Chapter-1

INTRODUCTION

1:1 Prelude:

In a clear-cut perception, delving into the ultimate objective of any society enables us to comprehend that children are the *raison d'être* for its existence. But grim reality of child labour and its abuse throws challenge of extremities of dark childhood for many, as a blot to human society significantly across many countries over the regions.

This research work is basically focused on the sad plight of child labour abuses, more particularly in India having larger concern perhaps for a dubious distinction of highest incidence of child labour in the world in several manifestations, which is most desperate and situational in some serious exploitation of children in organised or unorganized manner subjecting to perpetuate delinquency for criminogenic (i.e. tending to cause crime or criminality) influences inherent in child labour system.

The 'reality of childhood is altogether different' for many innocent children of the world and on 'each day' exposed to dangers that 'hamper their growth and development', suffer 'immensely for violence' also as victims of 'neglect, cruelty and exploitation' noted in the UN Document on the World Declaration on the Survival, Protection and Development of children at the

World Summit for children in 1990.

But in various connotation of immense importance there exists variations in the meaning of ‘child’ in various international and national instruments.

Amongst a few prolific views and expressions apart from the empirical reality that makes this study more compatible and encouraging, notably Albert Thomas, the first Director of International Labour Office, stated that the child labour constitutes “the evil most hideous, the most unbearable to the human heart, serious work on social legislation begins with the protection of children”.4 The Nobel Laureate Gabriela Mistreal rightly, observed that: “We are guilty of many errors and faults but our worst crime is abandoning the children neglecting them the fountain of life” expressing further that “Many of the things, we need can wait, the child cannot....”.5 The New York Times long back on September 3, 1902, in an article ‘Crime of Child Labour’ remarkably quoted Lady Florence Dixie, saying “United States is guilty of it” in an open letter to the then President Roosevelt in this subject in her own words that: “Let America awake and abolish her giant crime; let the world awake and slay this crime whenever it is being perpetrated”.6 In recent time, at the Human Rights Summit in Vienna in June 1993, where children were high on the agenda, Stephen Lewis, the Special Representative of UNICEF 's Executive Director, spoke of children as ‘the cutting edge’ of human rights.6a Kofi A. Annan, the former Secretary General of the United Nations recommended “A child in danger is a child that can not wait”.6ab

Although India having the Constitution and more than 300 union and state legislations on children6a the Committee on Child Labour in India (Gurupadaswamy Committee, 1979) recommended for “greater social consciousness in respect of evils of child labour”.7

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4. Shrivastav, M.P., Child Labour Laws In India, 2006, P-3
5. ibid
6."The New York Times" on: Sept, 3, 1902
(http://www.nytimes.com/2007/12/14/world/europe 14germany.html)
6aa. Barua, Arunita, Child Abuse, 2003, P-26
6ab. infra note 36
6a. infra note 8, P-19
7. Sharma, Usha (ed), Child Labour In India, 2006 (quoted, Report from Ministry of Labour, Government of India, 1979), P-200
Subba Rao has reminded “Social justice” as the first priority with welfare of children. Hon’ble Justice V.R. Krishna Iyer, argued with strong regret that “child labour has not been abolished by a blanket ban”. Former CJI of India Hon’ble Justice Chandrachud referring prohibition under Article 24 of the Constitution of India stated “this does not give the legislature a charter to put children to work in other occupations”. In a prudent view Unendra Baxi has critically observed leniency in the strategy of outlawing child labour.

It is also convincing to note that “child labourer are firstly children and then labourer” so more vulnerable to cruel and inhuman treatment and more precisely, child labour provides a ‘scope for abuse and exploitation of child’ or in other words a ‘major cause of child exploitation and abuse in the world’.

Again in India, the NCRB’s perception of “crime against children” encompasses ‘offences’ in which ‘children are victimized and abused” punishable also under Child Labour (Prohibition and Regulation) Act, 1986 i.e., CL (P&R) Act, 1986 that further covers ‘offence committed’ under few other Acts u/s 15 of it. Besides, there are also penal provisions on some statutes relevant to child labour.

In this regard, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders at Havana in September 1990 indicated 'childhood drift' towards delinquency of children at 'social risk' for

17. Sekar, Helen R., Child Labour Legislation in Select Countries of South Asia, in part ‘Penalty’
'criminogenic influence' in abuse and exploitation.\textsuperscript{18}

The US Juvenile Justice Bulletin (July, 2001) has also stated that: "Maltreated children are significantly more likely than non-maltreated children to become involved in delinquent and criminal behaviour"\textsuperscript{19} and at the same time child abuse is also defined in terms of child maltreatment (WHO:1999).\textsuperscript{20} Hon'ble Justice V. R. Krishna Iyer also observed 'noxious surroundings....' likely to turn the child to 'delinquent'.\textsuperscript{21}

In a much belated effort and for the first time in India, the study on child abuse officially reported in 2007\textsuperscript{22} being regarded "breaking the silence on child abuse in the country"\textsuperscript{23} that 'complements' the UN study on Violence Against Children reported in 2006.\textsuperscript{24} This UN Secretary General's global study (2006) categorically mentioned that "the contemporary drive against child labour has been accompanied by international, academic and NGO attempts to enhance understanding of its dynamics and remedies – although violence as a specific issue has been neglected" and also noted that "the informal economy harbours most child workers across all sectors"\textsuperscript{25} with a strong view that "states have an accountability in every case of violence" that affects many millions of children 'working both legally or illegally'\textsuperscript{26} indicating "much of such violence remain hidden, unreported and under

\textsuperscript{18} http://www.asc41.com/8th UN Congress on the Prevention of Crime/018 ACONF.144.16 Prevention of Delinquency, Juvenile Justice and the Protection of the Young.pdf, P-8 to 13
\textsuperscript{20} Study On Child abuse; India 2007, MWCD, GOI, 2007, P-3, 13
\textsuperscript{21} http://www.who.int/violence_injury_prevention/violence/neglect/en/)
\textsuperscript{22}http://www.who.int/violence_injury_prevention/violence/neglect/en/)
\textsuperscript{23} ibid, P-9, 126
\textsuperscript{24} ibid, P-([III])
\textsuperscript{25} Pinheiro, Paulo Sergio, UN Study on Violence Against Children, World Report, 2006, P-239
\textsuperscript{26} UN General Assembly Report on Study on Violence Against Children, 2006, P-6,8,9,18,19,24
reported".\textsuperscript{27} This UN study has also referred the Government of India's Country Report on Violence Against Children, 2005.\textsuperscript{28}

The US Department of Labour stated (2006) highlighting this UN study that "Children experience violence in the workplace".\textsuperscript{29} At the same time, the study on child abuse in India (2007) indicated that young children (5-12) years group is "most at risk of abuse and exploitation"\textsuperscript{30}, also noted India having highest number of 'working children'\textsuperscript{31} and largest number of 'sexually abused children'.\textsuperscript{32} The recent INDUS Child Labour Project also stated in India that "millions of children work in the worst forms of child labour in certain pockets of the country".\textsuperscript{33} Such studies/reports are also explored for a vivid understanding of the problem.

As a matter of serious concern, the 21\textsuperscript{st} century has inherited the problem of child labour as a challenge, as the "most prevalent form of child abuse"\textsuperscript{34} with situations of "human rights abuses"\textsuperscript{35} however may be scattered, more particularly in its "worst forms".\textsuperscript{36}

Further, as per the ILO Bureau of statistics (1998)\textsuperscript{37} a total of 250 million child labour world wide between 5-14 years, of course reduced to a certain extent only as per ILO-2006 report.\textsuperscript{38} As per ILO-IPU (2002) the worst forms of child labour is difficult to assess\textsuperscript{39}, however, the US Department of Labour reported (2006) ILO's concern to eliminate worst forms of child labour

\textsuperscript{27} ibid
\textsuperscript{28} ibid, P-242 (quoted, Government of India 2005, Country Report on Violence Against Children 2005, New Delhi, MHRD. Department of Women and Child Development)
\textsuperscript{31} ibid, P-7
\textsuperscript{32} ibid
\textsuperscript{33} Indus Child Labour Survey: An Analysis of Results, INDUS Child Labour Porject, ILO, 2006, P-1
\textsuperscript{34} Barua, Arunitma, Crime against Children, 2002, P-359
\textsuperscript{36} Eliminating the Worst Forms of Child Labour, A practical guide to ILO Convention No.182, Hand Book for Parliamentarians No.3, ILO-IPU, 2002, P-33,38
\textsuperscript{37} ibid, P-24
\textsuperscript{38} supra note 26, P-9,10
\textsuperscript{39} supra note 36, P-24
by the year 2016.\textsuperscript{40}

In the context of India, working children under the age 14 years increased as per 2001 Census of India.\textsuperscript{41} The UN System (1998) indicated ‘other estimates’ of child labour in India ranges “from some 40 million to over 100 millions”.\textsuperscript{42} As per the Country Programme Action plan of UNICEF and GOI indicated “the percentage of working children stood at 11.8 percent in 2005-2006”.\textsuperscript{43} The National Human Rights Commission (NHRC) viewed for long after independence “child labour persists in the country” and “freeing the estimated two million children in hazardous industries by the year 2000, has not been achieved”.\textsuperscript{44} And to an utter dismal, child labour is not yet banned in this country in absolute terms, on some shocking excuses as per the governmental position.\textsuperscript{45}

In the State of Assam in north-eastern part of India officially the number of child labour 5-14 years stated as 3.51 lakh ranking 14\textsuperscript{th} as per 2001 census.\textsuperscript{45a} A recent study revealed that in north-east region child labour is really an under estimation”.\textsuperscript{45b} The IANS reported: “child labour prevails in north east, but not in official data”.\textsuperscript{45c}

The decades long ethnic and non-ethnic violence and conflicts perpetrated by political extremism and armed outfits in Assam and many other parts of north-east region worsened childhood to thousands of children and their families were exposed to riots, violence, internal displacement etc. More particularly, in some backward districts of Kokrajhar, Chirang, Baksa and Udalguri of Bodoland Territorial Areas District (BTAD), violence

\textsuperscript{40}. http://www.dol.gov/ilab/programs/ocft/PDF/2006OCFTreport.pdf \\
\textsuperscript{41}. http://labour.nic.in/cw1/Census 1971 to 2001.pdf \\
\textsuperscript{42}. UN System in India: Position Paper on Child Labour, UN System's Operational Activities for Development in India, ILO, 1998, P-20 \\
\textsuperscript{44}. Series on 'Know Your Rights', Child Labour, NHRC, New Delhi, P-15 \\
\textsuperscript{45}. Sharma, Usha (ed), Child Labour in India, 2006, P-204 (quoted, inaugural speech of the Union Labour Minister First Meeting of the Committee on Child Labour, 1979 on 7th April, 1979 at New Delhi) \\
\textsuperscript{45a} infra note 146, P-2 \\
\textsuperscript{45b} infra note 53, P-7 \\
\textsuperscript{45c} Child labour prevails in North-East, but not in official data, IANS, Thaindian news, Oct 16, 2008: http://www.thaindlan.com/newsportal/
In society is a living illustration.

A report in the ‘Frontline’ revealed that violence in this area led to displacement of more than 3 lakh people of Bodo, Adivashi and Muslim people in 1993, 1996 and 1998 affecting many children even trapped by human traffickers while clashes in October, 2008 led to displacement of more than 2 lakh people.\textsuperscript{45d}

In a leading daily, the then District and Sessions Judge of Kokrajhar district revealed that violence in this area affected large number of children staying in relief camps many were orphaned and abandoned while children were also inducted to various militant cadres and as young as 10 or 11 years used as information and message couriers.\textsuperscript{45e}

Further, in absence of a uniform standardised system of SSA in elementary level of education in Assam for effective generalisation, in another account the four districts of BTAD, viz. Kokrajhar, Chirang, Baksa, Udalguri have shown poorest performance of school students in the examination of the Secondary Education Board of Assam as per the last 5 years results against the average performance in the state.\textsuperscript{45f} In a recent news item quoted ABSU’s appeal for “protecting children from terrorism with parents initiatives and also desisting from using children for political gains” indicating further 70,000 bodo students below 14 years deprived of free and compulsory primary education along with “thousands of students of same age group among other communities” in disregard to Article 21A of the Constitution, and large number of students are ‘deprived of mid-day meal’ adding only “33% of bodos are literate”\textsuperscript{45g} however, it also collects regular yearly donations even from children in elementary classes.

The Gurupadaswamy Committee on Child Labour (1979) observed that a substantial number of working children found in various kinds, now prohibited, expressing serious concern over acuteness in the informal

\textsuperscript{45d} infra note 247
\textsuperscript{45e} infra note 248
\textsuperscript{45g} Reported, The Assam Tribune, published on 12-12-2009
sector.\textsuperscript{45h} So far the CL (P & R) Act, 1986 has covered many of them in the list of prohibited occupation (sixteen) and processes (sixty five).\textsuperscript{45l} But there are many other visible or invisible and those in the worst forms.

This empirical investigation carried out in hotels/restaurants/eating houses that only became prohibited following the Govt. of India notification for CL (P & R) Act, 1986 since October 10, 2006\textsuperscript{45j} although the study was taken up in 2005 depicts “instrumental use of children in criminal activities” however, the UN General Assembly in 1991 recognised to respond to children at ‘social risk’ to attract sanctions “against adults who are the instigators and authors of crimes, rather than against children”.\textsuperscript{45k}

The UN Child Soldiers Global Report 2008,\textsuperscript{45L} indicated, in India that “Armed groups, including Maoists and groups in Jammu and Kashmir and in the north-east, were reported to be using children” and also pointed that “Armed conflicts also continued in several north-eastern states (Assam etc.) and Jammu and Kashmir”. This report indicated in Bhutan that “tension in ‘south-east Bhutan’ led to military operations in 2003 and 2004 against three separatist groups named operating in Assam in which militants were attacked and some children were also captured.

The Human Rights Watch in the World Report 2009 also stated in India that “Armed groups are responsible for human rights abuses against civilians including the use of explosive devices and land mines, forced recruitment including of children, threats, extortion and killings” and “violence has continued in the north-east” while “a series of bomb attacks in Guwahati” and other parts of Assam on October 30, 2008, killed 84 people and injured hundreds” besides in the north-east “Armed groups are responsible for extortion, killings, forced recruitment including of children

\textsuperscript{45h} Barua, Arunima, child abuse, 2003, P-42; also, Sharma, Usha (ed), Child Labour in India, 2006, P-202
\textsuperscript{45l} Gazettee of India, Extraordinary Part II, No. 1359, New Delhi, September 25, 2008
\textsuperscript{45j} infra note 53, P-61
\textsuperscript{45k} infra note 83j, P-747
and imposition of moral diktats, often by force” indicating seriousness of naxalite movements in some other states also.\textsuperscript{45m}

It is hopefully therefore, as an urgency for ‘social defence’ measures by the ‘state and civil society’ not only requires “focusing on individuals who are recognised as offenders’ but ‘inevitably requires also reaching out to those who are vulnerable to crime” – that aims ‘not only at perfecting the system that deals with offenders but also at forestalling conditions that generate criminality”.\textsuperscript{45n}

Exploring certain theories of criminology more particularly on the social aspects of crime in the abuse of child labour however, in a limited parameter keeping specific study on juvenile delinquency beyond the scope.

A concise effort is therefore made on my part to study certain aspects of criminogenic influences pertaining to child labour with an overview of societal responsibilities in the interest of corrective efficacy in tackling offenders and prevent crime against this neglected lot.

An empirical study with exploratory and evaluative investigation is made as a part of the prime objective in this regard on child labourer in some vulnerable locations in all ten sub-divisions of the four district units of Bodoland Territorial Areas District (BTAD) in Assam.

1:2 Objective of the study:

This study proceeds with the following main objectives:

(i) To know and find out the reasons for prevalence of child labour practices in India and nature of their abuses as social crime.

(ii) To determine the criminogenic risk situations pertaining to child labour abuses in various forms and influences compelled by social, economic, demographic and other predisposing factors despite national and international initiatives.

\textsuperscript{45m} The Human Rights Watch In the World Report 2009 (http://www.hrw.org/sites/default/files/reports/wr2009_web.pdf), P-249 to 252
with an effort to inculcating social defence measures in India towards curbing it.

(iii) To highlight international instruments and assess effectiveness of the provisions of the Constitution of India and in other legislations, role of judiciary, policies and recommendations to eradicate child labour and protect children from abuses.

(iv) To assess and analyse child labour abuses particularly during ethno-political violence for Bodoland movement in 1996 and 1998, insurgency and terrorism, displacement, conflict and violence upsurge, disturbance among other factors situational to the area in Bodoland Territorial Areas Districts of Assam and to ascertain necessary steps for protecting rights of these children and prevent some serious abuses.

1:3 Hypothesis:

The present study is undertaken on the following hypothesis:

(i) That the abuse of child labourer exists as a socio-legal and economic problem in our country result in atrocities against children.

(ii) That there is lack of concerted participation in augmenting measures to combat criminogenic influence involved in it, for protection of child labourer at social risk.

(iii) That there is hardly any social defence measure taken up objectively to remedy abuse of children and child labour abuses at various unregistered establishments in so called food stalls at vulnerable areas of BTAD, also affected by ethno-political violence in 1996 and 1998, displacements, insurgency and terrorism etc. in Assam are without application of child labour laws, welfare and safeguards where employed children are exploited and exposed to perpetuate criminality in such criminogenic establishments.
That inspite of a plethora of legislations the abuse of child labour will continue.

1:4 Methodology:

(i) Both secondary and primary sources of data are taken into account within limited resources and parameter preferably relevant to this study.

(ii) Stratified random sampling is adopted however for purposive selection of subjects in the universe for a situational case study.

(iii) Empirical study is conducted to make a critical and situational analysis of the problem in several pockets in field survey.

(iv) Data collected as per questionnaire in the scheduled used for analysis.

(v) The base-line field study is conducted for first hand data in the violence hit areas now under BTAD of Assam.

1:5 Scheme of the study:

With the purpose to the objectives in view, the study is arranged and divided into the following chapters:

Chapter 1 is apart from a prelude, mainly devoted to objective of study, hypothesis and methodology; historical background of child labour; crucial support bases and landmarks; definitions and meaning of child labour; nature; magnitude; dimensions; causes and implications of child labour; and, intricacies in the problem of child labour.

Chapter 2 deals with child labour and child abuse – conceptual linkages; contextual aspects of child labour abuses; causes and factors of child labour abuse; crime & few key connotations relating child labour abuses; criminogenic influences at workplace; and exploring theories of criminology to child labour exploitation.

Chapter 3 is focused on significant international instruments on protection against child labour. This is divided into specific UN Conventions
and ILO Conventions.

Chapter 4 is related to national tools to tackle child labour abuse that denotes some provisions of the Constitution of India; provisions in national legislations; judicial responses in few landmark decisions of the Supreme Court of India and few other High Courts; and policy measures relevant to child labour.

Chapter 5 exclusively highlights the problem of child labour at work in the food stalls (i.e. hotels/restaurants/eating houses) in the bordering locations in 10 (ten) subdivisions of 4 (four) districts of BTAD in Assam. This is also studied in two segments viz. in the background of BTAD dominated by bodo tribals and an empirical investigation on child labour in 100 (one hundred) establishments with a field survey in a universe of 206 number of working children upto the age of 14 years including both boys and girls across communities.

Chapter 6 deals with an appraisal, concluding observations and suggestions.

1:6 Historical background of child labour:

Evil pertaining to children have persisted world over in all societies and all communities irrespective of any regional barriers; the most prominent of these has been 'child labour'.\textsuperscript{46} V. V. Giri said: Though child labour existed, in some form or the other, from the very early times when children were required to work in home or in the field; it was not before the Industrial Revolution in England that the evil effects of child labour became acute and attracted attention. In the early stages of Industrial Revolution, towards the close to eighteenth century, pauper children from London and other towns were put to work in the cotton factories established in Lancashire and Yorkshire. The atrocities, to which these children, housed in horribly overcrowded and unsanitary dormitories were subjected, constitute one of the darkest chapters in the history of child labour. With the advent of steam power, factories were installed in towns and in coalfields and there also

\textsuperscript{46} supra note 34, P-85
children had to work under deplorable conditions. The social evils of child labour were not confined to England alone; they were no less prevalent in Germany, Belgium, the USA and other industrialised countries and had to be combated by progressive legislation.\footnote{47} As capitalism went through, children were sucked into the labour market by the surplus-seeking entrepreneurs.\footnote{47a}

In the Indian context, from time immemorial the practice was that the children gave helping hands to their parents in the household chores and also in family occupations.\footnote{47b} Further “Though there is little evidence of the employment of children for wages, but if child slavery could be regarded as that, the existence of child labour in ancient India can not be denied. Slaves of tender age, often less than eight years of age, were owned by for doing low and ignoble work; children of slaves were born as slaves, lived as slaves and died also as slaves unless the master was manumit them”.\footnote{48}

Besides, child slaves could be purchased or sold like commodities.\footnote{49} Kautilya stated that the purchase or sale of children as slaves was not forbidden amongst Mlechehas for they were backward and savage but an Arya child could in no case be allowed to remain a slave.\footnote{49a} However, Kautilya did not favour child slaves; yet children employed in agriculture and domestic service\footnote{49b}, children were engaged as bonded labour along with parents and also helped household activities and family crafts to help parents.\footnote{50}

During medieval period, a class of landless labourer came in and became bonded to landlords; occupations were largely based on heredity, and children were engaged in their traditional craft at a younger age.\footnote{50a} At the time of Mughals, slaves could be sold like commodities; and it was laid

\begin{footnotes}
\item[47] Girl, V.V., Child Labour, Usha Sharma (ed), Child Labour in India, 2006, P-172
\item[47b] supra note 46, P-85
\item[48] Saran, K.M., 'Child Labour in India', Usha Sharma (ed), Child Labour in India, 2006, P-93
\item[49] ibid
\item[49a] ibid, (quoted, Kautiliya, “Arthasastra”, Pt.III, Ch.13, Prakaran 65-6-7)
\item[50] ibid, P-23
\item[50a] ibid, P-24,25
\end{footnotes}
down in the decree of Akbar of 1594 AD, that “A father or mother if forced by hunger and extreme misery sell their child, and afterwards when they had the means to pay, might buy it back again from servitude” and; it was a custom in parts of Sylhet (now in Bangladesh) during Jahangir to make eunuch sons in place of revenue (mal-wajibi), where some children were ruined and cut-off from procreation, until order issued against it; that also notably, Pelsaert stated in “Jahangir’s India”, saying “…a workman’s children can follow no occupation other than that of their father, nor can they inter-marry with any other caste...”.

The advent of capitalism in the modern era of industrialisation during 18th century, child labour began to be designated as a ‘social problem’ while home based work place received a jolt then got separated from the family environment and children were exposed to unhealthy environment under meager earning and long hours of work.

Large scale mechanisation in the middle of 19th century, children in large number employed in industries like cotton and jute mills and coal mines, however certain public attention was drawn inspite of active opposition from the employers, as a result the first protective legislation for child labour was enacted in Britsh India 1881, known as Indian Factories Act, 1881, forbidding employment of children below seven years of age, limiting working hours to nine hours a day with rest and safety, but covered only factories with 100 or more persons. Later on, subsequent enactments followed.

It is also clear that exploitation of child labour at early periods of history ‘is continuing in different shape and nature’ revealed in studies that: “The child/bonded labour and other forms of slavery became more visible from early medieval period till the end of British Raj. However, even after attainment of Swaraj, the system of child servitude and bonded labour continued.

Millions of children and adult labourer were enslaved in almost all the

50b. ibid, P-25,26
50c. ibid, P-27,28
51. ibid. P-28,29
industries, occupations and manufacturing process, for generating profits for their masters".51aa

Although child labour existed through its several stages of history, the twentieth century is sometimes referred to as Century of the Child.51a The UN declared the year 1979 as the International Year of the Child.51b It was only in the 20th century that child labour has begun to be seen as a matter of global concern for all nations and peoples of the world. Some of the international instruments which India ratified included were the ILO’s Minimum Age (Industry) Convention, 1919; the Universal Declaration of Human Rights, 1948; UN Convention on the Rights of the Child, 1989 etc. Apart from the Constitution of India, 1950 many other legislations also enacted. However lack of enforcement is also a hurdle on the way.

A comprehensive children’s rights regime including human rights have become more focused on the adoption of the UN Convention on the Rights of the Child, 1989 (CRC) and the UN General Assembly Special Session on Children in 2002 documented in ‘A World Fit for Children’; India ratified CRC in 1992 and two other Optional Protocols to CRC, namely, the Protocol on Sale of Children, Child Prostitution on Child Pornography and the Protocol Against the Involvement of children in Armed conflict in 2005. One of the implications, of course, is to meet the exigencies of children’s right exploited, abused or violated and victimised for violence against children.51c The NHRC and State Human Rights Commission also perform monitoring functions attending violation of children’s rights cases in the country.51d

The 21st century has inherited the problem of child labour as a challenge, a ‘most prevalent form of child abuse’51c with some embarrassing

51d. Ibid
51e. Barua, Arunima, Crime against Children, 2002, P-359
situations of 'human rights abuses', however scattered, more particularly in its 'worst forms'.

1:7 Crucial support bases & landmarks on child labour:

Among some crucial support bases towards eradicating child labour, initiatives of ILO and UNICEF are significant. ILO's global programme on International Programme for the Elimination of Child Labour (IPEC) launched in December 1991 and in India began in 1992 and ILO/IPEC role has been also enhanced to implement ILO conventions namely, the Minimum Age Convention, 1973 (No.138); Worst Forms of Child Labour Convention, 1999 (No.182); Minimum Age Recommendation 1973, (No.146); Worst Forms of Child Labour Recommendation, 1999 (No.190). The ILO/IPEC also in a way shaped to implement National Policy on Child Labour, 1987, allocated 4.15 US million dollar between 1992-96 and promoted 13,939 child beneficiaries between 1992-96. In certain development since 1999, 'IPEC became one of the eight ILO In Focus Programmes' to implement ILO's 'strategic objectives' of 'knowledge, advocacy and services' in 'high priority' areas reflected in 'comprehensive support on the implementation of ILO Conventions on the Minimum Age for Employment (No.138) and the Worst Forms of Child Labour (No.182) while 'In Focus Programme' is 'part of the Standards and Fundamental Principles and Rights at work sector'.

The US Department of Labour (USDOL) supports Project for 'Preventing and Eliminating child labour in hazardous sector' on the experiences of Integrated Area Specific Programme (IASP) has also made ILO/IPEC approach meant to cover children between 5 to 17 years originally for primary education to lower age group, withdraw from work by enforcing labour laws, traditional and vocational education apart from social mobilisation and

51g. supra note 51b, P-106
52. Infra note 53, P-101
53. Sekar, Helen R, Child Labour: Situation and Strategies for Elimination, VVGNLI, New Delhi, 2006, P-73
54. ibid, P-101
55. ibid
partnership with trade union and employers associations. ILO also implemented the Child Labour Action Support Project (CLASP) aided by the Government of Germany in India in 1992 and recently executing INDUS child labour project through Indo-US governments co-operation largely in four states with five districts in each state as per the Joint Statement on August 31, 2000 by the two governments. INDUS Project also stated 'child labour is a massive socio-economic problem' and noted "Millions of children work in the worst forms of child labour in certain pockets of the country". This project also targeted 80,000 children as beneficiaries.

The Report of Stage-1 of the survey of INDUS project (2006) in 21 districts across 4 major states in 10 identified sectors of matches, fireworks, silk, bidis, bricks, locks, glass/bangles, brass, footwear and stone quarrying revealed 272, 265 child workers in 20 projects districts in identified pockets scattered across 22 sectors (10 identified rest non-identified) highest among 4 states in Madhya Pradesh; majority of child workers engaged in non-identified sectors in Maharashtra and Tamil Nadu (71%) greater in identified sectors in Uttar Pradesh (61%) and Madhya Pradesh (55%); dominating identified sectors are bidis in Madhya Pradesh and Maharashtra, silk and matches in Tamil Nadu, and glass/bangles and bidis in Uttar Pradesh; among non-identified sectors, the highest in ‘others’ category comprising domestic workers, helping in household chores, taking care of siblings etc. followed by the sector of shops/small establishments than next rag picking, working in garages, and in small hotels/restaurants; in identified sectors female child workers (62,019) is marginally higher than males (61,817) ranging between 9-13 to 14-17 years with some variations in all 4 states; in non-

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57. INDUS Child Labour Project In Focus Programme on the Elimination of Child Labour, ILO, P-2,3
57a. Indus Child Labour Survey: An Analysis of Results, INDUS Project, ILO, 2006, P-1
57b. INDUS Child Labour Project, In Focus Programme on the Elimination of Child Labour, ILO, India, P-3; also, Sekar, Helen R., Child Labour: Situation and Strategies for Elimination, VVGNLI, 2007, P:100
identified sectors 61% are males and in three such sectors of shops/small establishments, small hotels and restaurants, and garages employ child workers in 9-13 and 14-17 age groups mostly; identified sectors are prudentially household enterprises while non-identified sectors dominated by non-household enterprises among other major findings.\textsuperscript{57c}

Similarly, UNICEF has the history of co-operation with GOI supporting programme for women and children since 1947 and 'on the issue of child labour' began in 1983\textsuperscript{58} and remarkably invested USD 400 million between 2003-07\textsuperscript{59} and also supported to setup 'child labour cell' at VVGNLI in 1990, providing technical inputs for the state government's Child Labour Action Support Scheme (CLASS) at Sivakasi in Tamil Nadu and such other support.\textsuperscript{60}

In response to threats of sanction on import of goods involving child labour by Industrialised countries UNICEF as a board member of Regmark Foundation helped for inspection system that the 'Indian carpets are child labour free'.\textsuperscript{60a} In 2004, UNICEF emphasised 'education' as 'primary strategy to tackle child labour' but stated that "often accessing schools is hard, the quality of education is poor and there are problems of overcrowding, inadequate sanitation and sexual abuse. As a result parents often encourage their children to go to work instead of going to school, to help supplement family income".\textsuperscript{61}

Notably, UNICEF is the agency for the realisation of the goals and targets of 'A World Fit for children' – an outcome document of UN General Assembly Special Session on children, New York, 2002 that provides for 'child protection in all areas' that also covers immediate steps as a matter of urgency to prohibition and elimination of worst forms of child labour including trafficking and sexual exploitation of children by any other means.\textsuperscript{61a}

\textsuperscript{57c} Indus Child Labour Survey: An Analysis of Results, INDUS Project, ILO, 2006, P-(iii), 2 to 4
\textsuperscript{58} supra note 42, P-26
\textsuperscript{59} Mapping India's Children: UNICEF in Action, UNICEF, 2004, P-12
\textsuperscript{60} supra note 42, P-26, 27
\textsuperscript{60a} UN System in India; Position Paper on Child Labour, UN System's Operational Activities for Development of India, 1998, ILO, 1998, P-27
\textsuperscript{61} supra note 59, P-58
\textsuperscript{61a} Tiwari, Jyotsna (ed). Child Abuse and Human Rights, Vol-2, 2004, P-237 to 238, 314 to 316, 329
However, the UNICEF and the Government of India entered a 'Country Programme Action Plan' (CPAP) for 2008-2012 also directed in the context of the Millennium Declaration on protection from violence, exploitation and abuse of children.62 UNICEF has also proposed 'to provide more strategic technical assistance in the states of Assam, West Bengal, Gujrat, Maharastra, Tamil Nadu, Kerala, Andhra Pradesh and Karnataka.62a 'There are other UN-supported initiatives bearing on child labour might be indirect also in India included: the UNDP's South Asia Poverty Alleviation Programme in certain districts of Andhra Pradesh and Uttar Pradesh; the UNDCP co-ordinated project involving other UN agencies mainly on preventing working conditions on street adverse to health and well being; UNESCO's Learning without Frontiers (LWF) programme in few states of India with components of formal schooling income generation, coordination of govt. and non-govt. agencies, key individuals etc. significant to elimination of child labour; the UNFPA's support to the Govt. of India's adult literacy programme targeting 9-15 years age group; UNIFEM's entrepreneurship development programmes for women for improvement of child's well-being by improving women's status; WHO's projects on street children on health awareness and services to street children; UNAIDS' activities for information and facilitating National Aids Control Organisation's role, state AIDs cells and involving NGOs in social mobilisation and advocacy concerning HIV/AIDS; the World Bank's Sericulture Project in Karnataka to replace child workers in silk industry with other means of production; are further attended with some joint UN system initiatives, like UNIFEM engaged in the regional programme on trafficking in South Asia (2001) consistent with the National Plan of Action to combat trafficking and commercial sexual exploitation more particularly at Gorakhpur district in India close to Nepal's border.63

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62. supra note 43, P-1,8,9,15,16
On the part of the GOI, the real thrust came only after the CL (P&R) Act, 1986, that followed the National Child Labour Policy, 1987\textsuperscript{64} launched for children below 14 years under National Child Labour Project (NCLP) Scheme in 1988 only in 9 (nine) districts increased to 250 districts in the 10\textsuperscript{th} plan with a budget allocation of 602 crore.\textsuperscript{65} But the commitment of the government after constituting NAECL to eliminate ‘child labour’ from ‘hazardous industries’ could not be achieved by the year 2000.\textsuperscript{66}

As per the CPAP\textsuperscript{67}, the country achieved the GDP growth rate at 9.4% in 2006-07 compared to 5.8% in 2001-02; BPL population dropped from 36% in 1993-94 to 27.5% in 2004-05; population below less than a dollar per day is 34.3% compared to 36% in 1999, although SSA launched in 2000 by MHRD spent only 2.75% of GDP in 2004-05 as govt. expenditure short by at least 6% as recommended by National Commission of Education, 70,000 children below 15 years infected with HIV reported in 2006; and abysmally low at 0.034% share of resources for child protection in 2005-06 and 2006-07 and also not effectively utilised.\textsuperscript{68}

The INDUS Child Labour Project in four states also involved major central trade unions like All India Trade Union Congress (AITUC), Bharathiya Mazdoor Sangh (BMS), Centre of Indian Trade Unions (CITU), Hind Mazdoor Sabha (HMS) and Indian National Trade Union Congress (INTUC) with their branches to ‘reduce child labour’\textsuperscript{69} while Trade Unions slogan “children to school and adults to work”\textsuperscript{70} while a few trade unions opened cell on child labour rehabilitation among other measures.\textsuperscript{71} Trade Unions also focused

\textsuperscript{64} supra note 60a, P-23
\textsuperscript{65} Chandramouli, K., Joint Secretary, MOLE, Government of India, Policy and Programme for the Rehabilitation of Working Children and Manual for the Implementation of National Child Labour Projects, Ministry of Labour and Employment, Govt. of India, New Delhi, 2006, P-i-iii
\textsuperscript{66} UN System In India: Position Paper on Child Labour, UN System’s Operational Activities for Development in India, ILO, 1998, P-23: Series on “Know your Rights” ‘Child Labour’, NHRC, New Delhi, P-15
\textsuperscript{67} supra note 43, P-1 to 9
\textsuperscript{68} supra note 30, P-6
\textsuperscript{70} ibid, P-17 to 18
\textsuperscript{71} infra note 72, P-8,16
drop outs and juvenile delinquents" and also pointed out that "child labour can not be seen in isolation" and further noted that working children are often "physically and emotionally abused". In a pragmatic view, it is also stated recently "Trade unions with a membership of more than 20 million, are recognised as a major force to spread awareness about the abuses of child labour among large section of the community. They are also in a position to influence political parties, in making commitments to initiate appropriate steps to abolish child labour". Earlier besides sensitizing trade unions ILO/IPEC also involved employers organisations like FICCI, CIE, regional bodies like PHDCCI in combating child labour.

Some NGOs devoted to supporting elimination of child labour include Action Aid India reaches more than 5 million most poor and marginalized people for food, shelter, education including street and working children; CARE India working with vulnerable families, women and girls and those affected with HIV/AIDS in 11 Indian states; Child Relief and You (CRY) based in Maharashtra targeting large number of underprivileged Indian children and child worker who are uneducated, vulnerable to protect their rights; Global March Against Child Labour involved in global movement against child labour, based at New Delhi having partners in over 150 countries, and mobilised world wide efforts to protect and promote child rights including physical, mental, spiritual, moral or social development; CINI ASHA primarily working for street children and those living in slum, squatter colonies and children of sex workers; CREDA (Center for Rural Education and Development Action) focused on rural development and child rights, women empowerment also under taking projects around Varanashi (U.P.) for elimination and rehabilitation of child labour; CWC (Concerned for

Working Children) mostly work in the area of child labour in Karnataka and its projects targeting elimination of child labour in hazardous situations due to poverty, broken homes etc; Salaam Baalak Trust primarily work on street and working children in and around New Delhi railway station towards providing formal and non-formal education; Prayas involved since 1988 for the welfare of street and neglected children, destitute and working children for their rehabilitation, education and reintegration specially in Delhi, Bihar, Gujrat and some tribal areas of Rajasthan; Save the Children (UK) in India gave thrust on elimination of worst forms of child labour and as an international NGO working in Rajasthan, West Bengal, Jammu and Kashmir; MVF (M. Venkatranjaiya Foundation) involved in elimination of child labour in Andhra Pradesh, on bonded labour, child marriage, problem of girl children and universalising child education; World Vision India also took initiatives for street children, bonded child labourer and child victims of sexual exploitations; Pratham working for childhood education in terms of achievement and attendance; Butterflies working to provide alternate education to street and working children in many areas in New Delhi.\footnote{supra note 53, P-84 to 87}

There are also smaller groups of voluntary organisations and non-governmental organisations at local levels spreading in some parts of the country towards eliminating child labour besides, several other institutions and organisations like Child Labour Rehabilitation Center in Madras, Child in Need Institution in West Bengal, Gandhian Labour Institute at Ahmedabad, V V Giri National Labour Institute in New Delhi, Ankur in New Delhi, Bonded Labour Liberation Front in New Delhi, etc. at both government and non government levels.\footnote{Sharma, Usha, Child Labour in India, 2006, P-271 to 272}

In some international landmarks included: the 1990 World Summit for children resulting World Declaration on Survival, Protection and Development of children, that called upon countries to “work for the special protection of the working child and for the abolition of illegal child labour”;

\footnote{73. supra note 53, P-84 to 87 \hspace{1cm} 73a. Sharma, Usha, Child Labour in India, 2006, P-271 to 272}
the 1990 world conference on Education for All and its resulting declaration called for flexibility in the educational system to adapt to different circumstance for children; the declaration of the 1995 conference of Non-Aligned Movement and other developing countries refers to child labour as a "moral outrage" and "an affront to human dignity" developing plan of action to eliminate child labour; in 1996 the Stockholm Congress on Commercial Sexual Exploitation of children brought child prostitution in the global agenda for the first time; in August 1996 also the Non-Aligned Movement Conference in New Delhi called for a priority to eliminating child labour in hazardous employment; at the same time in August 1996, the third SAARC Ministerial Conference on children in South Asia called for eliminating bonded child labour by 2000, with total elimination of child labour in the region by 2010; in October, 1997 the Oslo Conference on child labour broadly accepted international instruments such as the CRC (1989) and the ILO Minimum Age Convention (No.138) and urged for ‘progressively eliminate all forms of child labour for children of school going age’ with priority to ‘immediate removal of children from the most intolerable forms of child labour and to their physical and psychological rehabilitation’ with special attention to ‘high risk’ faced due to sexual exploitation and child trafficking, prostitution of girl child workers; in 1998 the International Labour Conference brought child labour in the agenda.73b

In this General Conference of ILO (86th Session) at Geneva in June 1998 adopted ‘ILO Declaration on fundamental principles and rights at work’ incurred obligation on member states of ILO including non-ratifying states for effective elimination of child labour’ and ‘all forms of forced or compulsory labour’ also among others.73c In September 1997 the 98th Inter-Parliamentary conference at Cairo expressed concern that “children throughout the world continue to suffer abuses of their human rights as result of exploitation

73c. supra note 36, P-134, 135
child labour, child trafficking, sexual exploitation and poverty" and recommends countries to allocate sufficient funds, legislative steps and networking in this regard.\textsuperscript{73d}

Remarkably, in April 2000 the Europe Parliamentary Assembly indicated 'in the modern world children are involved in armed conflicts...' most often as victims and sometimes combatants or conscripted of their rights, called to stop recruitment of child soldiers, demobilise with physical, psychological and social rehabilitation with reintegration into suitable education system.\textsuperscript{73e}

Besides in April 1991, the UN General Assembly Resolution arising from discussion in UN Crime Commission specifically focused 'instrumental use of children in criminal activities' and recognised the need to respond to situations of 'social risk' that 'cause children to be manipulated by adults into engaging in crime' and attract sanctions 'against adults who are the Instigators and authors of crimes, rather than against children' while the UNCRC, 1989 under Articles 37 and 40 refer to juvenile justice.\textsuperscript{73f}

The Eighth UN Congress on the Prevention of crime and the Treatment of offenders in September 1990 at Havana in the 'working paper' on Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions' in its agenda stated "the General Assembly, in its resolution 40/35, recognised juvenile delinquency should include measures for the protection of young persons whoever abandoned, neglected, abused or in marginal circumstances, and in general, those who are at social risk, called for the development of standards in this respect' and it should address "especially those who are most likely to commit delinquency acts, or to be exposed to crime" and noted "millions of children at 'social risk' – may be abused, neglected, exploited and marginalised' by adults allowing chance of 'childhood drift towards delinquency activities'".

\textsuperscript{73d} ibid. P-113
\textsuperscript{73e} ibid. P-112
recognising the possible cause that "criminogenic influence of early exposure to violence can have a behavioral pattern" and 'creating a vicious cycle of violence' while child abuse may involve physical, emotional and sexual abuse indicated several facts of child exploitation and street children.\textsuperscript{73g}

The UN Millennium Declaration (September 2000 in Chapter VI), encompassed protection from violence, exploitation and abuse, made stronger focus on child protection.\textsuperscript{73h} Governments set the deadline 2015 since the base year 1990, to meet the Millennium Development Goals (MDG).\textsuperscript{73i} The UN General Assembly Special Session on May, 2002 held in New York on 'A World Fit for Children' adopted declaration with principles and objectives: put children first; eradicate poverty; leave no child behind; care for every child; educate every child; protect children from harm and exploitation; protect children from war; combat HIV/AIDS; listen to children and ensure their participation; and protect the earth for children – with plan of action and urging all countries 'as a matter of priority, signing and ratifying or acceding to the convention on the Rights of the child, its operational protocols, as well as ILO conventions 138 and 182' and also resolved to achieve benchmarks during this decade (2000-2010), in priority areas of action: promoting healthy lives; providing quality education (noting 'more than 100 million children of primary school age, the majority of them girls, are not enrolled in schools.); protecting against abuse, exploitation and violence (through general protection, protection from armed conflict, combating child labour with prohibition and elimination of worst forms of child labour as a matter of urgency, elimination of trafficking and sexual

\textsuperscript{73g} Working Paper by the Secretariat (A/COFN. 144/16, 2 July 1990), Item 6 of the Provisional Agenda, Prevention of Delinquency, Juvenile Justice and the Protection of the Young; Policy Approaches and Directions, Eighth UN Congress on the Prevention Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990, P-3,8,9, to 16, http://www.asc41.com/8th UN Congress on the Prevention of Crime/018 ACONF.144.16 Prevention of Delinquency, Juvenile Justice and the Protection of the Young.pdf
exploitation of children); combating HIV/AIDS; mobilising resources (noting investments in children are extraordinarily productive if they are sustained over the medium to long term) and therefore, the countries pledged for priority to child rights, their survival, protection and development for the 'best interests of all humanity' and 'well-being of children in all societies'.

According to the US Department of Labour, Findings on the Worst Forms of child labour indicated that ILO's global goal to 'eliminating worst forms of child labour is 2016.'

In some notable approaches of concern since long back even before independence in India, the Royal Commission on Labour, 1929 under the chairmanship of John H. Whitley, also known as Whitley Commission, stated "...In many cities large number of young boys are employed for long hours and discipline is strict. Indeed there is reason to believe that corporal punishment and other disciplinary measures of a reprehensible kind are sometimes resorted to in the case of smaller children. Workers as young as five years of age may be found in some of these places working without adequate meal, intervals or weekly rest days, and 10 or 12 hours daily for sums as low as 2 annas in the case of these tender years" and indicated prevalence of child labour 'since the early days of industrialisation' and largely focused on various industries, such as 'Carpet, bidi and match making and textiles'.

The Labour Investigation Committee (Rege committee, 1944) reported in 1946 found that 'legislative measures relating to child employment with little successes in ameliorating conditions or work of child labour' and observed: "The important fact that has emerged from the investigations is

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that in various industries, mainly smaller industries, the prohibition of employment of children is disregarded quite openly, and owing to the inadequacy of the inspection staff it has become difficult to enforce the relevant provisions of the law” and recommended ‘the prohibition of child employment in industries and the adoption of measures to wean children away from industrial employment’.73m

The Labour Bureau in early fifties, concluded (1954) that “...It is however, doubtful if statistics compiled from the returns under the Factory Act tell the whole story regarding child labour. For, it is well within the experience of factory inspectors as well as other officers engaged on field enquires that no sooner they make their appearance on the scene than quite a large number of children run away from the factory premises. These are often children below the minimum age for employment” and also found that “...employment of underage children, either uncertified or having false certificate continued. The actual hours of work found to be excess of the prescribed working hours under different enactments...".73n

The First National Commission on Labour (1969) under the chairmanship of P. B. Gajerdragadkar, J. considering child labour as a ‘serious economic problem’ did not however suggested ‘complete elimination of child labour’ but recommended that “by fixing limited hours of employment for children, their education and employment should be combined”.73o This commission reveals on the problem of child labour that: “…It persists in varying degrees in the unorganised sector such as small plantations, restaurants and hotels, cotton ginning and weaving, carpet weaving, stone breaking, brick-kiln, handicrafts, road building. Employment of child workers also reported to be continuing in far-off places and in rural areas where enforcement of statutory provisions is more difficult”.73p

73m. Sharma, Usha (ed), Child Labour In India, 2006, P-167, 252, 252 (also quoted, Labour Investigation Committee, Main Report, 1946, P-35)
73n. ibid (quoted, Child Labour In India, Ministry of Labour Bureau, 1954, P-8)
73p. supra note 73m, P-170 to 171 (quoted Report of the National Commission on Labour, 1969)
Importantly, the Committee on Child Labour, 1979 headed by Shri M. S. Gurupadaswamy, also known as Gurupadaswamy Committee on Child Labour\textsuperscript{73q} recommendation among others included: recognising multiple policy approach for each specific category on the problem of working children; prescribe minimum age, for entry 15 years and for adolescents between 15 and 18 years; minimum educational qualification for entry into regulated employment; strict enforcement of legislation; more deterrent penalty and punishment in existing laws on child labour, planning commission to work out feasibility to take away working children below 15 years from labour market and replace by able-bodied unemployed; improving earnings of adult workers to Minimum Wage Act; effective educational policy with change in curriculum and educational requirements; crèches/child care centers; health check-up and housing schemes; supplementary nutrition by employers; hygienic working environment; identification of hazardous occupations; and creating media awareness on the 'evils of child labour'.\textsuperscript{73r}

The Committee’s recommendations were also reiterated by the Sanat Mehta Committee (1986) emphasising ‘need of a uniform definition of child and combining work with education’.\textsuperscript{73s} Paradoxically, the then Union Labour Minister in the inaugural general speech of the first meeting of committee on child labour on 7\textsuperscript{th} April, 1979 defended immediate legal ban on the employment of child labour on the grounds of related economic problem ‘flowing from poverty’ and the other one is administrative problem for ‘implementation’.\textsuperscript{73t}

But in a strong view “The UN system in India feels that child labour should not be accepted as a necessary evil” as the product of poverty.\textsuperscript{73u}

\textsuperscript{73q} ibid, P-196 (noted that the UN General Assembly Resolution 31/169 Dated 21.12.1976 ‘Proclaiming the year 1979 as the International year of the Child’ the Ministry of Labour, Government of India through its Resolution No.S-27025/6/78-FAC, Dated 6/7\textsuperscript{th} February, 1979 set up this 16-member Committee headed by Shri M. S. Gurupadaswamy, as the Chairman to look into the Problem of Child Labour Situation in India)

\textsuperscript{73r} ibid, P-195 to 200 (quoted, Ministry of Labour, Govt of India, New Delhi, 1979; and also noted from Paragraph 1.21 to 4.21 of the Recommendations of this Committee)

\textsuperscript{73s} Ibid, P-252

\textsuperscript{73t} ibid, P-203,204

\textsuperscript{73u} supra note 60a, P-30
However, the recommendations noted of three committees in 1929, 1944 and 1979 led to passing of CL (P & R) Act, 1986 as a remarkable break through towards the problem.\textsuperscript{73v}

The report "Women and Child Labour" of the study group commissioned by the Second National Commission on Labour, 2001 opined that "all forms of work bad for children, and any form of distinction between one form of work or another done by children is completely arbitrary".\textsuperscript{73w} This Second National Commission on Labour, 2001 in its report in 2002 although 'not recommended complete ban on employment of children altogether; but, recommended the repealing of the extant CL (P & R) Act, 1986 with a new model Act which it has suggested, viz. Child Labour (Prohibition and Rehabilitation Act), "to prohibit the employment of children in all employments and to regulate employment of children where permitted..."; no action, has however, been taken by the government on this recommendation of the commission'.\textsuperscript{73x}

Apart from the provisions under Article 24, 39(e), 39(f) etc. of the Constitution of India more particularly in Parts III & IV, a chronology of legislations\textsuperscript{73y} specific to child labour during pre and post independence era beginning with the Indian Factories Act, 1881 the present day Child Labour (Prohibition and Regulation Act), 1986 is an important piece of legislation apart from some other legislations providing penal provisions.\textsuperscript{73z}

Besides the Supreme Court decision re. M.C. Mehta Vs State of Tamil Nadu and others (AIR 1997 SC 699) in its judgment on Dec 10, 1996 along with few other High Courts could definitely brought about some changes - but banning child labour remains a distant dream although many are abused in silence.

\textsuperscript{73v} supra note 73p, P-149
\textsuperscript{73w} supra note 73o, P-147 (quoted, Report of the Study Group, P-167-168, Second National Commission on Labour, 2001)
\textsuperscript{73x} ibid, P-147, 165
\textsuperscript{73y} Awards Digest, Journal of Labour Legislation, Vol-xx: No.7-12 July-December, 1994, National Labour Institute, Nodia, 1994, P-6 to 8; also, Sharma, Usha (ed), Child Labour in India, 2006, P-252 to 256
\textsuperscript{73z} Sekar, Helen R., Child Labour Legislation in Select Countries of South Asia, VVGNLI, Noida
Ironically, the then Deputy Union Minister for Social Welfare, GOI in 1975 at a national seminar on employment of children in India organised by NIPCCD, New Delhi, considering 'child labour being an undesirable practice' stated 'but looking to our present day economic situation, it is going to remain an unavoidable evil with us quite a long time'.\textsuperscript{73aa} In the Lok Sabha Debates (1986), one member pointed out, on 'child labour' sounds harsh that "is no longer a medium of economic exploitation; it is necessitated by economic compulsions of the parents and in many cases that of the child himself. They work because they must, for their own survival and that of their families. Therefore, any attempt through legislation will not be successful..."\textsuperscript{73ab} possibly reflects a picture of inadequate willingness to curb the problem in a real spirit.

\textbf{1:8 Definitions and meaning of child labour:}

According to the Encyclopedia of Social Sciences "When the business of wage earning or of participation in self or family support conflicts directly or indirectly with the business of growth and education, the result is child labour. The function of work in childhood is primarily developmental and not economic. Children's work then, as a social good, is the direct, antithesis of child labour as a social evil".\textsuperscript{74}

The ILO-IPU (2002) has stated "child labour is work that deprives children of their childhood, their potential and their dignity and that is harmful to physical and mental development".\textsuperscript{75}

According to the Committee on Child Labour (1979) "child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful".\textsuperscript{76}

\textsuperscript{73aa}. supra note 73o, P -159,160 (quoted, the Proceeding of the National Seminar on Employment of Children in India, Mimeo).
\textsuperscript{73ab}. ibid, P-159 (quoted, Lok Sabha Debates, Seventh Session, 8th Lok Sabha, Vol-xxii, No.22, Col.329,331, December 3, 1986)
\textsuperscript{75}. Eliminating the Worst Forms of Child Labour, A Practical Guide to ILO Convention No.182, Handbook for Parliamentarians, No.3-2002, ILO and IPU, 2002, P-16
\textsuperscript{76}. supra note 74, P-146,147,163
In a way, "the two main approaches to defining child labour are: (i) it is stated any labour force activity by children below a stipulated minimum age; and (ii) any work economic or not that is injurious to health safety and development of children and the definitions and led by different patterns of work and negative effects of work on children".76a

According to ILO "Child labour includes children prematurely leading adult lives, working long hours for low wages, under conditions damaging to their health and to their physical and mental development, sometimes separated from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future".76b

According to the Operations Research Group, based in Baroda "child labour refers to a child falling within the five to fifteen age bracket and who is at remunerative work, may be paid or unpaid, and busy in any hours of a day within or outside family".76c

According to the Campaign Against Child Labour, a national network of organisation working to eradicate child labour "child labour includes children prematurely leading adult lives, working with or without wages, under conditions harmful to their physical, social, emotional and spiritual development, denying them their basic rights to education, health and development. This includes children working in any sector, profession of process, including the formal and non-formal, organised and unorganised, within or outside the family".76d

The Government of Andhra Pradesh considers "All children out of school are child labour. Being out of school is equal to the worst form of child labour under hazardous intolerable circumstances" and "harmful in the overall growth and development of the child".76e

Significantly, there are also three schools of approaches76ee in respect
of child education and work: of which the first school of thought looks education as a fundamental human right for children (5-14) years, so it is state's responsibility to provide facility; second school of thought believes in sequential and gradual, selective approach to child education for high cost involved (for 100 million plus children outside school) in contrast to the first school of thought; and third one in a different footing regards opportunities and support for work in consonance with capacity of children for those who find school education dull, demotivating and irrelevant preferring to work; however, each one has merits and demerits.

Further, 'The UN System's comprehensive view on child labour is well reflected in some of the UN agencies' definitions, e.g., UNICEF defines any child out of school as a child labour or potential child labour; UNIFEM views child labour as any work that prevents children from enjoying their childhood; UNESCO's perspective on child labour is in terms of a group with special needs.76f

However, the product side definition of child labour is any work within or outside the family that threatens health and mental development of the child by denying him or her fundamental as well as non-fundamental rights.76g

According to NHRC, “ 'Child labour' is defined as any work within or outside the family that involves time, energy, commitment, which affects the ability of a child to participate in leisure, play and educational activities. Such work impairs the health and development of a child”.76h

There are varying definitions of child labour.77 But ILO-IPU stated “it is difficult to give a precise dictionary definition of the term 'child labour' applicable to all situations and all countries".78

As noted, V. V. Giri observed that the term child labour is commonly interpreted in two ways i.e. as an economic practice and as

76f. supra note 42, P-24  
76h. Know Your Rights Series, Child Labour, NHRC, P-1 
77. supra note 53 
78. supra note 75
social evil.\textsuperscript{79}

Unfortunately and very often the social good meant for childhood ends up in "social evil" as a result of "economic practice" in child labour.\textsuperscript{80} The forces and circumstances, which compel the child to work in its early stage of childhood, do more harm than good; child labour harms not only the present generation but also the posterity of the nation as well.\textsuperscript{81} The argument that the employment of children increases the earning of the family and keeps children away from mischief is misleading.\textsuperscript{81a} Such an attempt is also contrasted in myths versus reality of child labour practices.\textsuperscript{82}

1:9 Nature of the problem:

Child labour is stated as hard reality in the world with the exceptions of a few countries and as a multi-dimensional and multi-layered phenomenon.\textsuperscript{83}

Several studies revealed child labour as a social evil. In a study, Anker and Melkas stated that child labour involves one or more of the following elements: (i) work by very young children, (ii) long hours of work on a regular full time basis, (iii) hazardous working conditions (physically and mentally), (iv) no or insufficient access, attendance or progress in school, (v) abusive treatment by the employer, and (vi) work in slave like arrangements e.g. bonded labour.\textsuperscript{83a} NHRC has also stated: "child labour is a concrete manifestation of denial of rights of children. Working children are denied their right to survival and development, education, leisure and play, opportunity for developing their physical and mental talents, and protection from abuse and neglect".\textsuperscript{83b}

Besides, as a social evil child labour has several features. Child labour, as stated, is a pernicious practice\textsuperscript{83a}, most neglected human rights issue\textsuperscript{83b},

\textsuperscript{79} infra note 83 (also quoted, Giri, V.V., Labour Problems in Indian Industries), P-21
\textsuperscript{80} supra note 74, P-146 (quoted in Encyclopedia of Social Sciences, 413)
\textsuperscript{81} infra note 83, P-20
\textsuperscript{81a} supra note 74, P-146, 147
\textsuperscript{82} supra note 53, P-12,13
\textsuperscript{83} Raj, M.S. and Chauhan, D.J., Child Labour in India Causes, Magnitude and Way-out, Problems of Child Labour India, R.K. Sen & A. Dasgupta (ed), 2003, P-21
\textsuperscript{83a} supra note 74, P-146
\textsuperscript{83b} supra note 76h, P-3
\textsuperscript{83a} Cild labour An Oerview, 1998, VVGNLI, P-109, (quoted circular issued by the Govt. of India on identification, release and rehabilitation of child labour)
\textsuperscript{83b} Sekar, Helen, R. Child Labour: A perspective, Cild Labour An Oerview, 1998, VVGNLI, P- 32
most outrageous form of child abuse, child labour face physical, cognitive, emotional, social and moral hazards, a vexed subject in India and represents of fundamental abuse of child's right and a violation of various laws, a serious crime, absolute evil when exploited, insidious problem, worst forms of victimization, societal forms of violence such as exploitative child labour, and children's involvement in armed conflict, includes instrumental use of children both as victims and perpetrators in certain situations of criminal activities by adult criminal elements, cause injuries to physical, mental, moral and social development of child among others.

The ILO-IPU, 2002 also stated: engaging children in work that exposes them in severe hazards and to unacceptable forms of abuse and exploitation is morally wrong and criminal offence perishable by law. Worst forms of child labour is stated to be "some particularly odious forms of organised crime", this document indicated. It is also revealed that child labour both visible and invisible, exists as social evil and both an economic social problem.

It therefore leads towards a living concern that child labour is a social evil not only because of the unsound economic practice, but also due to

83d. Coonghi, Clarence James, Introducing Child Labour in India with special reference to hazards child labour face http://www.oikonomia.it/oikonomia/pages/ott2000/introducingchildlabourinindi.htm
83i. Barua, Arunima, child abuse, 2003, P-140
83k. Ibid, P-744-45
83L.supra note 8, P-13,14 (quoted, Kulshrestha, J.C., Child Labour in India, 1978, P-2)
83m. supra note 75, P-107
83n. Ibid, P-30
83o. supra note 83, P-20
some inherent nature of reckless violation of child rights including human rights and criminality involved in child labour abuse. However it requires addressing both of the economic and social problems.

Hence the problem of child labour is of course serious and it is difficult to solve, but neither impossible\textsuperscript{84} nor beyond the reach.

1:10 Magnitude of the problem:

The ILO global report (The end of child labour: within reach, 2006)\textsuperscript{84a} in a latest estimate indicated in 2004, between (5-17) years economically active children at 317.4 million, child labourer 217.7 million and children in hazardous work 126.3 million respectively; and between (5-14) years economically active children 190.7 million, child labourer 165.8 million and children in hazardous work 74.4 million. This also indicated sector wise distribution in 2004 as: agriculture sector at 69%; service sector at 22%; and industry sector at 9%. This has further indicated distribution of economically active children (5-14) years by region in 2004 as: Asia and Pacific at 122.3 million; Latin America and the Caribbean at 5.7 million; Sub-Saharan Africa at 49.3 million; other regions 13.4 million and the world at 190.7 million.\textsuperscript{84aa} This also reveals two-third of the child labourer still engaged in hazardous work.\textsuperscript{85} This global report of ILO, 2006 indicated among the estimated child labourer 49.3 percent boys and 50.7 percent girls between (5-11), 54.8 percent boys and 45.2 percent girls between (12-14) and 62.1 percent boys and 37.9 percent girls between (15-17) years while among these in hazardous work 50.5 percent boys and 49.5 percent girls between (5-11), 60.6 percent boys and 39.4 percent girls between (15-17)

\textsuperscript{84} Supra note 53, P-13
\textsuperscript{84a} Report of the Director General, The end of child labour: within reach, Global Report ILO, 95\textsuperscript{th} Session, 2006, P-6,7,8 (as per this report 'economic activity includes 'productive activities undertaken by children, weather for the market or not, paid or unpaid, for few hours or full time, on casual or regular basis, legal or illegal' but excludes chores in own households and schooling; 'child labour' is based on the Minimum Age Convention of ILO, No.138; and 'hazardous work' is any activity or occupation adverse to child's safety, health and moral development and may also drive from excessive work load, physical conditions of work etc. and also from those known to be 'non hazardous or safe')
\textsuperscript{84aa} ibid
\textsuperscript{85} supra note 53, P-5
years in 2004.\textsuperscript{85a}

On the other hand, this report (ILO, 2006) has also stated that globally "the number of child labourer in both age groups of 5-14 and 5-17 fell by 11 percent over the four years from 2000 to 2004".\textsuperscript{85b} In the recent back ILO, 2002 (A Future Without Child Labour, 2002) also indicated out of 178.9 million children in worst forms of child labour 170.5 million in hazardous work and 8.4 million in unconditional worst forms comprising 5.7 million in forced and bonded labour, 0.3 million in forced recruitment into armed conflict, 1.8 million in prostitution and pornography, 0.6 million in other illicit activities and 1.2 million trafficked children in 2000 between (5-17) years, however excluded those in hidden worst forms.\textsuperscript{85c} The ILO-IPU, 2002 stated that "the number of working children in the worst forms of child labour is difficult to assess".\textsuperscript{85d}

As per UNICEF estimate in 2007 revealed: "One in six children 5-14 years old in the world, or 158 million children of which 157 million in developing countries alone are involved in child labour in 2006 (for 98 countries between 1999-2006) and also depicts poor and rural children are more likely to be in child labour.\textsuperscript{86} This report UNICEF, 2007 also indicated higher percentage of children in economic activity with 18 percent boys/male and 14 percent girls/female compared to household activities with 3 percent boys/male and 5 percent girls/female in (5-14) years.\textsuperscript{86a}

Most notably also, Gadded and White (1982) mentioned that "it is often difficult to gain reliable estimates of the incidence of child labour" and precise data is difficult to obtain "as neither governments, employers, child workers or their parents tend to be forthcoming which suggests that the available figures of the number of children working are, if any thing, an

\textsuperscript{85a} supra note 84a, P-8
\textsuperscript{85b} ibid, P-8
\textsuperscript{85d} supra note 36, P-24
\textsuperscript{86} Progress for Children, A World Fit for Children Statistical Review, UNICEF, November 6, 2007, P-43
\textsuperscript{86a} ibid
underestimation of the extent of the phenomenon".  

Some difficulties are also noted in definitional approaches for comparisons, more prevalent in unorganised or informal sector where child labour not illegal and also for illegal child labourer kept mostly hidden leading to under estimation.

Also, in a critical note quoted Gleet, saying: "His inattention to the actual numbers hides the great improvements that have been made and creates the impression that some thing drastic needs to be done".

Nevertheless, such data are more precisely informative than exhaustive as sometimes populous countries are excluded or due to lack of coverage or piecemeal information partly affecting the data, opined union Labour Minister of India in 1979 however provide immense support and indications.

The statistics on magnitude of working children is vastly inadequate in India. The State of World’s children in 2009 indicated 12% of the children (5-14 years) of the total children of India in this age group are engaged in child labour activity in 2007, with the boys and girls at 12% each, however, it includes activities of household chores or family activity. On the average UNICEF in 2004 stated 5.2% between (5-14 years) children are child labourer strictly working for others only, in India, while it would be 15%, if activities in household chores or family activities are included in the study in 2000.

India has the largest number of child labour is in India in the world.

In India, as per the census data, the magnitude of child labour between (5-14) in 1971 at 10.75 million, in 1981 at 13.64 million, in 1991 at 11.28 million and 2001 at 12.66 million.

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86c. supra note 74, P-148,149
87. supra note 7, P-201
87b. The State of World’s Children 2009, UNICEF, P-150
State-wise Distribution of Working Children according to 1971, 1981, 1991 and 2001 Census in the age group 5-14 years

<table>
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<tr>
<th>S.No</th>
<th>Name of the State/UT</th>
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<th>1981</th>
<th>1991</th>
<th>2001***</th>
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<td>1661940</td>
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Note:  
* 1971 Census figures of Assam includes figures of Mizoram.  
** Census could not be conducted.  
*** Census figures 1971 in respect of Mizoram included under Assar  
**** includes marginal workers also.

Again, as per 2001 census among 584 districts in India, 3 districts have above 1 lakh, highest in Alwar district of Rajasthan and in Assam child labour increased in 17 districts out of 23 districts.\textsuperscript{89}

On the other hand, as per estimation of certain non-governmental organisations: Boroda based Operation Research Group stated the number of working children (upto 15 years) in 1980 at 44 million; Bengalore based Concerned for Working Children (CWC) for (below 15 years) about 100 million; ILO, 1998 stated non-governmental estimation between 40 million to more than 100 million child labour in India; Campaign Against Child Labour (CACL) estimated 70-80 million child labour in the country as submitted to UNCRC in 1999; while the Planning Commission of India, GOI in 1983 put the figure at 17.36 million estimated around 20 million in 2000 and at the same time the 61\textsuperscript{st} Round of National Sample Survey Organisation (NSSO), GOI estimation in 2004-05 at 9.07 million being strongly criticised for "too narrowing the definitional approach to child labour" for which a large section of working children remained unaccounted, besides the official sources of data mostly excludes work undertaken by children in domestic or informal sector.\textsuperscript{89a}

In some related facts and figures, also revealed\textsuperscript{89b} that: Child labour is

\textsuperscript{89} Magnitude of Child Labour in India An Analysis of Official Sources of Data (Draft), National Commission for Protection of Child Rights, New Delhi


a sub-set of child population; as per Census of India, 2001 child population is declining; according to Census of India, 2001, population of children (0-14) age group is 360 million accounted 35.3% of total population and children (5-14) age group is 251 million accounted 24.6% of the total population; out of 12.66 million child labour, 6.8 million are boys and 5.8 million are girls as per 2001 census, as against out of 11.28 million child labour comprising 6.189 million boys and 5.095 million girls as estimated in 1991 census; work participation (i.e. proportion) rate of child labour in India to (5-14) age group child population decreased to 5% in 2001 from 5.37% in 1991; share of workers of the country aged (5-14) age group to the total work force in 3.15% as per 2001 census (ILO); some states including Assam has shown higher percentage growth of child labour incidents and percentage of work participation rate; child labour mostly found in agricultural sector at 44 percent, in manufacturing etc. at 3 percent, in factory works at 3 percent, in service sector at 15 percent and others at 35 percent as per 1991 census, however 61st Round NSSO report in 2004-05 indicated 68.14% in agricultural sector; child labourer are mainly employed in informal and unorganised sector and around 2 million as per ILO, 1998 in hazardous industries; the percentage of work force participation rate of child labour by caste is highest among ST (3.79%) followed by SC (2.80%), OBC (2.87%) and others (2.03%) showing 2.74% among all these categories as per 61st NSSO round (2004-05) while as per 2001 census ST population is lowest only 8.2% followed by SC 16.2% compared to others; the 61st NSS round (2004-05) also reveals the percentage of work force participation rate of child labour by religion is highest among Muslims (3.47%) followed by Hindu (2.48%) and Christians (1.63%) depicted 2.58% in all these three religious groups; as per 2001 census Hindu population at majority (80.5%), Muslims (13.4%) and other constitutes 6%; India has the largest contingent of child labour, however, some of the other countries have higher percentage of child labour proportion than India in 2000.
1:11 Dimensions of child labour:

Child labour is classified being found in several dimensions. According to UN System (1998) they are mostly found in unorganised sector and falls under the categories like forced and bonded labour, commercial and sexual exploitation, industrial work, agriculture/plantation work and related activities, street work, domestic servants, and family and girls work.\textsuperscript{90} As quoted, according to Gerry Rodgers and Guy Standing (Child Work, Poverty and Under Development, ILO, 1981) that “working children are usually classified in terms of work situations in (a) domestic work, (b) non-domestic and non-monetary work, (c) bonded labour work, (d) wage work in hazardous and non hazardous acceptations, and (e) commercial sexual exploitation work and also added each work situation has deep rooted consequences on their human rights, healthcare and future economic production process”.\textsuperscript{90a} In various sectors of economy in a way, they are found in manufacturing sector like, brassware, lock, carpet making etc; agrarian sector like migrant labour, bonded labour etc and in service sector of informal activities like vending, begging, working in dhabas or domestic labourer etc.\textsuperscript{91}

In a typology, they are also found in concentrated and visible child labour like garbage collectors, workers in small repairing shops etc., concentrated and invisible child labour like brick kiln workers, quarry and factory works etc., dispersed yet visible child labour like selling news papers, workers in hotels and restaurants etc. and dispersed and invisible child labour like domestic servants, making toys, shoes, carpets in family based industries etc. even in pornography mostly in unorganised sector and difficult to count.\textsuperscript{92}

In a further extended out look, there are invisible child labour mostly

\textsuperscript{90} supra note 42, P-14
\textsuperscript{90a} Paul, Thomas, Child Labour Prohibition v. Abolition: Untangling the Constitutional Tangle Vol.50, No.2, April-June, 2008, P-149
\textsuperscript{91} supra note 53, P-8
In unorganised and informal sector, migrant child labour mostly from rural to urban, involved in abusive employment associated to child refugees and IDPs and also used as tools of armed conflict, bonded child labour mostly sold or pledged by parents or guardians for debt or loan at huge interest, children on the streets having family but mostly spend time on the street that may or may not contribute to family income, children of the street left families mostly shifted to towns or cities and stay at bus or railway stations, abandoned or orphaned children mostly abandoned by families without support, no where children or potential child labour also called 'reserve child labour force' neither at school nor at work and loss employability at adulthood, child labour within and with families working along side parents in farms, handicrafts, as domestics etc., girls child labour largely abused for discrimination and involved in taking care of sibling's caring, cleaning etc., and worst forms of child labour under Article 3 of the ILO Convention No.182.\(^\text{92a}\)

However, none of these manifestations is unique, nor there is any watertight compartment in categorising and there might also appear repetition in approaches.\(^\text{93}\) In a more rational view, the study group commissioned by the Second National Commission on Labour (Reported in 2001) on “Women and Child Labour” stated about work at home and outside that “all forms of work are bad for children and any form of distinction between one form of work or another done by children is completely arbitrary”.\(^\text{93a}\)

92a. Baruah, Arunima, Crime against Children, 2002, P-88,90,92 to 95, 97; Sekar, Helen R, Child Labour: Situation and Strategies for Elimination, VVGNI, New Delhi, 2006, P-9 to 11; Barua, Arunima, child abuse, 2003, P-93 to 104,132; Magnitude of Child Labour in India An Analysis of Official Sources of Data (Draft),NCPCR: Eliminating the Worst Forms of Child Labour, A practical guide to ILO Convention No.182, Handbook for Parliamentarians No.3, ILO-IPU, 2002, P-1,2,121; ILO Convention No.182 (Art. 3) and Recommendation No.190; Dutta, Mondira, Magnitude of Child Labour with Special Reference to the Girl Child- An Indian Scenario, Child Labour Rehabilitation In India, Bhupinder Zutshi and Mondira Dutta (ed), 1998, P-48 to 64
93. supra note 34, P. 97
1:12 Causes & implications of child labour:

The causes of child labour are deep rooted – not one but many. This may include circumstances like poverty, low family income, illiteracy, caste, tradition, lack of interest in study, loss of parents at an early age, however also not exhaustive and may also be due to displacements, unemployment and under employment of adults while poverty, illiteracy, displacement, unemployment also noted as some cause and consequence. The UN System indicated the causes of child labour as: exploitation of poverty for commercial or social reasons; absence of relevant education; and social attitudes and caste factors.

However, specific reasons may vary in each case depending on the economic, social and cultural factors in the supply side as “push factors” and preference for employers in the demand side as “pull factors”. In such “push factors” the economic reason may include: weak financial position of the families, parents not getting minimum wages, lack of resources for survival livelihood and consequently, migration to search of employment, adult unemployment/under employment, large family size, as children are used as a means of income, lack of basic civic services, early childhood care facilities, health care etc.; the social reasons may include: illiteracy of parents, ignorance of parents about the adverse consequence of child labour, absence of universal primary education, irrelevant and non-attractive school curriculum, non-availability and inaccessibility of schools, social apathy and tolerance of child labour, occupational rigidities of caste system (most of the child labour families are either SC or ST or BC); and cultural reasons may include: tradition of making children learn the family skill, attitude towards girl child where girls are meant to start working at an early age, without the need for being educated, ignorance of parents about the service

94. supra note 74, P-149
96. supra note 74, P-150
97. supra note 42, P-14-15
98. supra note 53, P-10,11
consequence of child labour while the “pull factors” may comprise reasons, such as: employment structured in unorganised sector, proliferation of informal sector, in effective enforcement of legal provisions pertaining to child labour, employers prefer children as they constitute cheap labour; globalization and existing trade policies, creation of cultural myths by employers, lack of strong determination and will power among Govt. officials.\textsuperscript{98a}

Further, NHRC in a limited sense stated child labour is inherent in the vicious cycle of poverty, low wages, unemployment and under employment while certain causes of child labour are: ignorance of parents about consequence of child labour, social apathy towards child labour, employers preference for child labour as they constitute cheap labour, children supplement the income of the family, rigidities of caste and traditions, unattractive schools and curriculum, migration, ineffective law enforcement on child labour etc.\textsuperscript{98b} Moreover, of various perceptions of ‘social environment’ child labour is yet to be seen as an undesirable thing; physical and logistic difficulties to get information on child labour as they disappear mostly on records and possible visits by inspectors; and certain legal difficulties to prove by inspectors for technical reasons.\textsuperscript{98c} In this regard the Director of National Labour Institute (1994) indicated constrains of enforcing legislations, firstly, for inadequate efficacy of legal provisions and effectiveness of enforcement machinery and secondly attitude of parents and different sections of society towards the practice of child labour.\textsuperscript{98d}

On further emphasis studies on the phenomenon of urban and rural child labour exploitation also revealed certain distinctive aspects. Urban

\textsuperscript{98b} Know Your Rights Series, NHRC, P-4,5
\textsuperscript{98c} Gupta, Meena, Special Problems of Enforcement of Child Labour Laws and Regulations, Awards Digest, National Labour Institutes, Journal of Labour Legislation, Vol-xx, No.7-12, July-December, 1994, P-27 to 31
child labourer are mostly found within a family as unpaid workers; within the family but outside the home; and outside family in informal sector or in households or in the street on adverse conditions and strain whether paid or unpaid sometimes physically and sexually assaulted by the employer or others. The urban child labour is also a cheap labour given the competitive labour market for exploitation for availability of so called ‘nimble fingers’, a study indicated contributing 20-30 percent of family income and another study (Standing 1982:614) indicated legal instruments are excessively abstract and fail to attack specific cases of ‘super exploitation’ while mentioned chance of “existence of strong class collaboration between implementation authorities and employers of child labour”. There is also insidious preference of child over adult workers, on the ground of age, nature and availability for employment at low wages or no wage; incapacity to bargain, resist, form unions etc.; some times have to pay commissions for the work they do in railway platform as porters, cleaners or at tea stalls, restaurants etc. for paltry sums and discrimination between male and female child workers adds among other advantages for exploitation. NHRC also added reasons for exploitation as: Children are preferred for ‘nimble fingers’; they do not absent from work; being gullible and innocent they can be easily manipulated; being ignorant they do not realise the hazards of the job they are doing; their maintenance cost is very low; and they can be removed as when their services are not required among others.

Rural child labour exploitation is mostly found in agriculture and allied activities that also comprise family based work or self-employment, also as bonded labourer and notably 90% of child labourer resides in rural

100. supra note 74, P-150
101. supra note 99, P-43
102a. supra note 98b, P-5
areas. Child agricultural workers often exposed to excessive sunlight, heat or rain chemicals, pesticides etc. being not told of its dangerous and many of them are bonded; some others in household works at a tender age of 5-6 years in most cases children of marginal framers or agricultural labourer, also undertaking domestic chores and child care at home freeing adults for wage labour as a part of survival of poor households (Mohsin: 1996); in some traditional practice children are kept in a state of debt bondage to serve their master's family for loans taken by poorer household at exorbitant interests at off seasons or to spend even for child marriage or other traditional fests also, that remain unpaid by the time children reach adulthood; some times supplements family income by taking up jobs in stone crashing, sand loading, bidi making etc. on piece rate basis; and some times also subcontractors engaged children at cheap labour by contracting out production units in villages making it difficult to locate by enforcement agencies keeping links often with village bureaucracy to hide facts. In the rural areas, children's work is characterised by poverty, larger family size, illiteracy and unattractive school education, unemployment non implementation of minimum wages, class-caste conflicts and rivalries leading migration of families, traditional practices, system of usury, defective system in selecting poor and needy beneficiaries for poverty alleviation sachems etc. mounting higher concentration of child labour for abuse and exploitation. A study in a village in 24 Parganas (North) district of West Bengal revealed in 32 types of children work from ploughing to smuggling and begging

However, it is pertinent to mention that huge chunk of child labour both from urban and rural areas join service sector including roadside hotels and restaurants, domestic services with a host of many other activities hoping for free meals to overcome starvation, free to move around, less resistance of parents etc. but marked with high degree of abuse and exploitation. As a matter of serious thrust on the problem, poverty and child labour reinforce themselves, because poor families have economic compulsions putting the child to the risks of inhuman exploitation. Poverty situation is also some times over burdened with vicious home environment, broken homes etc.

It is therefore tricky again to find who is really responsible for such abuse and exploitation of children and who’s responsibility to serve the “best interest of the child” as per the fundamental tenet of CRC?

In this regard, in some cultural practices the parent-child relationship on the basis of Patriae Potestas suggests monopoly power on parents to do anything with their child, including pledging, selling or even sacrificing for family well-being by way of tradition. In some horrible experience (Pande:2001; 2006) also indicated ‘barely clad’ children sold between Rs 500/- to 2000/- on ‘mandy day’ in full public gaze at Varanasi and parents also bounding children to work in match sticks, zari, carpet etc. industries in 'North and South India even today'. Such a tradition and culture might lead to systematic exploitation also. Again, on the basis of Parens Patriae,

105a. supra note 10, P-150
107a. ibid, P-78 to 80
in the parent child relation the monopoly of parents did pass to impersonal state exercising as ultimate parent of every child, however also attracted criticism for abandoned children might become child labour and the punishment of imprisonment upto 7 years under section 317 of Indian Penal Code, 1860 turned to six months imprisonment under section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 as such legitimizing criminalisation of abandonment equating to surrendering of children by parents. Both the situations are therefore to be seen in the light of rearing of children in the natural family environment under Article 18 and responsibility of the state under Article 19 of the CRC. It is therefore revealed, that the official mindset has not done anything superbly exceptional, as far as responsibility of childhood is concerned in the blend of parens patriae from the queer mindset in patriae potestas, as relevant in the continued existence even today of the worst forms of child labour, child abuse and violation of children’s right.

As far as responsibility of society/community is concerned, how can the responsibility of society be denied when child labour is conceived as a situation in which children are victims of adult greed? This exploitation continues as they are not protectively connected to society. For example, children from scheduled castes in South Asia are reported to be especially vulnerable to such exclusion, as are girls children of ethnic and religious minorities, refugee children, or children of the landless poor in many parts of the world (quoted Myers – 2000).

As noted (Putnam:2000) that: “Child development is powerfully shaped by social capital. A considerable body of research dating back at least fifty years has demonstrated that trust, networks, and norms of reciprocity within a child’s family, school, peer group and larger community have wide ranging effects on the child’s opportunities

109. supra note 107, P-81
109a. ibid, P-81
109c. Chakrabarty, Sudip, Child Labour in Rural Context, 2006, P-30
and choices and hence, on his behavior and development".109d

Of course whether it is a matter of excuse or a responsibility for the best interests of the children that: out of an official estimate of around 270 million which in fact may be as high as 500 million persons go to bed hungry, about 23 percent of the total population which means 58.2 million children in terms official statistics go to bed hungry. Many of them have to work for basic physical survival to save their childhood; living burnt to ash and forced to dump their childhood in cinder of involuntary labour.109e

But to refer a reality for childhood responsibility also holds good for curbing child labour, noted economist Edward (1996) observed "children are our future" and thus "children will have permanent effects on society's capacity to develop".110

It is to be noted here that the extent of child labour is partly influenced by the way in which Indian society reacts to the problem.110a In India marked indifference or lack of conviction stands in the way of tackling the problem of child labour effectively.110b It is a fact that civil society active groups and NGOs like M. V. Foundation, CREDA, Sanlap etc. doing some commendable services.111

As a part of responsibility is concerned the Inter-Parliamentary Workshop on children February 1997 stated, "The child is to be respected as a subject of rights and a human being needing special attention and assistance from the state and society".111a In a remark, it is stated, "we must not forget that we the adults are real "culprits" in letting the child labour to persist, the children are innocent".111b

109d. ibid, P-31,32
109e. Ray Burman, B.K., Development, Distribution and Displacement Scenario in India, Globalization, Development and Child Rights, Kallash Satyarthi and Bhupender Zutshi (ed), 2006, P-95
110. Chakrabarty, Sudip, Child Labour In Rural Context, 2006, P-70
110b. ibid
111. supra note 108, P-89
Ellas Mendelievich has also remarked: "It is not the family that should carry the blame for the fact that the child has to work, since the courses of action open to the family are few in number. It is society as a whole that is at fault" in a study quoted. In any case the responsibility is clear in CRC that "children first" it can not wait and the legal imperative is in the best interest of children.

1:13 Intricacies in the problem of child labour:

Studies on child labour reveal that the problem remains entangled with several intricacies in addressing the issue although the phenomenon involves large scale abuse of children. Some of the intricacies are noted below.

A. Child labour and exploitation of child labour

The term 'child labour' is often used synonymously with 'employed child' or 'working child' but more commonly it suggests something which is hateful and exploitative. The Gurupadaswamy committee on child labour (1979) in India recognising the distinction between child labour and exploitation of child labour, stated 'both as problems' but maintained 'they are of different orders' with a strong remark that "labour becomes an absolute evil in the case of the child when he is required to work beyond his physical capacity, when hours of employment interfere with his education, recreation and rest, when his wages are not commensurate with the quantum of work done, and when the occupation he is engaged in endangers his health and safety i.e. when he is exploited".

In a study, it was quoted that Mahatma Gandhi who in 1920 wrote in 'Young India' that: "...as the larger part of our time is devoted to labour for earning our bread, our children must from their infancy, be taught the dignity of such labour..." which must not carry 'demeaning' as "in defense of...

115a. ibid
child labour" but Gandhiji's concern was "to raise the dignity and status of those caste and classes in Indian society, which had traditionally been assigned the most menial tasks like scavenging" and so pointed out that Gandhiji was "fighting for equality and not inequality, which is being perpetrated through child labour".115b

B. The dichotomy between provisions

The dichotomy between provisions of Article 24 and Article 45 (now amended inserting under Article 21A; 86th amendment, 2002) of the Constitution, demands clearly 'if the employment of children is prohibited in hazardous occupations, does this imply that children are permitted to work in non-hazardous occupations? How to reconcile, fundamental right to receive free and compulsory primary education at a particular age, going to school and also to permit at the same time to work, if the work is non-hazardous? Does it mean earning with learning can be combined under non-hazardous conditions of work? Obviously a 'myth' as 'neither possible nor desirable'; the Supreme Court (re. M. C. Mehta vs. State of Tamil Nadu and others, AIR 1997 SC 699) also, on the existing law itself "in Civil Writ application No.465 dated December 10, 1996 in the judgment in paragraph No.31 (10)" has observed that children in non-hazardous employment should receive education for two hours a day" while work is permitted to 4-6 hours a day; the CL (P & R) Act, 1986 also 'permits children' to work accept those prohibited under the Act.'116 In the same line also viewed "definitely, child labour and education can not go together"; 'a child can not be at two places at the same time' i.e. in school and at work, 'earning while learning' is contrary to providing 'meaningful education'.116a

Further the word 'hazardous' in Article 24 of the constitution requires 'expanded interpretation' and the 'concept of hazardous/non-hazardous is

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relative' under CL (P & R) Act, 1986 as 'non-hazardous employment today may become hazardous tomorrow' and it stands relevant that prohibiting 'hazardous' employment under Article 24 of the Constitution "does not give legislature a charter to put children to work in other occupations" and Article 24 is to be studied "in the light of the Directive Principles of State Policy which is crucial" strongly viewed Hon'ble former CJI Chandrachud.116b

According to ILO-2006, 'hazardous work' is any activity or occupation adverse to child's safety, health and moral development and may also drive from excessive work load, physical conditions of work etc. and also from those known to be 'non hazardous or safe'.116c

C. Acceptable and unacceptable forms

This may be understood starting with possibly what does not mean by the term child labour. The INDUS child labour project in 2006 stated: children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling is regarded as being something positive. This includes activities, such as, helping their parents, care for the home and the family, assisting in a family business or earning pocket money outside school hours and during school holidays. Such activities contribute to children's development and to the welfare of their families, provides them with skills and experience, and further help in preparing them to be productive members of society during their adult life.117

Such activities 'in no way' be 'equated with child labour'.117a

On the other hand, child labour (ILO–IPU, 2002) refers to "work that: is mentally, physically, socially or morally dangerous and harmful to children' and interferes with their schooling".117b

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116b. ibid, P-166, 169, 173 (also quoted, Neera, Burra, Child Labour in India: Poverty Exploitation and Interest)
117b. ibid
An intricacy is also indicated, according to the (ILO-IPU, 2002) in the 'line between the acceptable and unacceptable' forms to eliminate 'worst forms of child labour' urgently.\textsuperscript{117c} It is stated that some human rights of children have been "violated through particularly repugnant and unacceptable forms of child labour"\textsuperscript{117d} and mentioned that "the worst child labour abuses occur among the poorest and the most vulnerable groups in society" and it calls for 'first priority to children at greatest risk and to rehabilitating those subjected to the most abusive and hazardous forms of exploitation".\textsuperscript{117e} That refers to ILO Convention No. 182, but also maintained "that does not mean that the ultimate goal of the elimination of all forms of child labour has been abandoned" rather, it is simply a matter of giving priority of "doing first things first".\textsuperscript{117f}.

The UN System (1998) also believes that "it is imperative to abolish the most exploitative and intolerable forms of child labour as a first priority which include child prostitution and trafficking, employment of very young children, child labour in hazardous occupations and process and any form of child labour under abusive and exploitative conditions that severely damages the child's mental, physical, moral and social development".\textsuperscript{117g}

Again, according to the US Department of labour (2006) noted that the conditional worst forms of child labour refers to activities that can only be determined to be 'worst forms' by relevant national authorities.\textsuperscript{117h} In this regard, Article 3 (d) of ILO Convention No. 182 provides a general description of those potentially hazardous forms of labour, and Article 4 makes clear that such work should be defined by national laws on consultation.\textsuperscript{117i} Some of these hazardous form could again constitute 'acceptable' forms of work in case "if certain conditions were changed". e.g. work with dangerous tools.
or chemicals or work for long hours or at night.\textsuperscript{117j}

In fact, one of the toughest hurdles perhaps would be to diagnose or identify worst forms of child labour, as most unacceptable form than any other forms, from a mix and that remains mostly hidden in a complex of child labour in various forms and dimensions.

**D. Child labour in economic activities**

According to the U.S. Department of labour: Economic activity is defined by ILO as "the production of economic goods and services as defined by the United Nations System of national accounts and balances during a specified time reference period" (quoted ILO, Current International Recommendations on Labour Statistics: 2000 edition, Geneva, 2000).\textsuperscript{118}

The report of the Director General, The end of child labour: Within reach, Global Report, ILO, 95th Session (2006:6-8) stated 'economic activity' includes 'productive activities undertaken by children, whether for the market or not, paid or unpaid, for few hours or full time, on casual or regular basis, legal or illegal' but excludes chores in own households and schooling.\textsuperscript{118a}

Economic activities may further be broken down into market and non-market activities, market activities i.e., those goods and services intended to sale or one sold to the market, non-market economic activities include e.g., bottling, dress making and tailoring, and the production of better, chose or flour for the household's own consumption.\textsuperscript{118b} But non-market activities are typically excluded from current child labour surveys altogether or are not measured in enough detail to enable their full inclusion in an estimate of economic activity – for these reasons, the statistics on working children presented in this report generally represents children involved in market activities" it is stated.\textsuperscript{118c}

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\textsuperscript{117j. ibid}
\textsuperscript{118. ibid, P-XXXII}
\textsuperscript{118b. ibid}
\textsuperscript{118c. ibid}
E. Minimum age variations

As the precise age of what constitutes child labour has not been laid down anywhere because of variation in the age of child under different enactments and in different countries, the definition of child labour varies from one act to another depending upon the problems of children working in particular employment.119

The ILO in 2002 stated: “A particularly complex problem arises from the fact that in many countries, protective labour legislation including minimum age legislation, excludes whole sectors or occupations from its scope. These include agriculture, domestic service and small workshops in the informal sector, which are precisely the sectors where a majority of working children are to be found and where they are labeled to be employed in potentially hazardous and in some cases abusive conditions. Even such sectors are covered by legislation; the enforcement of legislations is exceptionally difficult. Many of the most abusive types of child labour are hidden and the perpetrators of such abuse (for instance, slave labour, bonded labour and other extreme forms of exploitation) go to great lengths to make sure that they are not discovered”.119a

As per some of the ILO Conventions setting standards for minimum age and few of them ratified by India differs in terms of age, prohibiting employment of children.119b

It is significant to note that the basic (general) minimum age as per the ILO’s Minimum Age Convention, 1973 (No.138) should not be less than that required for compulsory schooling and in no case less than 15 years however with certain relaxation for developing countries.119c

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119a. supra note 117a, P-44  
Minimum Age under ILO Convention No. 138

<table>
<thead>
<tr>
<th>Minimum Age</th>
<th>For all Countries</th>
<th>Relaxation for developing countries (where economic and educational facilities insufficient)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic/General</td>
<td>15 Years</td>
<td>14 Years initially</td>
</tr>
<tr>
<td>Dangerous/Hazardous works (with certain safeguards and conditions)</td>
<td>18 years (16 years under certain strict conditions)</td>
<td>No exception or relaxation</td>
</tr>
<tr>
<td>Light work (not affecting health development and schooling)</td>
<td>13 years to 15 years</td>
<td>12 years to 14 years</td>
</tr>
</tbody>
</table>

Source: Extracted from VVGNLI, 1998 and ILO-IPU, 2002

However, India has not ratified the ILO Convention No. 138 but India has ratified the United Nations Convention on the Rights of the Child, 1989 (CRC) in 1992 (specifying under Art. 1 as child means person below 18 years) that requires the state to provide for minimum age for admission to employment, regulation on the hours and conditions of employment and penalties or sanctions for infringement.\(^{119d}\)

India has also not ratified the ILO Convention No. 182 however, ratified in 2005 two Optional Protocols of UNCRC, 1989 entered into force in 2002\(^{120}\) that prescribes child as a person below 18 years. The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery (CAS), 1956 also provides child as a person less than 18 years.\(^{120a}\)

In fact, the most abusive types of child labour are hidden\(^{121}\) and there is also no uniform definition of child in India, which varies under various provisions of law.

Such intricacies although somewhat perfunctory or latent however not exhaustive in the cross-road of isolating child labour from exploitative child labour, in acceptable or unacceptable forms, on the prevalence of the

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\(^{119d}\) ibid, P-65
\(^{120}\) Convention on the Rights of the Child with Optional Protocols, UNICEF, August 2007, P-(tv),21,30
\(^{120a}\) ibid, P-(iv),31; also, Usha Sarma (ed), Relevant International Instruments Covering Child Labour, 2006 (quoted, extracts from U.N. Economic and Social Council Document), Child Labour in India, 2006, P-59
\(^{121}\) supra note 117, P-44
worst forms of child labour, involvement of children in market or non-market economic activity, followed by absence of a uniform age of child, apart from the terms hazardous/non-hazardous is only being relative for legal determination, more particularly in the child labour law of India. However, the Constitution of India prescribes to eliminate exploitation of children, the Child Labour (Prohibition and Regulation) Act, 1986 in this regard being a prominent one, although is a piecemeal legislative step, besides India has an international obligation specifically under the UNCRC, 1989 and two other Optional Protocols under it for being ratified among others.