Chapter – 2

APPROACHING CHILD LABOUR ABUSES - AN UNDERLYING EXERCISE

2:1 Child labour and child abuse – Conceptual linkages:

It is pointed out that "Child labour is the most outrageous form of child abuse...". Child labour also remains a major cause of child exploitation and abuse in the world, depriving millions of children worldwide of adequate food, shelter, good health, education, safety and security. They are vulnerable to exploitation by almost anyone - the employer, the parents, the cops, and even the common man. They become easy targets of drug pushers, sexual abusers etc.

Several studies indicated that child abuse persists in almost all the forms of child labour visible or invisible, in every sector of child employment, in rural or urban areas of child labour phenomenon while the worst forms of child labour face some of the so called intolerable extremities of child abuse, however insidious. Many of these children are victims of the "worst forms" of child labour, which include slavery, bonded labour, drug trafficking, commercial sexual exploitation, domestic labour, armed conflict and all other physically and morally hazardous types of work. It is also indicated that children below 15 years even involved in armed conflict in 1990 in some countries and also indicated in North-East of India dramatic for indigenous children.

122a. supra note 18, P-9 to 12
122b. ibid
123a. ibid, P-112
Describing the sadistic plight of child labour abuse (quoted, Banerjee, S.: 1979), it is stated that some of the ways in which children are abused in this country, and others that permit their use, in the labour market is by making them work for long hours for a fraction of what adult worker would earn. They are often engaged in mechanical, repetitive tasks resulting in unbalanced development of muscles and nervous strain. Worse still many of them are engaged in dangerous jobs in unsafe working conditions, exposed to hazardous toxic environments that can permanently cripple, maim or even kill them. Sexual abuse by employers and others is another hazard these children face.

Quite apart from children being engaged as labour there are more treacherous techniques of using children for economic gains. A large section of children are sent out to beg, others to pick pockets and indulge in other criminal activities such as acting as carriers in bootlegging, smuggling or drug dealing operations. Children are deliberately maimed to make them more suitable for begging and those born with handicaps are particularly found suited to beg. Also there are children kidnapped and channeled into prostitution and pornography and into slavery exists even today in certain middle-eastern feudal society. With regard to female child exploitation, in a largely male dominated society, both sociological and economic factors perpetuate an unjust discrimination and abuse against the female child. 123b

It is remarked: “With reference to an estimated 44 million strong child labour force in the unorganized sector, about 40 percent are girls and their numbers are increasing in an alarming rate. Units such as the ones manufacturing fire works, match sticks and bidis have a special preference for girls. Of the estimated 2.5 million bidi workers 90 percent are girls and they are reported to be in appalling condition”123c the study indicated.

Most pertinently in India, class and caste structure in society also are responsible for a great deal of subtle and blatant, discrimination against,

123c. ibid, P-XXIV
and abuse of children of backward and lower classes, mostly in the supply side of child labour towards emotional, psychological and physical problems. Branding, maiming etc. and cultural sanction to child marriage despite legislation quite pathetically to follow in child labour and face physical and psychological abuse.\textsuperscript{123d}

Even the schools for children are not free from this vice, because schools constitute a situation where children can be abused both physically and emotionally, and most often parents have no say in matters of school discipline.\textsuperscript{123e} School dropouts leading to child labour in such a situation is quite obvious.

In a critical view over legislations, also stated ‘...child labour...has become state aided abuse after its legitimization throughout the Child Labour (Prohibition and Regulation) Act, 1986’\textsuperscript{123f} Pertinently, some underlying aspects are also noted below in this study.

- **Some concepts and linkages**

  Any attempt to define and clarify the concept of child abuse runs into several difficulties because largely been explained in western contexts and in using of the term in multidisciplinary nature of issues.\textsuperscript{124}

  Regarding definition, it is an enduring problem, in absence of universal standard of child rearing, so there is no universal standard of what constitutes child abuse.\textsuperscript{125} Long year of debate and discussion have not so far yielded such a conclusive definition of child abuse.\textsuperscript{125a}

  The child abuse study in India (2007) also expressed “A universal definition of child abuse in the Indian context does not exist and has yet to be defined” however stated ‘child abuse’ in terms of ‘child maltreatment’ as per the perception of WHO (1999)\textsuperscript{125b}; but this study in India stated ‘meant

\begin{itemize}
\item \textsuperscript{123d}. Ibid, P-XXV
\item \textsuperscript{123e}. Ibid
\item \textsuperscript{123f}. supra note 122, P-18
\item \textsuperscript{124}. Barua, Arunima, child abuse, 2003, P-118
\item \textsuperscript{125}. supra note 123b, P-XVII
\item \textsuperscript{125a}. Ibid
\item \textsuperscript{125b}. supra note 22, P-3
\end{itemize}
to complement the Global study on violence against children (2006) that has categorically incorporated Article 19 of CRC in a much wider perception to define 'violence' in this study. Some definitional approaches so far on interlinking establish strong conceptual linkages extending to violence and also to child victimisation that could also cover both primary and secondary 'crime victim' specially in case of children. Child labour is also stated as one of the worst forms of victimisation taking place through various forms of violence and mostly hidden and unreported that also incorporates that the 'crimes committed' against children might led to both criminal and non-criminal victimisation. Further, according to UNICEF the concern for 'child protection' refers to protection of children from violence, exploitation, abuse and neglect.

Consequently, sometimes medical writers refer to 'child battering' which focuses on the physical aspects, amongst social workers to "child neglect" which focuses the need for intervention, amongst psychiatrists/psychologists to child abuse which connotes emotional aspects of the situation; but quite often, the terms "child battering", "child neglect", "child abuse", "child maltreatment", "physical abuse" are used by different authors to refer to the same situation.

Child abuse and neglect, also noted as child abuse comprise a wide range of behaviour distinguished conceptually as well as operationally. Certain categorization, as shown below, for analytical purposes like child exploitation, child neglect etc. may be made but these are not mutually exclusive, e.g. child prostitution may be categorized as child exploitation as well as child sexual abuse.

\[125c. \text{Ibid, P-III}\]
\[125d. \text{supra note 26, P-6}\]
\[125e. \text{Paranjape, N.V., Criminology and Penology, 2007, P-592-93}\]
\[125f. \text{Barua, Arunima, child abuse, 2003, P-140}\]
\[125g. \text{Ibid, P-69 to 73}\]
\[125h. \text{Ibid, P-74-75}\]
\[126. \text{supra note 124}\]
\[126a. \text{Ibid}\]
I. Child maltreatment

Child maltreatment is broadly stated to "cover all behaviour patterns whether or not sanctioned by law and custom, which are in some way injurious to child’s health or social, economic, emotional or moral well being".\(^{126b}\)

It is also noted that Vaillard-Cybulska (1975) defined child maltreatment as covering not only parental acts, but also actions as well as customs of other individuals, groups, organizations or institutions or of society at large which “jeopardize the physical, social, mental and moral development of the child to some degree”. Belsky (1981) defines child maltreatment as a socio-psychological phenomenon that is a multiply determined by forces at work in the individual (outogenic development), the family (micro system), the community (exo-system) and the culture (macro system). Social abuse also closely parallels maltreatment, and results from acts that are detrimental to the child’s proper development as a full and functioning member of society. These include all forms of discrimination and denial of rights and privileges to the child on the basis of age, sex, illegitimacy, race, ethnicity or family status. The emotional or physical impact on the child of such abuse has far reaching effects of a negative nature.\(^{126c}\)

II. Child neglect

Child neglect is seen as a failure to provide necessary food, care, clothing, shelter or medical attention for a child. Some scholars also see child neglect as passive child abuse which occurs when parents or guardians fail to perform duties and obligations including those of supervision, maintenance and protection which fall within the limits of their ability and circumstances (Sweat and Reseck: 1979).\(^{126d}\) It also includes denial of education, toilet facilities or total abandonment.\(^{126e}\)

Physical neglect of child apart from including failure to provide

\(^{126b}\) supra note 124
\(^{126c}\) supra note 123b, P-XXI & XXII
\(^{126d}\) ibid, P-XX
\(^{126e}\) supra note 124
essentials like food, shelter and clothing also embraces such acts of under feeding, starving, abandoning, refusing medical attention to the child; neglecting body cleanliness or cleanliness of surroundings of the child. Psychological or emotional neglect on the other hand, results from withholding love, praise and warmth in interaction, resulting in severe emotional and behaviour problems, which eventually stand in the way of a healthy socialization of the child.126f

III. Child battering

This occurs when, due to any physical abuse or non-accidental injury, the child requires medical attention and treatment or leaves bruises.126g Physical abuse (physical violence and non-accidental injury) has been described by Gil (1970) as the intentional, non-accidental use of physical force on the part of parent or care giver interacting with a child in his care, aimed at hurting, injuring or destroying a child. This form of abuse includes child battering, with or without using implements.

Child battering differs from physical abuse only in degree or severity. Schmit (1980) suggested that any physical abuse (or non-accidental injury) that requires medical attention or treatment or leaves bruises is child battering. These acts cannot only result in physical injuries of varying degrees and nature but also lead to severe damage to the child's intellectual capacities and serious emotional trauma resulting in aberrant behaviours.126h

IV. Violence against children

As per the definition found in the Social Science Encyclopedia “violence entails inflicting emotional, psychological, sexual, physical and/or material danger. It involves exercise of force”.126i

The UN General Assembly Report, issued by UN Secretary General (29 August, 2006) of the UN Study on Violence Against Children submitted

126f. supra note 123b, P-XXI
126g. supra note 124, P-119
126h. supra note 123b, P-XXI
by Paulo Sergio Pinheiro provides a global picture on violence against children within family, schools, at places of alternative care institutions and detention facilities, places where children work and in communities.\textsuperscript{126j}

It is stated to be the first comprehensive global study conducted by the UN on all forms of violence against children and stated “It exists in every country of the world, cutting across culture, class, education, income and ethnic origin...in contradiction of human rights obligations and children’s developmental needs, violence against children is socially approved, and is frequently legal and state authorized .......... children have suffered adult violence unseen and unheard for centuries ........ no violence against children is justifiable - all violence against children is preventable”.\textsuperscript{126k}

This study adopts the definition of child as contained in Art. 1 of CRC that: “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” and also defines violence as that in Art. 19 of CRC as: “all forms of physical or mental violence, injury and abuse neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. It has also drawn attention on the definition in the World Report on Violence & Health (2000) which states “the intentional use of physical force or power, threatened or actual, against a child, beyond individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s health, survival, development or dignity”.\textsuperscript{126l}

This study further indicated: “Much of such violence remain hidden, unreported and under reported .......it takes variety of forms and is influenced by a wide range of factors, from personal characteristics of the victim and perpetrator to their internal and physical environments. Reasons are: parents who should protect children remain silent for fear of family members or employer or stigma of family ‘honour’ and secondly, social

\textsuperscript{126j}. UN Study on Violence Against Children, issued by UN Secretary General in the UN General Assembly (Resolution 60/231), 29 August, 2006, P-2,5
\textsuperscript{126k}. ibid
\textsuperscript{126l}. ibid, P-6
acceptance for both children and perpetrators that physical, sexual and psychological violence as inevitable and normal, particularly where no 'visible' or lasting physical injury results. Some groups of children are especially more vulnerable to violence. These include children with disabilities, ethnic minorities and other marginalized group, street children and those in conflict with laws and refugee or other displaced children.

In the home setting, the study pointed out that children are vulnerable to various forms of violence - physical, sexual, psychological within their homes. It is physical by 'disciplining'. Psychological like name calling, belittling by adults followed by threats and neglect including failure to meet children's physical and emotional needs. Girls are at more risk of neglect. Disability also increases the risk. Referring to WHO estimation, it reveals between 1 and 21% women sexually abused before the age 15 mostly by male members in family other than father. 82 million girls estimated to marry before age 18 faces coerce and high risk of violence. Other traditional practices affecting children include forced marriage, dowry related violence, exorcism or witchcraft. Between 133 and 275 million estimated to have received domestic violence annually affects child's well being and 80 to 98% children in many countries suffer physical punishment at home. It is also stated that in India, domestic violence in home doubled the risk of violence against children.

In school setting the study reveals, violence includes corporal punishment, cruel and humiliating forms of psychological punishment, sexual & gender based violence and bullying. At least 102 countries have banned corporal punishment in school on a global initiative as per the Global Initiative to End All Corporal Punishment of Children, but enforcement is uneven. Aggressive behaviour and fighting persists, others include gang culture and gang related criminal activity, more particularly related to drugs.

126m. Ibid, P-8,9,11
126n. Ibid
126o. Ibid, P-13 to 15
126p. Ibid
Girls are more prone to sex violence and also directed to lesbian, gay, bisexual & transgender young people in many states and regions. Between 20 and 65% school aged children verbally or physically bullied in past 30 days.\textsuperscript{126q}

In the care and justice system setting, the study reveals, millions of children, particularly boys spend substantial period of their lives under the control & supervision of care authorities or justice system and in institutions, such as orphanages, children home, care homes, police lockups, juvenile detention facilities & reform schools are also at risk of violence. It results in severe developmental delays and in some cases recidivism. Children are, kept under harsh disciplining. Neglect is also a feature of many residential institutions where conditions are so poor that the health & lives of children are put at risk. They are also vulnerable to violence from other children. Some countries, at least 31, the study stated still permit corporal punishment in sentencing children for crimes, but CRC allows only last resort for detention of children under Article 37. In 1999, one million children are deprived of liberty; most of them were detained for minor charges.\textsuperscript{126r}

Describing violence in the community setting, the study revealed, community is the source of protection and solidarity for children, but it can also be a site of violence including peer violence. Violence includes that related to guns and other weapons, gang violence, police violence, physical & sexual violence, abductions and trafficking. Older children are stated to be in greater risk. Anti-social behaviour increases in some area because of unemployment, lack of education and social amenities etc. and also strongly associated with drugs and alcohol. Police brutality and lack of access to justice often exist in communities deeply affected by violence. Children are vulnerable to sexual violence and exploitations from members of the community and violence mostly targets those in marginalized groups of children. Violence by police on street children & sometimes for petty offences

\textsuperscript{126q} ibid, P-9,15  
\textsuperscript{126r} ibid, P-16,17
is most common. Sex tourism also involves victimization of children. This study further noted, refugee and other displaced children experience significant violence. Many camps lack sincere buildings, regular law enforcement, making the place sanctuary for survivors of attacks with poor means of reporting and redress. Women and girls are stated as most vulnerable. Larger concern prevails for multiple forms of violence like abduction or deception from place of recruitment to destination for 'job' placement, child victims of trafficking, even across borders, trafficked into violent situations like prostitution, forced marriage and domestic or agricultural work in conditions of slavery, servitude or debt bondage. It has also expressed concern for glorification of violence in some cases in media and includes grooming.126

In work setting in the study stated that violence of physical, sexual and psychological affects many millions of children, who are working both legally and illegally. In most cases, violence inflicted by employers, although perpetrators may include co-workers, clients, foremen, customers, police, criminal gangs, and incase of sexual exploitation pimps. The largest employment category of girls under 16 is domestic work, the study noted. Most often children are engaged in unregulated employment and exploited sometimes by way of servitude and slavery. It has also stated, child workers reported of maltreatment such as physical punishment, humiliation and sexual harassment. Most physical and psychological violence against child domestic workers is perpetrated by women, generally employers, but girls are often subjected to sexual violence from male members of the family of their employers. 1 million children below 18 join prostitution every year and suffer violence due to exploitation while many are coerced, kidnapped, sold and deceived into these activities and often unable to seek help, because when they do so they are treated as criminals. All forms of violence are endemic in forced and bonded labour practices in many parts of the

126s. ibid, P-19,20
world. Violence also affects tens of thousands of children in traditional forms of slavery, it described.

The study took a serious note on the problem that there were 218 million child labour (ILO, 2004), 126 million in hazardous work (ILO reported in 2006), estimates from 2000 suggested that 5.7 million in forced or bonded labour, 1.8 million in prostitution & pornography, and 1.2 million were victims of trafficking (ILO, 2002) the study indicated.

The UN study further noted that the ‘worst forms of child labour’ is illegal and constitutes violence against children. However, the study does not address children involved in armed conflict that falls to the mandate of Special Representative of the Secretary General for children and armed conflict.\footnote{ibid. P-6,9,10,18,19}

The UN study on violence against children in this regard is so relevant & related that an extract of this study is put under the caption “child abuse across the globe” in the study on child Abuse: India 2007 (GOI).\footnote{Study on Child Abuse: India 2007, Ministry of Women and Child Development, GOI, P-4}

The UN study quoting ILO report, 2006 also stated that there are four prominent factors contributing to violence against children viz.: characteristics of victims; characteristics of perpetrators; factors in the working environment; and risks related to the environment external to the place of work.\footnote{Pinheiro, Paulo Sergio, Global Report of UN Secretary General, UN Study on Violence Against Children, 2006, P-251; http://www.crin.org/docs/UNVAC_World_Report_on_Violence_against_Children.pdf}

\section*{V. Child victimisation}

Among others, the CRC also addresses the needs and rights of children who have been victimized. Article 39 of CRC imposes a duty on states to “promote physical and psychological recovery and social rehabilitation” of children who have been victims of “any form of neglect, exploitation or abuse”. Such recovery and reintegration is to take place in an environment which fosters the health, self respect and dignity of the child.\footnote{Skennider, Eilleen, Violence Against Children. International Criminal Justice Norms and Strategies, K.D. Gaur (ed), Criminal Law and Criminology, 2002, P-742}
Child labour is stated to be one of the worst forms of victimisation where children are sent to work instead of their rightful place in school.\textsuperscript{126x} Most commonly such children are victimised for violence, exploitation and abuse in various stages and situations & in some cases with a distinction of child as victim and as perpetrator in instrumental use of children in criminal activities.\textsuperscript{126y} It is stated children who engage in criminal activity through coercion, instigation or enticement by adults who profit by their acts should be considered as victims of exploitation rather than perpetrators of crime. Such criminal lifestyle hinders their development and denies them opportunities for a healthy and responsible role in society.

When dealing with children who have been instrumentally used in criminal activities, Vitit Muntabhnem, the previous Special Rapporteur on the sale of children, child prostitution and child pornography, calls for an approach that avoids stigmatization, victimization and criminalisation of child’s conduct. He notes that there must be a “shift in emphasis from the rubric of juvenile justice to a more understanding vision of children engaged by a variety of circumstances and exploited by adult criminal elements”.\textsuperscript{126z}

Similar situation of child victimization is worst form of child involvement in armed conflicts in which children have been compelled to become instruments of war. They are lured or kidnapped to serve as soldiers as is evident from armed conflicts in Angola, Chechnya, Eritrea, Ethiopia, East Timor, Guinea Bissau, Kosovo and Kashmir to name a few.\textsuperscript{126aa} The scar affected some parts of NE India too. It is also mentioned that “child soldiers are sometimes called ‘little bees’, because their size and agility enable them to move quickly and ‘sting’ their enemy”.\textsuperscript{126ab} ‘Children are even exposed to vicious hate campaign as in Rwanda, Burandi and Bosnia and ‘neighbors are engaged in combat with each other’, as a result psychological trauma

\textsuperscript{126x. supra note 124, P-140}  
\textsuperscript{126z. ibid}  
\textsuperscript{126aa. supra note 124, P-131}  
\textsuperscript{126ab. ibid}
continues during war and civil conflicts even when fighting stops.\textsuperscript{126ac} Children are also being used as instruments of war by militant organizations like the LTTE in Sri Lanka and the Taliban in Afghanistan, besides, armed conflicts in countries like Angola, Sierra Leone have even produced a large number of limbless children, the victims of landmines.\textsuperscript{126ad}

Once observed by Olara A. Otunnu Special Representative of the UN Secretary General for children and armed conflicts observed that: “Children are truly blameless victims of conflict ...... Yet, today, we are witnessing unspeakable abominations directed against children in situations of conflict\textsuperscript{126ae}........... Over the last decade, two million children were killed............ over one million made orphans, over six million have been seriously injured or permanently disabled and over 10 million have been left with grave psychological trauma”.\textsuperscript{126af}

Child victimization is clearly manifested in female foeticide i.e. killing of female child before she is born, female infanticide i.e. girl child born normal subsequently go missing & those who survive becomes victims of gender bias, child abuse and neglect which may also perpetuates a “cycle of violence”, child slavery, child trafficking and prostitution, sexual abuse sexual harassment of working children, victims of drug trafficking and substance abuse, victims of criminal activities, wars & civil conflicts, victims of torture, migration or displacement along with exploitation & abuse incidental to child labour.\textsuperscript{126ag}

Conceptually, noted victimologists, like, Mendelson, Von Hentig and Wolfgang during 1940's considered victims as “hapless dupes who instigated their own victimizations, however strongly criticized and replaced by a notion of victim as anyone caught up in an asymmetric situation in an exploitative parasitical, oppressive destructive situation of inherent suffering. In modern
sense the term 'victim' connotes any person who experiences injury, loss or hardship and suffering due to any cause. The term is not confined to victims of crime alone and used in other areas like accident victims, Tsunami victims, famine victims, cancer victims etc. Thus the essence is that someone who suffers injury and harm by forces beyond his/her control is generally called a victim.\textsuperscript{126ah}

The term 'crime victim' refers to any person, group or entity who has suffered injury or loss due to illegal activity of someone. The harm can be physical, psychological or economic. Such a person may be called 'primary victim of crime'. Further, there are 'secondary crime victims' who suffer harm or injury as a result of harm or injury to the primary crime victim e.g. bastard children suffering lack of paternity for born out of raped women or battered woman.\textsuperscript{126ai} In other words in the first case, when the crime is directed against the child (primary victimization) and second, when the offence is indirectly against the child but affects the child (as secondary victimization) e.g. if a girl child is raped, the incident comes under first category and if the girl witness her mother being raped in front of her & as a result traumatized, it is covered under the second category.\textsuperscript{126aj}

Considering the physical, psychological and social ramifications of crimes committed against children, a typology of their victimization can be traced in five broad forms as: a) physical victimization which includes putting (forcing) children to hard physical labour under hazardous conditions, causing ill health, physical injury, permanent or temporary disability or, in worst cases, death. Victimization of working and street children are stated undoubtedly fits into this category. The most brutal and inhuman forms of physical victimization is the crime of maiming (kidnapped) children for purposes of begging; b) Sexual victimization which includes exposing or exploiting children for immoral and sexual purposes, like child rape, child prostitution, pedophilia, incest involving children and the most reprehensible

\textsuperscript{126ah} Paranjape, N.V., Criminology and Penology, 2007, P-592 to 593
\textsuperscript{126ai} ibid
\textsuperscript{126aj} supra note 124, P-150
form is child prostitution; c) Psychological victimization which includes different types of emotional deprivation, rejection or treating a child in manners that he or she may feel unwanted; d) social victimization which includes parental/familial neglect, abandonment or turning the child out of home; e) Economic victimization which includes cornering the earning of the child, denying the child the payment of adequate or prescribed minimum wages, keeping the child as bonded labour and taking the economic advantage of the work done, by the child.\textsuperscript{126ak}

In this regard, Cohen & Felson (1979) stated that crime occurs whenever three conditions exist together 1) suitable targets; 2) motivated offenders; and 3) absence of control or surveillance or security. Benjamine & Masters, in criminological studies attributed three factors generating crime, viz. 1) precipitating factors such as being in the wrong place at the wrong time; 2) attracting factors such as choices, options, life style etc; and 3) predisposing factors which include all the demographic characters of the victims, being female, young, poor, minority, living in squalor, living single, being unemployed and so on.\textsuperscript{126aL}

The victimization of children is by no means a new phenomenon. In fact, history is replete with examples of various forms of child exploitation and abuse. But children's abuse and exploitation is one such area where empirical insight is both partial and perfunctory. Most of the societies, including Indian society, ignored victimization of children through various forms of violence- physical and emotional, social and economic- as tolerable aberration of certain families troubled by the traumas of domestic disorganization. In most cases the names, number of such children and where about of the victimizers including parents, employers or any other are not known due to unreported incidents, victimization remains hidden or latent however that which comes to record is just the tip of an iceberg.\textsuperscript{126am}

\textsuperscript{126ak} ibid, P-74,75
\textsuperscript{126aL} supra note 126ah, P-592 to 593
\textsuperscript{126am} supra note 124, P-69 to 73
This suggests that the forms of juvenile victimization largely depend on the child’s social and economic background; situations of destitution and disability and conditions conducive to the criminal victimisation of the child.\textsuperscript{126an}

A study in USA revealed that being the victim of abuse and neglect as a child increases the chances of later juvenile delinquency and adult criminality by forty percent. Even among children who are neglected but not abused, one in eight would later be arrested for a violent offence.\textsuperscript{126ao}

\textbf{VI. Crime against children}

The Children’s Convention (CRC) under Article 32 recognises the right of the child to be protected from economic exploitation and the UN General Assembly Resolution 45/115, April 3, 1991 also recognised the sensitivity of ‘social risk’ that “cause children to be manipulated by adults into engaging in crime” in respect of instrumental use of children in criminal activities.\textsuperscript{127aa}

In regard to crime against children, the Monaco Declaration (2003) in the International Round Table organised by AMADE under the patronage of UNESCO stated that the crimes committed against children “such as and without limitation: child pornography, sexual and commercial exploitation of children, child trafficking and the sale of children, trading in human organs taken from children, child forced labour and slavery, the recruitment and enrolment of children in armed conflicts, or their use as military targets – are crimes which profoundly offend the conscience of humanity...should be recognised as crimes against humanity” and these crimes should be regrouped under the mobilising term of “Paedocide” and appealed cooperation for child rights protection.\textsuperscript{127}

\begin{itemize}
\item \textsuperscript{126an} ibid, P-74,75
\item \textsuperscript{126ao} ibid, P-127 (quoted, Wisdom, Cothy Spatz, the Cycle of Violence, NIJ Research in Brief, Washington, DC, US Department of Justice, 1992, 3; Wisdom, Victims of Childhood Sexual Abuse - Later Criminal Consequence, NIJ Research in Brief, Washington, DC, US Department of Justice, 1995,4)
\item \textsuperscript{127aa} supra note 73f, P-744,747
\item \textsuperscript{127} Monaco Declaration, Crimes against the child crimes against humanity, 15 November 2003, P-1 to 4. AMADE is an internationally recognized non-governmental organization with consultative status with UNICEF, UNESCO, the Council of Europe and the United Nations Economic and Social Council; http://www.amademondiale.org/
\end{itemize}
The study on child abuse in India, 2007 stated that 'Although there is a dearth of data on the nature and magnitude of the child abuse in India, data on offences against children reported by the NCRB is the only authentic source to estimate the number of children in abusive situations'. It has also pointed out that the NCRB data is only 'indicative' in nature as it is based on the 'reported cases' while 'it is an accepted fact that the majority of cases of child abuse go unreported'.

According to NCRB, "Generally, the offences committed against children or the crimes in which children are the victims are considered as crime against children. Indian Penal code and the various protective and preventive 'Special and Local Laws' specifically mention the offences wherein children are known to be victims". NCRB further stated, "The cases in which the children are victimized and abused can be categorized under two broad sections: 1) crimes committed against children which are punishable under India Penal Code (IPC); and 2) crimes committed against children which are punishable under Special and Local Laws (SLL)".

A recent trend of crime against children in India is shown below as per official source of data.

### Crime against children in India

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<td>Murder</td>
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<td>3</td>
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<td>Foeticide</td>
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<td>7</td>
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<td>933</td>
<td>909</td>
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<tr>
<td>8</td>
<td>Procuration of Minor Girls</td>
<td>205</td>
<td>145</td>
<td>231</td>
<td>59.3</td>
</tr>
<tr>
<td>9</td>
<td>Buying of Girls for Prostitution</td>
<td>21</td>
<td>28</td>
<td>35</td>
<td>25.0</td>
</tr>
<tr>
<td>10</td>
<td>Selling of Girls for Prostitution</td>
<td>19</td>
<td>50</td>
<td>123</td>
<td>146.0</td>
</tr>
<tr>
<td>11</td>
<td>Child Marriage Restraint Act</td>
<td>93</td>
<td>122</td>
<td>99</td>
<td>-18.9</td>
</tr>
<tr>
<td>12</td>
<td>Other Crimes</td>
<td>5107</td>
<td>4697</td>
<td>6127</td>
<td>30.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>14423</strong></td>
<td><strong>14975</strong></td>
<td><strong>18967</strong></td>
<td><strong>26.7</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: NCRB, Ministry of Home Affairs, GOI; Crime in India. 2006

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128. NCRB Report (2006 and 2007), Crime in India (Chapter-6), Ministry of Home Affairs, GOI
129. ibid
Again, a latest distribution of crime against children in several parts of India is shown below:

**Incidence of crime committed against children in the Union Territories in 2006-2007**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Union Territories</th>
<th>Year 2006</th>
<th>Year 2007</th>
<th>Percent variation in 2007 over 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Andaman &amp; Nicobar</td>
<td>9</td>
<td>10</td>
<td>11.11</td>
</tr>
<tr>
<td>2</td>
<td>Chandigarh</td>
<td>64</td>
<td>53</td>
<td>-17.19</td>
</tr>
<tr>
<td>3</td>
<td>Dadra &amp; Nagar Haveli</td>
<td>15</td>
<td>11</td>
<td>-26.67</td>
</tr>
<tr>
<td>4</td>
<td>Daman &amp; Diu</td>
<td>3</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Delhi</td>
<td>2160</td>
<td>2019</td>
<td>-6.53</td>
</tr>
<tr>
<td>6</td>
<td>Lakshadweep</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>7</td>
<td>Puducherry</td>
<td>25</td>
<td>23</td>
<td>-8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>2276</strong></td>
<td><strong>2119</strong></td>
<td><strong>-6.90</strong></td>
</tr>
</tbody>
</table>

Source: NCRB, Ministry of Home Affairs, GOI; Crime in India (2006 & 2007) and variation calculated

**Incidence of crime committed against children in the States in 2006-2007**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>States</th>
<th>Year 2006</th>
<th>Year 2007</th>
<th>Percent variation in 2007 over 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Andra Pradesh</td>
<td>1386</td>
<td>1499</td>
<td>8.15</td>
</tr>
<tr>
<td>2</td>
<td>Arunachal Pradesh</td>
<td>27</td>
<td>4</td>
<td>-85.19</td>
</tr>
<tr>
<td>3</td>
<td>Assam</td>
<td>252</td>
<td>167</td>
<td>-33.76</td>
</tr>
<tr>
<td>4</td>
<td>Bihar</td>
<td>66</td>
<td>675</td>
<td>922.72</td>
</tr>
<tr>
<td>5</td>
<td>Chattisgarh</td>
<td>1238</td>
<td>1024</td>
<td>-17.29</td>
</tr>
<tr>
<td>6</td>
<td>Goa</td>
<td>54</td>
<td>70</td>
<td>29.62</td>
</tr>
<tr>
<td>7</td>
<td>Gujrat</td>
<td>977</td>
<td>1110</td>
<td>13.61</td>
</tr>
<tr>
<td>8</td>
<td>Haryana</td>
<td>462</td>
<td>325</td>
<td>-29.65</td>
</tr>
<tr>
<td>9</td>
<td>Hmajal Pradesh</td>
<td>136</td>
<td>151</td>
<td>11.03</td>
</tr>
<tr>
<td>10</td>
<td>Jammu &amp; Kashmir</td>
<td>85</td>
<td>26</td>
<td>-69.41</td>
</tr>
<tr>
<td>11</td>
<td>Jharkhand</td>
<td>112</td>
<td>74</td>
<td>-33.92</td>
</tr>
<tr>
<td>12</td>
<td>Karanataka</td>
<td>276</td>
<td>266</td>
<td>3.62</td>
</tr>
<tr>
<td>13</td>
<td>Kerala</td>
<td>553</td>
<td>487</td>
<td>-63.74</td>
</tr>
<tr>
<td>14</td>
<td>Madhyra Pradesh</td>
<td>3939</td>
<td>4290</td>
<td>8.91</td>
</tr>
<tr>
<td>15</td>
<td>Maharatra</td>
<td>2841</td>
<td>2707</td>
<td>4.72</td>
</tr>
<tr>
<td>16</td>
<td>Manipur</td>
<td>54</td>
<td>49</td>
<td>-9.26</td>
</tr>
<tr>
<td>17</td>
<td>Meghalaya</td>
<td>71</td>
<td>71</td>
<td>0</td>
</tr>
<tr>
<td>18</td>
<td>Mizoram</td>
<td>35</td>
<td>64</td>
<td>82.85</td>
</tr>
<tr>
<td>19</td>
<td>Nagaland</td>
<td>14</td>
<td>7</td>
<td>-50</td>
</tr>
<tr>
<td>20</td>
<td>Orissa</td>
<td>154</td>
<td>201</td>
<td>30.52</td>
</tr>
<tr>
<td>21</td>
<td>Punjab</td>
<td>329</td>
<td>527</td>
<td>60.18</td>
</tr>
<tr>
<td>22</td>
<td>Rajasthan</td>
<td>951</td>
<td>1252</td>
<td>31.65</td>
</tr>
<tr>
<td>23</td>
<td>Sikkim</td>
<td>35</td>
<td>31</td>
<td>-11.42</td>
</tr>
<tr>
<td>24</td>
<td>Tamil Nadu</td>
<td>353</td>
<td>441</td>
<td>-24.93</td>
</tr>
<tr>
<td>25</td>
<td>Tripura</td>
<td>41</td>
<td>63</td>
<td>53.66</td>
</tr>
<tr>
<td>26</td>
<td>Uttar Pradesh</td>
<td>1767</td>
<td>2248</td>
<td>27.22</td>
</tr>
<tr>
<td>27</td>
<td>Uttarakhand</td>
<td>51</td>
<td>101</td>
<td>98.03</td>
</tr>
<tr>
<td>28</td>
<td>West Bengal</td>
<td>432</td>
<td>361</td>
<td>-16.44</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>16691</strong></td>
<td><strong>18291</strong></td>
<td><strong>9.58</strong></td>
</tr>
</tbody>
</table>

Source: NCRB, MHA, GOI; Crime in India (2006 & 2007) and variation calculated
The above figure shows the all India crime against children as per NCRB data increased from 18,967 in 2006 to 20,410 in 2007 respectively with percent variation in 2007 over 2006 at 7.61 percent in the States and Union Territories together.

As per the latest NCRB data\textsuperscript{130} in 2007, the total crime against children stood at 18,967 in 2006 has increased to 20,410 in 2007. High degree of percentage variations in the figure of 2007 over 2006 shows in some states a large indifference to the problem of crime against children and in some cases significantly ‘-ve’ variation might be intended to suppress crime against children in some states for world wide concern on the issue. The NCRB data also shows in the decline in all India level from over 26% during the period in 2006 over 2005 to only a little more than 7% in 2007 over 2006. Kidnapping and abduction of children were reported during the year 2007 as compared to 5,102 cases in the previous year accounting for a significant increase of 25.0%; the highest crime rate (12.1) was reported in Delhi as compared to national average (1.8); Madhya Pradesh reported 21.0% (4,290 out of 20,410) of total crimes committed against children in the country has the highest percentage shown in this crime; the conviction rate at the national level for crimes against children stood at 36.6%. As on 2007 the total number of pending cases for crime committed against children for disposal in court stood at 52,686 of which 43,185 remains pending trial (82.0%) at the end of the year.

The ‘crime head-wise’ percentage distribution of these crime against children in the latest NCRB reports show that kidnapping & abduction, rape cover a large part of crime after ‘other crime’ committed against children. It shows that in 2006/2007 murder (other than infanticide) at 7.0/6.7; exposure and abandonment at 4.8/4.5; rape at 24.9/24.7; kidnapping and abduction at 26.9/31.2; and other crimes at 36.4/32.8 in 2006 and 2007 respectively in the country.

It is to be noted here that there is a close link between kidnapping and abduction, and trafficking of children.\textsuperscript{131} It is also revealed that an estimated 1.2 million children being trafficked for labour and sexual exploitation worldwide, about 250,000 in Asia and Pacific. However, estimates often vary widely; depending on source e.g. number of children trafficked for prostitution in India range between 25,000 and 500,000, so to be considered with caution. Despite difficulty in determining the exact number of trafficked children the trend is high for sexual exploitation. In south and south east Asia the overwhelming numbers of child victims of trafficking are girls with the exception of Sri Lanka and to a lesser extent Pakistan, where boys are also found to be trafficked for commercial sexual exploitation. Trafficking in persons is a particularly abusive form of migration.\textsuperscript{132}

According to NCRB Human trafficking is a group of crimes involving the exploitation of men, women and children for financial gains which is violations of fundamental human rights. Victims are lured or abducted from their homes and subsequently forced to work against their wishes through various means in houses or other establishments indulge in prostitution or subjected to various types of indignities and even killed and incapacitated for the purposes of begging and trade in human organ. Human trafficking percent distribution, as per crime in India, NCRB data for 2006/2007 shows: selling o girls for prostitutions at 2.46/1.7; importation of girls at 1.34/1.5; procuration of minor girls at 4.62/6.3; buying of girls for prostitution at 0.70/1.0 and significantly such crime under the Immoral Trafficking (Prevention) Act, 1956 stood at 90.87/89.4 in 2006 and 2007 respectively. Moreover, out of a total incidence of 5096 human trafficking crimes 4541 numbers are related to 'buying of girls for prostitution' u/s 373 IPC followed by 230 number of offences relating procuration of minor girls u/s 366-A IPC in 2006.\textsuperscript{133}

\textsuperscript{131} supra note 25, P-113
\textsuperscript{132} Tiwari, Jyotsna (ed), Child Abuse & Human Rights, 2007, P-10.
\textsuperscript{133} supra note 128, (Chapter 6 and 6*)
But NCRB data does not provide a clear indication for estimating crime of child trafficking, as the Crime Bureau of NCRB collects data on human trafficking only on IPC crimes such as: procuration of minor girls u/366-A; importation of girls u/s 366-B (referred in past as 'eve teasing'); selling of girls for prostitution u/s 372; buying of girls for prostitution u/s 373 and SLL crimes such as: under Immoral Trafficking (Prevention Act), 1956; Child Marriage Restraint Act, 1929. But NCRB excludes collecting data in other cases which also form part of offences under human trafficking such as Bonded Labour System (Abolition) Act, 1976; Juvenile Justice (Care and Protection of Children) Act, 2000; Child Labour (Prohibition and Regulation) Act, 1986; Human Organ Transplant Act, 1994.134

Again the study on child abuse in India, 2007 revealed a report published in 2005 on Trafficking in Women and Children in India' in which "44,476 children were reported missing in India, out of which 11,008 children continued to remain untraced. India, being a major source and destination country for trafficked children from within India and adjoining countries has by conservative estimates, 3 to 5 lakh girl children in commercial sex and organised prostitution".135

More over, NCRB shows only 99 crime incidence under Child Marriage Restraint Act, 1929 in 2007, however the Prohibition of Child Marriage Act, 2006 came into existence in 2007 only, but at the same time out of total 474 number of cases in court for trial including 405 cases remained pending as at the end of 2007.135a On the other hand, according to 2001 census, nearly 3 lakh girls below the age of 15 years have already given birth of at least one child while early marriage has been considered as hazardous for both physical and mental growth of children of children, besides 26% of domestic violence reported is against wives below 18 years.135b

134. NCRB, Ministry of Home Affairs, GOI, Crime in India, 2006 and 2007, Chapter 6
135a. ibid
135b. supra note 131
VII. Abuse in child exploitation

Child exploitation is noted in the form of child abuse that yields economic benefits to the perpetrator or some one else and occurs when a child is made to engage in some gainful productive activity or service, which is detrimental to its physical, social, psychological and moral development.\textsuperscript{136} It may take the form of employing children as servants, as street beggars, as child prostitutes, as hawkers, as apprentices etc.\textsuperscript{137}

Some of the ways in which such exploitations led to children abused in this country, and others that permit their use in the labour market is by making them work for long hours for a fraction of what an adult worker earn. They are often engaged in mechanical repetitive tasks resulting in unbalanced development of muscles and nervous strain. Worse still many of them are engaged in dangerous jobs in unsafe working conditions, exposed to hazardous toxic environments that can permanently cripple, maim or even kill them. Sexual abuse by employers and others is another hazards these children face.\textsuperscript{137a} In a significant observation stated, “The UN has recognized that the exploitation of child labour is a form of sale of children”.\textsuperscript{136}

VIII. Perception of child abuse

• Conceptual explanations

In an earliest attempt to define child abuse made when the problem first came to public attention in the U.S.A. in the post world war II period. Pediatric radiologists drew attention to such injuries as bruises, fractured bones, skin infections and multiple abrasions, probably inflicted by parents and caregivers. Kempe and his associates (1962) published an article on the Battered Child Syndrome in the Journal of the American Medical Association.\textsuperscript{139}

\textsuperscript{137} Barua, Arunima, child abuse, 2003, P-118
\textsuperscript{137a} supra note 136
\textsuperscript{138} supra note 127aa, P-744
Some studies\textsuperscript{139a} limit the term 'child abuse' to 'children who have received serious physical injury caused willfully rather than by accident' (Garden and Gray, 1982:5). Kempe and Kempe (1978) have defined child abuse as "a condition having to do with those who have been deliberately injured by physical assault". Burgess (1979:143) has given a wider definition of child abuse. According to this definition, child abuse refers to "any child who receives non-accidental physical and psychological injury as a result of acts and omissions on the part of his parents or guardians or employers......". Verbal abuse, threats of physical violence, and excessive physical punishment which do not require medical attention, are also included in the definition of child abuse.

A legalistic interpretation of child abuse in the American context given by Holder and Schene (1980) according to which any "abused or neglected child" means a child whose physical or mental health or welfare is harmed, or threatened with harm by acts of omission of his parents or other persons responsible for his welfare.\textsuperscript{139b}

Certain definitional exercise on child abuse and neglect by the United States Congress in 1984 as well as in India in 1988 in a National Seminar on child abuse in India (June 22-24, 1988) under the support of National Institute of Public Co-operation of Child Development (NIPCCD), New Delhi, indicated that child abuse encompasses a broad range of acts and behaviour ranging from a variety of neglect, ill treatment, exploitation, sexual abuse and even murder.\textsuperscript{139c}

However, very recently in 2007, in a landmark study, for the first time in India on child abuse by the Ministry of Women and Child Development, GOI, found that two out of every three children have been physically abused, and 53.2 percent of children reported having faced one or mere forms of sexual abuse.\textsuperscript{139d}

\textsuperscript{139a} Ahuja, Ram, Social Problems in India, 1997 (Reprint & Revised, 2007), P-220
\textsuperscript{139b} supra note 139, P-xviii
\textsuperscript{139c} ibid, P-xix to xx
According to WHO:\textsuperscript{139e} “Child abuse or maltreatment constitutes all forms of physical and/or emotional ill treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”

The study on child abuse in India, 2007\textsuperscript{139f} adopted for working purpose only that: “child abuse refers to the intended, unintended and perceived maltreatment, whether habitual or not of the child, including any of the following: Psychological and physical abuse, neglect, cruelty, sexual and emotional maltreatment; any act, deed or word which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; unreasonable deprivation of his/her needs for survival such as food and shelter, or failure to give timely medical treatment to an injured child resulting in serious impairment or his/her growth and development or in his/her permanent incapacity or death”.

The study has established beyond doubt that child abuse exists in India much higher than the incidence generally perceived in an alarming situation, in order to place the subject of child abuse on the national agenda.\textsuperscript{139g}

In a study, Bolton and Bolton (1987:93-113) have identified eight possible effects of abuse on children, viz. self-devaluation, dependency, mistrust, revictimisation, withdrawal from people, emotional trauma, deviant behaviour, and interpersonal problems. An empirical study in Rajasthan conducted by G. S. Kewatramani has found the final effect of child abuse is revictimisation that is a child once abused essentially will be abused time and again. The study has also observed that “a child who is a victim of abuse once is not only abused frequently and by more than one person but is also at a greater risk of being victimized in more than one way, that is,

\textsuperscript{139f} Ibid, P-4,13,14
\textsuperscript{139g} Ibid, P-121
physically, emotionally and sexually".139h

In real terms, and more particular to a situation, child abuse must encompass & address co-relatives pertaining to all the facets of child maltreatment, child neglect, child battering, violence against children, child victimization, lack of child protection, crime against children including child exploitation, however complex, but mutually interlinked.

- **Glimpse of global child abuse scenario**

  The “Study on Child Abuse: India 2007” (GOI) has quoted the UN Secretary General’s overview from the ‘Study on Violence Against Children (2006)’ indicating situation of abuse and violence against children across the globe. This UN study has pointed out WHO estimates of 53,000 child deaths in 2002 due to child homicide; 20% and 65% school going children reported having been bullied verbally or physically in school in previous 30 days; an estimated 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact; 3 million girls and women are subjected to FGM in sub-Saharan Africa, Egypt and Sudan as per UNICEF; ILO estimates that 218 million children were involved in child labour in 2004, of whom 126 million are engaged in hazardous work. Estimates from 2000 suggest that 5.7 million were in forced or bonded labour, 1.2 millions were victims of trafficking; only 2.4% children in the world protected from corporal punishment in all settings.139i

  But most critically, the study on child abuse in India, 2007 in a limited aspect does not refer the part of overview of the same UN study that includes violence against refugees and other displaced children & the issue of children in armed conflict that is not reflected but kept ‘within the mandate of the Special Representative of the UN Secretary General for children and armed conflict’; vulnerability reasons of child homicide; child disability; child marriage; child detention for minor charges; worst form of child labour &

139h. supra note 139a, P-231 to 234
types of perpetrators, traditional forms of slavery, child as victims & perpetrators, affect of community violence on children protection & penalty concerns to prevent child abuse, states' accountability in every case of violence against children etc. amongst others. However, an endeavor is made in to focus on the areas of UN study of 2006\textsuperscript{139} considering immense gravity of the situation.

- **Glimpse of child abuse scenario in India**

  Indicating the child abuse scenario in India, the study, 2007 has stated that although the phenomenon of child abuse as a serious problem is not new in India, but in the absence to public and government interest, no statistics have been compiled for long. It is only recently that the Ministry of Women and child Welfare, GOI made out a report on “Study on child abuse: India 2007”\textsuperscript{139k} for the first time in our country to focus the problem on the national agenda.

  This study, 2007 was carried out in a sample size of 12,447 children in five different categories viz. children in family environment, children in schools, children in institution, children at work and street children in 13 different states of the country (taking two districts from each state) dividing into 6 zones, namely North (Delhi, Rajasthan), Central (Madhya Pradesh, Uttar Pradesh), East (Bihar, West Bengal), West (Gujrat, Maharastra, Goa), South (Andhra Pradesh, Kerala) and North East (Mizoram, Assam). The children were also categorized in 3 groups at younger children (5-12) years children (13-14) years and Adolescents (15-18) years child was defined as a person not having completed 18 years of age.\textsuperscript{139L}

  But the tone set at the beginning of the study may be felt in that “19% of the world’s children live in India. According to 2001 census, some 440 million people in the country today are aged below 18 years and constitute 42% of India’s total population i.e. 4 out of every 10 person. This is an

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\textsuperscript{139j} supra note 6, P-6 to 30
\textsuperscript{139k} Study on Child Abuse: India 2007, Ministry of Women and Child Development, Government of India, 2007
\textsuperscript{139L} ibid, P-13,44,128
enormous number of children that the country has to take care of...”. The general findings of study on child abuse, 2007 across the data is shown below:

### Percentage of child abuse across the states

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>State</th>
<th>Physical abuse</th>
<th>Total Physical Abuse</th>
<th>Sexual abuse (all age group)</th>
<th>Emotional abuse (all age group)</th>
<th>Girl child neglect (all age group)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>5-12</td>
<td>13-14</td>
<td>15-18</td>
<td>Severe form</td>
<td>Other forms</td>
</tr>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>55.17</td>
<td>22.73</td>
<td>22.1</td>
<td>63.74</td>
<td>38.65</td>
</tr>
<tr>
<td>2</td>
<td>Assam</td>
<td>41.82</td>
<td>24.88</td>
<td>33.29</td>
<td>84.65</td>
<td>57.27</td>
</tr>
<tr>
<td>3</td>
<td>Bihar</td>
<td>49.73</td>
<td>23.73</td>
<td>16.51</td>
<td>74.65</td>
<td>33.27</td>
</tr>
<tr>
<td>4</td>
<td>Delhi</td>
<td>50.3</td>
<td>22.01</td>
<td>27.69</td>
<td>83.14</td>
<td>40.9</td>
</tr>
<tr>
<td>5</td>
<td>Goa</td>
<td>28.96</td>
<td>22.76</td>
<td>18.28</td>
<td>53.07</td>
<td>2.38</td>
</tr>
<tr>
<td>6</td>
<td>Gujrat</td>
<td>52.28</td>
<td>24.23</td>
<td>23.49</td>
<td>68.51</td>
<td>7.34</td>
</tr>
<tr>
<td>7</td>
<td>Kerala</td>
<td>44.21</td>
<td>25.49</td>
<td>30.3</td>
<td>56.1</td>
<td>17.7</td>
</tr>
<tr>
<td>8</td>
<td>Madhya Pradesh</td>
<td>46.86</td>
<td>26.89</td>
<td>26.23</td>
<td>63.41</td>
<td>9.87</td>
</tr>
<tr>
<td>9</td>
<td>Maharashtra</td>
<td>51.17</td>
<td>24.63</td>
<td>24.19</td>
<td>68.13</td>
<td>9.79</td>
</tr>
<tr>
<td>10</td>
<td>Mizoram</td>
<td>33.83</td>
<td>30.74</td>
<td>35.43</td>
<td>84.64</td>
<td>16.2</td>
</tr>
<tr>
<td>11</td>
<td>Rajasthan</td>
<td>46.58</td>
<td>27.22</td>
<td>26.22</td>
<td>51.2</td>
<td>10.82</td>
</tr>
<tr>
<td>12</td>
<td>Uttar Pradesh</td>
<td>46.93</td>
<td>37.42</td>
<td>15.64</td>
<td>82.77</td>
<td>5.98</td>
</tr>
<tr>
<td>13</td>
<td>West Bengal</td>
<td>48.82</td>
<td>30.92</td>
<td>20.25</td>
<td>55.63</td>
<td>17.2</td>
</tr>
<tr>
<td>Average</td>
<td></td>
<td>45.9</td>
<td>26.43</td>
<td>24.59</td>
<td>68.43</td>
<td>20.2</td>
</tr>
</tbody>
</table>


Some major findings indicated are: 68.99% children out of which 54.68% boys reported physical abuse; Highest percentage of physical violence in Assam (84.65%) in one or more situations; Highest physical abuse among (5-12) yrs children (48.29%) followed by (13-14) years children (26.69)% and adolescents (15-18) years at (25.01)%; 48.70% physically abused by family (of which 89% by parents) and 34.00% by others; the highest 54.47% younger children (5-12) years group physically abused in family while children (13-14) years age abused by others; Boys and girls faced almost equal physical abuse.

Significantly, physical abuse of children in family environment not going to school indicated: Every second child in the family environment not going...
to school got physically abused by family members; 59% of these children within the country physically abused in family of which 52.91% male and 47.09% female; 77% of these children in UP followed by 69.55% in Assam; younger children (5-12) years is highest affected by physical abuse among children not going to school in families; in such family environment 74.3% children are slapped/kicked and in 14.83% cases resulted in swelling or bleeding or serious physical injury.

Similarly among physical abuse of children at work: From a 19% of total sample size (i.e. 2,477) were working children; 50.2% children worked 7 days a week; the highest 56.48% younger children of (5-12) years working for 7 days followed by (51.53%) in the age group (13-14) years children; among all age groups Bihar and West Bengal have higher above (60%); children working 7 days a week; 65% children put to work by parents & 76% children handover earning to parents among all age groups; 58.8% of working children faced physical abuse either within the family or at work place and 22.9% of these children faced physical abuse in both situations.

Further (a) As domestic workers: Out of total child workers 23.2% domestic workers of which 81% girls & 44.19% of them in (5-12) age group; 14.44% physically abused by employers (of which 69.51% girls). (b) Working at Tea Kiosks and Restaurants: Out of total child workers 11.21% working in these establishments; 84% were boys & highest 53.45 in the age group of (5-12) yrs and 20.7% in (13-14) yrs; 22.55% reported physical abuse by employers (of which 91.94% were boys). (c) Children in Bidi rolling: Out of total child workers 7.8% in bidi rolling; 83.33% were girls; 47.92% in the age group of (5-12) years and 25% in (13-14) yrs; 14.04% reported physical abuse by employers (of which 91.94% boys) (d) Children in other occupations: Out of total child workers, 57.81% children working in other occupations like shop sales assistants, construction workers, artisan, auto repairing, lock, carpet and agarbati making, embroidery and Zari etc.); 61.28% boys and 38.72% girls; highest 51.41 were from (15-18) years age group followed by 25.60%
from (5-12) years age group; 46.40% reported physical abuse by employers (75.19% were boys).

Among physical abuse of street children: 18.7% of the total child (i.e. 2,317) were street children covered of which 55.28% boys & the rest girls; physical abuse at family, by others & by both constitutes 66.8% of which 54.62% boys and 45.38% girls; boys & girls almost equally abused although have intra-state disparity across few states; Highest physical abuse (65.70%) in the age group (5-12) yrs; Highest among the states Mizoram (91.67%), Goa (79.41%), Assam (78.77%) followed by others.

Only 58.8% street children provided food in families & 20% buy own food; 65.9% street children lived with families on the streets (of which 51.8% slept on footpath, 17.5% in night shelters & 30.7% in other places including under flyovers & bridges, railway platforms, bus stops, parks, market places etc; 63.1% having access to municipal taps, 30% use ponds and lakes, river etc. for water 70.6% defecating on railway links & roadside ditches but 4.6% using pay & use bathrooms. This shows they have to work to survive & meet other needs.

Study on child abuse 2007 has stated that “child sexual abuse is still a taboo. There is a conspiracy of silence around the subject.........”. Out of the total child respondents 12,447 interviewed in five different categories, 53.22% reported having faced one or more forms of sexual abuse (52.94% boys and 47.06% girls); the abuse starts at the age of 5 years gained momentum at 10 years onwards, peaking at 12 to 15 years then declines, so teen age children are most vulnerable; highest percentage of children who faced sexual abuse were those at work (61.61%) followed by children on the streets (54.51%), child in family environment not going to school (53.18%), children in schools (49.92%) and children in institutional care (47.08%); 21% subjected to severe forms of sexual abuse (57.30% boys & 42.70% girls) of which the highest (39.58%) affected in the age group (5-12) years but 73% reported from age below 11 and 18 years; highest
percentage (57.27%) reported from Assam (62.55% boys & 51.9% girls) followed by Delhi (41%); Andhra Pradesh reported highest percentage girls (38.52%) among girls; and every fifth child is victimized by severe form of sexual abuse.

In respect of emotional abuse of children the study, 2007 indicated 48.37% reported emotional abuse in one form or the other (49.99% boys & 50.01% girls); highest 47.02% in (5-12) years, 25.61% in (13-14) years and 27.37% in (15-18) yrs; begins at 5 yrs, gains at 10 yrs, peaks in 12 year (14.12%) & after 14 yrs declines; highest in Assam (71.3%) followed by Delhi (62.01); no clear-cut perception in India; every second child perceives himself or herself as being emotionally abused; higher among (5-12) years (except Kerala); 83% cases parents are abusers however studied only in two aspects by family members alone.

This study, 2007 has also on the aspect of girl child neglect in family situation only indicated out of total 12,447 child respondents, a total of 5981 were girls; 70.57% reported neglect in one form on the other by family members; highest 87.22% from Rajasthan reported neglect; 48.4% wished they were boys; neglect only compared against brothers; 70.38% girls reported doing mere household works than brothers; highest household works by girls in Assam (87.73%) followed by Uttar Pradesh (84.06%); 49% girls reported taking care of or minding their young siblings and reported highest in UP (69.04%), Gujrat (67.83%) and Bihar (65.63%); less food than brothers (27.33%) and such cases are highest in West Bengal (48.16%) followed by Assam (46.63%); 48.44% reported parents not taking side with girls and highest in Madhya Pradesh (67.33%) and second highest (66.96%) in Assam.

IX. Child protection and concerns

As per UNICEF the term 'child protection' refers to protection of children from violence, exploitation, abuse and neglect. Violations of child’s right to protection, in addition to human rights violations are also massive, under
recognized and under-reported barriers to child survival and development. Children subjected to violence, exploitation, abuse and neglect are at risk of: shortened lives; poor physical and mental health; educational problems (including drop out from schools); poor parenting skills in later life; homelessness, vagrancy and displacement. Conversely, successful protection increases chances of a child growing up physically and mentally healthy, confident and self-respecting, and less likely to abuse or exploit others, including his or her own children.140

Some recent facts of child protection scenario of the world highlighted the UNICEF in its annual report in 2007. UNICEF indicated: an estimated 250,000 children recruited by armed forces worldwide; 8,820,000 children displaced due to armed conflict; disabled women and girls are most vulnerable to violence, abuse neglect and abandonment; 3 million girls at risk of FGC each year; 126 million children forced to work in worst forms of child labour; 1.8 million children trapped in commercial sex trade human: trafficking generates 9.58 billion US dollar annual revenue. Certain other facts include: 9.7 million child deaths in 2006 and 99 percent occurred in developing world; under five mortality rate is 160 per thousand in sub-Saharan Africa compared to 6 per 1000 in industrialized country; 143 million under weight under five children in developing world with highest prevalence in South Asia; 125 million under five without access to safe water; 280 million under five without adequate sanitation; 115 million primary school age children out of school and the same stood at 93 million in 2007; 43 million out of school for armed conflict; 36 percent mothers of out of school children have no formal education; 774 million adults can not read; 2.1 million children under 15 living with HIV in 2007; 290,000 children under 15 died of AIDS in 2007; 6,849 new HIV infections each day.140a


have not had their birth registered, 40 percent of them live in South Asia are directly deprived of human rights and under poor coverage of protection compared to other children; One in six children 5-14 years old in the world, or 158 million children, is involved in child labour; poor and rural children are more likely to be engaged in child labour; More than 60 million women aged 20-24 years were married before they reached the age of 18 and about half of such girls live in south Asia and more likely in poor households; 86 percent of children aged 2-14 years experience violent discipline at home and more prevalent in poorest households, in rural areas than in cities; Some 1.5 billion children – two third of world's child population – in 42 countries affected by violent, high intensity conflict between 2002 and 2006; On an average 14.2 million refugees worldwide, 41 percent are believed to be children under 18 years, of 24.5 million internally displaced persons because of conflict 36 percent are children; No reliable up-to-date data on number of children in armed conflict, but more than 100,000 children have been demobilized and reintegrated since 1998; disabilities among children varies between 2 percent to 35 percent in some countries causing discrimination also.\textsuperscript{140b}

Describing the child protection picture in India, UNICEF in 2004 stated: while many families live in remote areas with very few livelihood options, others caught up in unrelenting cycles of migration in search of work. Still other families consist of single parent households 41 per 1000 children below 15 have one parent alive where survival itself is at times a formidable struggle. Violence and abuse in some of these settings fails to provide children with an environment where their rights are protected. Such children are often pushed either into commercial sex work or low paid labour. Often families with little or no income are compelled to sell their children to others who offer the child work. There are estimated to be more than 12 million child labourers in India. Most have never been to school or have dropped

\textsuperscript{140b. Progress for Children, A World Fit for Children Statistical Review, December 2007, P-42 to 49}
out before completing primary school. In Bihar, Nagaland, Mizoram, Rajasthan and Uttar Pradesh 60 percent or more girls dropped out before their first five years of education completed.

The significance and impact of violence on children's lives is also enormous. It can force children out of school and into work and drive them from home onto the streets. The presence of large number of street children, who don't have any identity and receive no protection either from the family or the state, makes the situation more complex.

Roughly 20 percent of the Indian population is considered migrant, 77 percent of who are women and children. They are often at greater risk of exploitation and tend to accept jobs on unfair terms. Mobility usually means surviving without family and community support networks, and children tend to suffer disruption to their education and access to basic services. Forced relocation in conditions of distress, natural disasters or conflict also affects whole families, psychologically and economically.

Trafficking of girls for commercial sexual exploitation, domestic labour and forced early marriages continues to be a serious problem. For a vast number of trafficked women and children, who are subsequently rescued, rehabilitation and repatriation mechanisms are scarce and reintegration is arduous. Among large number of disadvantaged children, especially girls, are vulnerable to violence, abuse and exploitation.141

UNICEF representative in India Cecilio Adorna in 2004 also stated: India is home to the largest number of children in the world but of a hundred children born in India today: 35 of these births will be registered; 93 will make it to their first birth day; 51 will be fully immunized; 5 will die of malnutrition; 42 will remain underweight which will affect their performance throughout their lives; 25 will complete primary school".141a

In a recent study on child abuse in 2007 the Govt. of India indicating child protection scenario in the country stated that children suffer from a
number of violations and girls are also killed before they are born; India has the world largest number of working children and also largest number of sexually abused children, with "a child below 16 years raped every 155th minute, a child below 10 every 13th hour and one in every 10 children sexually abused at any point of time". Child marriage, economic exploitation, practices like the 'devdashti' tradition, genital mutilation in some parts, are most subtle forms of violence against children while physical and psychological punishments in the name of child disciplining are culturally accepted; forced evictions, displacement due to development projects, war and conflict, communal riots, natural disasters—all of these take their own toll on children. Children are also worst affected by HIV/AIDS. Even those within protective net are at risk of falling out of it. Remarkably, the National Crime Records Bureau (NCRB) reported 14,975 cases of various crimes against children in 2005.

Describing 'status of India's children' the study further indicated: 2.5 million children die in India every year, accounting one in five deaths in the world, girls likely at 50%, one in 16 children die before they reach one year of age and one in eleven dies before attaining five years of age; 35% and 40% of children have low birth weight & child malnutrition respectively and neo-natal mortality rate is 44 per 1000 between 1995 and 2000; about 35% of districts (out of total 577 districts) have child sex ratios below the national average of 927 females per 1000 males in 2001 census; among the second largest number of persons with HIV/AIDS after the Republic of South Africa, NACO estimates the figure at 0.55 lakh HIV infected children of (0-14) years in 2003 & UNAIDS puts the figure at 0.16 million; 35.9% of children and young person (0-19) age group living with disabilities as per 2001 census; only 29% of pre-primary age children enrolled in educational institution against 7.73 crore pre-schoolars of 3-5 years (UNESCO), services under ICDS covered only 22%. (i.e.3.41 crore) as in March 2004 with supplementary nourishment but 53% reported undernourished out of 16.4 crore children
aged 0-6 years as per 2001 census; child participation in the decision making process is most affected as they are mostly not heard in family, schools, neighbouring society & community, work place in almost all settings limiting access for help & access outside their immediate circle.\textsuperscript{142}

This study has also indicated certain facts of critical concerns that: every fifth child & every third malnourished child in the world live in India; birth registration is only 62%; retention rate at primary level educations is 71.01%, girls enrolment at primary education is 47.79%; IMR is as high as 58 per 1000 live births; child labour stated 1104 lakh in the country (SRO 2000) among few others.\textsuperscript{142a}

\textbf{2:2 Contextual aspects of child labour abuses:}

\textbf{A. The perspective}

The term ‘child labour’ is often used synonymously with ‘employed child’ or ‘working child’ making it coextensive with any work done by children for gainful purpose while the ‘practice of child labour can be traced back to the Industrial Revolution when children were sucked into the labour market by the surplus seeking entrepreneurs’.\textsuperscript{143} The phenomenon also existed in the far past as a part and parcel of social and economic uplift in the ‘survival process’ in the forms like child slavery, domestic service etc. and even today ‘there is wide spread employment of children, both open and disguised, for survival of the self and often their families’ in order to supplement family income and self sustenance.\textsuperscript{143a} This suggests child labour mostly exists as a result of economic exploitation of children.

Child exploitation is essentially a form of child abuse\textsuperscript{143b} and this includes: engagement of a child for economic benefits; and occurrence of child abuse, however it is found scarce into systematically explaining various facets of abuses and victimisation of working children.

\textsuperscript{142. Study on Child Abuse: India, Ministry of Women and Child Development, Government of India, 2007, P-7}
\textsuperscript{142a. ibid, P-6}
Here as a part of the problem under study, child labour abuses or in other words abuses of child labour or working children, it is visualized that: (a) There is child abuse in every sphere of engagement of children used interchangeably – in family, in community or in work place settings, and (b) correlating violence on working children as a key factor of child labour abuses perpetuating victimisation.

Among others, the UN study (2006) has also delved into violence on working children at family setting, community setting and must notably at work place setting or in place of work, while the study also mentioned that violence against working children remained invisible, ignored and neglected, especially for child workers in the informal economy where the majority are to be found.\textsuperscript{143c}

The US Department of Labour (2006) stated that scores of children work for abusive employers and suffer maltreatment such as verbal abuse, physical punishment, psychological torture, and sexual harassment\textsuperscript{143d}.

In 2005, the Govt. of India in the country report on violence against children stated: “workplace violence and abuse perpetrated on children and comments that most of it occurs in the informal workplace where regulation in non-existent and solid data is lacking".\textsuperscript{143e} Yet there are countries having laws that prohibit all violence against children include: Sweden, Finland, Denmark, Norway, Austria and Cyprus.\textsuperscript{143f}

Moreover, in Asia having issues of child labour and child sexual exploitation very high, political instability and other internal disturbances, including conditions of insurgency in many countries in Asia are also creating major problems, with increasing number of child soldiers, refugee children, trafficked children and children on the streets.\textsuperscript{143g}

\textsuperscript{143b} Bhan, Susheela, Child Abuse: An Annotated Bibliography, Institute of Peace Research and Action, Vol. 1, 1991, P- xxiii
\textsuperscript{143c} supra note 25, P-233
\textsuperscript{143d} Findings on the Worst Forms of Child Labour, Department of Labour, USA, 2006, (Forward note), P-XIII
\textsuperscript{143e} supra note 143c, P-242
\textsuperscript{143f} supra note 73f, P-739 (at footnote:2)
\textsuperscript{143g} supra note 22, P-5
The child abuse study (2007) in India also reveals, in its own limited parameter, that boys and girls working children equally abused; 50% children work 7 days a week; 56.38% children work in illegal/hazardous occupations, 80% domestic workers are girls and such other findings.\textsuperscript{144}

It has also revealed 61.6% of working children faced sexual abuse at work followed by 54.51% on streets.\textsuperscript{144a} Notably children at workplace and street children treated harshly\textsuperscript{144b}, girl children at workplace faced highest emotional abuse.\textsuperscript{144c}

Recent views are also mounting up considering child labour as 'a serious crime'.\textsuperscript{144d} The UN study (2006) revealed: Overt or implied violence was integral to the view of workplace abuse of children .......... underage children should not be at workplace.\textsuperscript{144e}

The Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (Havana: 1990) encompassed these children at 'social risk' describing situations of child exploitation.\textsuperscript{144f} Child labour is stated as 'one of the worst forms of victimization where children ate sent to work instead of their rightful place in school'.\textsuperscript{144g}

In regard to the purpose of socio-legal study it has become pertinent to look at the situation of child labour abuse in which working children are subjected to some serious victimization for violence, exploitation and abuse of various types with a further distinction as 'victim and perpetrator' in instrumental use in criminal activities. Such a situation can also make the working child a victim of crime in physical, psychological and social

\textsuperscript{144. Ibid, P-62}
\textsuperscript{144a. Ibid, P-75}
\textsuperscript{144b. Ibid, P-109}
\textsuperscript{144c. Ibid, P-111}
\textsuperscript{144e. supra note 25, P-231}
\textsuperscript{144g. supra note 6aa, P-140}
ramifications that can cause him/her physical, mental, sexual, social and economic hardship, hurt, humiliation, cruelty, pain, injury, suffering, shame, rejection and other kinds of social denigration in the forms of 'criminal victimization' besides, there could be 'non-criminal victimization' too.\textsuperscript{145} Further, the victimization can also be direct or primary and indirect or secondary.\textsuperscript{146} Victimization may also generate a 'cycle of violence'.\textsuperscript{147}

As such, as a part of the problem, the phenomenon of child labour abuse has also become so common in our society that many of such crimes remained 'overlooked' or technically a 'conspiracy'. This study (GOI,2007) categorically also has pointed out that NCRB data is a 'minuscule' of the total crime/violence committed against children with reasons that "very often crimes against children are either not reported or cognizance is not taken and also that some crimes against children are not covered under existing legislations".\textsuperscript{148}

In fact, in a limited parameter certain types of 'crime against children' covered by Crimes in India, figured in NCRB data under Chapter-6 and Chapter-6* of it\textsuperscript{149} also related to the child labour abuse situation.

Besides, there are some other statutes imposing penalty which may comprise fine, imprisonment or both but not considered crime against children as per crime in India with regard to NCRB's perception. This may include, viz. The Children (Pledging of Labour) Act, 1933, the Factories Act, 1948 (Amended), the Minimum Wages Act, 1948, the Plantation Labour Act, 1951, the Minis Act, 1952 (Amended), the Merchant Shipping Act, 1958, the Apprentices Act, 1961, the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, the Dangerous Machine (Regulation) Act, 1983 etc.

Significantly, in a context as per the available statistics provided by VVGNLI, 1998 (quoted Ministry of Labour, New Delhi) between 1987 to 1992 the total conviction under CL (P&R) Act, 1986 shown as 414 against

\textsuperscript{145} Barua, Arunita, child abuse, 2003, P-74,75
\textsuperscript{146} Paranjapee, N.V., Criminology and Penology, 207 (13th ed), P-292 to 293
\textsuperscript{147} supra note 145, P-127
\textsuperscript{148} supra note 22, P-v
\textsuperscript{149} NCRB, Ministry of Home Affairs, Govt. of India, Crime in India (2006 and 2007), Chapter-6
total prosecution 3204 and under Factories Act, 1948 the total conviction shown as 2688 against total prosecution 5435 indicating percentage of convictions to prosecutions at 12.92% and 49.45% respectively during this period; again in between 1992-93 to 1996-97, the total conviction under CL (P&R) Act, 1986 shown at 451 against total prosecution of 4345 cases and under Factories Act, 1948 the total conviction shown as 1128 against total prosecution of 1986 cases, amidst non availability of data, during this period. (Child Labour - An Overview, VVGNLI, 1998: P-173, 192).

The US Department of Labour in a report (2005) on Indian Context indicated: “from 1999 through November 2004, state governments uncovered 21,246 violations of Child Labour Act, leading to 12,348 prosecution and 6,305 convictions” and further added “enforcement of child labour laws is inadequate and this Report in 2007 also indicated that “the rates of investigation, prosecution and conviction of forced labour crimes are extremely low”.

B. The rational basis

As a part of the problem, in one hand there is exploitation of child labour for being involved in illegal employment/occupations while an attempt is made in particular to explain some distinctive types of abuse in order to find certain criminogenic influences co-relative to some serious victimization for abuses of child labour in this area worst affected by decades long criminal violence, insurgency and terrorism.

In this present study, abuses in case of working children with special reference to workplace situation or setting in a most deplorable state as revealed in certain studies as certain ‘pockets of the country’ is carefully noted and analyzed in some pockets in four districts of Bodoland Territorial Areas District (BTAD) of Assam in north - east region of this country, however carried out, within the limits only of working children upto 14 years in

150a. US Department of Labour’s 2005 Findings on the Worst Forms of Child Labour, Department of Labour, USA, 2005, p-239
151. US Department of Labour’s 2007 Findings on the Worst Forms of Child Labour, Department of Labour, USA, 2007, p-163
roadside hotels and restaurants/eateries in this area.

Again from the definitional point of view, the definitions of child labour vary.\textsuperscript{152} It is also difficult to give a precise dictionary definition of the term 'child labour' applicable to all situations and all countries.\textsuperscript{153}

In context to the relation, the term 'child labour' is defined as work that deprives children of their childhood, their potential and their dignity and is harmful to their physical and mental development".\textsuperscript{154}

Further, according to the study on child abuse: India, 2007, it is stated\textsuperscript{155} that "A universal definition of child abuse in the Indian context does not exist and has to be defined". It has also stated 'child abuse may have different connotations in different cultural milieu and socio-economic situations. Certain relevant definitions in this regard mentioned.

At a National Seminar on child abuse in India (1998, NIPCCD), the definition stated that: "Child Abuse and Neglect (CAN) is the intentional, non accidental injury, maltreatment of children by parents, caretakers, employers or others including those individuals representing governmental/ non-governmental bodies, which may lead to temporary or permanent impairment of their physical, mental and psycho-social development, disability or death".\textsuperscript{156} According to Burgess (1979: 143), a wider definition of child abuse refers to "any child who receives non-accidental physical and psychological injury as a result of acts and omissions on the part of his parents or guardians or employers ...".\textsuperscript{157} According to WHO (1999): "Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{152} UN System in India: Position Paper on Child Labour, United Nations System’s Operational Activities for Development in India, ILO, 1998, P-13
\item \textsuperscript{153} Eliminating the Worst Forms of Child Labour, ILO-IPU, 2002, P-16
\item \textsuperscript{154} Eliminating the Worst Forms of Child Labour, ILO-IPU, 2002, P-16; also, Indus Child Labour Survey: An Analysis of Results, INDUS Child Labour Project, ILO, 2006, P-8
\item \textsuperscript{155} supra note 22, P-3
\item \textsuperscript{156} Barua, Arunima, child abuse, 2003, P-119 (quoted, NIPCCD Report of National Seminar on Child Abuse in India, New Delhi, NIPCCD, 1998)
\end{itemize}
\end{footnotesize}
health, survival, development or dignity in the context of a relationship of responsibility, trust or power".\textsuperscript{158}

C. Operational definition and types

In regard to the purpose of the present study however not exhaustive, the working definitions and types have been derived and adopted as follows:

The abuse of child labour at work place, may be stated to comprise: The state of child abuse situations that affect working children by their employers or any other perpetrators which may include co-workers, clients, foremen, customers, cops, criminal gangs and in sexual exploitation including pimps, depriving the children of their childhood, potential and dignity harmful to their physical and mental development. This may be of the following types\textsuperscript{158a}:

- Physical abuse of child labourer is inflicting physical injury upon the child and may include slapping, shaking, punching, beating, burning, strangulation and such other injuries.

- Emotional abuse of child labourer is the neglect or maltreatment of the working children, which may involve physical, emotional, moral or social needs of the child. This could also cause serious behavioral, cognitive, emotional or mental distress/trauma. Emotional abuse may be in the forms/types of:
  - Physical neglect that is, failure to provide the essentials for normal life, such as food, clothing, shelter, care and supervision, and protection from assault.
  - Emotional neglect includes both the lack of expressed love and affection and the deliberate withholding of contact and approval. This may also include name-calling, belittling,
excessive teasing, scapegoating or blaming and such others.

- Moral neglect includes exposure situations that present a pattern of moral conduct at variance with the norms of society. It may include exposure to situations like alcoholism, obscenity, illicit sex relations and such others.

- Sexual abuse of child labourer denotes the involvement of dependent and immature working children in sexual activities they do not fully comprehend to which they are unable to give informed consent. It also amounts to inappropriate sexual behaviour with a child. Secrecy, misuse of power and distortion of adult-child relationship promotes such abuse. It also includes exposure, molestation, voyeurism, grooming, homosexuality, sodomy, fondling, intercourse, rape, persistent intrusion of child's privacy, involvement with pornography and such others.

- Instrumental abuse of child labour is coined to refer children exploited for instrumental use in criminal activities that blurs the distinction of child as victim and as perpetrator. They are engaged in criminal activities through coercion, instigation or enticement by adults who profit by their acts and should be considered as victims of exploitation rather than perpetrators of crime. It results in stigmatisation, victimisation and criminalisation of child's conduct by adult criminal elements. This may also include recruitment of children in forced sexual slavery, prostitution, pornography and sex tourism, selling drugs, robbery, burglary, petty theft, armed conflict and such others.

2:3 Causes and factors of child labour abuse:

A. The causes of abuse

Working children are abused both as children and as labourer, so the causes are complex, however, exist in supplementing the situations of
victimising children. The present study is also more focused on to find certain causes of child labour in relation to abuse and victimisation, more particularly in their incidence at work place.

The study on child abuse in India (2007) also indicated that child labour in the country increases “vulnerability to abuse and neglect of children”\(^{159}\) which suggests child labour itself is the cause of abuses of the child or working children. From the study of co-relation and mutual dependence between ‘child labour’ and ‘child abuse’ the two main causes of child labour abuses or abuses of working children may be indicated as: poverty situation of child labour/their families; and profiting by employers as working children constitute cheap labour.

In the work place situation, both the above two causes on being fused together amounts to ‘exploitation of poverty for commercial or social reasons’\(^{159a}\) which the UN System in India (1998) explained: “the commercial and social exploitation of poverty is due to the fact that children can be paid less, are more flexible, can be abused without provoking, retaliation and are not organised as adult workers”.\(^{159b}\) Again, the then Union Minister for Labour K. V. Raghunatha Reddy in 1975 at a national seminar on employment of children in India organised by the NIPCCD, New Delhi, observed: “I need hardly emphasise that poverty is the main factor which is responsible for child labour in India. The main reason for engagement of child labour is that it is very cheap and is also readily available”.\(^{159c}\) The Eighth UN Congress (Havana:1990) has also observed ‘in respect of child exploitation’ that: ‘mass millions of children are considered commodities to be used for economic benefits; sometimes parents are led by poverty to sell their own children to earn money; or they force them to under take illicit

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\(^{159}\) supra note 22, P-5,6

\(^{159b}\) ibid

\(^{159c}\) supra note 10, P-159
activities to sustain the family'.\textsuperscript{159d}

Poverty is treated as the 'greatest single force driving children into workplace'\textsuperscript{159e} and also a leading factor to child abuse\textsuperscript{159f} while, child labour is stated to constitute cheap labour.\textsuperscript{159g}

Under this circumstances, children are seen as the 'property of the family or employer'\textsuperscript{159h}, more particularly in societies 'where children are at the very bottom of the pecking order'\textsuperscript{159i}, in and 'among certain classes, castes or ethnic group, parents place greater value on children being employed in economic activities than going to school'\textsuperscript{159j} for prevalence of 'exploitation of poverty, societal attitudes and caste factors, and absence of relevant education also\textsuperscript{159k}, as important causes of child labour being abused by parents and employers in our country\textsuperscript{159l}, besides others in communities as well.

Apart from both the above two causes mainly responsible for 'supply and demand' of child labour in the workplace\textsuperscript{159m} primarily considered in this study, there is an interplay of multitude of other factors of the 'Supply (push factor) and Demand (pull factor)' sides that spread and increases the magnitude of higher incidence of child labour\textsuperscript{159n} as many child workers are found within family setting mostly unpaid, community setting like children on street besides certain other common forms in work setting like those

\textsuperscript{159e} supra note 36, P-25
\textsuperscript{159f} supra note 22, P-5
\textsuperscript{159h} supra note 25, P-238 (quoted, Burra, Neera, Born to Work, Child Labour In India, 1995, Oxford University Press)
\textsuperscript{159i} ibid
\textsuperscript{159j} ibid
\textsuperscript{159k} supra note 42, P-14
\textsuperscript{159l} supra note 139a, P-222
\textsuperscript{159m} Eliminating the Worst Forms of Child Labour, A Practical Guide to ILO Convention No.182 Handbook for Parliamentarians, No.3-2002 ILO-IPU), 2002, P-24; also, Indus Child Labour Survey: An Analysis of Results, INDUS Child Labour Project, ILO, 2006, P-8
which are labour intensive, function with rudimentary technology and which requires labourer for repetitive work for long hours besides in the work place in the most worst forms.

There are some other common causes for increasing magnitude of child abuse\textsuperscript{159o} and child labour\textsuperscript{159p} by linkages that may include: illiteracy, unemployment and low family income, unorganised working sector, large families, occupational rigidities of caste system, migration and displacement, barriers to education etc. Further, the causes of child labour are deep rooted and many\textsuperscript{159q} and also vary from country to country\textsuperscript{159r} while in case of 'child abuse and neglect' many issues are specific to certain regions among the common issues.\textsuperscript{159s} The study on child abuse in India (GOI:2007) also revealed that issues of child labour, child sexual exploitation, political instability and other internal disturbances including insurgency with increasing number of child soldiers, refugee children, trafficked children and children on the streets are also creating major problems to child abuse in Asia.\textsuperscript{159t} It is therefore, in one way both the problems supplement each other.

This gets further support from the poor enforcement of legislation and because of weak social and political commitment towards the cause of child workers\textsuperscript{159u} while on the other, the 'problem of child abuse has not received enough attention in India'.\textsuperscript{159v} Besides, due to poor performance in respect of child protection: India has the largest number of working children and sexually abused children; mostly subtle forms of violence against children

\textsuperscript{159o} Ahuja, Ram, Social Problems in India, 1997 (2\textsuperscript{nd} ed. 2007), P-222; Study on Child Abuse, India 2007, P-5
\textsuperscript{159p} Child Labour, Know Your Rights Series, NHRC, P-4,5; also Indus Child Labour Survey: An Analysis of Results, INDUS Child Labour Project, 2006, P-8; also, Eliminating the Worst Forms of Child Labour, A Practical Guide to ILO Convention No.182 Handbook for Parliamentarians, No.3, ILO-IPU, 2002, P-150
\textsuperscript{159q} supra note 10, P-149
\textsuperscript{159r} supra note 36, P-23
\textsuperscript{159s} supra note 22, P-5
\textsuperscript{159t} ibid
\textsuperscript{159u} Indus Child Labour Survey: An Analysis of Results, INDUS Child Labour Project, ILO, 2006, P-8
\textsuperscript{159v} supra note 22, P-8
include economic exploitation, practices like devdashi, child marriage etc.;
cruelty in the name of child disciplining mostly accepted; forced evictions,
displacement due to development projects, war and conflict, communal riots,
natural disasters take their own toll on children.\textsuperscript{159w} So prevalence of either
of these or multiple situations add to chances of expanding child labour
abuses.

There are also enough of reasons for 'economic exploitation of children'
in the hands of unscrupulous employers. This include some belief or so to
say wicked belief among employers that: child labourer are best suited to
their industry; economically viable for more hours of work at low wages
compared to adults; quick learners & pick up skills in minute work because
of ‘nimble fingers’; do not absent or protest work as ignorant of their rights;
easily manipulated for being gullible and innocent; unable to bargain for
wages hence inexpensive; do not realise hazards of jobs for ignorance; can
be removed when not required and low maintenance cost.\textsuperscript{159x}

Such causes of child labour abuses provide a clear idea of why so
many children are found to work often in most appalling conditions and the
'reasons for economic exploitation' providing an insight as to why do
employers hire children besides, there are certain 'risk factors' for violence
at workplace.\textsuperscript{159y}

\textbf{B. The factors of abuse}

In this study of child labour abuse, the problem has largely been
emerged as violence perpetrated against working children while 'economic
exploitation of children' has been also described as one of the 'most subtle
forms of violence against children' in the study on child abuse in India
(Gol:2007)\textsuperscript{159yy} in a similar perception. Again, most common forms of violence
against children in the work place can be: "physical violence including hitting,
kicking, slapping, whipping, scalding and in extreme cases even murder;

\textsuperscript{159w} Ibid, P-7
\textsuperscript{159x} Child Labour, Know Your Rights Series, NHRC, India, P-5
\textsuperscript{159y} supra note 25, P-251
\textsuperscript{159yy} supra note 22, P-7
psychological (or emotional) violence including shouting, scolding, insults, threats, obscene language, bullying, mobbing, isolation, marginalisation, repeated discriminatory treatment; sexual violence including sexual harassment, fondling and rape\(^{159z}\) are most common characteristics of abuses working children do face and suffer pain in silence.

It is therefore most pertinent to look at the factors contributing to violence against child labourer at work on the basis of the causes and reasons thereof, as the problem of child labour has both 'short term and long term' consequences, and such a child being subjected to abuse, cannot wait.

Viewing at the core of abuse of working children is violence perpetrated against child labour at work place reveals as per ILO (Violence at Work:2000) frame work\(^{160}\) as a function of four inter-related factors, viz. characteristics of victims; characteristics of perpetrator; factors in the working environment; and risk related to the environment external to the place of work.

Such a function may be reconciled to fit child labour abuse at work place into the factors as follows:

- **Characteristics of victims & perpetrators**

Children are by definition more vulnerable as victims to violence than adults due to small size, developmental immaturity, and state of dependence; children are less likely to physically resist violence or make complaints, and easy targets; work being legal or illegal but children are at the bottom of hierarchy at the work place; children with disabilities are at elevated risk & also spent out to live as beggars often meet physical violence if do not earn on a 'working day'; girl child workers are more vulnerable to sexual violence.

On the other side, the distance of the employer in terms of space, social & ethnic affiliation from child's background affects responsibility for young workers; the power relationship of employer over worker exacerbates risk; affected by 'bossism' of employer a term that includes any one who

\(^{159z}\) ibid, P-242

\(^{160}\) ibid, P-251 to 253
has a controlling relationship over a working child; perpetrators also include foremen, co-workers, customers, police and criminal gangs; more vulnerability when the working situation is isolated or illegal; in sex trade children also falls prey of pimps or brothel owners; even in traditional system of apprenticeship, as a consequence of poverty, and trying to acquire skills & training in informal economy or where it exists in industrial setting abuses also take place.

• **Work place characteristics**

Risks related to workplace itself very according to whether working activity takes place in an organised setting, such as factory or an informal setting, such as back room enterprise; whether remoteness or danger in circumstances, such as mining, fishing, quarrying and in some types of agriculture; whether, in closed environment such as household, or illegal activity such as sexual activity or drug dealing and most serious workplace violence in worst forms of child labour, unsafe working environment like glass, mining, plantation agriculture.

Severe injuries can result from dangerous machinery, guns, accidents, toxic fumes and explosives. Systematic workplace abuse against children include in human condition in cotton industry, unsafe use of pesticide in agricultural workers including children.

• **Environmental factors**

It is observed that where the environment is full of risk, the children who work in open spaces are constantly exposed to violence; work in service industries such as restaurants and shops may expose young workers to armed robbery or customer aggression when working children feel constantly threatened by violence in the environment, they may also learn violent behaviors themselves or behaviorally disturbed, exhibiting sexual or personal aggression.

Work on the street or in transport, shops, bars or hotels based in shanty – town areas exhibits a special risk of violence. Illicit activities such
as trade in illegal goods are by their nature conducted in high risk areas where criminal enterprises are part of the environment.

2:4 Crime and few key connotations relating child labour abuses:

A. Crime-criminal behaviour-delinquency

The definition and concept of 'crime' varies from 'time-to-time and place-to-place' depending on several factors.\textsuperscript{160a} The definition of crime has also both legal and social connotations. Few such definitions are considered for conceptual purpose in related aspects.

In a legal definition of crime, Tappan (1960:10) has defined crime as "an intentional act or omission in violation of criminal law committed without defence or justification".\textsuperscript{160b} Hall Jerome (1947:8-18) has defined crime as "legally forbidden and intentional action, which has a harmful impact on social interests, which has a criminal intent and which has legally prescribed punishment for it".\textsuperscript{160c}

However, 'crime has been also defined in non-legal or social terms' as Mowrer (1959) has defined it as “anti-social act”; Throsten Sellin (1970:6) described it as “violation of conduct norms of the normative groups”; Clinard (1957:22) maintained that all deviations from norms are not crimes, among three types of deviations: i. tolerated deviation, ii. deviation which is mildly disapproved, and iii. deviation which is strongly disapproved – this third type of deviation as crime.\textsuperscript{160d} Garafalo, an eminent criminologist also defines crime in terms of immoral and antisocial acts.\textsuperscript{160e} There are several other definitions of crime by jurists on different aspects.\textsuperscript{160f}

Criminologists with a sociological perspective have drawn attention to situations in which people who engage in criminal behaviour are either not caught or are acquitted by courts because of inadequate evidence or legal loopholes or pressures. Taking the reconciliatory position between legal...

\textsuperscript{160a} Gaur, K.D., Crime: Aims and Objects, Criminal Law and Criminology: 2002, P-3
\textsuperscript{160b} Ahuja, Ram, Social Problems in India, 1997 (Reprint 2007), P-308-309.
\textsuperscript{160c} ibid, P-309
\textsuperscript{160d} ibid
\textsuperscript{160e} supra note 160a, P-6
\textsuperscript{160f} ibid, P-4
and social or non-legal definitions of crime, Reid (1975:5) has said that the legal definition may be used for compiling statistics on crime and for assigning the label 'criminal' but for studying causation of crime should include such persons in their sample of 'criminals' who admit their crime but are not convicted by court.\footnote{161}

In India, as a legal wrong (i.e. in terms of legal definition of crime), “When a penal statute prescribes punishment for an act or illegal omission (u/s.32 IPC), it becomes crime. But as regards the definition of the term 'crime', there is no satisfactory definition acceptable to all and applicable in all situations. Even the Indian Penal Code (IPC) is silent on the issue, though it has codified the bulk of criminal law of the country. Section 40 of the code simply states: ‘Except in the chapters and sections mentioned in clauses two and three of this section, the word ‘offence’ denotes a thing made punishable by this code ... or under any special or local law’. This provision is nothing but a statement of fact and can not be regard as a definition of crime”.\footnote{162}

A noted criminologist, Edwin Sutherland, defines crime in terms of criminal behaviour, saying: “Criminal behaviour is behaviors in violation of the criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a crime unless it is prohibited by criminal law. The criminal law, in tern, is defined conventionally as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer, and which are enforced by punishment administered by the state. Characteristics, which distinguish this body of rules regarding human conduct from other rules, are therefore, politically, specificity, uniformity and penal sanction”.\footnote{163}

The term ‘delinquency’ comes from the Latin word ‘\textit{delinquers}’ which

\footnotesize{\begin{itemize}
\item 161. supra note 160b, P-310
\item 162. supra note 160a, P-9
\item 163. ibid, P-7
\end{itemize}}
means to 'omit'. William Coxton (1484) used the term 'delinquent' to describe a person found guilty of customary offence. The word defies its universally acceptable connotation, however, in broad sense is understood to apply to acts covered within the range of child misbehaviour. The word 'delinquent' is also may be used to designate a young criminal and can therefore take on either the technical legal meaning or the wider criminological meaning.

Generally, legalistic approach toward the problem, describes it under the brand names like 'delinquency', 'youth crime' while writers with sociological background describe the problem as social 'maladjustment, 'problem child', 'deviant' or 'anti social element'. These terms are also used almost interchangeably, with a preferred sense of describing non-conforming behaviour of a child below a certain age varying from mild naughtiness of the child to the child in most violent crime.

Ruth Shonle Cavan, USA observed that: Irrespective of legal definition, a child might be regarded as delinquent when his anti-social conduct inflicts suffering upon others or when his family finds him difficult to control so that he becomes a serious concern to the community. As such there is no single unique definition of Juvenile delinquency to the satisfaction of all the disciplines. In a broad generic term, juvenile delinquency also refers to: many divers forms and shades of anti-social behaviour of a child and is defined somewhat differently by different societies, though a common converging tendency may be noted in these forms namely, 'socially unacceptable tendency of the child at any given time'.

164a. ibid
164b. ibid, P-884
164c. Katherine S. Williams, Text Book on Criminology, First India Reprint, 2001, P-37
164d. supra note 164, P-884
164e. ibid
164g. supra note 164, P-884
164h. ibid
In India, the present perception, as observed by Venugopal Rao, a noted Indian criminologist that: "It is safe to restrict our study of juvenile delinquency to all violations of penal law committed by children whose adjudication, custody and treatment have to be imbued with a philosophy of protection". But at the same time 'delinquency' is stated to mean anti-social behaviour which is so serious that is labeled as an offence punishable by any law which is in force for the time being and the Act is considered blending of law and sociology.

B. Susceptibility to criminogenic influence

The word 'criminogenic' is meant to denote that is producing or tending to produce crime or criminality. Again, criminogenic influences also regulate human behaviour. As rightly pointed out: child labour is often perceived as a form of child abuse, and popular opinion in high income countries seems to believe that child labour stems from opportunistic behaviour seeking cheap labour and callous parents happy to live off the earnings of their children.

Child abuse is based on and also defined (WHO: 1999, and operational definition of child abuse: India, 2007) in terms of 'child maltreatment' is a generic phrase that covers a hole range of behaviour; ".... it covers all behaviour patterns whether or not sanctioned by law or custom, which are in some way injurious to the child’s health or social, economic, emotional, or moral well being". So child abuse comprises a wide range of acts and behaviour distinguished conceptually as well as operationally. The US Juvenile Justice Bulletin (July, 2001) stated, “a substantial body of research has shown that: Maltreated children are significantly more likely than non-
maltreated children to become involved in delinquent and criminal behaviour; the prevalence of childhood abuse or neglect among delinquent and criminal population is substantially greater than that in general population; delinquent youth with a history of abuse or neglect are at higher risk of continuing their delinquent behaviour than delinquents without such history". It follows, as stated: ‘that if it were possible to reduce the incidence of children’s maltreatment, delinquency rates would decline’. It has been also made clear that “Given the links between child maltreatment and juvenile offending, designing and implementing programme to reduce the child maltreatment as a means of preventing delinquency are a promising - though often overlooked strategy”. As quoted, justice V.R. Krishna Iyer, observed ‘... noxious surroundings, neglect of basic needs, bad company and other abuses and temptations would spoil the child and likely to turn him a delinquent’. It is also observed that the working children at workplaces are significantly abused as per the study on child abuse in India (2007), however studied in a limited scope.

In fact, many of the child abuses including victimisation of child workers or labourer form part of ‘crime against children’ as per the NCRB perception of crime in ‘legal terms’ but there is crime in ‘social terms’ as well for understanding. At the same time there is a strong perception that as a result of abuses or on being abused the working children are exposed to forced delinquency due to criminogenic influences at work place, which might cause them to be perpetrators in crime or criminal acts - at least embracing criminality. Farrington (1991) indicated that: ‘childhood behavioral problems become juvenile criminal behaviour and then adult anti-social activities’.

165h. ibid
165i. ibid
165j. supra note 164f, P-513
165k. supra note 22
165L. supra note 164c, P-360
In this conceptual frame work, it stands pertinent that, possibilities of influences that can generate criminality among working children in workplace setting could explain the gravity of abuses, on the premise that more abuses produce more inclinations towards delinquency, in other words, influences more towards producing delinquency or criminality inculcate more susceptibility towards predisposed to delinquency. Hence the extent of child labour abuse is seen with respect to the extent of exposure to delinquency at workplace setting.

Exploring certain aspects of criminology concerned with these particular conducts of human behavior which are prohibited by society covers an area of socio-legal study to find the possibility of the 'causes' of developing criminality in other words criminogenic influences, especially with reference to working children at certain workplace setting condition, for remedial measures to reduce crime. It is to be further noted that victims are now an integral part of criminological study.\textsuperscript{166}

2.5 Criminogenic influences at workplace:

It is not only a fact that child labourer are more seriously abused at workplace, however some cases are recognised as crime against children in legal terms, but at the same time there is an ample scope and opportunity that these children are forced to become delinquents or perpetrators as "crimeless victims" of violence/abuse. The UN Congress (Havana:1990) expressed the view that in "child exploitation" children are at "social risk" of criminogenic influence of early exposure to violence – creating a vicious cycle of violence and also stated in child exploitation that "children are entrapped in criminal activities at an early age" even by agents in "organised crime".\textsuperscript{167}

In this regard, an attempt is therefore made to understand the criminogenic influences that might generate criminality among child labourer particularly at workplace correlative to victim of abuse, however, the study

\textsuperscript{166} ibid, P-134
\textsuperscript{167} 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-12
on juvenile delinquency as such, is kept beyond the scope. This may also help to understand whether workplace employing children is criminogenic, although it may require a further study of 'criminogenic needs' on the effect of criminogenic influences, however focused on the existential phenomenon of such influences.

It is also pertinent to note here that where employers are involved in organised crime (quoted, Sellin) that even employers 'operate' legitimate ventures, to carry out illegal activities, by illegal means to amass huge profits by illegal means, e.g. prostitution, smuggling, bootlegging, gambling, racketeering etc.\textsuperscript{168} that obviously attract involvement of children in worst forms of child labour.

As per the UN study (2006): the worst forms of child labour under Art.3(a) to 3(d) of ILO Convention No.182 is considered illegal\textsuperscript{168a}; some 'unconditional worst forms' under Art. 3(a) to 3(c) of ILO Convention No.182 are identified universally outlawed\textsuperscript{168b}; child labour proscribed under international law falls in three categories are Art. 3(a) to 3(c) of the ILO Convention No.182, Art 3(d) of ILO Convention No.182 and under the Minimum Age ILO Convention No.138.\textsuperscript{168c} And abuse for violence – physical, sexual, psychological/emotional affects many millions of children who are working both legally and illegally.\textsuperscript{168d} According to ILO-IPU (2002): children engaged in worst forms of child labour is a matter of some particularly 'odious forms of organised crime'\textsuperscript{168c}; in some situations children find themselves in 'prison like condition'.\textsuperscript{168e} The U.S. Department of labour in its report (2006) on the 'Findings on the Worst Forms of Child Labour' across the world revealed that it is difficult to identify worst forms of child labour from other forms as they mostly remain inseparable and hidden.\textsuperscript{168f} The UN study (2006)
also revealed in abduction or trafficking working children are ‘deceived’ from place of recruitment to ‘job’ placement as victims of prostitutions, forced marriage, domestic or agricultural work in conditions of slavery, servitude or debt bondage. These children from recruitment as slaves may often be trapped by criminal syndicates. So, in many of the cases, real form of child labour remains hidden or invisible than they are outwardly visualised.

Under this present study, a partial attempt is made from a study of criminology, the underlying criminogenic influences also in child labour abuses at workplace situation, more particularly at certain pockets of BTAD in Assam with some details in the empirical investigation. This study further leads to a rational/logical conclusion that work place employing children are criminogenic.

Under this circumstances, viewing child workers as victims of abuse for mostly adult perpetrators criminality insists upon ‘risks’ at work place, for inter-related factors specific to such situation may be inter-linked as a function of influence of:

- Acquisitive tendencies among employers;
- Criminogenic working environment;
- Propensity of criminogenic sub-culture in the area.

In this regard acquisitive tendency in man being a part of human nature, explains both the situations of 'poor' as well as 'rich' that tends to make him criminal. Chances of profit motives by private persons like employers considerably at the helm of power at workplace, facilitates the chances, that exacerbate ‘risk’ as per ILO (violence at work:2000) frame work which can thus explain the characteristics of employers as perpetrator.

Commenting on the aspect of 'social danger' Prof. J.L. Gillin observed that employment of children is associated with an increase in criminality.

168b. supra note 158k, P-20
169. supra note 164f, P-100
169a. ibid
169b. supra note 25, P-251
170. supra note 164f, P-98
Besides, employers employing children are not only moved by the selfish motive of economic gain by exploitation and abuse but also perpetuate criminality among working children. Further, in cases, where employers are involved in 'organised crime' most significant in some 'worst forms of child labour' even they 'operate legitimate ventures by illegal means' (quoted, Sellin) from iniquitous enterprise, e.g. prostitution' smuggling, bootlegging, gambling, racketeering etc. in which child workers are found in significant numbers, in which police officials are owned by underhand tactics or use of threat, undue influence or coercion against victims in order to refrain from making complaints to police (quoted, Sutherland). And the situation gets extremely worst when such employer keeping nexus, in some way or the other being a part with anti-social including terrorist outfits, as prevalent in some 'pockets of the country' as in the forms of 'organised predatory crime' in which case children may be used for pick-pocketing, extortion, and even recruited for armed conflicts, or in unlawful acts of terrorism, in which case the real benefits mostly goes one way to the perpetrators (including employers) without actual benefit to victims (in this case working children).

In this context of present study (empirical) here the acquisitive tendency of employers is identified interims of dishonest profit motive by way of employing child workers, adopting illegal means of income, employers' link with anti-social terrorist and extremist groups, bribing corrupt official & security personnel's, and employers persuading co-workers of working children in offending.

Criminogenic working environment may also be perceived both from certain situation of 'workplace characteristics' and 'environmental factors' as stated in the UN study on violence against children (2006) that has incorporated ILO's (Violence at Work:2000) conceptual frame work as explained above. This includes unsafe and inhuman working condition

170a. ibid, P-104,105
170b. ibid, P-104
171. supra note 25, P-251
perpetuating illegal activities like sexual activity, drug dealing etc. under further risks of customers aggression, armed robbery etc. with constant threats of violence and abuse with all possible chances to learn violent behavior themselves and tending to 'mobility' or behaviorally disturbed, exhibiting sexual or personal aggression in addition to the 'egoistic' (Freud: 1856-1939) criminal behavior.

For the purpose of this (empirical) study, criminogenic working environment has been identified in terms of higher incidence of odious customers, frequency of visits of odious customers, forceful access of anti-social terrorists and extremists, exposure to immoral situation, egotistic behavior among perpetrators of abuse and tendency of mobility among co-workers of working children.

Propensity of criminogenic sub-culture in the area can be visualised from 'environmental factors' of ILO (Violence at work:2000) conceptual framework as noted in the UN study (2006) on violence against children, as discussed above, that the young workers are vulnerable to illicit activities and criminal enterprises in high risk areas are part of the environment. In certain situations, delinquent sub-culture vitiates the environment and even risk prevails to the areas external to the place of work.

The effect is serious, when such an environment is dominated by a sub-culture of criminals having their own norms. A sub-culture (observed, Cohen): is a group of individuals who follow a distinctive and usually deviant style of life; such a group isolates itself from a larger society and maintains physical and social distance. It is also stated that the sub-culture may include deviant groups, such as criminal gangs, or occupational groups e.g. Miners, truck-drivers, building workers etc. But in a wider perspective such a sub-culture may also be associated to socio-cultural and political tension for being led by anti-social elements and as a result of communal violence, conflicts and terrorism, specific to certain areas and situation.

172a. ibid
For the purpose of empirical study, propensity of criminogenic sub-culture in the area is identified in terms of dominance of anti-social terrorists and extremists in the area (specifically under study), informal undertaking of workplace by anti-social terrorists and extremists and offensive use of establishments as logistic bases by anti-social terrorists and extremists.

On the receiving end, characteristics of working children as victims, as per the ILO conceptual framework on the aspect of working children’s vulnerability as ‘easy targets’ as noted above, can also be explained on an understanding that: juvenile victimisation depends on the child’s social and economic background; situations of destitution and disability; and condition conducive to criminal victimisation of the child (in this case a working child labourer who is also a child).172b The forces that govern existential conditions/circumstances may depend upon: firstly, on child’s family milieu – disorganisation in domestic conditions, poverty and penury of parents, and the parents attitude and behavior of neglect, ill-treatment etc.; and secondly, external conditions making the child vulnerable to be victimised by persons other than parents/family members.173

In this regard, it may also be noted here that ILO, 1999 stated that: certain groups of children are particularly vulnerable to hazard and abuse; the younger the child the more prone he or she is to injury; girls are most vulnerable to exploitation and abuse particularly because they are likely to start working at a younger age and to work in hidden and unregulated situations.173a An analysis of study on child abuse in India (2007) also reveals, among the working children of all age groups, (5-12) years group is highest abused and girls are highest neglected.173b In this regard, (Benjamin & Masters) attributed “pre-disposing factors” such as being poor, female, young etc., however ‘victim blaming’ as a contributory factor is a negative thing at

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172b. Barua, Arunima, child abuse, 2003, P-75
173. ibid
173a. A New Tool to Combat the Worst Forms of Child Labour, ILO Convention No.182, ILO, 1999, P-12
173b. supra note 22
'victimology' of present times.\textsuperscript{174}

So for the purpose of empirical investigation in the present study in particular, the background characteristics of working children as victims, are identified in terms of the profile of working children in one part, and in another part, components like poverty situation; impacts of ethnic and non-ethnic violence in the area; broken family background; neglected education; and affected personality trait pertaining to background situations are described as contributing factors.

\textbf{2:6 Exploring theories of criminology to child labour exploitation:}

Certain criminological theories (excluding the biological theories) are explored on criminal motivation and opportunity or place to explain some criminogenic risk situations of child labour abuses co-related to the extent of exposure to delinquency for exploitation of child labour. The theoretical approach is considered to cover influences in both the situations at work place setting and that external to it.

\textbf{A. Influences at/inside work place setting situation}

\begin{itemize}
  \item \textbf{Relative deprivation}

  Based on Runcimen (1966) formulating the idea of relative deprivation, Stack (1984) and left realists views put together, with Bonger (1969) lead to explain employers (being richer) might develop selfishness, greed & may develop illegitimate means to desire for more profit tends to offend and gets more attracted to cause emotional abuse by way of physical neglect.\textsuperscript{175} Employers when linked to organised crime having relative deprivation and nexus with acts of terrorism because of relative deprivation and connected to organised crime for support base, illegal profit motive gets exacerbated by illegal means of income may also cause in inflicting instrumental abuses; and relative deprivation connecting to stress in frustration according to Merton, leads to cause physical abuse; relative deprivation can also occur in 'anyone in the economic chain' poor or rich, but Bonger, amongst early
\end{itemize}

\textsuperscript{174} supra note 164f, P-594
\textsuperscript{175} Kathern S. Williams, Text Book on Criminology, (First India Reprint 2001), P-350, 351, 475, 451, 474, 440; Paranjapee, N.V., Criminology and Penology, (13th ed), 2007, P-97
radicals on Marxist view, puts it among 'rich' for 'necessity' to protect business, personal interest or be related to power incline to criminality with relative impunity also. On the other hand, to him criminality among poor (i.e., children or their families) is only for 'self-interest' and to Quinney only to 'survive' could be seen among cheap labour.

In certain valuable remarks, Donald Taft observed: 'crime is a mere phenomenon of prosperity rather than adversity'; further, 'it is not necessarily the need but greed and craze for amazing wealth that motivates even the wealthiest persons to indulge into criminal activities'; Gabriel Tarde attributed 'acquisitive tendency' in man tempts to 'commit illegal acts'. It is stated in specific observation that "employers employ children not for altruistic or charitable considerations, but to minimize labour cost and to maximize their profits. Some element of exploitation is inherent in such a relationship".

- **Sub-culture**

Sub-culture may include deviant groups like occupational groups, that may be of employers also might be getting support from delinquent peer group provides & teaches skill to criminality (Conger: 1976) and certain illegalities become accepted in corporate crime for illegal profits (Box: 1983-1987) and in organised crime it is criminal gangs of professional or career criminals, some times exhibiting more allegiance to group norms, may even lead to cause instrumental abuse as peer group norms or be a reason to emotional abuse in physical neglect. Tarde also stated that: "professional or career criminals like employers, if connected or a part of organised crime predisposed to criminality or may be led by imitation" which Southerland calls 'learning behavior' from peer groups in 'differential association theory'.


175b. supra note 164f, P-93,99,98

175c. supra note 10, P-174

Sub-culture among the peers, more particularly from among comparatively adult co-workers who might have been already 'drifted' to criminality (Mataz and Sykes:1957;'64;'69) can primarily do cause sexual abuse and emotional abuse in the form of moral neglect in which the younger children obviously could internalize from values and norms of sub-culture that becomes more relevant for 'blocked legitimate opportunity' for these working children (Cloward and Ohlin:1960).\textsuperscript{176a}

There may also be sub-culture among customers like motorists that lead to sexual abuse and emotional abuse in moral neglect together taking advantage of opportunity most.\textsuperscript{176b}

- **Behavioural conduct**

  Based on the Freudian theory (Sigmund Freud:1900-1939) it is quite possible to happen that the working children are also exposed to disadvantageous socialisation process for less 'super ego' among the perpetrators like employers, mostly adult co-workers and odious customers. This might cause emotional abuse of children in the form of moral neglect\textsuperscript{177} and perpetuate the same to their adulthood.

- **Individual control**

  Loss or lack of self-control among the perpetrators (like employer, adult co-workers and customers) imbibing defective or improper socialisation process accompanied by less super ego (i.e., psychological) or among sexual psychopaths become more inclined to extra marital relation or on developing secondary relationship might lead to stronger 'impulses' for sexual abuse of the victim in a favorable opportunity and once sexually abused, criminality is further enhanced for emotional excitement. The 'impulse' due to loss of self-control also increases the tendency to cause violence that might also lead to inflict certain physical abuse. Besides, coarse disciplining in the name of informal control and in certain cases led by sub-cultural group

\textsuperscript{176a. supra note 164c, P- 354 to 359, 362 to 363  
176b. supra note 176  
177. Katherin S. Williams, Text Book on Criminology, (First India Reprint 2001), P-198 to 203, 371 to 372; Paranjapee, N.V., Criminology and Penology, (13th ed), 2007, P-56,57}
norms, may also become the cause of physical abuse.\textsuperscript{178}

- **Opportunity/place**

Criminal opportunity theory of Mercus Felson and Lawrence Chohen in mid 1970's attract both perpetrator and victim (or target) for an opportunity (place) to pursue, criminal motivation of inclination based on environmental factors, namely, physical i.e. actual place and social i.e. people in the area comprising factors of (a) accessibility of the victim or target; (b) perceived attractiveness of the target; (c) proximity to numerous potential offenders; and (d) absence of capable guardian (especially for children & youths).\textsuperscript{179}

In this regard may be added the left realist's view of environment also in neighborhood influence in certain places and areas on the ecological theory of Shaw and McKay of Chicago school in 1940's where migration became too intensified; and in certain situation dominance in the area might also be shifted to organised criminals or terrorists; and that could invariably also arise in racial conflict or that forms stronger interest groups as explained by Vold (1958) which according to Sellin (1938) the secondary conflict situation develops the sub-culture.\textsuperscript{179a}

Further, roots of terrorism may sometimes be found in ethnic or communal violence which may lead to migration.\textsuperscript{179b} This is to be noted that place which also includes the area provide an opportunity to pursuing criminality congenial for both perpetrator and victim.

Sparks (1982) attempted to explain certain role of victim (consciously or unconsciously) that contributes to criminality to victims as: vulnerability, opportunity, attractiveness, facilitation, precipitation and impunity, on the basis of relations suggested by Von Hentig (1948).

Although there is a danger to ‘victim blaming’ moving responsibility...
from criminal or perpetrator to victim, but certain aspects like children's vulnerability and special risk considered in several studies & sometimes beyond control in variations of status like economic position or environment, weak grouping such as minority races, area or environment, including economic vulnerability; and 'impunity' related to situation where victim is unlikely to complain that could immensely contribute to sexual abuse.180

- **Delinquency and defenses**

  In course of abuses, the exploited children might be exposed to criminal acts or 'delinquent sub-culture' as a result delinquency induced or developed as explained by Cohen (1955) or Cloward and Ohlin (1960), due to delinquent influences of peer group or sub-culture in the workplace setting might be learnt as explained in Sutherland's theory of differential association or may also be achieved by way of 'drift' as described by Matza & Sykes (1957; Matza:1964, 1969) for free choice or will and may not be exactly by sub-culture but by a set of learnt 'definitions favorable to violation' which is also observed in Southerland's theory but in terms of the norms of dominant culture.181

  Some serious defenses on the part of delinquents as a huge concern found Matza & Sykes (1957) include: denying responsibility as a result of uncontrollable factors such as an accident, parental neglect, poverty, broken home, led astray by friends, also often in corporate crime claiming forced by superiors or allegiance to superior or fault of subordinate; no one harmed, common in gang fight or corporate crime as private matter; deserving victim, every one committed crime some time; approval of group or gang or corporation because more important to justify delinquency.181a

  It is therefore as to how child labour, most specifically, exploitation of child labour contributes to Juvenile delinquency.181b It may further be noted here that the UN Congress (1990) pointed out that there could be chance of

180. supra note 164c, P-126 to 130
181. Ibid, P-354 to 360,362 to 363
181a. ibid, P-363 to 366
181b. supra note 164f, P-518
childhood drift towards delinquent activities.\textsuperscript{181c}

**B. Influences external to workplace setting**

- **Vulnerability to victimisation**
  
  According to left realism, in the 'square of the crime' as considered an holistic approach to criminology, indicated impact of victimisation due to risks involved in, such as, poverty, unemployment, bad housing, racism, poorest areas, minority races etc. for lack of financial and other resources; while Sparks (1982) indicated children at special risk for vulnerability due to young (in age), weak, variation of status for environment and economic vulnerability.\textsuperscript{182}

  Benjamin & Masters also considered certain per-disposing factors to generate crime that include all the demographic characteristics of the victims, being female, young, poor, minority, living in squalor, living single, being unemployed and so on.\textsuperscript{183}

  Many of such factors attract working children and their families contributing to victimisation for exploitation of child labour. Certain explanation also provided that education that could provide better skill leads to better earning ability in reducing poverty and therefore could minimize victimisation.

- **Drives and pulls**

  In some studies, scholarly attempts were made to explain child labour in terms of 'push factor and pull factor' or as 'supply side factors and demand side factors' carrying similar meanings which is seen closely resemble theoretical explanation of criminology to factors tempting towards delinquency – that might be considered to be associated with workplace setting conditions (i.e. pull).\textsuperscript{184} Justice Krishna Iyer proclaimed 'child labour is the enemy of child education' linking these two sides, quoted Henry Peter

\textsuperscript{181c. supra note 158k, P-8,9}
\textsuperscript{182. supra note 164c, P-,128,129,473,474}
\textsuperscript{183. supra note 164f, P-594}
that 'education makes people .... difficult to drive .... impossible to enslave'. This proposition therefore not only indicates 'illiteracy' as a factor to the causes of child labour but most importantly 'drive' denotes the reason (i.e. push) towards criminality associated with child labour.

Reckless (1967; 1973) in his containment theory posited pushes (drives) and pulls to tempting towards delinquency indicated certain external push factors to criminality, such as poverty, family conflicts and lack of opportunity apart from psychological desires or propensities as internal factors; and those in pull factors as; availability of illegitimate opportunity, criminal peer groups and also mass media images. He indicated both internal and external insulators that build 'self-concept' to prevent criminality.

- **Poverty situation**

Poverty has been considered as a leading cause for child labour and its abuses. However, if it is not absolute poverty per se that could cause criminality (Patterson: 1991) it might be the relative deprivation for economic reason for unfairness in setting legitimate income opportunity as explained in left realism.

At the same time there might be poverty culture or sub-culture in lower class culture and also poorest areas get greater social disorganisation (Sainsbury: 1955; Bottoms et al: 1992) and lack of money might cause eroded usual social control (Patterson: 1991).

- **Control factors**

Some control theorists also indicated criminality to weaknesses in certain control factors in community, such as, family breakdown or broken home, parent-children relationship, unemployment, increased family violence etc. This also becomes acute for deficiencies for effectively operated school attachment (Hirchi: 1969), peer groups, neighborhood, religion and traditions (among races). Again, individual control might get affected for lack

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185. supra note 10, P-171
186. supra note 164e, P-371,372
187. supra note 139a, P-36,37,48,49
of 'self control' that makes vulnerable to temptations to criminality acted on by certain traits in personality of the individual, if opportunity arises.

As such self-control is also to be externally shaped and reinforced by socialisation in family, peer groups and school, otherwise could be low (Gottfredson and Hirchi: 1990; 1993). This might also lead an individual with more chances if has skills and be used as tools to an opportunity that could facilitate a supportive atmosphere i.e., in both physical and social environment followed by lack of social control which in turn might led to choosing criminality if felt attracted or on belief that more money and goods in law breaking than abiding law. 188

2:7 Summing up:

In summing up of this chapter, it is clear that child labour is an outrageous form of child abuse through a series of conceptual linkages in which working children are victimised withstanding violence in silence which is notably dangerous in work place setting than any other settings, mostly hidden and unreported, but an odious form of organised crime in worst forms or paedocide as crime against humanity, however the 'worst forms' is too difficult to be separated from any other form of child labour. Further, the NCRB’s perception of ‘crime against children’ in India denotes victimisation/abuse of children that incorporates violation of several provisions under IPC and SLL including CL (P&R) Act, 1986 along with few other related legislations. At the same time some other legislations provide penal provisions, however, child labour has not been banned in this country in absolute terms so far, although the real initiatives in respect of child protection in this country is 'abysmally low' as against a huge 'critical concern' about child abuse scenario, as per the Study on Child Abuse: India 2007 that compliments the UN Study on Violence Against Children, 2006

At the same time it is revealed that the definitional aspect child labour and child abuse vary across place and purposes. In the contextual

188. supra note 164c, P-372 to 375, 382 to 393
background, there is a long history that children are required to work 'on their own account or for wages' in the all societies, but that does not affect health and development or schooling of children is some thing positive as a 'part of natural socialisation process'. Again in child labour system 'exploitation and abuse' are almost simultaneously used to denote 'economic benefits' to the perpetrators and 'social evil' in the practice together, however also used interchangeably as child exploitation is necessarily a form of child abuse which is further emphasised in UN Study of Violence Against Children, 2006 that incorporates Article 19 of the UNCRC, 1989.

It is for the purpose of the present study, child labour abuse at work place is identified, however not exhaustive, in terms of the types/forms of physical, emotional, sexual and instrumental abuse of child labourer while emotional abuse is seen in a further categorisation of physical, emotional and moral neglects.

Pertinently, as per ILO – 2006, around 218 million children involved in child labour of which 126 million in hazardous work. The ILO's commitment to eliminate Worst Forms of Child Labour by the year 2016 is yet a far cry. India has a dubious distinction of having highest number of working children and largest number of sexually abused children in the world as per the child abuse study in India, 2007 however; in a major flaw India has not yet ratified the ILO's Minimum Age Convention No.138 and No.182 on the Worst Forms of Child Labour. Nevertheless, the empirical findings of the child abuse study in India 2007 also pointed out that 50% working children work 7 days a week; 56.38% work in illegal/hazardous occupations; 80% domestic workers are girls; 60.6% working children face sexual abuse at work followed 54.51% on street apart from other abuses.

Working children are abuse both as children and labourer that supplements a situation of victimising children in a complex of causes recognising that child labour increases vulnerability to abuse and neglect of children. Amongst a multitude of causes for child labour abuse, at the
work place, more prominent are the causes due to poverty situation of child labourer/their families and profiting by employers as child labour constitutes cheap labour. Further, from interplay of several factors, the child labour abuse situation at work place is also pertinently interpreted as per ILO framework, as a function of interrelated factors in the characteristics of victims and perpetrators, factors in the working environment and risk related to the environment external to the place of work. Moreover, considering the key connotation of ‘crime’ in both legal and non legal or social terms cover those assigned as ‘criminal’ and also those involved in immoral and anti social acts incorporating criminal behavior. In the work place, criminal conduct of human behaviour provides enough likelihood in generating criminality towards delinquency among working children.

It is not only a reality that working children are subjected to abuse at work place but some cases are recognised as ‘crime against children’ in legal terms, also providing ample opportunity and scope to become susceptible to delinquency and might internalise perpetrators’ conduct norms as ‘crimeless victims’ of violence/abuse. Victims are now also an integral part of criminological study. The UN congress (Havana: 1990) recognised that in child exploitation children are at ‘social risk’ of criminogenic influence of early exposure to violence, creating a ‘vicious cycle of violence’ and in many cases children are entrapped in criminal activities in an early age by agents of organised crime, that might obviously include nexus with terrorist or anti social groups as a means towards involvement of children in worst forms of child labour.

Again viewing child workers as victims of abuse mostly for criminality of adult perpetrators insists upon risks at work place, inter-linked to a function of influences of acquisitive tendencies among employers, criminogenic working environment and propensity of criminogenic sub-culture in the area. And at the receiving end, characteristics of working children as victims and vulnerability as ‘easy targets’ also depends on a
multitude of social and economic or demographic factors or on the pre-disposing factors, however, 'victim blaming' is a negative thing in the 'victimology' of modern times. However, it is recognised that employment of children is associated with increase in criminality.

As relevant, certain theories of criminology (excluding biological theories) explored in co-relating criminal motivation and opportunity (place) to explain situation of child labour abuses and exposure to delinquency in exploitation of child labour. In this theoretical approaches, criminogenic influences at/inside work place situation noted in the aspects of relative deprivation, sub-culture, behavioral conduct, individual control, opportunity/place, victims role, delinquency and defenses while such influences external to work place setting noted in vulnerability to victimisation, drives and pulls, poverty situation and control factors in explaining the situation. Significantly, this also shows as to how child labour abuse contributes to juvenile delinquency with every likelihood that establishment engaging child labour is criminogenic.