976.<sup>25</sup> Section 5 of the Bonded Labour System (Abolition) Act, 1976 calls for any agreement or custom governing bonded labour relationships to be voided. The *jajamani* system falls within the purview of the Act.

23. The Government of Odisha, Law Department gave their opinion to the Panchayati Raj Department regarding clarification on identification of bonded labour. They clarified that whenever any officer of the District Administration goes to such place for identification and release of bonded labour on the basis of the information given by such representative of the social action group, he shall take such representative with him and a copy of the report made by him shall be handed over immediately to such representative of the social action group.<sup>26</sup> Such clarification was communicated to the Collector, Puri vide Panchayati Raj Department No.31018/PR dated 18/9/07 and then to all Collectors.<sup>27</sup> As per advice of the National Human Rights Commission, the Government of Odisha, Panchayati Raj Department issued some important guidelines embodied in the Manual on Identification, Release and Rehabilitation of Bonded Labour prepared by the Ministry of Labour, Government of India. Such guidelines are how to conduct enquiry on receipt of any complaint/information regarding the incidence of bonded labour system, whose statements to be recorded and what questions to be asked to bonded labourers and how to release them.<sup>28</sup>

24. Even though the circulars dt. 16.5.2009, dt.07.9.2009 & 17.2.2011 have been issued to all Collectors for identification, release and rehabilitation of bonded labourers, still it is not being followed by the implementing authorities. Therefore a case was filed in the Odisha High Court that directed the District Magistrates and Collectors, as well as the Sub-Divisional Magistrates and Sub-Collectors of Odisha to adhere to certain guidelines, circulars and judgments of the Supreme Court of India for identification, release and rehabilitation of bonded labourers.<sup>29</sup>

25. Recognition that these practices constitute forced labour have generally met with support from the Supreme Court of India which, on 15<sup>th</sup> October 2012, directed the State Governments to conduct periodical surveys through District Level Bonded Labour Vigilance Committees and Sub-Divisional Level Bonded Labour Vigilance Committees once in every three years to identify bonded labourers to monitor compliance with this ruling<sup>30</sup> and to enhance the rehabilitation package of bonded labourers from the present limit of Rs.20,000.00<sup>31</sup> (approximately \$312 US). The NHRC was also directed to approach the Supreme Court if the Governments fail to effectively carry out all its directions for elimination of bonded labour system.<sup>32</sup>

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<sup>22</sup> See the proceedings of coordination meeting held on May 19, 2003 at the Office Chamber of the Collector, Puri attached (See Annexure – Page 54-61)

<sup>23</sup> See Government of Odisha Panchayati Raj Department No. IV DEV (BL) 39/04 3364 (2)/P.R. Dt. 8.4.04 attached (See Annexure – Page 62)

<sup>24</sup> See National Human Rights Commission Case No. 13/18/2006-2007/FC order dated July 15, 2008 attached (See Annexure – See Page 63-65)

<sup>25</sup> See Government of Orissa Notification No. 17-STGR-22-4004/11-3795/CS (PR) dated 17.02.2011 attached (See Annexure – Page 66-67)

<sup>26</sup> See *Neeraja Chaudhary v. State of M.P.*, AIR 1984 Supreme Court 1099 para-4

<sup>27</sup> See Govt. of Orissa Panchayati Raj Department No. IV-DEV-(BL)-19/2007 16917/PR Dated 16.5.09 attached (See Annexure – Page 68)

<sup>28</sup> See Govt. Of Orissa, Panchayati Raj Department No. IV-DEV (BL) 11/09 29517 (30)/PR Dated 07.9.09 attached (See Annexure – Page 69-73)

<sup>29</sup> See High Court of Orissa WP. (C) No. 7738/2011 order dated 18.1.2012 attached (See Annexure – Page 74-78)

<sup>30</sup> See Direction (1) & (2) given by the Supreme Court of India in *Public Union for Civil Liberties v. State of Tamil Nadu*, judgment of 15<sup>th</sup> October 2012, in the matter of Writ Petition (Civil) No. 3922 of 1985 at p. 18

<sup>31</sup> See Direction (6) given by the Supreme Court of India in *Public Union for Civil Liberties v. State of Tamil Nadu*, judgment of 15<sup>th</sup> October 2012, in the matter of Writ Petition (Civil) No. 3922 of 1985 at p. 19

<sup>32</sup> See Direction (18) given by the Supreme Court of India in *Public Union for Civil Liberties v. State of Tamil Nadu*, judgment of 15<sup>th</sup> October 2012, in the matter of Writ Petition (Civil) No. 3922 of 1985 at p. 21

26. The Bonded Labour System (Abolition) Act, 1976 is silent on the procedure which should be adopted for securing release of a bonded labourer. This omission, however, has been more than made well by landmark judgments of the Supreme Court reported in AIR 1982 SC 1473 in W.P. (C) No. 8143 of 1981; reported in AIR 1984 SC 802 in W.P. (C) 2135 of 1982 and reported in AIR 1984 SC 1099 in W.P. (CrI) No.1263 of 1982. But in practice the implementing Collectors and District Magistrates as well as Sub-Collectors and Sub-Divisional Magistrates do not follow all such judgments and sensitize their sub-ordinate officers to identify, release and rehabilitate the bonded labourers. The restoration of the possession of any property to the bonded labourer is not being possible as the time to apply to the prescribed authority for the restoration of such property has already been elapsed since long. Similarly the prescribed authority has not been mentioned in the Bonded Labour System (Abolition) Act or Rules, 1976. Keeping it in view, the NHRC in consultation with the members of Core Group on Bonded Labour and civil society examined the need for amendments to the Bonded Labour System (Abolition) Rules, 1976 to ensure better implementation of the Bonded Labour System (Abolition) Act, 1976. Accordingly the NHRC in its meeting held on 21.11.2014 has taken into account all suggestions and feedback and approved the recommendations for amendments to the Bonded Labour System (Abolition) Rules, 1976 and forwarded to the Joint Secretary & DGLW, Ministry of Labour and Employment with a copy of the recommendations vide D.O. No.2/21/2011-PRP&P Vol. II dated 10.12.2014 for necessary action by the Ministry of Labour and Employment.<sup>33</sup> But no action has yet been taken on such recommendations.

27. The Ministry of Labour and Employment has revamped the Centrally Sponsored Scheme for Rehabilitation of Bonded Labour, 1978. The revamped scheme is now known as the Central Sector Scheme for Rehabilitation of Bonded Labourer, 2016 which has come into effect from 17.05.2016. It has been as Office Memorandum communicated vide F. No.S-11012/01/2015-BL dt.18<sup>th</sup> May 2016.<sup>34</sup> Before approving such a revised scheme it has not taken into consideration the suggestions sent by various NGOs and social action groups although the Government is to take the assistance of non-political social action groups and voluntary agencies for the purpose of ensuring implementation of the Bonded Labour System (Abolition) Act, 1976.<sup>35</sup>

28. The rehabilitation of bonded labour is linked with the quantum of penalty/ imprisonment awarded to the accused. Such linkage of rehabilitation funds to penalties would adversely affect rights and welfare of survivors of bonded labour. The Scheme violates constitutional rights of survivors and is against the intention of the Bonded Labour System (Abolition) Act, 1976. As the Act is welfare legislation therefore, the rehabilitation funds supported by the Central Government would help to reduce vulnerability to re-bondage. By tying 'claims' to bonded labour rehabilitation funds to award of penalties will result in undue delays in rehabilitation of bonded labourers. In the cases of inter-state trafficked labourers, the bonded labourers rescued and released at other state come back to their own state where they get rehabilitation. On the other hand the prosecution of offenders continues in the state where the bonded labourers are rescued. In such cases there is every possibility of the offender employers of bonded labour to be acquitted due to want of witness of the bonded labourer in the court. Hence no claim can be made for rehabilitation of rescued bonded labourers and they are again to fall a prey to re-bondage. In the cases of hereditary, customary, economic, land-based and caste-based bondage, the bonded labourers may be one or two in a village whereas upper caste employers are many in number in the same village. In such cases punishment to a vast number of upper caste offenders in villages is quite impossible. The linkage of rehabilitation of victims to conviction of offenders is also contrary to Indian law.<sup>36</sup>

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<sup>33</sup> See National Human Rights Commission D.O.No.2/21/2011-PRP&P Vol II dated 10.12.2014 attached (See Annexure – Page 79-89)

<sup>34</sup> See Govt. of India, Ministry of Labour and Employment F.No.S-11012/01/2015-BL dt.18.5.2016 [http://labour.gov.in/sites/default/files/OM\\_CSS\\_Rehab\\_BL\\_2016\\_1.pdf](http://labour.gov.in/sites/default/files/OM_CSS_Rehab_BL_2016_1.pdf)

<sup>35</sup> See *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 para 40 (3)

<sup>36</sup> Some statutes in civil law make provisions for immediate relief and final compensation to the victim of accident and industrial disasters. See The Workmen's Compensation Act, 1923, The Motor Vehicle Act 1988, The Railway Act 1989, The Public Liability (Insurance) Act 1991 and The National Green Tribunal Act 2010

29. The claim for rehabilitation fund is to be submitted along with the revised performa for details of Bonded Labour surveyed. Such revised performa contains the nature of bondage in lieu of advance/debt. But the nature of bondage in lieu of other economic consideration or for any custom or social obligation or by reason of one's birth in a particular caste or community<sup>37</sup> doesn't contain in such revised performa. In Odisha 'Bartan'-receiving barbers and washer men are being identified and released from bonded labour system as per the direction of NHRC and Odisha Human Rights Commission and Government of Odisha notification dt. 17.2.2011. The Supreme Court noted that the survey format can be suitably modified to suit local conditions.<sup>38</sup> Accordingly it should have been modified to suit local condition of 'Bartan'. But that has not been done. Therefore if survey is conducted in such a revised performa, no 'Bartan'-receiving barber or washer man can be identified and released from bonded labour system. Therefore bondage on account of other economic consideration or for any custom or social obligation or by reason of one's birth in a particular caste or community will continue which is a violation of the international human rights instrument, Indian constitution and law.<sup>39</sup>

30. *Jajamani* system prevails across the country for which the Government of India, Ministry of Rural Development, during the Socio-Economic and Caste Census 2011-Rural, in their Instruction Manual for Enumerators provided for enumeration of artisans whose payment may be under the *jajamani* system.<sup>40</sup> According to the Socio Economic Caste Census 2011, there are 165392 legally released Bonded Labour in India which includes 8292 in Odisha out of which 6 only in Puri district.<sup>41</sup> However 1787 nos. of bonded labourers under *Jajamani* system have been identified and released in 4 districts of Odisha out of which 1610 in Puri, 48 in Cuttack, 28 in Khordha and 101 in Nayagarh districts.<sup>42</sup> There are more than 45,000 bonded labourers only in Puri District as per media report on Socio-Economic and Caste Census 2011- Rural<sup>43</sup>. The large gap on the number of released bonded labourers in Puri District from 6 to 1610 shows the falsehood of the Census.

31. India is one of the participants in the World Conference against Racism held at Durban in 2001 which accepted to take immediate measures as a matter of priority to end slavery like practices. Bondage arising out of debt, economic consideration, land, custom, social obligation and caste all are slavery type practices on which immediate measures need to be taken by India for its elimination. The Convention approved the Programme of Action in which States were urged to collect, compile, analyse, disseminate and publish reliable statistical data at the national and local levels and undertake all other related measures which are necessary to assess regularly the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance. States were also urged to collect appropriate information with the explicit consent of the victims, based on their self-identification and in accordance with provisions on human rights and fundamental freedoms.

## **IX. Observations**

32. Non-implementation of the repeated directions of the Supreme Court to conduct survey<sup>44</sup> and take particular steps, lack of amendment of the Bonded Labour System (Abolition) Rules, 1976 on the basis of recommendation of NHRC, linkage of rehabilitation of bonded labourers with punishment of employers notified in the Central Sector Scheme for Rehabilitation of Bonded Labour-2016, apathetic attitude towards the Programme of Action accepted in WCAR at Durban, all such are perpetuating bonded labour system, untouchability and caste in India.

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<sup>37</sup> See *Bandhua Mukti Morchav. Union of India*, AIR 1984 SC 802 para 24

<sup>38</sup> See Direction No.(5) given by the Supreme Court of India in *Public Union for Civil Liberties v. State of Tamil Nadu* judgement dated 15<sup>th</sup> October 2012, in the matter of Writ Petition (Civil) No.3922 of 1985 at p.19

<sup>39</sup> Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (SCAS) ratified by India although in order to meet its international commitment arising out of Article 1 of SCAS and constitutional mandate Article 23, India has enacted the Bonded Labour System (Abolition) Act, 1976.

<sup>40</sup> See the Government of India Socio-Economic and Caste Census 2011-Rural, Instruction Manual for enumerators . p.34  
[http://rural.nic.in/sites/downloads/BPL\\_Census/Training%20Material/Instruction%20Manual%20for%20Enumerators\(English\).pdf](http://rural.nic.in/sites/downloads/BPL_Census/Training%20Material/Instruction%20Manual%20for%20Enumerators(English).pdf)

<sup>41</sup> See Socio Economic Caste Census 2011 data of Govt. of India link:  
<http://secc.gov.in/statewisePTGLRBLMSReport?reportType=PTG%20,%20LRBL%20,%20MS>

<sup>42</sup> Letters of District collectorates of Puri, Cuttack, Khurdha and Nayagarh (See Annexure – Page 90-104)

<sup>43</sup> Report published in Dharitri, Odia daily (See Annexure –Page 105)

<sup>44</sup> See directions dated 13<sup>th</sup> May 1994 & 15<sup>th</sup> Oct.2012 in *W.P.(C) No.3922 of 1985* given by the Supreme Court of India in *Public Union for Civil Liberties v. State of Tamil Nadu* Page 3 and Page 18

## **X. Recommendations**

33. In light of the gravity of the above-mentioned situation, the Government of India should be encouraged to:

- i. Take effective action for implementation in letter and spirit all the directions of the Supreme Court of India judgment dated 15<sup>th</sup> October, 2012 in WP (C) No. 3922 of 1985 with regard to elimination of bonded labour system through the State/ UT Governments in close collaboration with civil society and facilitate monitoring of the implementation process by National Human Rights Commission.
- ii. Modify suitably the Central Sector Scheme for Rehabilitation of Bonded Labour- 2016 approved and circulated by the Ministry of Labour & Employment vide F.No.S-11012/012015-BL Dated 18 May, 2016 delinking rehabilitation of freed bonded labourers with punishment of offenders in consultation with National Human Rights Commission and other stake holders involved in abolition of bonded labour system & having provisions for identification of bonded labourers not only on debt but also on other economic consideration or by any custom or social obligation or by reason of one's birth in a particular caste or community.
- iii. Enact the recommendations for the amendment to the Bonded Labour System (Abolition) Rules, 1976 approved by the National Human Rights Commission in its meeting held on 21<sup>st</sup> November 2014 and communicated to the Ministry of Labour & Employment vide D.O. No.2/21/2011-PRP&P Vol. II dated 10<sup>th</sup> December, 2014.
- iv. Take immediate measures to end slavery like practices by collecting, compiling, analyzing and publishing reliable statistical data about the situation of all slavery like practices including jajamani system at the national and local levels, with the involvement of civil society as per the Programme of Action approved in the World Conference against Racism (WCAR) held at Durban.
- v. Publish white paper on artisans having occupations under *jajamani* system village, block, district and state wise as well as all bonded labourers numbering 1,65,392 enumerated among primitive tribal community in Socio Economic and Caste Census 2011.
- vi. Construct and review scientifically criterion & yardstick to identify & enumerate the population under extreme poverty and potential bonded labourers.
- vii. Set up adequate and special measures & safeguards for the protection of human rights defenders advocating for the rights of bonded labourers and their rights to peaceful assembly & associations.

**The Report has been endorsed by 31 persons representing CSOs, HRDs, Community Based Organizations, People's Movements.**

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