

P O C K E T B O O K
FOR LABOUR INSPECTORS
ON CHILD LABOUR AND
TRAFFICKING OF CHILDREN
FOR FORCED LABOUR
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1. Who is a child?

A person below the age of 18 years.

2. What is child labour?

Any work that interferes with the completion of a child's education or is mentally, physically, socially and morally dangerous and harmful to children is considered child labour.

3. What risks do child labourers face?

- Child Labourers are at a risk of mental, physical, social and moral harm.
- Child Labour deprives children of schooling, and at times exerts additional burden of labour above the schooling chores.
- Drags children and their families in the vicious circle of poverty and deprivation.
- Violence and sexual abuse on the part of adult counterparts or employers.
- Susceptibility to injuries by sharp tools and heavy machinery.
- Poor employability prospects in future because child labourers do not attain education or skills.

4. International and National Legislation

Three most important legal instruments in the fight against child labour:

- Child Labour (Prohibition & Regulation) Act, 1986,
- Juvenile Justice Act, 2000,
- Bonded Labour System Act, 1976.

4 (a). Constitutional Provisions

- Constitution of India;

4(b). National legal provisions relating to prohibition of child labour

- the Child Labour (Prohibition & Regulation) Act, 1986;
- the Indian Penal Code, 1860;
- the Juvenile Justice Act and the Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006;
- the Bonded Labour System Act, 1976;
- the Minimum Wages Act, 1948;

4(c). Other Legal Provisions Relating to Prohibition of child labour:

- the Children (Pledging of Labour) Act, 1933;
- the Factories Act, 1948;
- the Plantation Labour Act, 1951;
- the Apprentices Act, 1961
- the Right of the Children to Free and Compulsory Education, 2009.

4(d). State Acts, State Action Plan and State Monitoring Systems on Elimination of Child Labour

The trainer illustrates several acts, plans and systems on elimination of child labour on national and state level.

- the Child Labour (Prohibition and Regulation) (Karnataka) Rules, 1998: states that no child shall be required or allowed to work in an establishment for more than twenty hours in

any week and for more than five hours in a day. It also lays rules for health and safety of the children in the establishment.

- the Karnataka Shop and Establishments Act, 1961: a state act is applicable in the state territories only. This act states that no child below the age of 14 years shall be required or allowed to work whether as employee or otherwise in any shop and establishment. Further states that no child (less than 14 years) or young person (between 15 and 18 years of age) be allowed to work more than 6 hours in a day and is also prohibited from working at night.
- State Action Plan on Elimination of Child Labour;
- National Child Labour Projects ("NCLP's");
- Karnataka State Resource Centre on Child Labour
- Legal Aid Cells, District Task Forces, Monitoring Committees and Cells

5. Role of the Labour Inspector in eliminating child labour:

Actor	Actions
Labour Inspectors	<ul style="list-style-type: none"> • Identify child labourers • Order the withdrawal of children from workplaces • Collect information on child labour • Contribute to child labour laws and policies

6. Trafficking and Forced Labour:

6(a). Types of forced labour and modern-day slavery:

- Traditional forms of bonded labour:
- Debt bondage and other forms of coercion:
- Forced child labour:
- Forced labour linked to migration:
- Forced labour as a result of organised criminal trafficking

6(b). Some industries and sectors where children are trafficking into forced labour:

- Construction, including brick kilns
- Agriculture and horticulture
- Mining and logging
- Food processing and packaging industry
- Domestic service and other care and cleaning work
- Factory work, mainly textiles and garment manufacturing
- Restaurants and catering
- Sex and entertainment industry
- Transportation
- Various forms of informal economic activities, such as organised begging or hawking

6(c). Forced Labour in Indian Context

The Supreme Court of India has ruled in:

1. People's Union for Democratic Rights (PUDR) vs. Union of India (1983): "...Any factor, which deprives a person of choice of alternatives and compels him to adapt

one particular course of action may properly be regarded as 'force' and any labour or service which is compelled as a result of such 'force', it would be 'forced labour'..."

It further says,

"...Where a person provides labour or service to another for remuneration which is less than minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the word 'forced labour'... as described in Article 23 of the Indian Constitution".

2. *Bandhua Mukti Morcha vs. Union of India* (1982):

"...Whenever it is shown that a labour is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic considerations received by him and is, therefore, a bonded labour..."

Additionally, under the Bonded Labour Act Section 15, 'whenever any debt is claimed by a bonded labourer, or a Vigilance Committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor'.

6(d). Child trafficking for forced labour and Labour Inspector

Any child who is found working for less than the minimum wage would effectively be presumed to be working as a forced labour (bonded labour) and the labour inspector has the authority to take action under the Minimum Wages Act, Child Labour Act and others.

Importance of Labour Inspector in supporting investigating the crime of trafficking for forced labour

Labour inspectors have at their disposal a wide range of investigation methods; including the power to enter freely at any time of the day or night any workplace liable to inspection without prior notice. They can carry out inquiries freely and in particular speak with persons alone, examine documents and take samples, and even foreclose workplaces. They also have the power to issue orders with a view to remedying the defects, or to institute or recommend proceedings. These proceedings could ultimately also entail criminal proceedings, as in the case of Juvenile Justice Act and sections of the Indian Penal Code.

Labour inspectors collaborate with other agencies such as worker unions and employer association, and can support the identification of violations and ensure compliance of labour standards at workplaces.

7. Collaboration with other agencies

- Important role in coordination with Government Agencies, Employers' and Workers' Organization.
- Cooperation with the ministries of education, health and social affairs whose mission it is to protect the safety and welfare of the public in general and of children in particular.
- Collaboration with NGOs.
- Coordination and Collaboration with employers' organization.

7(a). Some focus action points for the Labour Inspectors:

- acting on child labour information received
- sharing child labour information gathered
- informing police of illicit types of work
- referring children to support programmes
- referring children to schools or informal education
- informing parents of economic assistance programmes
- following through the child labour 'case' with the juvenile courts
- participating in national steering committees against child labour
- informing other government departments of the child labour situation and advising on future priorities
- getting employers' organizations and trade unions more involved in the effort to combat child labour
- advising and informing non-government organisations on follow-up, rehabilitation and repatriation of child labourers rescued withdrawn from work.

8. Understanding Child Labour in Supply Chains

- Child labour usually found at the end of the global supply chains.
- Companies are increasingly concerned about child labour being found in their supply chains.
- Children are involved in the production of cash

crops and manufactured goods that are exported directly, as well as in the production of goods that serve as inputs into final products; final assembly or finishing of these products often takes place in the importing countries.

- Home working is one way in which child labour can find its way into the bottom of global supply chains. It is endemic in the Indian garment industry and it is customary practice for registered factories to outsource elements of production (embroidery, beading, embellishments and often whole garments) to sub-contractors who run small domestic units.
- The work in informal sectors, mainly private individual/families working without formal registration with authorities, is often not monitored, and mostly likely is organised by middlemen/contractors who deal with the garment factories and buying houses in the formal sector.
- In homes, children especially girls are often involved to augment the family income or to fulfil the orders taken.

9. Visiting methods and observation guides

9(a). Qualitative Inspections

There are (quantitative) inspections but there is a lack of quality (result productive) and well-planned inspections. To conduct qualitative inspections, the inspectors should try to focus on:

- planning and considerations for inspection;
- requirements for a physical inspection;
- considerations during inspection for effective prosecution (e.g. determination of age of the child);
- preparation of inspection report;
- behaviour at the inspection site;
- Collection of evidence.

9(b). Points to keep in mind while planning inspection

- inspection policies;
- strategies;
- selecting;
- familiarising;
- keeping plans as flexible;
- keep secrecy/confidentiality.

9(c). Physical Inspection of the establishment or industry:

This inspection is to ascertain:

- the position with reference to engagement of child labour;
- whether there has been a breach of the Child Labour Act or other labour laws;
- whether the legal requirements as to the safety and welfare of child labour are being followed or not; and;
- the persons responsible for the breach of the law for the purpose of initiating action against them or for reporting.

9(d). Preparation of Inspection Report

- a report has to be prepared on the basis of the facts and figures collected at the inspection site;
- the report must give a systematic account of the engagement of child labour in the establishment;
- it must contain the findings of the inspection about the nature of compliance or breach of the legal provisions, factual particulars about the children employed, or the working conditions of child labour.

9(e). Documentation of the inspected production site

The inspector has to concentrate on what proofs would be relevant for her/him to ensure that the information of employment of underage children is backed by substantial proof.

9(f). Evidence to be collected will be to establish the above facts and may be as follows:

1. statements of occupier or other witnesses recorded at the time of inspection when child labour was found to be employed;
2. records/documents that may have been reviewed or of which copies had been taken at the time of inspection;
3. details of child labour engaged together with medical certificates, tokens or other documents/registers pertaining to the establishment;

4. inspection report prepared at the site;
5. any correspondence that was exchanged with the employer;
6. any evidence as to the conduct of the occupier of his agents;
7. evidence about the absence of working conditions that should have existed;
8. evidence on family relationship with the employer of the child labour;
9. age certificate of the child labour, if available.

9(g). The following points should be taken into consideration in relation to production/supply chains:

1. identification of production chain;
2. identification and influence of social background;
3. gathering data on children's earnings to elicit necessary information on child wages from employers, adults and children, for ensuring consistency and reliability of child wages;
4. child labour productivity.

9(h). Key considerations while interviewing children

- The security of the child being interviewed must always be a priority. If there are any doubts that an interview may bring harm to the child, it must be avoided;
- Tell the child being interviewed what you are there

for and how the information they are gathering will be used;

- Be sensitive to where the child is emotionally at any given time before, during, and after the interview;
- Be deeply aware of the consequences of your questioning, be constantly aware of what the child has to go through to give an answer, especially if in the process the child has to relive a painful experience, admit resentment for a person or situation, or accept the utter hopelessness of being caught up in the complexity of poverty and work;
- Respect the child's right to speak (what is said, how it is said, how much is said);
- Most importantly, respect the child's right not to speak, to refuse to answer a question: because s/he cannot or because the answer is too painful to express.
- Take all the time necessary. Interviews with children are likely to take longer than those with adults. Small talk, play, recurrent visits, patience and time are some of the major ingredients needed to obtain reliable data from children on delicate issues as family background or illegitimate child labour activities;
- Assurances of confidentiality must be given and observed.

9(1). Interviewing other key actors

- Key individuals who can provide information

regarding the child's working conditions are likely to include: parents, employers, supervisors, co-workers, worker representatives, neighbours;

- The aim of these interviews is to collect information about the kinds of work children are involved in, their assessment of the hazards and risks children are exposed to and to compare information obtained from them with that obtained from the children themselves.
- To make an effective evaluation of the overall situation of the individual child, inspectors should visit other places where the child workers they interviewed go and question the key actors.

10. Determination of the age of the child.

10(a). Indicators for determination of a child's age

Indicators

Doctor's certificate	<ul style="list-style-type: none"> • Assessment of bones, muscles and teeth. • Soft hand and nails
Intellectual maturity	<ul style="list-style-type: none"> • Interview/conversation with the child • Recollection from memory of event and characters • Past work experience
Age certificate	<ul style="list-style-type: none"> • Birth certificate • School certificate • Other certificate

10(b). In case of any doubt about the age proof:

- Contact source of original document, such as local government authority, medical officer, etc. for authentication;
- Ask for multiple original documents for cross comparison;
- Utilise specialised document authentication machinery to rule out falsification;

In-depth interview using advanced interview techniques to cross-check information.

As stated under section 11 of the Child Labour (Prohibition and Regulation) Act, 1986, the employer is bound to maintain a register of working children wherein he should clearly indicate the age of the child. Failure to do so also attracts nominal penalty. Records should be kept of all young workers on the site. Records should record the worker's age, worker's permit to work, types of work young workers have been assigned, hours of work.

11. Referral, Rehabilitation and Follow-up.

11(a). 5 Ps: Prevention, Protection, Prosecution, Partnership and Participation

- Prevention – of child labour
- Protection – of child labourers, particularly children in hazardous working conditions
- Prosecution – of employers to create a deterrent in the society
- Partnership – with other key government department and the civil society actors – trade unions, employer associations, non-government

organisations, parents, community members, etc.

- Participation – of the children in establishing the parameters of protection, supporting prosecution through their testimonies and partnership for remediation mechanisms.

11 (b). Child Labour Referral mechanism

Under section 33 of Juvenile Justice Act, when a child is in need of care and protection is produced before the Child Welfare Committee, the Child Welfare Committee may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

- The age and maturity of the child is decisive in determining what the best approach is. Older children may be given the opportunity of vocational training whereas younger children may be assisted to go to school.
- Medical treatment in the short and medium-term may also be part of the action plan for remediation of child labour, if the child is sick or injured from work. Children who have injured themselves may be incapable of sustaining a living as adults, and they are need social support measures.

11 (c). Importance of Rehabilitation

- Health care and psychological support or counselling, particularly for those who have been exposed to traumatic situations;
- Legal aid and protection for children threatened with reprisals;
- Non-formal or basic education to bring older

children up to grade level so that they can successfully enter or re-enter regular schools;

- Facilitating entry directly to regular schools for younger children, including provision of school supplies, and occasionally stipends, subsidies, or scholarships to offset costs of schooling;
- Vocational training for older children;
- Income substitution programmes for those in extreme poverty, for whom loss of income could mean lack of food or other basic necessities for themselves or the family;

11(d). Need Matrix for a Child

Needs of the child	Possible service providers	Mechanisms
Basic needs (shelter, food, health care)	Child Welfare Committees, NGO, family, community	Contact Child Welfare Committees for overall support for the basic needs of the child, and for discussing a process of remediation;
Medical care and verification of age	Child Welfare Committees, NGOs, Doctors	Contact family members for remediation and in cases of trafficking for repatriation of the children; Contact NGO for the immediate provision of basic needs.
Education	School	Contact the concerned authorities at the National Child Labour Projects; Contact school teacher to discuss placement of the child in the school.

11(e). Rehabilitation may be statutory through state mechanisms and monetary compensation, or through non-state mechanisms.

- Rescue under Bonded Labour Act: Immediately upon rescue or withdrawal, if it is done under the Bonded Labour Act, a Release Certificate may be issued and an interim relief of Rs. 1000 per child may be given. The Release Certificate issued by the District Magistrate or the Sub-Divisional Magistrate shall entitle the child (or even adult) victim to a rehabilitation package of Rs. 20,000. The District Magistrate or the Sub-Divisional Magistrate shall write to the Resident Commissioner of the state to which the child belongs for the safe repatriation of the child or shall order a law enforcement authority to repatriate the child back to the parents safely.
- Rescue under Juvenile Justice Act or other legal provisions: If the rescue has been under the Juvenile Justice Act or any other legal provision, the rescued child labourer may be sent to a Shelter Home or Children's Home by orders of the Child Welfare Committee in accordance with the Juvenile Justice Act for the reception of the child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

11(f). Statutory Rehabilitation – under various laws

- Injunction to introduce changes – under various

sections of the Indian Penal Code

- Payment of fines – under Child Labour Act
- Recovery of the back-wages as per the Minimum Wage Act, 1948
- Temporary closure of firm until changes are introduced
- Temporary or permanent withdrawal of licence (e.g. of private employment agency)
- Refund of financial damage caused to victim
- Repair of moral damage with a lump sum
- Confiscation of assets
- Imprisonment – under various legal provisions

11(g). More in specific the consequences for the employer if engaged in child labour are the following:

1. fine the employer with a maximum of Rs. 20,000 per child;
2. initiate proceedings for imprisonment. For first offenders the maximum time is one year. For second offenders the maximum time in prison is two years;
3. make a case under the Bonded Labour Act the maximum time of imprisonment the employer faces is three years;
4. file a complaint for the recovery of the back wages besides the fine;
5. seize the employer's property;
6. Foreclosure of the property, if the employer is unable to pay for the fines and back wages.

→ under various laws – Child Labour Act, Bonded Labour Act, Juvenile Justice Act, Indian Penal Code

Section 14 of the Child Labour Act lays down the penalties for the offenses under the Act. It states that (1) whoever employs any children or permits a child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than, three months but which may extend to one year or with fine which shall not be less than Rs. 10,000 but which may extend to Rs. 20,000 or with both.

→ In case of repeat offense, the employer can face imprisonment, which may extend to 2 years.

Another important statute, which includes prohibiting exploitation of working children, is the Juvenile Justice Act. Section 26 states, 'whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earnings for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine". Section 23 provides punishment for cruelty to juvenile or child. Offenses under Section 23 and 26 are cognizable. According to the Juvenile Justice Act, child means a person who has not completed his 18th year of age.

11 (h). Repatriation of the Child and Follow-up
Repatriation is initiated either by orders of the District Magistrate/the Sub-divisional Magistrate or by the Child Welfare Committee.

11(i). Some of the key elements of the repatriation are:

- Assessing the current situation of the child – mental, physical and emotional;
- Assessing the home factors – the financial situation of the family, the home-based factors that could contribute to further exploitation, nature of the family, etc;
- Liaison with the relevant government and non-government agencies in the home state and district;
- Liaison with the National Child Labour Project, Sarva Shiksha Abhiyan, State Child Labour Departments/Resource Centres;
- Mainstreaming the child into education – formal or non-formal;
- Accountability setting and follow-up.



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