

प्रत्यक्ष जस्टिस

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प्रियंक कानूनगो
Priyank Kanoongo
अध्यक्ष
Chairperson

11/4/2020
TLC

भारत सरकार
GOVERNMENT OF INDIA
राष्ट्रीय बाल अधिकार संरक्षण आयोग
NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
नई दिल्ली-110 001
New Delhi - 110 001

No. 1601/26/2019/Child Labour/

Dated: 18th March, 2020



NCPDR

122

Sir/Madam,

The National Commission for Protection of Child Rights (NCPDR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, an Act of Parliament (December 2005). National Commission for Protection of Child Rights (NCPDR) is a statutory body under the Commissions for Protection of Child Rights (CPCR) Act, 2005 under the administrative control of the Ministry of Women & Child Development, Government of India. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

2. Beneath its mandate under Section 109 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and its power and functions enumerated under Section 13 of CPCR Act, 2005, the Commission is obligated with the role of monitoring of JJ Act and to look after the issues related to child rights.

3. The Commission while dealing with the cases of complaints relating to child labour and through exercising its powers and functions especially provided under the Juvenile Justice Act, 2015, observed that there are procedural delays in the process of rescue and rehabilitation of children due to lack of convergence in the implementation of various legislations.

4. Therefore, in order to strengthen the mechanism of rescue and rehabilitation of child labour, in light of amended CALPR Act, 2016, CALPR Rules, 2017 and in consonance with Juvenile Justice Act, 2015, the Commission, in a Consultation Workshop held on 12th June, 2019, deliberated various aspects with concerned stakeholders i.e. Department of Labour and Employment, Department of Women and Child Development, Department of Mines and Geology, All State/UTs Commission for Protection of Child Rights and officers/ representative from the Ministry of Women and Child Development, Ministry of Labour and Employment, Ministry of Law and Justice, Government of India, for formulating a draft SOP, on the subject. The draft SOP was prepared and circulated to concerned stakeholders for comments/inputs. The comments/inputs so received from them were incorporated in the draft SOP. Further, to strengthen the SOP, the nitty-gritty of the same was again discussed in a National Consultation with all States/UTs Commission for Protection of Child Rights during October, 2019. After detailed deliberations as mentioned above, a Standard Operating Procedure for Rescue and Post Rescue of Child Labour has been formulated and uploaded in the Commission's website for comments/views/suggestions from the general public on 11.12.2019.

Contd...

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5. In furtherance to above, the final version of the said Standard Operating Procedure has been uploaded in the Commission's website on 27.01.2020, which is enclosed herewith for kind information and necessary action at your end. The said Standard Operating Procedure may also kindly be seen in link below; <https://ncpcr.gov.in/showfile.php?lang=1&level=2&&sublinkid=1950&lid=1889>

With regards,

Encl: as above.

Yours sincerely,


(Priyank Kanoongo)

1. All Home Secretary of States / UTs – for kind information.
- ✓ 2. All Principal Secretary (WCD) of States/UTs – with a request to share the above SOP to CWCs for information and necessary action.
3. All Principal Secretary (Labour Department) of States/UTs – with a request to share the above SOP to District Labour Officer for information and necessary action.
4. All DGPs of States/UTs – with a request to share the above SOP to Special Juvenile Police Unit & Child Welfare Police Officer for information and necessary action.

Copy for information and necessary action to :-

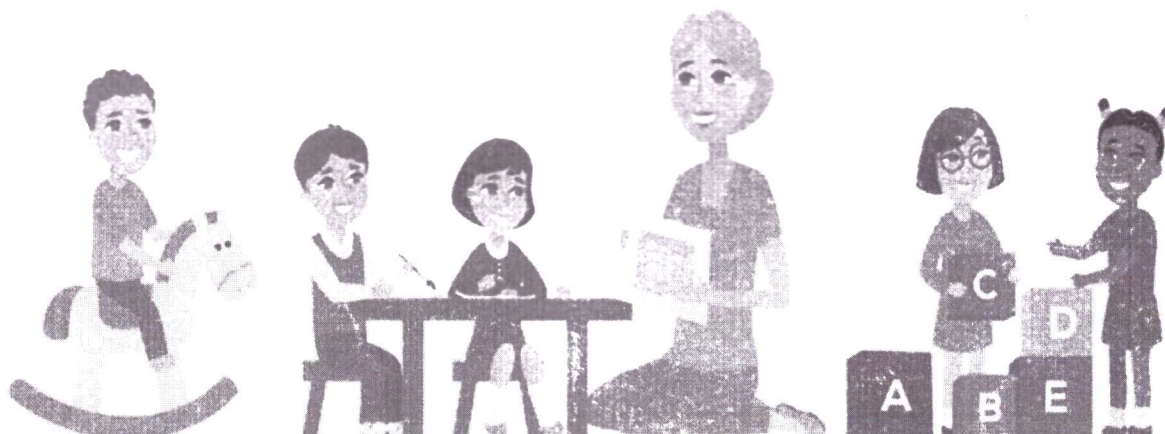
All Chairperson States/UTs Commission for Protection of Child Rights.



STANDARD OPERATING PROCEDURE

For

RESCUE AND POST RESCUE OF CHILD LABOUR



2020

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1. List of Abbreviations

CARA	Central Adoption Resource Authority
CALPR ACT	Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
CALPR Rules	Child and Adolescent Labour (Prohibition and Regulation) Rules, 2017
CCI	Child Care Institution
CPP	Child Protection Plan
CrPC	Code of Criminal Procedure, 1973
CWC	Child Welfare Committee
DCPO	District Child Protection Officer
DCPU	District Child Protection Unit
DLSA	Delhi State Legal Services Authority
DM	District Magistrate
DWCD	Department of Women and Child Development
FIR	First Information Report
ICPS	Integrated Child Protection Scheme
JJ Act	Juvenile Justice (Care and Protection of Children) Act 2015
JJB	Juvenile Justice Board
MWCD	Ministry of Women and Child Development
NCPCR	National Commission for Protection of Child Rights
NFPA	National Foster Parent Association
NGO	Non-Governmental Organization
POCSO	Protection of Children from Sexual Offences
PO-IC	Protection Officer Institutional Care
SAA	Specialized Adoption Agency
SCPCR	State Commission for Protection of Child Rights

SJPU

Special Juvenile Police Unit

SOP

Standard Operating Procedure

UN

United Nations

2. "Child in Need of Care and Protection"

Section 2 (14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines child in need of care and protection as a child:

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) **who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or**
- (iii) who resides with a person (whether a guardian of the child or not) and such person—
 - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
 - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
 - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
- (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
- (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
- (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
- (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
- (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

- (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
- (x) who is being or is likely to be abused for unconscionable gains; or
- (xi) who is child of or affected by any armed conflict, civil unrest or natural calamity; or
- (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage.

SCOPE

3. Standard Operating Procedure for Rescue and Post Rescue of Child Labour

Rescue of the child by any person, organization- governmental or non-governmental, any committee, task force or any other person or institute; whether under the Child Labour Act, 1986; Bonded Labour Act, 1976; Juvenile Justice Act, 2015; The Immoral Traffic Prevention Act, 1986 or any other law for the time being in force shall be done in accordance with this SOP and the following steps must be followed in order.

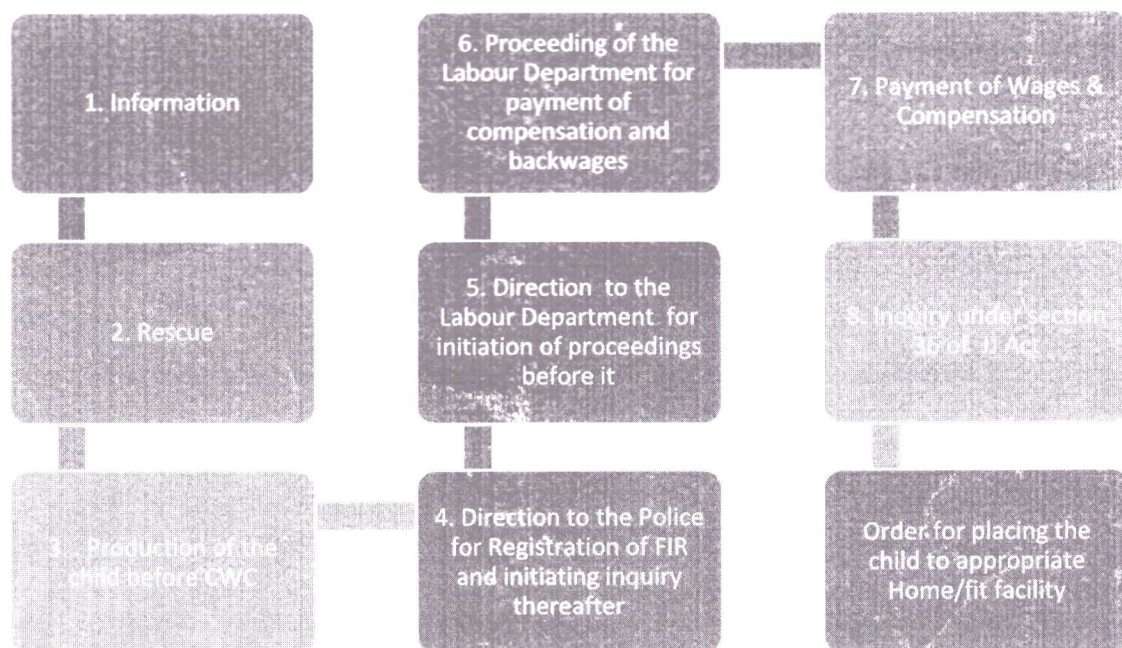


Figure 1: Standard Operating Procedure

Step 1: Information and Rescue

The first step for effective rescue of a child in need of care and protection is of information and rescue. It is important to first get the information which may be from any primary source such as a child labour or relative of a child labour or any person on behalf of the child or through secondary sources like surveys conducted under Sarva Shiksha Abhiyan, surveys conducted by the Department of Labour or community micro-planning or by any government or non-government organization or any other person.

The child can be rescued by any person who is competent to produce the child before CWC as under Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015 namely:

- (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;
- (ii) any public servant;
- (iii) Child-Line Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;
- (iv) Child Welfare Officer or probation officer;
- (v) any social worker or a public spirited citizen;
- (vi) by child himself;
- (vii) any nurse, doctor or management of a nursing home, hospital or maternity home

Such competent person may also include:

- (i) A team constituted by NCPCR, SCPCRs, Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Bonded Labour System (Abolition) Act, 1976 or any other law for the time being in force.
- (ii) Person as defined in Rule 17 A of Child and Adolescent Labour

(Prohibition and Regulation) Rules, 2017 which may include school teachers and representatives from school management committee, child protection committee, Panchayat or Municipality, who shall be sensitised to file complaint, in the event that any of students in their respective schools is employed in contravention to the provisions of the Act.

(iii) Task Force as provided under Rule 17 C (1)(iii).

Step 2: Production of the Child before the Child Welfare Committee (CWC)

The child shall be produced before the Child Welfare Committee within 24 hours of his/her rescue, as given under Section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

- i. As soon the child is produced before the CWC, the statement of the child shall be recorded by CWC having powers to function as bench of Magistrate/Judicial Magistrate under Section 27 (9) of JJ Act, 2015 in the manner provided under Section 164 of the CrPC, 1973. The said statement should be sent to the Magistrate by whom the case is to be enquired into or tried. The CWC shall ask the questions as provided in **Annexure A.**
- ii. In case a translator is required to understand the language of the Child and record his/her statement, the DCPU shall provide translator to overcome the problem of language barrier in case of migrant child labour.
- iii. After recording the statement of the Child, if any violation is found by CWC under Child and Adolescent (Prohibition and Regulation) Labour Act, 1986 and Bonded Labour System (Abolition) Act, 1976, then CWC should give direction to the Police for registration of First Information Report (FIR). A copy of the Statement should also be sent to the District Legal Service Authority (DLSA) for further coordination and compliance of the provisions under CrPC. On the basis of the statement of the child, CWC will make a performa and send it to the

Police. A copy of the said performa shall also be sent to the District Magistrate and District Child Protection Unit. The CWC shall fill the performa as provided in **Annexure B**.

- iv. A requisition should be sent to the Labour Department by the CWC along with Annexure C, for ascertaining the Back Wages, penalty, fine etc. of the rescued child. A copy of the same should also be sent to the District Magistrate who presides over the task force as provided under Rule 17C (iii) of the CALPR (Amendment) Rules 2017. The District Magistrate to also ensure compliance of Rule 17 (C) Clause iii of the CAPLR (Amendment) Rules 2017 in so far as rehabilitation of children rescued are concerned. A copy of the direction should also be sent to the District Magistrate. The CWC should send requisition as per the performa as provided in **Annexure C**.
- v. CWC shall conduct due inquiry as prescribed under Section 36 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The inquiry before the CWC is for the purpose of restoration and rehabilitation of the Child and is independent of the investigation by the Police. While the inquiry before CWC is ongoing, the Police is to continue its investigation in accordance with the procedures prescribed by Law, as the inquiry before CWC is not in contravention and interference of the investigation by the Police on the matter.

The said inquiry shall be conducted in adherence to the procedure provided under section 36 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which is as follows:

- (1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social worker or Child Welfare Officer or Child Welfare Police Officer: Provided that all children below

six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

- (2) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

- (3) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years: Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

- (4) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

Step 3: Registration of First Information Report

Registration of the First Information Report (FIR) on direction/order of CWC :-

- i. On receipt of the information from the CWC as per the performa in Annexure A in respect of a cognizable offence against a child, the Police shall register an FIR immediately on the basis of the statement given by the child before CWC or on the directions given by the CWC thereof. A copy of the FIR shall be sent to the District Magistrate and CWC within 24 hours of the direction/order of the CWC. The District Magistrate will exercise his duties as provided under Rule 17C of the Child and Adolescent Labour (Prohibition and Regulation) Amendment Rules 2017 and Bonded Labour System (Abolition) Act, 1976 as the case may be or as provided under any other provision of law.
- ii. While filling the FIR, due care shall be taken to ensure that all provisions that apply, across different statutes, are incorporated in the FIR/Complaint. *[Note: Provisions under Child Labour Act, 1986, Bonded Labour Act, 1976, Juvenile Justice Act, 2015 and POCSO Act, 2012 , Plantation & Labour Act, 1954 , Mines & Mineral Act, 1956 , Factories Act, 1948 , IPC 1860 or any other Act should be incorporated in the FIR]*
- iii. The FIR shall be uploaded on the official website of the Police within 24 hours of the registration of the FIR as directed by the Hon'ble Supreme Court of India in **Youth Bar Association of India v. Union of India**, AIR 2016 SC 4136. However, there should be no disclosure of the identity of the child. [Ref. Section 74 of the JJ Act, 2015 & Section 23 of POCSO Act, 2012]
- iv. The Police shall hold an independent investigation as per the CrPC, 1973 for initiating prosecution against the offenders. [Note: The investigation being undertaken by the Police to implicate the offender and the inquiry being conducted by CWC are independent of each other. It is to be understood that the inquiry before CWC and the investigation by the Police can process simultaneously without affecting each other as the purpose of the investigation by the Police is

to inquire into the violations and apprehend the offenders while the purpose of the inquiry by CWC is to restore, repatriate and rehabilitate the child while keeping in view the best interest and welfare of the child.]

- v. Once the investigation is done by the Police, a charge sheet shall be prepared and the judicial proceedings under the CrPC, 1973 shall be initiated.

Step 4: Transfer of Child to Temporary Shelter

If the parents, family or guardian of the child were present with the child at the time of rescue or were present before the CWC, then restoration of the child shall be done as per the discretion of the CWC. The Parents/Family/Guardians of the child present should not be in contravention of laws themselves. While making any decision, CWC shall give utmost importance to the interest of the child.

In case parents, family or guardian of the child are not present, then the child should be taken to a shelter home/Fit facility.

Step 5: Proceeding before the Labour Department

- i. Upon receiving the direction/order from the CWC, the Labour Department shall ascertain the back wages, penalties, compensation etc. of the child based on their statement made to the CWC within 7 days of the child's rescue.
- ii. Once the amount is ascertained by the Labour Department, then the same shall be recovered by the Labour Department from the offender within 10 days of ascertaining the amount. The money shall be recovered in form of a Demand Draft (DD) in the name of the child.
- iii. It is the responsibility of the District Magistrate to ensure that recovery is done in a time bound manner and in case of any delay in recovering the amount, the District Magistrate will issue appropriate orders at the request

of the CWC or Labour Department or any other authorised government agency, the parent, guardian of the child, at the instance of the child or the District Magistrate may *suo-motu* issue such orders.

Step 6: Payment of Wages and Compensation

Once the child is restored with his family or placed at an appropriate home/shelter/facility, the CWC under whose jurisdiction the child is restored will ensure payment of wages and compensation to the child.

- i. The CWC under whose jurisdiction the child is restored will ensure that a bank account for the child is opened.
v
- ii. The Demand Draft received from the employer of the child shall be deposited in the bank account of the child.

The Supreme Court of India in ***M.C. Mehta vs State Of Tamil Nadu And Others***, AIR 1997 SC 699 has held that to ensure compliance with Child Labour (Prohibition and Regulation) Act, 1986, an employer must be asked to pay a sum of Rs. 20,000 as compensation for every child employed in contravention of the provisions of the Act and further by the appropriate government to contribute a grant/deposit of Rs. 5,000/- for such child employed in hazardous job. The same should be done in the following manner:

- The inspectors, appointed under Section 17 of the Act, would bear the responsibility of ensuring this.
- The sum paid as compensation should be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund.
- Such a fund should be established district-wise or area-wise. The fund so generated should be used only for the concerned child. The income earned through the fund would also be a part of the fund. To generate greater income, the fund could be deposited in a high-yielding scheme of any nationalised bank or other public body.

- The employer would be liable to pay this amount even if he were to disengage the child presently employed.

If the child is found to be a bonded labour, the District Administration is to ensure that the compensation shall be given to the child in accordance with Clause 5 of the Central Sector Scheme for Rehabilitation of Bonded Labourer – 2016. District Magistrate may pass any appropriate orders as he may think fit. The benefits prescribed in the scheme shall be, in addition to, other cash or non-cash benefits, which a beneficiary under the scheme is entitled to, by or under any other scheme or law applicable for the time being in force.

Step 7: Prosecution and Adjudication

The matter should be prosecuted and adjudicated by the competent authority having jurisdiction to adjudicate the matter.

**Guardian will be termed as defined under JJ Act, 2015*

4. ANNEXURE A

The statement is to be recorded by CWC after ensuring that the child giving statement has understanding/maturity to provide the reasonable answers to the following questions:

Questions to be asked while recording the statement of a rescued child:

A. General Information

Child's name, age, nationality, family, address and such other information required for identification of the child

B. Recruitment

- i. What is the child's native place?
- ii. What location was the child last residing in?
- iii. How long was the child residing at that location?
- iv. How old was the child when he/ she left the native community?
- v. Do members of the family know the child's whereabouts?
- vi. Was the child forcibly transported to another location in his/her native place? If yes, how?
- vii. Who recruited the child?
- viii. What was the purpose of the recruitment?
- ix. Was initial contact with recruiter voluntary or not?
- x. When did the child start receiving salary/wages?
- xi. Was there any advance given to the child before commencement of work?

C. Use of Force or Threat

If force was used in the recruitment, please ask the following questions:

- i. Was the child abducted or kidnapped?
- ii. Was the child threatened with harm to his or her self or family?
- iii. Was the child sold? By whom?
- iv. What were the circumstances of the forcible removal?
- v. Who initiated the contact? How?

- vi. What was the method of recruitment (e.g. by advertising, acquaintance, family, relative, agency, study, training, etc.)

D. Employment

If the recruitment was for employment. please ask the following questions:

- i. What activities did the child believe she/he would be engaged in following arrival at the new location?
- ii. What kind of work was offered to the child?
- iii. How much money was promised to the child and by whom?
- iv. Did the child sign a contract? (e.g. an employment contract) If so, what are the terms of the contract?
- v. Does the child know them (e.g. was the contract in a language the child understood)?
- vi. Does the child possess a copy of the contract?
- vii. Was the child coerced into signing the contract? How?
- viii. Was anyone paid a fee for recruiting the child for work?

E. Identity Documents

- i. Does the person have any identity proof? If so, is it his own legitimate document or is it a fraudulent one?
- ii. How did he acquire this document?
- iii. What kind of employment authorization was promised to the child and by whom?

F. Working Conditions (Exploitation)

- i. Does the child believe that she/ he is subject to some form of debt bondage?
- ii. Does the child believe that she/ he owes money to recruiters/ transporters/ exploiters?
- iii. Was the child paid and at what rate?
- iv. Who has the possession of these earnings now?
- v. How many hours a day did the child work?
- vi. Was the child allowed any time off? Allowed to rest if sick?

G. Restriction of Freedom

- i. Was the child unable to quit working for the employer and get a job somewhere else?
- ii. Was the child's movement restricted? How? (e.g. did the child have a key of the house)
- iii. Was the child living and working at the same place?
- iv. Was the child allowed to communicate with Other workers and family members, if the child is not living with his/her family?

H. Living Conditions

- i. What were the living conditions of the child? (e.g. no. of rooms, no. of people living together)
- ii. Did the child have friends?
- iii. Did the child have money?
- iv. Could the child buy his/ her own belongings?
- v. Was the child given proper food, clothing, shelter etc.?

I. Physical Coercion

- i. Was the child subject to physical assaults or torture? (pinching, hitting, slapping, punching, kicking, shaking, burning, branding, chained, etc.)
- ii. Was the child subject to sexual assaults as defined under section 7 of The Protection of Children from Sexual Offences Act, 2012 (forced sexual contact, rape, forced prostitution etc.) or Sexual Harassment as defined under section 11 of POCSO Act, 2012?
- iii. Was the child forcibly confined or isolated?
- iv. Was the child denied essential medical care?
- v. Was the child denied food/ clothes and other basic necessities including ability to maintain basic hygiene?

J. Psychological Coercion

- i. Was the child threatened with violence, harm or retaliation against child or the child's family members (or friends)?

- ii. Were there threats to report the child to authorities?
- iii. Did the child view or hear others being physically or sexually assaulted/harassed?
- iv. Was the child deceived regarding the employment, activities or basic conditions of his or her employment?
- v. Was the child subject to verbal abuse, name calling, degrading remarks about child's ethnicity/social group?
- vi. Was the child photographed and filmed while being physically or sexually assaulted, humiliated or degraded?

5. Annexure B

A Child was produced before the CWC _____ (State and District) by _____ (name of the person/agency) on _____ (date) at _____ (time).

The child has given the CWC the following information:

His / Her name is _____ (name) is aged about _____ years (age). He/she was working at _____ (name and place of the employment) from _____ (time from which he has been working) as _____ (position) for _____ (the person concerned). His/her duties were _____ (explain the nature of his work).

In the enquiry held before the CWC and on account of the statement of the child and the evidence, a *prima facie* offence of child labour appears to have been committed under the Child and Adolescent Labour (Prohibition and Regulation) Act or/ and the Bonded Labour System (Abolition) Act, 1976.

As per the functions and responsibilities given to the CWC under Section 30 (xv) of the Juvenile Justice (Care and Protection of Children) Act, 2015 you are hereby requested to register an FIR in the present matter.

6. Annexure C

A Child was produced before the CWC _____ (State and District) by _____ (name of the person/agency) on _____ (date) at _____ (time).

The child has given the CWC the following information:

His / Her name is _____ (name) is aged about _____ years (age). He/she was working at _____ (name and place of the employment) from _____ (time from which he has been working) as _____ (position) for _____ (the person concerned). His/her duties were _____ (explain the nature of his work).

In the enquiry held before the CWC and on account of the statement of the child and the evidence, a *prima facie* offence of child labour appears to have been committed under the Child and Adolescent Labour (Prohibition and Regulation) Act or/ and the Bonded Labour Sysytem (Abolition) Act, 1976.

As per the functions and responsibilities given to the CWC under Section 30 (xv) of the Juvenile Justice Act, you are hereby requested ascertain the back wages, penalty, compensation etc. to be paid to the child and recover the same.

Indt.En.-5155/2020, dt:

Copy of the letter is forwarded
to all RJLC's and all DLO's (E) for
n/a.

17/8/2020

17-8-20
8 (en)

Labour Commissioner