

F.No.15011/20/2012-ATC (CF-145675)
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
CENTRE STATE DIVISION

New Delhi, 12th August 2013

SUBJECT: Standard Operating Procedure to handle Trafficking of Children for Child Labour – measures to be taken for rescue of trafficked child labourers' and action against the traffickers/employers

1. The trafficking of children for economic exploitation, bonded labour, forced labour, physical/sexual abuse and misuse is a heinous crime. The trafficking of children are vulnerable and need care and protection. After they are rescued they also need to be rehabilitated. It is, therefore, necessary that effective steps be taken for investigating of cases relating to trafficking of children for child labour and/or forced labour.
2. Please refer to our MHA Advisory on trafficking and combating human trafficking in India F.No.15011/6/2009-ATC(Advisory) dated 9th September, 2009 to all States and UTs.
3. The following paragraphs supplements the previous advisory :-
 - i) The Article 23 of the Indian Constitution prohibits trafficking in human beings and forced labour and other forms of forced labour.
 - ii) As per Section 2 (K) of the Juvenile Justice (Care and Protection of Children) Act, 2000(hereinafter referred to as JJ Act) juvenile or child means a person who has not completed 18 years of age. Section 2 (D) of the JJ Act defines "a child in need of care and protection" in detail.
 - iii) The trafficked child could suffer from any or all the handicaps stated in Section 2 (D) of the JJ Act and is clearly in need of care and protection. Sections 23, 24, 25, 26 of the JJ Act which deals with various forms of exploitation of the child are declared to be a cognizable offence under the JJ Act.
 - iv) The Criminal Law Amendment Act, 2013 has amended the Indian Penal Code on the specific offence of trafficking. Section 370 defines trafficking in detail. It is to be noted that the consent of victim is immaterial in determination of the offence of trafficking and the offence as already stated are cognizable.

v) The Supreme Court in PUDR Vs Supreme Court in 1982 3SCC235 has elaborated on the issue of forced labour. Therefore, service without wages or with paltry wages; denial of choice of alternative avocations, denial of right of movement are all to be considered as forced labour. The trafficked children from the any one of these conditions are not only to be retrieved but the offender has to be charged as having committed a cognizable offence.

vi) The trafficked children are often those children who have gone missing. Wherever there are more than one case relating to trafficked children or forced labour, Section 155 (4) of CrPC makes it very clear that the case shall be deemed to be cognizable notwithstanding that the other offences charged are non-cognizable.

4. As regards missing children, the Supreme Court in the case of Bachpan Bachao Andolan Vs. Union of India and Others dated 10.05.2013, defined missing child in detail. It also stated that the child missing shall be treated within the meaning of JJ Act in need of care and protection as per the JJ Act. The Supreme Court has also stated that all cases of missing child will be prima facie treated as cognizable act (until proved otherwise) and a FIR filed accordingly. The registration of FIR should be stressed not only with reference to JJ Act but all Acts wherever children are the victims. Trafficked child upon recovery should be counseled by a social worker and proper investigation launched against the offenders/traffickers.

5. The AHTU shall take all necessary steps to investigate all the cases relating to trafficked persons with special emphasis on investigating crimes relating to trafficked children and women and treat the same as being part of organized crime and target the economics of crime syndicates. This may be done through cancellation of licences of establishments/factories, sealing, attachment and confiscation of property etc. During and after the rescue of the child, the SOP for investigating the crime relating to crime on trafficking for forced labour; developed by UNODC-MHA may be effectively utilized. The protocol for prevention, rescue, repatriation and rehabilitation issued by the Ministry of Labour and Employment in 2008 may be followed.

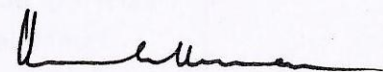
6. The rescue team should be multi-disciplinary and should comprise representative of Police or Labour, SDM or his representative, NGO/complainant, lady police/volunteer, and member of child welfare committee. Under no circumstance should any interaction between the child and the employer/trafficker be allowed. The children rescued must be sent immediately to child welfare committee and action taken under the JJ Act 2000. The Labour Department should be held responsible for filing of FIR and to initiate other necessary proceedings against the offender. The repatriation of the child should be a prime objective in the investigation to ensure that the child goes back to safety. The police shall take all necessary precaution for the safety of the child and/or other witnesses wherever cases of organized trafficking is investigated. The statement of victim should be

recorded under Section 164 of CrPC and charge sheet be filed soon after investigation. There should also be an inquiry for home verification under the JJ Act before repatriation and child welfare committee in the home district shall be responsible for the wellbeing of the child. Before the repatriation of the child, efforts should be made by the Police to obtain as much information from the child about his/her traffickers as possible. This information must be uploaded to the district/state database on trafficked children and traffickers/employers. The Labour Department should initiate proceeding for immediately recovery of the fine of Rs.20,000 to be recovered from the employer under the Supreme Court guidelines of M.C. Mehta Vs. State of Tamil Nadu 1996 (6 SCC 756). After recovery, the said amount shall go to the Rehabilitation Cum Welfare Society of Child Labour in the native district of the child for his/her socio-economic and educational rehabilitation. The Department of Labour shall also initiate proceeding for the recovery of the back wages of the child as per the Minimum Wage Act, 1948.

7. The various provisions of law applicable at various stages of trafficking of child labourers' are in the table attached as **Annexure-A**.

8. The aforementioned measures are only indicative and the States/UTs may consider any additional measures for dealing with the crime of human trafficking and child labour. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to other State Governments and UT Administrations for consideration/adoption. States/UTs may consider translating this SOP into regional languages for dissemination.

The receipt of the SOP may be acknowledged.



(S.Suresh KUMAR)

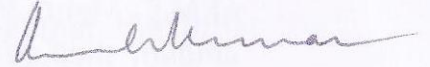
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To
The Chief Secretaries &
The Principal Secretary/Secretary (Home)
All State Governments and Union Territories

Copy also for information and necessary action to:

- i. The DGs of all State Governments/UTs.
- ii. National Commission for Protection of Child Rights
- iii. Director General BPR&D
- iv. Director NCRB

- v. Director CBI
- vi. Director, IB
- vii. Director General BSF
- viii. Director General ITBP
- ix. Director General SSB
- x. Ministry of Women and Child Development
- xi. Ministry of Labour
- xii. Ministry of Social Justice and Empowerment
- xiii. Nodal officers Human Trafficking



(S. Suresh KUMAR)

Joint Secretary to Govt. of India

LEGAL PROVISIONS IN CHILD LABOUR TRAFFICKING

Sl. No.	Situation of the child	Statute	Offence (Provision)	Section	Classification	Punishment
1.	Children are lied to and enticed to be brought for work	Indian Penal Code (IPC) 1860	a) Cheating	Section 417 and related	Bailable and non cognizable	Up to 1 year or fine
			b) Abduction	:		
			i) Abduction for wrongful confinement	Section 365, 367 and related	Non bailable and cognizable	Up to 7 years and fine
			ii) Abduction for slavery	Section 367	Non bailable and cognizable	Upto 10 years or fine
			c) Kidnapping through enticement	Section 363	Cognizable and Bailable (Non-Bailable in Delhi)	Upto 7 years and fine
		JJ Act	Procurement	Section	Cognizable and	Upto 3 years

Sl. No.	Situation of the child	Statute	Offence (Provision)	Section	Classification	Punishment
		2000	t of a child for hazardous employment	26	Bailable (Non-Bailable in Delhi)	and fine
2.	By paying some money to the parents as consideration or as advance	a) Indian Penal Code, 1860	Buying of a person as a slave	Section 370	Bailable and non-Cognizable	Upto 7 years and fine
		b) The Bonded Labour System (Abolition) Act, 1976	Punishment for advancement for bonded labour	Section 17	Bailable and Cognizable	Upto 3 years and fine
3.	Giving away the procured (Trafficked child) to the employer for monetary consideration for the purpose of employment.	a) Indian Penal Code 1860	Selling a minor for the purposes of Prostitution.	Section 372	Non Bailable and Cognizable	Upto 10 years and fine
4.	Employin	a) Child Labour	Employing the child in	Section	Non-Cognizable	Upto 1 year. Repeat offence

Sl. No.	Situation of the child	Statute	Offence (Provision)	Section	Classification	Punishment
	g the child	(Prohibition and Regulation Act, 1986	prohibited occupations and processes	3/14	and Bailable	upto 2 years and fine upto 20,000 (Min. 10,000 and max. 20,000 as per Supreme Court Guidelines
		b) JJ Act, 2000	Procuring child/juvenile for hazardous employment	Section 26	Cognizable and Bailable (Non-Bailable in Delhi)	Upto 3 years and fine
5.	a) Not allowing the child to move freely, return home as per his/her will	Indian Penal Code, 1860	Wrongful confinement of a kidnapped or abducted person/child	Section 368	Cognizable and non Bailable	Upto 10 years and fine
	b) Not paying wages or paying less than the minimum	a) The Bonded Labour System (Abolition) Act, 1860	Enforcing forced or bonded labour	Section 16	Bailable and Cognizable	Upto 3 years and fine

Sl. No.	Situation of the child	Statute	Offence (Provision)	Section	Classification	Punishment
	wage	b) Indian Penal Code		Section 373	Bailable and cognizable	Upto 10 years and fine
				Section 374	Bailable and Cognizable	Upto max. 1 year and fine

In all of the above Situations it may also be noted that Section 370 of the Indian Penal Code shall be applied in situations where an Act, Means and End (i.e., a form of exploitation) exists as elaborated below:

Statute	Section	Act	Means	End (Exploitation)
Indian Penal Code	370 Whoever for the purpose of exploitation,	Recruits	Using threat	Physical Exploitation
		Transports	Using force or any other form of coercion	Sexual Exploitation
		Harbours	Abduction	Slavery
		Transfers	Practicing fraud, or deception	Practices similar to slavery
		Receives	Abuse of power	Servitude
			Inducement	Forced Removal of Organs