

2008

Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour

The protocol provides practical guidelines to key stakeholders on crucial issues relating to prevention, rescue, repatriation and rehabilitation of trafficked and migrant child labour.

Ministry of Labour & Employment
Government of India



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Chapter 1: Introduction

There is an increasing trend of migration and trafficking of children for labour in different parts of the country. Compelled by the socio-economic conditions, a large number of children are migrating from economically backward areas to big cities for work. In many of these cases, these children are being trafficked by middle men and agents who are bringing them to the employers in the city by extending meagre advances to the parents and giving false assurances of lucrative jobs etc. These children work under highly exploitative situations like very long working hours, paltry wages, unhygienic and most difficult working conditions. Such children mostly work in industries like zari making, jewellery units, domestic help, dhabas, tea stalls, etc. Very often, they are kept within the confines of the work places and therefore, lack any kind of freedom and are vulnerable to abuse.

Various State Governments have been conducting raids to rescue such children from the clutches of these unscrupulous employers. On being rescued, they are, in most cases, repatriated to their native places. Till their repatriation, they are kept in temporary shelters. These shelter homes lack in basic facilities like clean toilet, sleeping place, clothes, health care facilities, food etc. Lack of sensitization of the staff there and lack of proper security arrangements are the other negative factors in shelter homes. In addition, they also face a number of other problems relating to their transit to their native places, including the delay in presentation before Child Welfare Committees (CWCs), delay in payment of compensation, legal delays etc. Once they are sent back to their native places, there is lack of proper rehabilitation measures there. Under the circumstances

and in the absence of monitoring, many of these children sooner or later get re-trafficked for labour.

There are a number of factors that make children more vulnerable to trafficking for labour. Some of these are at the family level and some others at the community or society level. While at the family level, the major push factors are poverty, illiteracy, dysfunctional family life, under-employment and a lack of income-generating opportunities for families, those at the community or society level are a general apathy or tolerance towards exploitative forms of child labour, degeneration of moral values, increasing commercialization, lack of community support, social vulnerabilities and weak law enforcement.

Considering the complexity of the problem, a comprehensive multi-pronged approach to this problem is required. This would cover not only the educational rehabilitation of these children to prevent them from entering and re-entering such exploitative labour situations but also various socio-economic causal factors such as poverty, illiteracy, lack of awareness etc. The measures could include economically empowering the families by covering them under various schemes of the Government, community mobilization and attitudinal changes through awareness generation, creation of suitable rehabilitation infrastructure, backed by unambiguous legislative provisions against offenders and stronger enforcement.

Some of the crucial areas requiring attention are as follows:

Better coordination among key players - Trafficking of children for labour touches on many other concomitant issues like child bonded labour or servitude, labour as well as sexual exploitation, infringement of human rights etc. There is a

need for better coordination of the activities among various government departments looking into these areas including the police, labour department officials, judiciary, NGOs etc.

Strict enforcement - Lack of complete awareness, sometimes apathy on the part of enforcement officials and long time taken in settlement of cases of prosecution can lead to the weak enforcement of the laws. To make a dent into this problem, there is a need for consistent enforcement of various laws relating to trafficking of children for labour and regular monitoring of enforcement by the State government. To ensure strict enforcement there is a need for the enforcement officers, prosecutors and judicial officers to be adequately sensitized about the provisions of the laws dealing with child trafficking.

Long drawn repatriation process - There are number of time consuming procedures involved in the repatriation of the rescued children to their native place and at times, it takes many days/weeks of waiting in the Shelter Homes. This involves delay in production of rescued children before CWCs, delay in police investigation, filing of a charge sheet, filing of complaint in the court, and judicial proceedings etc. These children are in the meanwhile kept in the Shelter Homes where the arrangement in many cases is inadequate. Locating their home addresses and establishing contact with the local administrations for their rehabilitation also takes time. This adds up to the miseries of these children and at times, they also run away from these Shelter Homes.

Cross Border Trafficking

There are instances of migration or trafficking of children for labour from neighbouring countries like Nepal and Bangladesh. These children are being brought to big cities in India in search of labour and they end up working in most difficult conditions, mostly in dhabas, tea stalls or as domestic servants. So far away from their families, these children are highly vulnerable to all kinds of abuses, including physical and sexual abuse. Issues related to repatriation and rehabilitation of children who are victims of cross border trafficking becomes even more complex and difficult as it involves coordination with other countries from where these children are coming. There has to be a mechanism for smooth repatriation of such children so that these children do not suffer in the process and they are safely sent back home.

Need for a Protocol

There is no specific protocol that deals with various issues involved in prevention, rescue, repatriation and rehabilitation of trafficked and migrant child labour. There are a number of Government Departments and other stakeholders which have an important role to play in the rescue, repatriation and rehabilitation of these children. During raids as well as post-raid operations, there are no clearly laid out mechanisms and supporting instructions, which could be relied upon by various stakeholders for taking all the necessary steps. Inter departmental linkages therefore have to be formalized and mechanisms for coordination clearly laid out. Hence, this protocol has been developed as a set of guidelines for smooth rescue, repatriation and rehabilitation of these children.

Considering the seriousness of the problem, the judiciary has also taken up the issues of rehabilitation of such children. In a recent case relating to

trafficking of children for labour, the Hon'ble High Court of Delhi has directed that the Union Labour Secretary may form a Committee consisting of the concerned Labour Secretaries to look into the issue of rehabilitation of migrant children rescued in Delhi and develop an appropriate Scheme for this purpose. The Committee has already been formed under the Union Labour & Employment Secretary and this draft protocol has taken into account the decisions taken by the Committee.

Chapter 2: Constitutional Provisions & International Conventions

The Constitution of India places a primary responsibility on the State to ensure that all needs of Children are met and their human rights are fully protected. The specific provisions under the Constitution relating to protection of children from economic exploitation and their education are given below:

Article 21: A Right to Education

The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State, by law, may determine.

Article 23: Prohibition of traffic in human beings and forced labour

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

Article 24: Prohibition of employment of children in factories, etc.

No child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any other hazardous employment.

Article 39: The State shall, in particular, direct its policy towards securing

that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

International Conventions

UN Convention on the Rights of the Child (1989)

The UN Convention on the Rights of the Child (CRC) has prescribed a set of standards to be adhered to by all State Parties in protecting the child and securing the best interest of the Child. It deals directly with protection of children especially girl children. Under this Convention, the States are to take all appropriate measures to prevent trafficking in children and also protect them from all forms of exploitation and abuse. The Government of India acceded to the UN Convention on the Rights of the Child in 1992 with a declaration that considering the existing socio-economic conditions, it was not possible to agree to the provisions of Article 32 of the Convention relating to the Minimum age for employment.

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)

As per the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children, 2000 supplementing the UN Convention against Transnational Organized Crimes, definition of trafficking includes situations of forced labour, servitude and slavery. It defines "Trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of

persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". In case of children, however the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means mentioned above.

The Government of India has signed the protocol, but not yet ratified it. This implies that India has expressed its intent to consider criminalizing trafficking in domestic legislation, but not yet given specific commitment through an instrument of ratification.

The General principles of the UN Protocol, viz., Protection of rights of the child, Best interest of the child, Protection of the child, Equality and non discrimination, Avoidance of harm, Non criminalization of the child, Respect for views of the child, Right to confidentiality, Right to information shall be broadly followed in the rescue, repatriation and rehabilitation of migrant and trafficked child labour.

Chapter 3: National Legal Framework

Some of the provisions of the laws that can be invoked for most common situations of trafficking of children for labour as seen in the country are listed below:

Child Labour (Prohibition and Regulation) Act, 1986

- Prohibits employment of children below 14 years in certain hazardous processes and regulates it in other non-hazardous processes (Section 3) At present, 15 occupations and 57 processes are prohibited under the Act for employment of children.
- Further, the Act regulates the condition of employment of children in other occupations and processes that are not prohibited.

Indian Penal Code, 1860

- Kidnapping or maiming a minor for purpose of begging (Section 363A)
- Kidnapping or abduction to subject a person to slavery (Section 367)
- Buying or disposing off any person as a slave (Section 370);
- Habitual dealing in slaves (Section 371);
- Unlawful compulsory labour (Section 374).

The Juvenile Justice (Care and Protection of Children) Act (JJA), 2000

- Procurement of a child for the purpose of any hazardous employment, keeping such child in bondage and withholding the child's earnings for one's own use (Section 26)

The Bonded Labour System (Abolition) Act, 1976

- Enforcement of bonded labour (Section 16)
- Advancement of bonded debt (Section 17)
- Extracting bonded labour under the bonded labour system (Section 18)

The Schedule Castes and the Schedule Tribes (Prevention of Atrocities) Act, 1989

- Compelling or enticing a member of SC or a ST to do 'begaar' or similar form of forced labour or bonded labour other than any compulsory service for public purposes imposed by Government (Section 3(1) (vi))

Children (Pledging of Labour) Act, 1933

- Declares any agreement by a parent or guardian to pledge the labour of a child below 15 years of age for payment or benefit other than reasonable wages, to be illegal and void. It also provides punishment for such parent or guardian as well as those who employ a child whose labour is pledged

Other Key Labour legislations

Some of the other labour laws such as, the Shops and Establishment Acts of various States, the Factories Act, 1948, the Plantation Labour Act, 1951, the Mines Act, 1952; the Merchant Shipping Act, 1958; the Apprentices Act, 1961; and the Motor Transport Workers Act, 1961 can also be used to take action against the offenders.

Chapter 4: Government Policy & Programmes

The National Policy on Child Labour enunciated in 1987 lays down following action plan for tackling the problem of child labour.

- A legislative action plan
- Focusing and convergence of general development programmes for benefiting children wherever possible, and
- Project-based action plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour.

Based on the above, Government had initiated the National Child Labour Project (NCLP) Scheme in 1988 to rehabilitate working children in 13 child labour endemic districts of the country. Its coverage has been increased progressively since then to 250 districts in the country in the 10th plan. The Government plans to cover all the districts of the country in which there is an incidence of child labour during the 11th Plan. Giving due consideration to the specific needs of the migrant child labour, one of the proposals given for the 11th Plan includes a provision of residential schools in the metropolises and other big cities

Under the NCLP Scheme, children are withdrawn from work and put into special schools, where they are provided with bridging education, vocational training, mid-day meals, a stipend of Rs. 100 per month, health-care facilities etc. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by NGOs in the district. Linking the child labour elimination efforts with the Scheme of Sarva Shiksha Abhiyan (SSA) of the Ministry of Human Resource Development, efforts are made to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the

formal education system through special schools functioning under the NCLP Scheme. At present, there are 8,887 NCLP schools being run in the country with an enrolment of 3.4 lakhs children and 4.5 lakhs working children have already been mainstreamed to regular education under the NCLP Scheme.

Since poverty and illiteracy are the root causes for child labour, Government is taking steps to supplement Educational Rehabilitation of these children with economic rehabilitation of their families so that they are not compelled by their economic circumstances to send their children to work. Efforts are being made for convergence between the schemes of different Ministries like Ministries of Human Resource Development, Women & Child Development, Urban Housing & Rural Poverty Alleviation, Rural Development, Panchayati Raj etc., so that child labour and their families get covered under the diverse schemes of these Ministries also. A Core Group under the Chairpersonship of Union Labour Secretary comprising all these Ministries was formed for this purpose in September, 2006 to take measures for effective convergence of various developmental Schemes of the Government for education rehabilitation of child labour & economic empowerment of their families.

In addition, the Government is also implementing some other international projects for child labour elimination in association with ILO. An important project among these is the INDUS Project launched in 2003 and jointly funded by the Government of India and the US. It is being implemented in 21 districts of 5 States of Delhi, M.P., Maharashtra, T.N. and U.P. The project aims to rehabilitate 80,000 child workers in these identified districts. This Project has some additional features, such as vocational training programme for adolescents, convergence with Education Department etc. This project has been extended till March, 2008. In addition, the Ministry is also implementing some other smaller

international child labour projects, one in Karnataka State, funded by Government of Italy and another in Andhra Pradesh State, funded by DFID.

The Government is also laying lot of stress on the enforcement of the Child Labour (Prohibition & Regulation) Act. State Governments are the appropriate authority for implementation of the Act for areas under their jurisdiction and the Chief Labour Commissioner (Central) for areas under the Central sphere. Strong enforcement measures act as deterrents and also lead to voluntary action on the part of the employers not to employ child labour in their respective units.

The Government took a major step last year in the direction of elimination of child labour by banning the employment of children below the age of 14 years in two occupations viz., children working as domestic workers (CDL) and in tea-shops, hotels, road side eateries, etc. For the effective enforcement of the ban and the rehabilitation of the affected children, The Government has been coordinating with the State Governments for taking appropriate measures in this direction. Extensive awareness generation campaign against child labour is being launched from time to time in the print and electronic media. Recently, beginning from 14th November, 2007 the Government had launched a fortnight long nation wide special enforcement drive against child labour.

Chapter 5: Key concepts

This Protocol shall apply to any migrant or trafficked child labour in the country, irrespective of the child's home State or country of origin, without any discrimination on the grounds of gender, caste, language, ethnicity, religion or origin.

Child: For the purposes of this Protocol, a child shall mean any person who has not completed the fourteenth year of age, pursuant to Section 2 (k) of the Child Labour (Prohibition & Regulation) Act. The term 'children' shall be construed accordingly. The definition of child has to be in consonance with that given under the Child Labour (Prohibition & Regulation) Act, 1986.

Child Labour: Pursuant to the definition of child under the Child Labour (Prohibition & Regulation) Act, the child labour will include children below 14 years of age engaged in hazardous occupations and processes as detailed by the Act.

Migrant child labour: Migrant child labour may be broadly taken to be a child who has moved with or without the family across State borders or even within the same State and is engaged in hazardous work as specified under the Child Labour (Prohibition & Regulation) Act.

Trafficked child labour: In comparison, a trafficked child labour may be taken as a child who has been recruited, transported, transferred, harboured or received for the purpose of labour exploitation through forced labour or forced services, bonded labour, slavery, practices similar to slavery, or servitude. A child

has been trafficked if he or she has been moved within a country, or across borders, whether by force or not, with the purpose of exploiting the child.

Prevention: It would mean various activities to be taken up to prevent migration and trafficking of children into exploitative labour. It would include stepping up enforcement drives against offenders employing children in prohibited hazardous work to act as a detriment, increasing community level awareness of the problem, providing alternative income generating or educational opportunities to children at risk. It would also include raising general awareness among public against child labour. Monitoring and reporting of movement of children under suspicious circumstances will also have to be strengthened.

Rescue operations: It would involve all activities associated with organizing inspections and raids, for identification, establishment, and withdrawal of child labour engaged in prohibited work as specified under the Child Labour (P&R) Act, with the aim of securing the rehabilitation and social reintegration of the rescued child. The term rescue operation shall include both the rescue of an individual child or of several children.

Interim protection: All processes to be adopted pursuant to the rescue operation and until the repatriation of the child has been secured shall be termed as interim protection. In case repatriation is not possible, then it would also include measures to secure the rehabilitation and social reintegration of child within the State they are rescued from with a view towards ensuring the safety and well being of the child, in accordance with the Juvenile Justice Act, 2000 or any other Act or Rules in operation in the State supporting the process of interim protection

Prosecution: Legal proceedings against the offenders under Child Labour (P&R) Act or any other labour or criminal laws applicable.

Repatriation: It would involve all actions taken after the rescue of the children till their effective restoration with their families or legal guardians or others, in line with the proceedings outlined under the Juvenile Justice Act and the Rules laid down in this regard. Repatriation shall include intra state repatriation, if the child belongs to the State of rescue and inter state repatriation, if the child is from any other State in the country and repatriation shall be cross border if the child is from any other country.

Rehabilitation and Social Reintegration: The term 'rehabilitation and social reintegration' shall include the processes included in Chapter IV of the Juvenile Justice (Care and Protection of Children), 2000 Act. The term 'rehabilitation' shall include the economic rehabilitation of the family and educational rehabilitation of the child.

All terms and expressions used in this document, but not defined, unless the context requires otherwise and defined in the Child Labour (Regulation and Prohibition) Act, 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000 shall have the meanings respectively assigned to them in those Acts.

Chapter 6: Pre-Rescue and Rescue operations

Broadly, the rescue related activities can be divided into two sub stages: pre rescue operations and operations during the actual rescue.

Pre-Rescue operations

Pre-rescue operations include all steps taken to facilitate effective rescue operation. Some of the key steps are given below:

Source of information:

Information from primary source, such as a child labour or relative of a child labour or anyone else on behalf of the child, may be the basis for planning a rescue operation.

Information about child labour is also available from secondary sources, such as surveys conducted under Sarva Shiksha Abhiyan, surveys conducted by the Department of Labour or community micro-planning. Data available with NGOs, Childline Service could also be used as the basis for identifying 'hotspots' or clusters of child labour for planning rescue operations.

The onus for sharing the information with other responsible authority will rest with the responsible authority receiving¹ information from the informant, and not with the informant. The responsible authorities are empowered to conduct rescue operation or get it conducted on its behalf. However, the District

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Labour Department must always be involved in the rescue operations of the child labour.

In case rescue is conducted by Labour Department officials alone during normal course of inspection or on specific complaint, the responsibility of lodging an FIR, wherever required will be of the concerned labour department official under the appropriate criminal law.

Wherever possible, voluntary assistance of social organizations or NGOs or other responsible citizens shall be sought in the rescue as well as in the post rescue operations to take care of the children rescued.

Verification of the information:

(1) In case of a rescue operation, as soon as the responsible authority is informed of the likelihood of any act of child labour, if required and only in exceptional circumstances where it is necessary to verify the information in the best interest of the child, the responsible authority shall at the earliest, **but in any event not beyond 72 hours** make a prima facie determination of whether the information provided is true or not. After verification, the responsible authority shall start making arrangements to ensure logistical, financial and other arrangements, which would be necessary in the rescue operation as well as post rescue operations. The informant, NGOs or any other party interested in facilitating the rescue of the child may help the responsible authority, by providing such information, which may help in the verification of the information provided.

(2) The responsible authority shall simultaneously inform all the relevant Government Departments, including but not limited to the Department of Women & Child Development and Child Welfare Committee, Municipal Corporation, Home Department, with the view towards ensuring that adequate preparations are undertaken to facilitate the interim care and protection and for taking care of logistical and other requirements subsequent to the rescue operations.

Preparation of a plan of action towards undertaking the rescue operation:

(1) In case of a rescue operation, a plan of action shall be prepared towards facilitating the safe rescue of the children and towards ensuring that the rescue operation itself **does not inflict additional trauma** on the children to be rescued.

(2) The rescue team to be involved in the actual planning shall be kept to the minimum with a view to have secrecy and confidentiality of the rescue operation. Care should be taken that as far as possible the proceedings are kept confidential.

(3) The rescue team can consider preparation of a map of the rescue area on the basis of the information provided, which marks out where child labourers are likely to be found as well as identifying spots which maybe potentially dangerous for the child, with the assistance of NGOs and other concerned officials, as may be feasible.

Creation of the Rescue Team:

(1) While carrying out a rescue operation, a rescue team² shall be constituted, which may comprise of the following members:

- a) The Department of Labour;
- b) The Police;
- c) The Municipal Corporation or the local self government like the Zilla Parishad, panchayats etc, as the case maybe;
- d) Social Welfare Officer/Probation Officer/DM's nominee/CWCs; and
- e) NGOs, social organizations, trade unions or other responsible citizens.
- f) Doctor with first aid kit.
- g) Lady Police/volunteers when rescuing girls.

The actual number of the members of the team will be determined by estimated number of children to be rescued, the geographic area of operation and any other significant factor.

- (2) The Department of Labour will be responsible for initiating and coordinating efforts towards legal & administrative action.
- (3) As far as possible, for carrying out any rescue operation, at least four of the aforesaid members shall participate in the same.
- (4) In addition, the rescue team could be accompanied by the support team while carrying out the rescue operation. The members of the support team could be stationed at critical places to check escape of offenders themselves as well as the children to be rescued.

² For the purposes of constitution of the rescue team, the members of the rescue team need not necessarily be the same members of the State/District Child Labour Taskforce.

Orientation of all members to be involved in the rescue operation:

In case of a rescue operation, a basic Orientation shall be provided to all persons who shall be involved in the rescue operation, including voluntary members, community members etc and shall include the following:

- (1) Briefing about key provisions of relevant laws that are applicable while dealing with the issue of child labour;
- (2) All members involved in the rescue operation shall have their respective roles clearly articulated;
- (3) The members need to be made aware of the different strategies adopted by employers to avoid detection.
- (4) Since the actual rescue operations may be traumatic for the child, the nodal department should sensitize the members of the rescue team about how to deal with such children, the use of appropriate language and to adopt child sensitive and friendly behaviour, and treating the child as a victim and not as an offender. As these children have been rescued from an exploitative situation, they need to be reassured about the benefits of the rescue operation that will be available to them.

Rescue operations

For the purposes of conducting a rescue operation in an effective child friendly manner and towards making the procedures less traumatic for the child, the following procedures can be applied:

- (1) Strategic placement of rescue team members in pre-planned locations shall be undertaken, in order to locate the actual employer of children in that area, and towards preventing the children from being relocated by the employer to evade detection;
- (2) The police personnel, including women police officers shall accompany the rescue team wherever possible;
- (3) Physical separation of employers/intermediaries and children and to prevent any communication between them, during the rescue, to ensure that the employers do not threaten the children, or brief them to misguide the team conducting the actual rescue operation. At all stages, care shall be taken by the concerned officials to ensure that the child is not exposed to the employer or his agents;
- (4) The assigned members of the Rescue Team shall simultaneously collect evidence in the form of documents, and other material & forensic evidence to facilitate effective prosecution against the employers under the law. As far as possible, information must also be collected from the employer towards determining the status and age of the child. The entire operation should be so organized that it does not delay the rescue of the child labourers concerned;
- (5) The Rescue Team shall ensure the safety of the child as the utmost priority and ensure that they are treated in a humane manner. They shall facilitate that the personal belongings of the child are collected, listed and kept in safe custody to be produced before the Child Welfare Committee/Court.

(6) As far as possible and wherever considered appropriate, a trained counselor, Inspector (Factories) and the doctor or suitably trained Para-medic with a first aid kit may be included in the team.

(7) The Rescue Team shall ensure that the details revealing the identity of the children rescued are not divulged to the media so that provisions under Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by Amendment Act, 2006 regarding confidentiality are not violated. A draft model press note should be kept ready and should be completed and issued after the rescue operation;

(8) The nodal department must make prior arrangements for transportation for shifting rescued children to temporary shelter homes/drop-in centres, etc. They should also make adequate arrangements for their food and refreshment.

(9) The details of every child must be included in the FIR. In case the rescue is conducted by Labour Department officials alone during normal course of inspection or on specific complaint, the responsibility of lodging an FIR of cognizable offence under the appropriate criminal law, wherever applicable, will be with the concerned labour department official.

(10) In case the rescued child also happens to be a bonded labour, then the action must be also initiated simultaneously under the Bonded Labour System (Abolition) Act through the appropriate authority.

(11) Every rescued migrant or trafficked child labour, including bonded child labour, has to be presented before the Child Welfare Committee. However, in case of bonded child labour, they need to be also produced before the Sub-

Divisional Magistrate for grant of certificate and other compensations. This would also include the bonded child labour rescued along with the family.

(12) After the rescue operation is carried out, the Child Welfare Committee, as the competent authority under the Juvenile Justice (Care and Protection of Children) Act is empowered to take all actions and decisions with regard to the child, including the decision to release such children, as per the provisions of the Juvenile Justice (Care and Protection of Children) Act.

(13) In cases where children are found to be working in non-hazardous occupations or processes, provisions of the Child Labour (Prohibition & Regulation) Act should be invoked to ensure that the working conditions of such children are well regulated as laid down under the provisions of the Act. Action should be initiated against the defaulting employers for violation of the Act, including its regulatory features.

(14) Provisions of the Factories Act/the Shops & Establishments Act may also be invoked, wherever possible to initiate action against the offending employers.

Chapter 7: Post-rescue and Repatriation

The Post-Rescue operations include following:

Medical Examination:

(1) As soon as the rescue operation has been completed, within 24 hours, a medical team shall be dispatched to the place where the children are kept to undertake a medical examination. However, the admission to any children's home should not be conditional on the requirement of a prior medical examination.

(2) Wherever there are actual signs of injuries, hurt or the likelihood of sexual abuse, the child shall be sent to the prescribed medical authority for further medical examination immediately.

(3) The medical officer shall undertake a detailed physical examination and record the findings in writing, drawing particular attention to any signs of physical or sexual abuse or any adverse mental health condition. Wherever considered appropriate, the medical officer must keep the child for further observation and also arrange for counseling.

Investigation and Collection of Evidence:

In addition to the medical examination, the rescue team shall promptly collect all forms of evidence that shall be used in the legal proceedings, which shall include documents of employment, attendance registers, photographs of the workplace, statements of children and other people.

Production of the Child before the Child Welfare Committee (CWC):

- (1) Once the child has been rescued, the child shall be produced before the Child Welfare Committee, under Section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2000;
- (2) The Labour Department shall coordinate and liaise with the Child Welfare Committee towards facilitating necessary action for best interest of the child in accordance with Juvenile Justice (Care and Protection of Children) Act;
- (3) The Child Welfare Committee shall be the guardian of the rescued child who are empowered to take decisions in the best interest of the child and shall have the power to secure all relevant information and documentation in order to plan the rehabilitation plan of the child;
- (4) Wherever required, under the provisions of the Juvenile Justice (Care and Protection of Children) Act and the Juvenile Justice Rules of the State, or in case the Rules have not been framed by the concerned State, in consonance with the Rules framed by the Centre, assistance from the probation officer or the child welfare officer or suitable social worker should be sought.
- (5) Having rescued the children from work, they shall be produced before the CWC and the nodal Department shall monitor the children till they are restored to their families. If the child belongs to some other State, the child shall be restored to the family by coordinating with State Resident Commis-

sioners, local administration of the district as well as the CWC of the destination district.

Temporary shelter for rescued children

- (1) Immediately after the rescue, these children should be taken to the drop-in centres or the temporary shelter homes under the control of Social Welfare Department.
- (2) Adequate arrangements should be made by the nodal Department for food, clothing and security of these children in the shelter homes in coordination with the Department of Social Welfare/Women & Child Welfare or the NGOs as the case may be.
- (3) The rescued children to be kept in these temporary shelter homes/drop-in centres until arrangements are made for their repatriation to the home States/families as per the decision of the Child Welfare Committee.

Legal Action:

- (1) Once the Police have completed the investigation, a charge sheet shall be prepared and the judicial proceedings under the Code of Criminal Procedure, 1973 shall apply;
- (2) Care shall be taken to ensure that all provisions that apply, across different statutes, are incorporated into the Charge sheet/complaint.

(3) Investigation into the FIR of cognizable offences will be carried out by Police having jurisdiction over the case. The Investigating Officer (IO) shall ensure that all relevant evidence including material, forensic, documentary evidence is collected and analyzed to build a proper case for prosecution. IO shall also ensure that all relevant and applicable provisions of the criminal laws and labour laws are invoked for the case. IO should also collect and include as evidence relevant reports such as orders of the CWC, home enquiry report conducted under the JJ Act, reports prepared by the officials of the shelter homes/counselors/partner NGOs, etc.

(4) Complaints and challans under the labour laws shall be filed by the labour officials. In order to ensure that the case is covered completely, the officials must examine implementation of all applicable labour laws and assess the violations. The labour officials shall also take necessary action for obtaining compensation/claim/wage arrears on behalf of the rescued child.

(5) In case, it also turns out to be a case of bonded labour, the labour officials shall immediately inform the concerned executive magistrate to initiate action under the Bonded Labour Systems (Abolition) Act simultaneously.

(6) As per the directions of the Hon'ble Supreme Court of India³, labour officials shall also issue a notice to the defaulting employers to deposit Rs.20,000 per child in the District Child Labour Rehabilitation cum Welfare Fund.

(7) The Labour Officials would also take appropriate action for deposit of Rs 5,000 by the State Government in the Child Labour Welfare & Rehabilitation

³ M.C. Mehta Vs. State of Tamil Nadu

Fund for every rescued child, in case employment cannot be provided to an adult member of his\her family.

Assessment and Verification of the Child's background on the basis of the information provided:

(1) The home addresses of the rescued children shall be verified by the State Resident Commissioner/Labour Department officials of the State to which the child belongs, or the district administration as the case may be before these children are repatriated to their home states;

(2) In case of claimants of the child, the CWC shall adopt extreme caution and should seek specific documentation, wherever possible, to verify the claims, considering the risks of claims by the employers or their representatives or agents;

(3) Considering the risk of the employees tutoring the child, the Child Welfare Committee shall adopt extreme care and caution and must satisfy itself completely and shall record the reasons in writing for taking a decision.

(4) For children who cannot be repatriated, care shall be taken for specific measures to ensure their effective short term and long-term rehabilitation within the State itself.

(5) The Child Welfare Committee in the home district shall coordinate with the District Collector/District Magistrate towards tracing the child's family and

inform the other Child Welfare Committee of the course of action that would be adopted for their restoration and reintegration with their family.

Transportation and Restoration of rescued children:

(1) The nodal department of the rescuing State shall make arrangements to send the child to his family under escort. However, it would be the responsibility of the State of the child's origin to pay for his transportation back to the child's family. The fare for the child as well as the escorts shall be borne by the State of the child's origin.

(2) The State repatriating the rescued child however will, as far as possible keep a reserve pool of such personnel who could be used for escorting these rescued children. These officials would be adequately sensitized so as to ensure the comfort and safety of these children during the transit back to their families. It goes without saying that these escorts would be responsible for the safety and security of these children until they are handed over to the local authorities of the State of origin.

Chapter 8: Rehabilitation and Prevention

Rehabilitation Plan:

(1) The rehabilitation plan shall include two independent components: the educational rehabilitation for the child and economic rehabilitation for the family. The Labour Department and the District Collector of the home district of the rescued child shall be responsible for implementing the rehabilitation plan.

(2) The rehabilitation plan must include measures that are sustainable and match both the short term rehabilitation needs as well as long term integration needs of the child and his/her family. The local panchayats must be consulted and taken into confidence by the local authorities while identifying the family of the child labour and their rehabilitation.

(3) The Labour Department shall make efforts for the educational rehabilitation of rescued children in their home places under the National Child Labour Project (NCLP) Scheme of the Government in the districts, where this Scheme is in operation and under special bridge centres under Sarva Shiksha Abhiyan (SSA) Scheme in the other districts. The labour department officials shall coordinate the enrolment of these children in the Special Schools under NCLP Scheme and also in counseling and motivating the parents of these children to send them to schools

(4) The child labour, who are migrating along with their families on seasonal basis, should be enrolled in the Special Schools under NCLP Scheme in the migrated district or the SSA bridge centres, wherever NCLP Special Schools are not

available. The nodal Department along with the District Authorities shall ensure that there is no disruption in their schooling due to migration.

(5) Along with the educational rehabilitation of the children, efforts should also be made towards the economic upliftment of their families by covering them under various developmental schemes of the Government in convergence with the other concerned departments. It is, therefore of utmost importance that there is an effective convergence of different income generation and employment generating schemes with the NCLP Scheme. Some of such Schemes could be NREGA, Schemes for BPL families, other poverty alleviation Schemes, Pension Schemes, Schemes for setting up of SHGs under DRDA and DUDA, Indira Awas Yojana, Swaran Jayanti Shahari Rozgar Yojana, Swavlamban, Swadhar, etc.

(6) Panchayati Raj institutions should invariably be involved in monitoring the rehabilitation efforts in general and tracking these children and their families in particular for their educational and economic rehabilitation. In fact, they need to be adequately sensitized for this work through extensive workshops and social mobilization campaigns.

(7) Efforts shall also be made by the District Child Labour Society formed under the NCLP Scheme for monitoring and tracking of children enrolled in these Schools to identify cases of drop outs and subsequently after mainstreaming to regular education for at least one year so that they do not relapse to exploitative situations. This monitoring and tracking would also help in covering the families of these children labour under various poverty alleviation and income generation Schemes of different Ministries to economically empower these families.

Prevention:

The following action points are essential for a effective strategy for prevention of child Labour:

(1) Awareness and sensitization of the concerned officials of their respective roles and methods to be adopted with the issue of child labour in a child friendly manner and taking proactive steps towards the detecting and eliminating child labour;

(2) Public awareness strategies to make people aware of the issues related to child labour and their role and responsibilities in tackling this problem. It would also empower the community members, leaders, teachers, to play an active role in detecting, monitoring, eliminating, and creating awareness on the issues of child labour. This would help to promote universal education at least till the age of 14 years.

(3) The Labour Department should make all efforts to step up enforcement of Child Labour (Prohibition & Regulation) Act in the feeder as well as recipient areas. Stringent action against the erring employers shall deter others from trafficking and employing children for labour. Towards this end, the State Governments shall have to create wide awareness on the issue and regularly monitor the enforcement of the Act.

(4) The activities of the Recruitment/Placement Agencies need to be regulated by the State Labour Department so that these agencies do not indulge in recruitment and placement of children in hazardous employments and also in their trafficking. The State Governments need to issue strict guidelines for this

purpose and as soon as possible enact suitable legislation for registration, regulation and control of the activities of these agencies. In this regard, a model Act drafted by the National Commission for Women may be referred to for regulation of Employment Agencies.

(5) Investigation should also focus on identifying the middlemen and agents involved in trafficking of children for labour and action should be taken against them under the relevant legislation. The States should share such information with other States in case of inter State migration and trafficking.

(6) In case of cross-border trafficking (across international boundaries) the State Governments should inform the Ministry of Home Affairs for taking up with the concerned country from where children have been trafficked so as to organize their smooth repatriation.

(7) Steps should be taken for creation of monitoring and vigilance committees at both the source as well as demand areas, to prevent children from entering into labour situations. The functionaries of the Panchayati Raj institutions should be actively involved in the committees as they can play a very important role in monitoring of these children within the community.

(8) To facilitate developing rehabilitation plan for these children, Governments should encourage studies, research activities, data collection, data dissemination on issues of child labour;

(9) To ensure quality care in children's institutions and homes, there should be dissemination of information on the various existing Schemes, whose funds could be utilized for running these Children's Homes in a better way.

(10) To prevent children from getting into the workforce, the families of these children, who are migrating or are trafficked for labour need to be effectively covered under the poverty alleviation and income generation Schemes and Programmes of the Government through convergence of various such Schemes under different Ministries/ Departments. In this direction, every State need to constitute a Core Committee on Child Labour (CCCL) under the State Chief Secretary for providing policy level convergence and State Monitoring Committee (SMC) for Elimination of Child Labour under the State Labour Secretary for convergence in implementation of various programmes and schemes at the state level.

(11) The different Government Departments and other stakeholders, including Child Welfare Committees, the State Children's Commission, the State Human Rights Commission, NGOs etc should work in coordination and develop common strategies towards eliminating child labour.

(12) Traditional and cultural practices that violate the full enjoyment of the rights of every child and support child labour should be campaigned against.

(13) The State shall ensure that all the concerned stakeholders, particularly the officials entrusted with the labour enforcement work shall be regularly trained and capacity building exercises be undertaken, at periodic intervals, in collaboration with NGOs and other institutions, towards creating a well trained work force.

Annexure-1

Roles of key stakeholders

1. Labour – Nodal Department:

- Conduct regular surveys of areas having high probability of child labour.
- Conduct raids with the help of Task Force in case of hot spots having high incidence of child labour.
- Actively participate in all rescue operations of child labour.
- Action to be initiated against the employer of the child labour under the Sec 3 of the Child Labour (Prohibition & Regulation) Act in case of hazardous occupations & processes and Sec 7, 8, 9, 11, 12 & 13 in case of non-hazardous occupations & processes.
- Surveillance of the establishment where there is information that child labour is being used.
- Post rescue coordination with NGOs for accommodation, transportation, producing of children before the Child Welfare Committee, food and clothing and medical check-up.
- Coordination with Police for providing security during the raid and afterwards. And also sensitize police of its role and responsibilities during and after the rescue operation.
- Involve Chief Inspector of Factories to ensure that area Factory Inspector and Inspector Factories (Medical) is included in the rescue operation.
- After the raid, intimation to press including maintaining data-bank of press, prepare draft press note in advance etc.

- While conducting rescue operation for girls, to ensure that the lady police and lady representative from NGO/Labour Department/Social Welfare department is included.
- Enrollment of rescued child labour in Special Schools under NCLP Schools or SSA bridge centres in the home district.
- Coordinate with CWC for speedy repatriation of rescued child labour.
- Coordinate with Social Welfare and other Departments, NGOs, etc. for temporary shelter for the rescued children.
- Make arrangements for safe transportation of rescued children to home States/families.
- Enable safe restoration and rehabilitation of rescued child labour in their home places.
- Any other role mentioned in the Protocol.

2. **Police:**

- Provide sufficient police force for Raids
- Active Participation during the Raids.
- Evidence collection during raids and thereafter.
- Taking Custody of the rescued Child Labour by the Task Force.
- Arrest the employers under the relevant provisions of law.
- Treat the rescued children with care & respect and to hand over safely them to the authorities of Children's Home.
- Juvenile Aid Police Unit (JAPU) for escorting children to their home States.
- Cases of child labour should be properly pleaded (as per sec 32), before The Child Welfare Committee.
- Booking of middlemen and agents under appropriate criminal laws.
- Any other role mentioned in the Protocol.

3. District Administration:

- To ensure action under the Bonded Labour System (Abolition) Act, 1976, if applicable.
- Arrange for accommodation in temporary shelters of children rescued until they are produced before CWC and repatriated to their homes places.
- Instructions to be given to SDMs to give priority to respond to raid/inspection calls.
- Make adequate arrangements for the rehabilitation of child labour in their home places including verification of the information pertaining to their home addresses.
- Any other role mentioned in the Protocol.

4. Social Welfare Department:

- Extend Childline toll-free 1098 helpline service, wherever available for child labour.
- Improve infrastructure in Children's Shelter Homes and increase their strength.
- Sensitize CWC about the special needs of the child labour and the rehabilitation plan so as to ensure speedy and adequate reparation and rehabilitation of these children.
- Any other role mentioned in the Protocol.

5. **Education Department:**

- Child labour to be accommodated in Residential Bridge Centres under SSA where NCLP special schools are not available.
- Providing books and uniforms to the children enrolled in Special schools.
- Smooth mainstreaming of children from Special Schools to regular SSA schools.
- Identifying child labour in the district level surveys conducted for out of school children.
- Any other role mentioned in the Protocol.

6. **Municipal Authorities:**

- Rescued children to be admitted in schools without insisting on various formalities and certificates.
- Children should be admitted irrespective of the time of the year i.e. even after the month of October.
- Any other help sought by the local administration/labour Department in the rescue and rehabilitation of child labour.
- Any other role mentioned in the Protocol.

7. **Health Department:**

- Doctors/female doctors to accompany in raids if required.
- Appropriate instructions to be issued to the hospitals for the medication examination of the rescued child labour.
- Team of psychiatrists to be identified and communicated, which could help in counseling of the rescued child labour.
- Medical benefits to be provided to child labour under the School Health Scheme by the Health Dept.
- Any other role mentioned in the Protocol.

