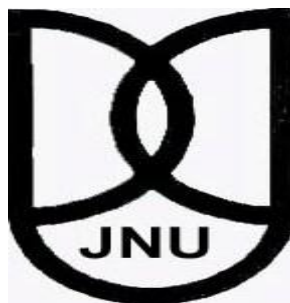


CHILD SEXUAL ABUSE AND INTERFACE WITH MEDICAL SERVICE SYSTEM

*Dissertation submitted to Jawaharlal Nehru University in partial fulfillment of the
requirements for the award of the degree of*

MASTER OF PHILOSOPHY

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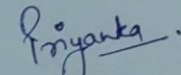


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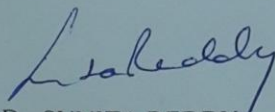
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CERTIFICATE


This is to certify that this dissertation entitled "CHILD SEXUAL ABUSE AND INTERFACE WITH MEDICAL SERVICE SYSTEM" is submitted in partial fulfilment of six credits for the award of the Degree of MASTER OF PHILOSOPHY of Jawaharlal Nehru University. This dissertation has not been previously submitted for the award of any other degree of this university or any other university and is my own work.

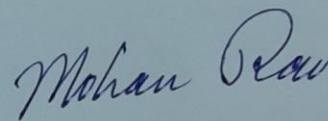

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We recommend that this dissertation be placed before the examiners for evaluation.



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CONTENTS

<i>Acknowledgement</i>	iii
<i>List of abbreviation</i>	iv-v
<i>List of figures</i>	vi
<i>List of tables</i>	vii
Introduction	1
Child Rights: Laws and Development	17
Child Sexual Abuse: A Review	44
Data Analysis	76
Discussion	97
Bibliography	104

Acknowledgement

“The ideas that have lighted my way have been because of the kindness and generosity that has been shown by the people that I am blessed with”. For any academic endeavor, it is important to be surrounded by people who have the ability to expand your knowledge through mental and physical help. The journey to writing this dissertation has been rough but as it is said all is well that ends well. I have been able to come this far because of the many help that I have received during this past year. I would like to take this opportunity and thank my Guide, Dr. Sunita Reddy who has been my pillar of support throughout my dissertation phase. Without her tireless guidance and encouragement, this dissertation would not have been a success. I have been blessed to have her as my Guide.

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All the learning's that I have acquired during this period of writing this dissertation is going to be a pushing factor to step into my new journey. This phase has not only strengthened me academically but it has gifted me with knowledge of life and relationships. My gratitude also goes out to all those names that I might have missed mentioning in this page. I am truly thankful for all the help. I look forward to a new journey with joy in my heart.

List of Abbreviations

CIC	Crises Intervention Centre
CSA	Child Sexual Abuse
CWC	Child Welfare Committee
DCW	Delhi Commission for Women
FIR	First Information Report
GOI	Government of India
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
HOD	Head of the Department
HRW	Human Rights Watch
ILO	International Labour Organization
IO	Investigation Officer
IPC	Indian Penal Code
JJ Act	Juvenile Justice (Care and Protection of Children) Act 2000
JJB	Juvenile Justice Board
ME	Medical Examination
MLC	Medico-Legal Certificate
MWCD	Ministry of Women and Child Development
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Records Bureau
NGO	Non Profit Organization
POCSO Act	Protection of Children against Sexual Offences Act, 2012
RAHI	Recovery and Healing from Incest
SHO	Station House Officer
STDs	Sexually Transmitted Diseases
STIs	Sexually Transmitted Infections
Tulir- CPHCSA	Tulir-Center for Prevention and Healing of Child Sexual Abuse
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations International Children's Emergency Funds

VS

Victim Survivor

WHO

World Health Organization

WIO

Woman Investigation Officer

List of Figures

4.1	Sexual Offences Against Children, 2012
4.2	Rape Cases Against Children In India 2001-2013
4.3	Top 10 states: Rape Cases Registered Against Children in 2013
4.4	Rape Cases of Children in DELHI 2001-2013
4.5	Increase in the Rape cases Registered in Delhi
4.6	Incest Cases Reported in Delhi in 2013

List of Tables

2.1	Age Prescribed for Majority Under Various Laws
3.1	Gender Based Violence Throughout the Life Cycle: - Types of Violence Present
3.2	Common Myths About Rape
4.1	Number of Rape cases registered and worked out in Delhi between 2009-2014
4.2	Type of the case registered between 2009-2014
4.3	Place of Crime

CHAPTER-1
INTRODUCTION

CHILD SEXUAL ABUSE

Child Sexual Abuse (CSA) can be defined as an abuse in which a child is used for stimulation by an adult person or older person¹. Child marriage is the biggest form of Child Sexual Abuse. According to United Nations International Children's Emergency Funds (UNICEF) "Child marriage represents perhaps the most prevalent form of sexual abuse and exploitation of girls"². Child Sexual Abuse may also occur in home, school, work location where the child labour concept is common or in practice. The after effect of the Child Sexual Abuse may include anxiety, depression, guilt, left alone, post traumatic disorder, complex post traumatic stress disorder and other associated issues and problems³. Sexual abuse to a child by his/her family members may result in serious and long term psychological trauma especially in the parental incest⁴.

DEFINITION OF CHILD SEXUAL ABUSE IN INDIA

The protection of Children from sexual offenses Act, 2012 was drafted to effectively deal with the issue of sexual abuse and sexual exploitation of children. The act defines different forms of sexual abuse as described below.

Penetrative sexual assault

- Inserting any object or using any part of body to cause penetration into any part of the body of the child or making the child do so.

Sexual assault without penetration

- Touching penis, vagina, anus, and breast of a child with sexual intent.
- Making physical contact to child with sexual intent or making the child do so.

¹"Child Sexual Abuse" Medline Plus.U.S. National Library of Medicine.

² http://www.unicef.org/chinese/protection/files/Child_Marriage.pdf

³Roosa MW, Reinholtz C, Angelini PJ (February 1999) "The relation of child sexual abuse and depression in young women: Comparisons across four ethnic groups". *Journal of abnormal child psychology*

⁴Courtois, Christine A. (1988). *Healing the incest wound: adult survivors in therapy*. New York: Norton

Sexual harassment

- Making any sound or gesture or exhibiting any object or part of body, with sexual intent, so that it will be heard or seen by the child.
- Making a child exhibit his body or make a gesture on that, it is seen by the child or other person with sexual intent.
- Constantly following or watching child either directly or through digital or any other means with sexual intent.
- Showing any object to child in any form with sexual intent or enticing child for pornographic purposes.

The law deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher or doctor⁵.

STATISTICS ON CHILD SEXUAL ABUSES IN INDIA

The presence of child sexual abuse at global level has been predicted to be 19.7 percent for girl children and 7.9 percent for boys⁶. Most of the offenders are already known to the victims (children). An approximate 30 percent of the offenders are likely to be the relatives of the child like uncle, aunt, sibling, parent or cousin. Nearly 60 percent are other known people like family friends, neighbors and baby sitters and only 10 percent of the perpetrators are strangers in child sexual abuse cases⁷. As per different studies, majority of the child sexual abuse crime is committed by men and only maximum up to 40 percent is committed by women among which women commit 14 to 40 percent against boys and not more than 6 percent of the cases reported against the girls.

⁵ “Learn about CSA”

⁶Pereda N., Guilera G, Fornis M and Gomez Benito J. (2009) “The prevalence of child sexual abuse in community and student samples: A meta analysis”. *Clinical Psychology Review* 29

⁷Save the Children and Tulir (2006): Research on Prevalence and Dynamics of Child Sexual Abuse among school going children in Chennai

Coming to India, Recovery and Healing from Incest (RAHI), an Indian Organization conducted India's first study of Child Sexual Abuse in 1998. It has surveyed over 600 English speaking upper class and middle class women. 76 percent have stated that they have been abused in Childhood or during the period of adolescence among which 40 percent of them by their own uncle or cousin⁸.

A study was conducted by Tulir-Center for Prevention and Healing of Child Sexual Abuse (CPHCSA) in 2006 among 2211 school going children in Chennai, Tamilnadu. The study indicates that 42 percent of children, irrespective of their socio economic condition, have experienced to child sexual abuse and is equally vulnerable. When seen gender based, 48 percent of boys and 39 percent of girls are experienced to child sexual abuse among which 15 percent of both boys and girls are extremely vulnerable to child sexual abuse.

In 2007, the Ministry of Women and Child Development (Government of India) has published their study on "Study on Child Abuse: India 2007". In this study, the Govt. Representatives have sampled a total of 12447 children, 2324 young adults and also 2449 stakeholders across 13 states of India. In this study, the department has covered multiple dimensions of abuse like physical abuse, sexual abuse and emotional abuse, alongside, the study also covered the child neglect in 5 evidence groups namely children in family environment, children in school, children at work location, children on the streets and also children in institutions.

As per the findings of the study, it is stated that 53.22 percent of the children have faced the sexual abuse from different people in their lives among which the higher portion was constituted by boys with 56.94 percent and 47.06 percent were girls. Delhi, Bihar, Assam and Andhra Pradesh have reported the highest incidences and percentages for boys as well as girls and also the most number of sexual assaults. Among these, 21.90 percent of all children have faced extreme forms of sexual abuse where as 5.7 percent were sexually assaulted and 50.76 percent have

⁸ RAHI (1998): Voices from the Silent Zone- A Study on Women's Experiences of Incest and Childhood Sexual Abuse; Delhi

reported all other forms of sexual abuse. The sexual assault prevalence was very high among the children who live on streets, work are working as child labour and who are residing in the institutions under care and protection. The study also revealed that 50 percent of abusers are already known to the child, who faced the abuse or they abusers are a relative and are in a responsible position like parent uncle/aunt or cousin and the child have not reported the issue to anyone due to whatever the reason may be⁹.

In regard to the condition stated above, there was a huge evidence of lack of proper laws against child sexual abuse in India, which treated the children separate from adults with regard to sexual offences. The “Protection of Children against Sexual Offences Bill, 2011” was passed in the later stages in 2012 which came into force from the Children’s day (14th November) 2012.

Human Rights Watch presented a report in 2013 with the name “Breaking the Silence” which states that the protection of children in particular regard to prevention of sexual abuse across classes is at its worst. The report marks the absolute existence of child sexual abuse according to the case studies and expert comments present in the report, it has highlighted that the child sexual abuse in schools, homes and institutions for care and protection of children is very common. The report further stated that the Government appointed a committee in January 2013, which has stated that the government child protection schemes “have clearly failed to achieve their avowed objective”¹⁰.

Hence, it is clear that the Government has failed to prevent the child sexual abuse from happening. Adding to that, the present systems of child protection, where Police, Lawyers, Parents, Teachers and Media etc. are part of the stakeholders are not actively involved to help the victims on one hand and on the other; they are not even ensuring the perpetrators to get punished.

⁹ Kacker, L.; Varadan, S.; Kumar, P. (2007). *Study on Child Abuse in India*. New Delhi: Ministry of Women and Child Development.

¹⁰ Human Rights Watch (HRW). (2013). *Breaking the Silence: Child Sexual Abuse in India*. United States of America: Human Rights Watch

Due to failure in the implementation of the Act and the social stigma attached the rape, poor awareness of the rights and lack of knowledge to reason the situations and negligence are still attached to the issue.

A statement released by Louis-Georges Arsenault, UNICEF representative to India states, “It is alarming that too many of these cases are children. One in three rape victims is a child. More than 7,200 children including infants are raped every year. Experts believe that many more cases go unreported. Given the stigma attached to rapes, especially when it comes to children, this is most likely only the *tip of the iceberg*”.

LEGAL SYSTEM AND VICTIM

19 percent of World’s children live in India. According to 2001 census 44 crores, population age below 18years of age which is 42 percent of nation’s population are children and a large number of percentage in this population is vulnerable to abuse, exploitation and neglect. Studies suggest, 7200 children including infants are raped every year. Experts believe that many more cases go unreported. Many are mistreated again by the criminal justice system that often does not want to hear or believe their accounts or take serious action against perpetrators (Human Rights Watch: Breaking the silence: Child Sexual Abuse in India, 2013).

A major problem in India is the lack of effective monitoring over the residential institutions, childcare facilities and correctional institutions. The lack of monitoring is because as per the Juvenile Justice (Care and Protection of Children) Act 2000, all Child care facilities should register themselves in Government in six months and Child Welfare Committees to inspect them but there is no penalty or legal action mentioned against those who do not comply. In short, there is not even an approximate number of how many childcare institutions are established and rendering their truthful or unfaithful services and how the children are treated in such facilities.

As per the “Model Guidelines” issued under section 39 of The Protection of Children from Sexual Offences Act, 2012, the child who becomes a victim of child sexual abuse can avail the free legal services from the court of law. It also provides the interpreter/ translator for expressing the situation in special cases. As per the above stated act the child can avail the public prosecutor, child friendly procedures, legal representation, legal counseling, and legal advice. The lawyers get paid along with the expenditure made under the court of law.

The Act also has made certain guidelines to avoid adjournments to conclude the trial as quickly as possible as the prolonging of the case will only cause more trauma to the child. The Act ensures the child gets proper mode of communication for understanding the language. The victim is given the right to be accompanied by an adult in whom the victim has trust and confidence. The Act, best of all ensures that the courtrooms and waiting areas are child-friendly.

However, from the time police receive a complaint until trails are completed, the criminal justice system needs urgent reform. The processes in Indian Judicial System are very prolonging and not convincing as the delay in completion of trail leads to a continuous trauma to the Victim under all circumstances. The inconsistency in handling the cases by the system is one of the major problems. Due to the extremism in the process, the victims and family feel unapproachable to the criminal justice system. Besides the Police filing process, the doctors, who examine the victims of rape, are very insensitive as per the complaint of the victims, who are treated. Due to these reasons there are many instances that the victims drop off their cases and the perpetrators are freed from being punished for their unlawful deeds.

There is one more important thing which boosts the confidence of perpetrator and fuels it for repeating his crimes over their victim is the “culture of silence”. As

crimes related to sexual violence gets more attention than any other crime which is followed by stigma. Therefore, people who are the victim of sexual violence tend not to report their victimization because there are chances that they themselves will be blamed for the incident. This unwanted attention actually creating a notion of silence among people and cries of victims most of the times goes unheard.

CONCEPTUALIZATION

Sexual violence is defined as:

“any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts totraffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.” [(World Health Organization (WHO), 2002, pg. 149)]

WHO further elaborates on the definition as, “Sexual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object. The attempt to do so is known as attempted rape. Rape of a person by two or more perpetrators is known as gang rape. Sexual violence can include other forms of assault involving a sexual organ, including coerced contact between the mouth and penis, vulva or anus” (WHO, 2002, p. 149).

The World Health Organization (WHO) and the Centers for Disease Prevention and Control (CDC) defines sexual violence as “a public health problem.”But it is more than a public health problem—it’s a public health crisis. Victims of sexual violence suffer debilitating immediate and long-term physical, psychological and social effects, and when they are left untreated, or are poorly treated, victims face the risk of disease, disability and even death. Sexual violence is also a silent epidemic. The majority of victims do not talk about what happened to them

because they are overwhelmed by feelings of fear, self-blame and social disgrace, and therefore do not seek the help necessary to heal (The Torch, 2009, p. 1).

Sexual Violence, when done with the children can have the fatal affects on the minds of the innocent children. Therefore, children are more vulnerable to the after affects of sexual violence due to their age, their physical growth, their lack of understanding of the incident, threatened by the perpetrator, feeling of guilt after the incident, fear of being blamed for the incident and if they do not have any trustworthy person, whom they can share with about the incident their condition get worst.

From the above discussion, it has clearly come out that Child Sexual Abuse is not a new phenomenon to India. But still we are not at the stage, where we can accept clearly as a society that this problem of CSA exists within our families. When a case of child sexual abuse gets registered, child victim has to undergo all the processes, which is required and the one is the Medical Examination (ME). Medical examination consists of physical examination (external examination) and Gynecological Examination (internal examination). This process is very important for the evidence collection. Medical examination of a child victim can be a traumatizing experience for them; it can make them think about the entire incident again, and leave a mark on the tender mind, where their personal space is violated though under the garb of medical examination. There can be feelings of shame and guilt due to such experiences. Therefore there is prominent need for conducting medical examination sensitively keeping the best interest of the child in mind.

But, the conditions are not smoother as they are supposed to be, there is no separate doctor appointed who is responsible for conducting ME. Therefore, when all the doctors are busy in performing their daily duties in Gynecology

Department, child victim and the family and the Police have to wait till the doctor gets free, because seeing patient is their priority.

RATIONALE OF THE STUDY

Researcher's previous exposure of working in this field, have actually seen the experiences of child rape victims and their families post incidents. Medical examination (ME) after sexual assault is required and it is to be conducted in any Government Hospital. The way it is being conducted again is very much harassing. Firstly there is no separate doctor appointed for conducting medical examination of medico-legal cases and no privacy for the victim. The doctor is available in the Gynecological Department and that also close to the labour room. As a counselor researcher had accompanied many victims for conducting medical examination. The doctor directly asks the victim, what happened? *Rape ka case haikya* (Is it a rape case)? People wait outside the labour room for their relatives and they also become the part of the conversation many times. Most of the times Doctor is very loud and the people will eventually come to know that it is a rape case. After that they start looking at the child in a very suspicious manner making all kinds assumption about the character of the victim. Many victims used to get terrified because of this reaction of people. People's reaction and the behavior of the doctor have been the reason that victim denied for medical examination. Researcher, as a counselor had tough time with victims and their families in making them understand about the importance of medical examination. They are told that if victim denies conducting medical examination, which is used as a weapon by the defense lawyer at the time of trial so that the perpetrator can be prosecuted.

One of the incidents researcher would like to mention here, is the case of a 6 years old child, an unknown person in a park raped her near her house. There was severe bleeding from the vagina. Child was taken to hospital immediately. After

examining her, doctors referred her to another hospital because they did not have facility of Anesthesia in their hospital. So we moved to another Hospital and by that time it was almost an hour. In the second hospital there was no wheelchair or stretcher available, so the father of the girl child had to carry his bleeding daughter on his shoulder. In the Gynecology department there was no vacant bed, doctors kept the girl child lying down on an iron stretcher without any bedding outside the labour room. The girl was bleeding and crying. The whole scenario was so terrifying; later on they took the girl inside; she got admitted there in the same room where women were giving births. The girl child was feeling nervous by looking at the women crying and she wanted to go out but as there was no other place, so she had to be there. After few days of treatment she got discharged. During this whole process there were so many people outside the labour room; they came to know about what has happened to the girl child. Some were showing sympathy to parents of the girl child. Some were saying “*pehle to bachho ka dhyan nahi rakhte ye log, fir ye sab ho jata hai*” (initially these people do not take of children then such incidents happens). In that also the concept of class comes in, the father of the girl child was rickshaw puller and people have these tendencies that such kind of incident only happened with poor people. It needs further understanding of poor families, where because of compulsions, both the parents have to go out and work and there is no safe place for the children in their absence, due to poor housing conditions and no day care centers in the vicinity.

The study is focusing on the child rape victims and its interface with medical service system. Medical examination plays a vital role in the cases of sexual violence and it is also a major part of police investigation as the part of judicial service system. The crime such as sexual violence is already very traumatizing and when it is done to a child, it becomes even more gruesome and self-destructing. When cases come to judicial system it is again a huge struggle for both victim and the family to go through the whole process. Medical examination

is one of the important processes, which require special attention as well as the men power. But there is no special doctor appointed to conduct medical examination and such cases, directly goes to Gynecology Department, in this department doctors are already perform their duties assigned to them. It happens many times that no doctors is free to conduct Medical examination (ME), the victim and the family has to wait for a longer period till the doctor gets time to conduct ME. It takes one and half-hour to complete a full medical examination (internal and external). But usually they have to spend 2-4 hours in hospital. Apart from that people around this department come to know about the rape case and not all people react in the same manner. Some show sympathy to the parents and the child but some will look at them suspiciously. These are the confidentiality issues, which needs to be understood and intervened.

The interface of the child victim with the medical system was observed to be a traumatic experience for the child and also humiliating for the family. This study attempts to understand and analyze the interface of the child victim of sexual abuse and the medical interface.

There is not much work being done on the issue of CSA in India and the issue which researcher has decided to work on is not yet explored. So, this study can be useful for further policy recommendations and interventions as well.

OBJECTIVES OF THE STUDY

1. Recognizing Child Sexual Abuse as the serious crime against children.
2. To understand the child rights and specially the CSA related issues, concerns and laws.
3. Child Sexual abuse and its interface with medical service system.

METHODOLOGY

Earlier researcher planned to follow up the case since its beginning and in order to do that attached her with the organization which works with direct cases of child sexual abuse. But it was difficult to follow up the cases prospectively because such incidents are unpredictable and you do not know when other incident will happen. As, M. Phil. is a time bound one year Dissertation program and one cannot stretch the duration; it was difficult for the researcher to collect data prospectively. Therefore, researcher had to change the methodology; which ultimately ended up in changing the objectives of the study as well.

As a researcher I found that Police has been very supporting than doctors. When people hear the term “rape” they get frightened, especially doctors and they do not want to comment on anything. The researcher had to meet Medical Superintendent to take permission and then interviewed the doctors who conducted Medical Examination.

It was challenging to get permissions to conduct interviews with the busy doctors. However, with persistent efforts, could get permission to interview. It is also interesting to find that how in every day experience, one has to negotiate through one’s own gender and caste. In one of the hospital, researcher went to Gynecology Department and informed doctors about the research study. First they heard and advised researcher to meet Head of the Department (HOD) (Gynecology and Obstetrics), but HOD was in Operation Theater, so they asked researcher to go to Labour Department, because Doctors who conduct ME were performing their duty in Labour Department. In labour department MEs are being conducted. Researcher talked to 3 doctors in that department and everyone was directing the researcher to other doctors. At the end they also advised researcher to meet HOD. The researcher waited for more than half an hour to meet HOD and after meeting the HOD, researcher learnt that she has to take permission from the

Medical Superintendent (MS). So, the researcher went to meet MS, but MS was also not in his office, so she went to the office of Additional MS. Then researcher explained him about the purpose of her visit, he talked to researcher very nicely and asked for the permission letter from the University. While reading the letter he asked researcher; where does she belong to? Researcher said that she belongs to Delhi. Then he asked about which place in Delhi; researcher informed him. After knowing the exact location of researcher in Delhi, he further asked about the Caste of the researcher. Researcher informed him that she belongs to this particular caste and it comes under the Scheduled Caste. Then he gave a little pause, so researcher asked him the reason why did he ask about the caste. First he asked the researcher, whether she felt bad; she said no, she did not feel bad, and then he informed that he also belongs to the Scheduled Caste and Medical Superintendent is also from Scheduled Caste. After that he became very friendly and said that he is very happy to meet researcher and he will help in all the aspects in which he can, after all researcher was like his daughter. Here it has worked in the favour of the researcher, however, this sort of attitude upsets researcher as an individual.

Researcher also interviewed him, but nothing concrete came up (and he was defending doctors in all aspects). Then he had to go for a meeting, after finishing interviewing him, he asked researcher to come next day before 12:00 noon, because then only doctors will be available. Researcher asked him whether she has to meet him next day or she should directly go to the doctors; then he replied very sarcastically which answered many questions of researcher's, he said that "*if doctors entertain you please go to doctors*" and smiled.

Study Design: - The study is qualitative in nature. It is more of secondary literature review, due to the reasons stated above. Though the researcher traced CSA cases happened in last one year and simultaneously analyzed development in

the laws of child right and the development of Government bodies set up for protection of child rights. The researcher chose East District of Delhi for data collection, because researcher has worked in the same district so it would be easy for networking.

Primary Data: The researcher conducted in-depth- interviews with few key informants who deals with CSA cases; Doctors, Police, Members of Child Welfare Committee and Counselor from NGOs. Interviews with Police, Doctors and Child Welfare Committee Members, the unpublished data collected from Police Headquarters.

Secondary Data: - Journal Articles, Newspaper Clippings, Government Records and reports, policies and programs.

Ethical Concerns: The Researcher followed ethical guidelines of taking informed consent to interview respondents and also keeping the names of the respondents and institutions confidential. The synopsis was also discussed in the students presentation and faculty advised on following ethical guidelines on the submission for ethical clearance at the center level.

LIMITATION OF THE STUDY

Since this study demands a number of sensitive information but due to the time constraint the researcher was unable to collect enough detailed qualitative insights that would have strengthened the study more.

In the following chapters, the researcher tried to explain her experience and ground realities of Child Sexual Abuse in Delhi. Through her research she has depicted how the victims have been treated at various stages of their daily lives starting from complete lack of privacy, confidentiality in the process of medical examination and thus exposing the child to further trauma to the stage of completing the trials of Indian Judicial System. How the society make the victims more victimized in the process of providing justice to the sufferer. The research also tried to explore how due to traumatized prolonged process and the vulnerability at different phases of trials, friends and family usually ask not to report and avoid taking any action. However, this study does not look at the other angle where especially, in middle and upper middle classes, not reporting to police is to keep up the honor of the family.

Chapter-2

Child Rights: Laws and

Development

“No matter whether violence against children occurs in family, school, community, institution or workplace, health workers are the front line for responding to it. We must make our contribution to ensuring that such violence is prevented from occurring in the first place and that where it does occur children receive the best possible services to reduce its harmful effects.”

Anders Nordström, Acting Director-General, WHO

INTRODUCTION

The law, policy and practice of child welfare have undergone a significant change from historical perspective. Before, 1839, there was the concept of authority and control. It was an established common law doctrine that the father had absolute rights over his children. After this, the welfare principle was reflected in the dominant ideology of the family. The Victorian judges, who developed the welfare principle, favored one dominant family norm. The Indian traditional view of welfare is based on *daya* (mercy), *dana* (charity), *dakshina* (offerings), *bhiksha* (alms), *ahimsa* (non-violence), *samya-bhava* (brotherhood), *swadharma* (moral duty), and *tyaga* (sacrifice). The essence of which were self-discipline, self-sacrifice, and consideration for the others. It was believed that the well being of children dependent on these values (Bajpai, 2010, p. 1).

There was no concept of rights before twentieth century, during this century the concept of rights came into picture. The entire shift from 'welfare' to 'rights' has its significance as rights signify entitlements and they also signify obligations and goals.

The rights perspective is embodied in the United Nations Convention on the Rights of the Child 1989, which is a landmark in international human rights legislation. India ratified the Convention on the Rights of the Child in December 1992 (Bajpai, 2010, p. 1).

THE LEGAL DEFINITION OF CHILD

It is important to set a certain age limit for defining a child so that children can get benefit from the law and government as well as policies and programs can be designed for benefitting the children. The legal definition of the child varies from country to country and culture to culture. This chapter is focusing on the Indian Laws which are related to children.

Table- 2.1	
Age Prescribed for Majority Under Various Laws	
Legislation	Provision
Indian Penal Code (IPC) 1860	<p>Nothing is an offence which is done by a child under the age of seven years (Sec. 82 IPC). The age of criminal responsibility is raised to twelve years if the child is found to have not attained the ability to understand the nature and consequence of his/her act (Sec. 83 IPC).</p> <p>Attainment of sixteen year of age for a girl is necessary for giving sexual consent. In case she is married, the prescribed age for sexual consent is not less than fifteen years.</p>
Child Marriage Restraint Act 1926	Child means a person who, if a male, has not completed twenty one years of age and, if a female, has not completed eighteen years of age.
Apprentices Act 1961	A person is qualified to be engaged as an apprentice only if he is not less than fourteen years of age and satisfies such standards of education and physical fitness as may be prescribed.
Juvenile Justice (Care and protection) Act 2000	‘Juvenile’ or ‘child’ means a person who has not completed eighteen years of age.
Factories Act 1948	A child below fourteen years of age is not allowed to work in any factory. An adolescent between fifteen and eighteen years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. A child between fourteen and eighteen years of age cannot be employed for more than four-and-a-half hours.

Mines (Amendment) Act, 9152	No person below eighteen years of age shall be allowed to work in any mine or any part thereof.
Army Head Quarters Regulations	The age of recruitment in the army is from sixteen to-twenty five years. Persons, who are recruited at the age of sixteen years, undergo basic military training for up to two-an-a-half years from the date of enrollment and are the inducted into regular service.
Indian Contract Act 1870	A person below the age of eighteen years has no capacity to contract.
Constitutions of India (Ninety- third constitutional amendment)	<p>Article 21(a) of the Constitution states that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may by law determine.</p> <p>Article 45 of the Constitution states that the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years.</p> <p>Article 51 (k) lays down the duty that the parents or guardians should provide opportunities for education to his child/ward between the age of six and fourteen years.</p>

Source: (Bajpai, 2010, p. 4)

Under the recent Act, Protection of Children from Sexual Offences Act (POCSO), 2012, ‘child’ means any person below the age of eighteen years. The age for sexual consent for both male and female has been kept eighteen years.

Each and every Act has maintained a certain age criteria in order to benefit the highly vulnerable population and tries to provide the necessary care to the children. However, maintaining different age in order to define a child, most of the times cause the condition of chaos; because these criteria overlap each other.

Looking at the number and gravity of the sexual offences against children a separate law was much needed, this further led to the enactment of the POCSO Act in 14th November, 2012. This Act covers a vast range of sexual offences committed against children, which researcher will be discussing later in this chapter. Before this, researcher would like to throw some light upon the nuances created by these different legal definitions of child and setting up different age limits.

Under IPC, the fifteen years old girl can give consent for sexual relationship, which is overlapping with the consent age given in POCSO Act. Under Child Marriage Restraint Act, 1926, a child means a person who, if a male, has not completed twenty one years of age and, if a female, has not completed eighteen years of age; on the other hand Indian Penal Code states that “Sexual intercourse or sexual act by a man with his own wife, the wife not being under fifteen years of age, is not rape”. There is inconsistency in the Acts, one Act is saying one thing for the same issue and the other is saying the different one, therefore offenders and their lawyers take advantage of these loopholes at the time of trial.

PRESENT FRAMEWORK

Women, children and elderly have always been at the center of the policy framework, because this population is the highly vulnerable population and require extra attention.

The Constitution of India, the fundamental law of country, came into effect on 26 January, 1950. It provides a protective umbrella for the rights of the children. These rights include right to equality [Art.14], rights to freedom including the freedom of speech and expression [Art.19 (1) (a)], personal liberty, right to due process of law [Art.21], right against exploitation [Art.23], religious, cultural,

educational rights [Art.29], and right to constitutional remedies [Art. 32] (Bajpai, 2010, p. 06).

It is estimated that there are more than 250 Central and State Statutes under which the child is covered in India. Some of the important legislations listed by Asha Bajpai are: -

- The Guardian and Wards Act 1890
- The Child Marriage Restraint Act 1929
- Hindu Adoption and Maintenance Act 1956
- The Hindu Minority and Guardianship Act 1956
- Young Persons Harmful Publication Act 1956
- Probation of Offenders Act 1958
- The Orphanages and Other Charitable Homes (Supervision and Control) Act 1960
- Apprentice Act 1961
- The Medical Termination of Pregnancy Act 1971
- The Child Labour (Prohibition and Regulation) Act 1986
- The Children (Pledging of Labour) Act 1933
- The Infant Milk Substitutes, Feeding Bottle and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992
- The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994
- The Juvenile Justice (Care and Protection of Children) Act 2000

The Code of Criminal Procedure 1973 lays down various procedures to be followed in a criminal trial and provides for the machinery for the punishment of offenders. The Code of Civil Procedure 1908 lays down the procedure to be followed in civil trials (Bajpai, 2010, p. 09).

POLICIES AND PLANS

Since independence Government of India has initiated many policies and plans for the benefit of children. These are mentioned above: -

National Policy for Children 1974

India is one of the very few countries which have laid down the National Policy for Children. Under this policy children have been considered as utmost important asset and emphasize that programmes for children need to find a separate and important place in our national plans and policies which gradually will lead to the development of human resources (Government of India, 1974). Certain objectives were set for the policy: -

- To provide adequate services to children, both before and after birth and through the period of growth.
- To ensure their full physical, mental, and social development.
- To progressively increase the scope of such service so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth.

Under this policy a comprehensive health programme will cover all children. It will be implemented in order to provide nutrition services to the children with the objective of removing nutritional deficiencies. This policy proposed free and compulsory education of the children till the age of fourteen years; non-formal education was added to fulfill this objective. Children are to be protected against neglect, cruelty and exploitation and they were given priority for rescues at the time of any calamity (Government of India, 1974).

But this policy is outdated now and it also does not include the provision set by the United Nations Conventions on the Rights of the Child 1989, which India ratified in 1992.

National Policy on Education 1986

Idea of Universal Education has always been at the forefront in both developed and developing countries for development. This policy was modified in 1992. Thereafter, Parliament approved a programme of action which sought to launch the National Elementary Education Mission- Education for All- in 1993 and the District Primary Education Programme launched in 1994. Currently the emphasis is on universal primary education (Bajpai, 2010, p. 12).

National Policy on Child Labour 1987

Three main components of this policy: -

- The legal action plan
- Focusing of Central Government Programmes, and
- Project bases plan action.

While framing this policy the basic objective which was kept in mind was the rehabilitation of rescued child laborers and reducing the number/incident of child labour in the prominent areas.

National Plan for SAARC Decade for the Girl Child 1991-2000

This was the separate plan for the girl child by the Government of India (Bajpai, 2010, p. 12). The main goals of the plan are listed below: -

- Survival and protection of the girl child and safe motherhood
- Overall development of the girl child

- Special protection for vulnerable girl children in need of care and protection

National Nutrition Policy 1993

This policy reflects the understanding that malnutrition is not simply a matter of 'not enough food', but is most frequently caused by a combination of factors, including lack of time and attention on child care, inadequate feeding of the child especially in the first year of life, poor health, unhygienic conditions as well as the lack of purchasing power of poor families. A National Plan of Action on Nutrition was formulated in 1995(Bajpai, 2010, p. 13).

National Population Policy 2000

The crux of the policy rests on denying state representation to Parliament based on their population. In other words, the essence of the population policy is that by taking away the democratic rights of those states whose population is growing too fast; these states will somehow find a way of controlling their population. It simultaneously addresses the issue of child survival, maternal health, and contraception (Bajpai, 2010, p. 13).

The national Health Policy 2001

The first health policy was implemented in 1983 and it has been revised in 2001. The main objectives of National Health Policy 2001 are to achieve an acceptable standard of good health among the general population of the country. It focuses on building the new infrastructure as well as improving the infrastructure of existing institution. Mainly it has offered the time bound goals in reducing the Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR) (Bajpai, 2010, p. 13).

National Policy for Children 2013

Declaring its children as the nation's "supremely important asset" in the National Policy for Children, 1974, the Government of India reiterated its commitment to secure the rights of its children by ratifying related international conventions and treaties. The National Charter for Children, 2003 adopted on 9th February 2004, underlined the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation. To affirm the Government's commitment to the rights based approach in addressing the continuing and emerging challenges in the situation of children, the Government of India adopts this Resolution on the National Policy for Children, 2013 (Government of India, 2013).

In preamble the Policy recognizes that, a child is any person below the age of eighteen years; childhood is an integral part of life with a value of its own; children are not a homogenous group and their different needs need different responses, especially the multi-dimensional vulnerabilities experienced by children in different circumstances; a long term, sustainable, multi-sectoral, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children. This policy also reaffirms that every child is unique, special actions are required to eliminate discrimination, all children have the right to grow healthily, happily and with love and affection (Government of India, 2013).

The National Commission for Protection of Child Rights (NCPCR)

The National Commission for Protection of Child Rights (NCPCR or Commission) was setup in March 2007, under the Commissions for Protection of Child Rights Act, 2005. The mandate of the Commission is to monitor all laws,

policies, programmes, and administrative mechanisms in the country to ensure that children's rights as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (UNCRC) are protected. The Commissions for Protection of Child Rights Act, 2005 provides for one chairperson and six members in the Commission (Sinha, 2013. p. 4).

CHILD RIGHTS AND INTERNATIONAL LAWS

When the laws enacted and implemented by the international bodies; they make a different impact on the states and they are considered as important. And international laws has contributed a lot in order to address social issues and providing a perspective towards it.

In one of its judgment, Supreme Court held that 'once signed, any international Treaty or Convention will be treated as a part of law unless otherwise stated'. The India government is thus bound in its obligation to implement any convention or treaty that is signed. India has ratified the United Nations Conventions on the rights of the Child and the Convention on All Forms of Discrimination against Women (Bajpai, 2010, p. 14).

Human Rights Instruments Specific to the Rights of the Child

The Declaration of the Rights of the Child 1924, establishes the claim that 'mankind owes to the child the best it has to give'. This can also be seen as the first international instrument dealing with child rights (Bajpai, 2010, p. 15). The five principles that were stated are: -

- The child must be given the means requisite for its normal development, both materially and spiritually.

- The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be proclaimed; and the orphan and the ‘waif’ must be sheltered and succored.
- The child must be the first to receive relief in times of distress.
- The child must be put in a position to earn livelihood, and must be protected against every form of exploitation.
- The child must be brought up in the consciousness that its talent must be devoted to the service of its fellow men.

Declaration of the Rights of the Child 1959

The Declaration of the Rights of the Child enshrines the principle that children are entitled to ‘special protection’ and that such special protection should be implemented by reference to ‘the best interests of the child’, which ‘shall be the paramount consideration’. The Declaration also contains a broad non-discrimination clause (Bajpai, 2010, p. 16).

Convention of the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)

This convention seems to restrict the best interest principle in family relations and matters. The scope is not wide. But today, the principle needs wider applicability than custody and family Matters (Bajpai, 2010, p. 17).

Convention on the Rights of the Child 1989 (CRC)

The United Nations Conventions of the Rights of the Child (CRC) represents a turning point in the international movement on behalf of child rights. This comprehensive document contains a set of universal legal standards or norms for

the protection and well being of children. The range of rights can be summarized in three Ps: provision, protection, and participation.

The CRC gives children their basic human rights-civil, economic, social, cultural and political-which enable children to achieve their full potential. The *civil rights* includes right to a name and nationality, protection from torture and maltreatment, special rules governing the circumstances and conditions under which children may be deprived of their liberty or separated from their parents, etc. the *economic rights* under the CRC include the right to benefit from social security, the right to a standard of living adequate to ensure proper development and protection from exploitation at work. The *social rights include* the right to the highest attainment standards of health services, the right to social care for handicapped children, protection from sexual exploitation and abduction, and the regulation of adoption. Right to education, access to appropriate information, recreation and leisure, and participation in artistic and cultural activities are included in the *cultural rights* of the children under CRC (Bajpai, 2010, p. 17)

Broadly the civil, political, social, economic, and cultural rights of every child can be grouped into the following four classes.

The Right to Survival

This includes the right to life, the highest attainable standard of health and nutrition, and adequate standards of living. It also includes the right to a name and a nationality.

The Right to Protection

This includes freedom from all sorts of forms of exploitation, abuse, inhuman or degrading treatment, and neglect, including the right to special protection in situations of emergency and armed conflicts.

The Right to Development

This includes the right to education, support for early childhood development and care, social security, and the right to leisure, recreation, and cultural activities.

The Right to Participation

This includes respect for the view of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience, and religion.

Standing Order no. 303/ 2010

The need to issue comprehensive instructions regarding investigation of rape or sexual assault cases has been felt to improve the quality of investigation and to secure maximum conviction. In the past few years the Hon'ble High Court of Delhi and the Hon'ble Supreme Court have passed guidelines for the investigation of sexual assault cases. In addition to the statutes and directions of the Hon'ble Courts, certain other important directions have been incorporated in this standing order which are equally important and are to be followed while investigating sexual assault cases (Commissioner of Police, 2010).

Guidelines of the hon'ble high court

The Hon'ble High Court of Delhi in the Writ Petition (Crl.) No. 696/2008 titled 'Delhi Commission for Women Versus Shri Lalit Pandey and another' passed comprehensive guidelines to be followed by the police, hospitals/doctors, child welfare committees, courts, prosecutors and other authorities. This includes setting up of 'Crisis Intervention Centers' by the Delhi Commission of Women. The guidelines which are relevant to the police are:-

a. "Crises Intervention Centre" The Hon'ble High Court of Delhi defined a Crises Intervention Centre as an agency recognized by the Delhi Police and Delhi Commission for Women (DCW) for responding to calls of sexual assault at the

police station to provide counseling and other support services to victims of rape. However, it needs to be noted that NGOs which have not been recognized by the Delhi Commission for Women do not meet with the directions/requirements of the Hon'ble High Court of Delhi. It is imperative that one of the following agencies which are recognized as Crisis Intervention Centers by the DCW should be associated with the investigation of cases (Commissioner of Police, 2010).

The Investigation Officer (IO)/Station House Officer (SHO) has to inform the Rape Crisis Cell at their, who in turn would depute a member from the Crisis Intervention Centre. However, in order to avoid delay, they may also directly contact the Crisis Intervention Centre approved by the Delhi Commission

- b. **“Expert”** means a person who is qualified and has experience in dealing with cases of sexual violence;
- c. **“Guardian”** includes besides the natural guardian, support person or any person appointed by the Child Welfare Committee for a specified period to take care of the victim during the pendency of the trial;
- d. **“Rape Crisis Cell”** – On receipt of an information regarding commission of a rape, the IO/SHO shall immediately inform the Rape Crisis Cell established by the Delhi Commission for Women at 2nd Floor, C Block, Vikas Bhawan, New Delhi-110002. The DCW has a 24 hour helpline number 23370557. The High Court of Delhi has clearly stated that this cell is to provide legal assistance in the cases of sexual assault that could coordinate the Crises Intervention Centers and provide legal support to the victim and her family.
- e. **“Support Person”** means a person working in the capacity of a counselor working with a recognized and registered Crises Intervention Centers, approved by the Delhi Commission for Women;

f. The expression “**offence**” for the purpose of these guidelines shall mean and include offences of rape, attempt to rape and unnatural offences.

Police

1. On a complaint of a cognizable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately.
2. The investigation of the case shall be referred to an officer not below the rank of Sub-Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime.
3. The statement of the victim shall be recorded verbatim.
4. The officer recording the statement of the child victim should not be in police uniform.
5. The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear.
6. The statement should be recorded promptly without any loss of time.
7. The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present.
8. The investigation officer to insure that at no point should the child victim come in contact with the accused.
9. The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination.
10. The investigating officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.
11. In the event the investigating officer should so feel the necessity, he may take the assistance of psychiatrist.

12. The investigating officer shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours (in accordance with Section 164-A Cr.P.C.) at the nearest government hospital or hospital recognized by the government.
13. The investigating officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.
14. The investigating officer shall promptly refer for forensic examination clothing and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.
15. The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation shall be periodically supervised by senior officer(s).
16. The investigating officer shall ensure that the identity of the child victim is protected from publicity.

Medical Examination

1. In case of a girl child victim the medical examination shall be conducted preferable by a female doctor.
2. In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.
3. The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim.
4. In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.
5. The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination.

6. Emergency medical treatment wherever necessary should be provided to the child victim.
7. The child victim shall be afforded prophylactic medical treatment against STDs.
8. In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.

Recording of statement before Magistrate

1. The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.
2. In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital.
3. To create a child friendly environment separate rooms be provided within the court precincts where the statement of the child victim can be recorded.

The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of “Ascertaining voluntary nature of statement” unless the parent/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.

4. Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.

This standing order also states that, “No Court shall detain a child in an institution meant for adults”.

If these directions are to be followed by all the authorities and government bodies while handling the cases of child sexual abuse then it will solve half of the problem and no victim and the family of the victim will hesitate in filing case against the perpetrator. If we look at the medical facilities available for the child rape victims, there is no psychiatric help available in the hospital for children and it has clearly come out while interviewing the doctors. The only conversation the victim and family has with the doctor during medical examination. In that as well, if the doctor is in a good mood he/she will talk to child /family nicely, otherwise doctor will look at them just as their work. There are other findings as well, which researcher will explain in the chapter particularly for data collection. This standing order directs doctors to provide a copy of medical report to the family of the victim, which never happens. In case of any delay for conducting medical examination doctor should put it in writing on medical report, but this also does not happen into practice. Doctors will never admit that there was delay in conducting medical examination and police is also does not say anything in front of doctors, because there is the hierarchy with doctors.

Juvenile Justice (Care and Protection of Children) Act, 2000

Children are the future of the nation, if we nurture them in childhood then only they will develop as a responsible citizen. So, it is the responsibility of the Government in particular and society at large to provide a healthy environment to the children. Legal system is one of the important aspects where children can come into contact and we cannot regulate the same rule with the children as adults. The vast majority of the children are impoverished. They do not have a full functioning family, home, access to health services, education, food, protection and these all are the basic need for a person to grow healthily. If we try to imagine once; our lives without even single component which have been mentioned earlier; we can actually figure out the life we could have lead without any single component. It would have affected our growth and development and we would not have reached the place where we are today. Here, researcher is just

talking about one single aspect that we could be deprived of and we can analyze the impact of it. Now, try to imagine the situation of those children who have only one or two components present in their live and those who do not have access to any one of them. For them, life becomes a battle; they have to struggle even for surviving a single day. At the end of the day they are children, they commit crimes but the reason behind this may vary and we cannot treat them in our legal system same as adults. So, there was the dire need of a separate law which only deals with the cases of children.

The vulnerable group of deprived children can be categorized as: orphans, abandoned and destitute, working and street children, victims of natural calamities, emergencies and man-made disasters, children with disability, AIDS affected children, children engaged in substance abuse, children of sex workers, juvenile offenders or children in conflict with law, children of families 'at risk' like refugees, migrant and construction workers, chronically and terminally ill, prisoners or lifers, single parents and the girl child (Bajpai, 2010, p. 277).

Juvenile Justice Act 1986 (JJ Act 1986) replaced the Children's Acts, which was previously implemented in the States and Union territories. JJ Act 1986 came into force in 1987 and it was uniformly implemented in the entire country. In the preamble of this Act it has been stated that this Act provides for the care, protection, treatment, development, and rehabilitation of neglected and delinquent juveniles and adjudication of certain matters relating to disposition of juvenile delinquents. Under this Act the age limit were set different for boys and for girls, it was sixteen years for boys and for girls it was eighteen years. So, those girls and boys who have not attained the age of sixteen and eighteen years will be considered as juvenile under this Act. The act divided two categories of children neglected juvenile, those who found begging or has no home and is a destitute, has unfit parents, lives in brothel, victim of trafficking etc. and the other is the delinquent juvenile, is the one who has committed any offence and is in conflict with law. Neglected Children dealt by Juvenile Welfare Board and

neglected children are produced before Juvenile Courts. There were provisions for different homes such as Observation homes, Juvenile Homes, Special Homes and After-Care Organizations. But the spirit of the Act was never utilized by the adjoining authorities. There were many loopholes in the implementation of the JJ Act 1986. Even though this Act was a central legislation but the implementation was left to States. The different provisions can be implemented on different dates in different states.

Juvenile Justice (Care and Protection of Children) Act, 2000, was the outcome of the ratification of the Convention on the Rights of the Child 1989 by India in 1992 and the changing social attitudes towards criminality by children. The preamble of this Act states that it is an Act to consolidate the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation.

Under this Act a “juvenile” or “child” means a person who has not completed eighteenth year of age [Section 2(k)] and “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth years of age as on the date of commission of such offence [Section 2(l)]. However, there distinct categories of children have been given under this Act:

- ‘Juvenile’ for children in conflict with law and
- ‘child’ for children in need of care and protection [Section 2(d)]

There are separate bodies constituted which deals with the two categories of children separately.

Juvenile Justice Boards (JJB)

The State Government has been empowered under this act to constitute the Juvenile Justice Boards to deal with juvenile in conflict with law [Section 4(1)]. A board shall consist of Metropolitan magistrate or Judicial Magistrate of the first Class and two social workers of whom one shall be woman. No magistrate shall be appointed as the member of the Board unless he has special knowledge or training in child psychology or child welfare or no social worker shall be appointed unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years [Section 4(3)]. A juvenile in conflict with law has to be produced before Board, when Board is not sitting, juvenile has to be produced before and individual member of the Board [Section 5(2)].

Child Welfare Committee (CWC)

For the second category of the child in need of care and protection there is the provision for the establishment Child Welfare Committee [Section 29(1)]. This Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights [Section 31(1)]. The Committee shall consist of a chairperson and four other members as the State Government may think to appoint, of whom at least one shall be a woman and another, and expert on matters concerning children [Section 31(2)].

The appointment of any member of the committee may be terminated, after holding inquiry, by the State Government, if [Section 29(4)]-

- (i) he has been found guilty of misuse of power vested under this Act;
- (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence

- (iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sitting in a year.

Any child in need of care and protection may be produced before the Committee by one of the following persons [Section 32(1)]-

- (i) any police officer or special juvenile unit or a designated police officer;
- (ii) any public servant;
- (iii) child line, a registered voluntary organization or by such other voluntary organization or an agency as may be recognized by the State Government;
- (iv) any social worker or a public spirited citizen; or
- (v) by the child himself:

The child has to be produced before Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

Protection of Children from Sexual Offences Act (POCSO), 2012

The finding of the study conducted by Ministry of women and child Development “Study on Child Sexual Abuse: India 2007” were sufficient to draw the attention of lawmakers towards the dire need of making a law which exclusively deals with cases of child sexual abuse.

In an attempt to protect children against sexual abuse, sexual harassment and child pornography the Union Cabinet has passed a first-of-its-kind Bill in March 2011, dealing exclusively with sexual offences against children, which threaten stringent action against the offenders (Kumar, Pathak & Kumar, 2012, p. 174). This bill came into force as POCSO Act, 2012 on 14th November 2012. There

are total forty six sections this Act containing a wide range of sexual offences committed against children.

In the introduction of this Act it has been stated that “Sexual Offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. Such offences against children need to be defined explicitly and countered through adequate penalties as an effective deterrence. This Act provides for protection of children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of children” (POCSO Act, 2012)

In chapter-II of this Act the definition of different sexual assaults against children and the punishment for the same offence has been given. Which is mentioned below: -

Section.3- Penetrative sexual assault: - A person is said to commit “penetrative sexual assault” if-

- a. he **penetrates** his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- b. he **inserts**, to any extent, any object or part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c. he manipulates any part of the child so as to **cause penetration** into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- d. he **applies his** mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Section.4- Punishment for the penetrative sexual assault: - imprisonment of **seven years** but which may extend to imprisonment for life, and shall also be liable to fine.

Section.5 - Aggravated penetrative sexual assault: –this section covered as range of conditions and situation under which incident of sexual assault which are, whoever, being a police officer, a member of armed force or security forces, being a public servant, commits gang penetrative sexual assault and other circumstances are also covered in this section.

Section.6 – Punishment for Aggravated penetrative sexual assault: – whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for the term which shall not be less than **ten years** but which may extend to imprisonment for life and shall also be liable to fine.

Section.7 – Sexual Assault – whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child **touch** the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Section.8 – Punishment Sexual Assault – whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than **three years** but which may extent to five years, and shall also be liable to fine.

Section.9 - Aggravated sexual assault: – whoever, being a police officer, a member of armed force or security forces, being a public servant, commits gang sexual assault and other circumstances are also covered in this section. Under those conditions a person is said commit aggravated sexual assault.

Section.10 – Punishment for Aggravated sexual assault: – whoever commits this offence shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Section.11- Sexual harassment: - a person is said to commit sexual harassment upon a child when such person with sexual intent, utter any word or makes any

sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

Section.12 Punishment for sexual harassment: - Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Chapter – III covers using a child for pornographic purposes and punishment, chapter-IV covers abetment of, and attempt to commit and offence, chapter-V procedure of reporting of cases, chapter-VI covers the procedures for recording statement of the child, chapter-VII & VIII covers the designation of special courts, also the procedures and powers of special courts and recording of statement and lastly chapter-IX covers the miscellaneous section.

This Act defines ‘child’ as any person below the age of eighteen years. This Act covers penetrative and non-penetrative, touched and untouched sexual offences against children. It also incorporate the child friendly environment through it provision of special courts. The burden of producing proof before the Court has been shifted towards accused.

As of now, as a country we have almost enough legislatures to protect our children, but all these legislatures will not be of any help until unless they are being implemented fully and are supervised regularly. Because till now there are States where there is no functional Juvenile Justice Board and Child Welfare Committee, then how can we expect that other provisions would have been followed. Till now, no authority is sensitized enough to deal with children. Child Welfare Committee is one of the important authority, which deals with the children who are in need of care and protection, but the chairperson and

members are not salaried personnel. They are provided honorarium per day and it directly affects the spirit of work of the members and chairperson. At present, Child Welfare Committee members and chairperson are not getting their honorarium on a regular basis; instead, they receive a lump sum amount for two-three months together. As a human being they also need incentives and they do have their families to feed. Considering the amount of work they have to do and the social value attached to it, these members and chairperson deserve a regular salary. Right now, they are given an honorarium which means they do not get paid for the days they are on leave; this makes their job less secure and leaves them with not much of enthusiasm to work and produce results.

CHAPTER-3
CHILD SEXUAL ABUSE: A
REVIEW

INTRODUCTION

Rape!!!! What come in one's mind after hearing the word 'rape'? An act committed against women under patriarchal system of society which can entirely ruin her life, no matter what section of society that woman belongs to upper caste or lower caste, upper class or lower class, it can happen with women of every age ranging from roughly from six months to seventy years. If you ask to a highly complacent patriarch to an extreme feminist both will oppose the act of rape. But the reasons of their anger are different which has clearly put forth by Nivedita Menon, that "for patriarchal forces, rape is evil because it is a crime against the honour of the family, whereas feminists denounce rape because it is crime against the autonomy and bodily integrity of a woman" (Menon, 2012, p. 113). The polarity in understanding rape as a crime, actually lead to two entirely different perspectives of fighting rape.

Under patriarchal system even murder as a crime does not considered more gruesome compare to a crime to which the word 'sexual' has been attached. We, as a society, what sort of measure we take to avoid rape, do not let girls out at night alone. If they have to go, then they should be accompanied by one male. Nivedita Menon discusses how patriarchal understanding is rampant in judiciary as well; she mentioned a statement made by Chief Justice of Karnataka in 2008, that immodest dressing was the cause of the increasing crimes against women. A person holding such a high position; must be having a good exposure of societal dynamics, such sort of statement coming from him actually suggests that education of a person really cannot make any difference until and unless he/she understands the need of accepting the fluidity of the issues in particular and society at large. A person, who had the accessibility to education and other facilities, was not able to analyze the situation and leave behind the garbage of his rotten ideologies then how can we expect a gender sensitive behavior from a layman.

All rape incidents never get registered, very less number of rape cases get registered compared to the actual number of incidents happened. The patriarchal system, itself make it difficult, because rape is not a crime but it's a crime against honour of the family, as it has already been mentioned above. If, somehow case gets registered, there is no surety that it reaches to the court. When case gets registered the victim survivor and family face lot of problems which are, stigmatization due to rape, community boycott, hate messages from the community, pressure from the other party, if rapist has got good political connection and financial status the chances of pressurizing to withdraw the case gets double. The public hearing via *Khap Panchayat*, what they actually do, they do not allow the rape case to get registered instead they take laws in to their hands and order the victim survivor to get marry with the rapist. That sort of punishment a rapist gets of violating one's human rights, now, this matter of concern whether it was the punishment for rapists or for the victim survivor.

The section 375 of Indian Penal Code (IPC) after so much of pressure from the women's organizations and other social activists was updated. Earlier under section 375 of Indian Penal code only penetration of the vagina by the penis was constituted as rape, but after struggling a lot, penetration via other foreign objects such as finger, pen, bottle etc. was also added by the expanding this section. This has been argued by Flavia Agnes, a renowned feminist scholar that laws are based on the same old notions of chastity, virginity, premium on marriage and fear of female sexuality. She again argues that, why penile penetration is considered more grievous than other sexual or non-sexual assaults, because it can cause pregnancy with different men; this is the direct threat to the patriarchy.

Among all other crimes, crimes, which are related to sexuality, are considered to be more barbarous in our society. The reason is because; gender, sex and sexuality are the main issues, which are never being discussed in our society openly.

Section 375 of **Indian Penal Code (IPC), 1860** defines “rape”, a **man** is said to commit “rape” if he-

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her to do so with him or any other person; or
- (b) Inserts, to any extent, any object or part of the body, not being the penis, into the vagina the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions:

- *First-* against her will
- *Secondly-* without her consent
- *Thirdly-* with her consent, when her consent has been obtained by putting her on any other person in whom she is interested, in fear of death or hurt.
- *Fourthly-* with her consent, when the man knows that he is not her husband and that her consent is given because, she believes that he is another man to whom she is or believes herself to be lawfully married.

- *Fifthly*- with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequence of that to which she gives consent.
- *Sixthly*- when she is unable to communicate consent.

Under IPC it is given that “sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”. This clearly contradicts the age limit of giving sexual consent set under POCSO, Act 2012 which is eighteen years of age. So there is confusion among the laws itself. Another thing which is again of concern is that, under IPC before giving the definitions of rape it starts stating that “a **man** is said to commit ‘rape’ if he”, our laws are not ready to accept the notion that man also can be raped, even though it is very less in numbers and there is no clear record for that in our country, but it does not mean that problem does not exist. We have countries like United States of America and European countries which collect data of men raped by women or men raped by men.

RAPE AND AMERICAN SOCIETY

Sommers, 1995, in her article traces the history from the decade 1980s in relation to the prevalence and incident of rape cases in the American society on the basis of the reports/surveys conducted by the researchers. She starts with the reports, which were frequently cited in *Ms. Magazine* report by Mary Koss, 1985 and the National Women’s Study by Dr. Dean Kilpatrick of the Crime Victims Research and Treatment Center at the Medical School of South Carolina, 1992. The methodological difference between the studies conducted by the Moss and Kilpatrick was that, Moss categorizes the responses of interviewees as per her classification/definition of rape, which she used. On the other hand, Kilpatrick left

the decision on the respondents by giving them certain questions regarding conditions in which rape may consider to be occurring. She further analyses the statistics given by the each report probing into the methodology and what sort of questions the surveyor asked in the interview. She is also referring to the other reports to counter the findings given by these reports. Findings of the study conducted by Koss stated that 1 out of 4 women were raped, on the other hand finding of the study conducted by Kilpatrick stated that 1 in every 8 women were raped. There has been critique over the methodology used by the both the researchers. There were many studies conducted during this period in order to know about the actual number of cases of rape, but every study was giving different estimates. The major finding of the Koss study was that 73% of women whom she interviewed did not categorize what happened to them as rape, so they do not see them as rape victims. The critique for this was given that women were overwhelmed by the forced male attention and threatening at the time of date, so they were not able to categorize their unwillingness to as rape.

An ample number of studies were conducted in the university campuses; the idea of “date rape” arose out of this. Student protests started happening and they demanded for counseling and helpline facility. Millions of dollars were spent in the university campuses in building the Rape Crisis Centers and help lines. There were misallocation of funds, as in funds was given to the university campuses where less number of cases was happening and in the general population where the incident of rape case visibly high, the allocation funds was nonexistent (Sommers, 1995).

Feminist scholar linked these rape cases with patriarchy system. Those who support the patriarchy, they do not consider patriarchy as the reason for increasing number of rape cases. They say that countries like Greece, Portugal or Japan are much more overtly Patriarchal than America and they have very less number of rape cases happening. The counter argument for that was given that these countries do not have a well-established system to record rape cases. Which is

very much true; if there is underreporting of cases in America, where society is considered to be much more liberal, we can figure out the condition of women in other countries, when it comes to reporting of a rape cases. According to radical feminists and I would like to quote feminist legal scholar Catherine MacKinnon “by conservative definition (rape) happens to almost half of all women at least once in their life” (Mackinnon, as cited in Sommers, 1995). Radical feminist also believes that under patriarchal system no women can give free consent for sexual relation even if she is married. On the other hand Equity feminist follows a different perspective on that, they believe that crime should be seen as crime against person without dividing people on the basis of gender.

CONTRIBUTION OF FEMINIST SCHOLARS

Feminists have contributed a lot in shifting the idea from victim-blaming to the taking out perpetrator into the center of discussion. It has been the decades of struggle but still our society has different sort of judgments or the rape victims, the judgments which are full of negativity, never leaving them alone in their lives, never allowing them to live a life which earlier they used to live. We say we are living in 21st century, so called advanced in terms of technology, human relationships but deep down we still do not have place in our society to the innocent people who were the victims of someone else's wrong deeds. These children are most vulnerable given the patriarchal systems, where the social values and norms are more important than the individual freedom, individual rights and safety and security. Due to culture of silence, the cases are not reported by the family and the children are too young to understand. The legal system is weak and there is no recourse when one of the family members is involved.

The collection of the rape statistics is also a very difficult task. Some countries have better system of communication than the other ones. It is very difficult to get the actual data of the rape incidents because a large number of incidents of rape never get registered so they can never come in the surveillance. There are many reasons for not reporting of cases, the main cause is the societal pressure and the

stigma attached to rape, inaccessibility of information/transport service system, no family support, victim blaming, fear of being boycotted from the society of the victim as well as the family, if accuser holds an influential position in the society the consequences of reporting rape case can be fatal in many ways and no or very less awareness among people regards to child rights.

Programs for rape victim, what is the design and approach of the program and what dimensions of the incidents will be discussed in relation to the regaining the confidence of the victim. This is the thing which one has to keep in mind. Rape resistance program, are going to differ from society to society. If we primarily talk about the Indian society we do not promote our girls to be stronger, but we take up other measures such as avoiding going out at the odd hours and being accompanied by any male. Women do not have any agency in any sense and this sort of thinking is eventually going to affect the programs run by NGOs for the rape victims.

This issue is also connected to the notions of feminine. A good girls is supposed to be tolerant, soft spoken, one who does not argue, is silent. Thus the socialization is also in such a manner that the girl may not gather any courage to shout at the perpetrator, fight back or even report it. The socialization of girls then becomes very important component in understanding CSA. Equally it is important is to understand masculinity as to how the boys are raised and socialized in the families and what are the peer learning they have.

If this is the case of highly developed country such as America that they have lot of underreporting of cases, then we can assume the proportion of under reporting in India given the entire social pressure and stigma. Role of race, age, occupation of both, and in Indian context caste plays vital role in the criminal justice system.

The rape cases which our nation cannot forget ever

1. Bhanwari Devi: - raped September 22,1992

An around 50 year old Dalit Social worker, Bhanwari Devi was gang raped by a group of upper class, influential men because she had tried to stop the practice of child marriage in her village near Jaipur, Rajasthan. Determined to get justice Bhanwari Devi lodged a case against the offender. However the accused were acquitted by the trial court, because everyone, even the village authorities, Doctors and the Police dismissed her situation. This injustice inspires several women groups and NGOs to file a petition in the Supreme Court under the collective platform of Vishakha (Vishakha and others V. State and Others 1997). They demanded justice for Bhanwari Devi and urged sexual harassment at work place. The Supreme Court defines sexual harassment as any unwelcome gesture, behavior, words or advances that are sexual in nature. The court for the first time drew upon an International Human Rights Law Instrument, the convention on the elimination of All Forms of Discrimination against Women (Kurup, 2006).

2. Mathura Case, 1972

Mathura was a 16 year old tribal girl, was raped by two policemen within a Police compound. The session court acquitted the Policemen on the ground that since Mathura had eloped with her boyfriend she was 'habituated to sexual intercourse' and hence she could not be raped. Further the court held that there is a world of difference between sexual intercourse and rape. The High Court Convicted the Police men and held that mere passive or helpless surrender induced by threat or fear cannot be equated with desire or will. The Supreme Court set aside the High Court Judgment and acquitted the policemen and held that since Mathura had not raised any alarm, her allegation of the rape were untrue. This case led to a massive campaign for the sake of justice. The important provisions that were amended were (Kurup, 2006). -

- A new section was added which made sexual intercourse by persons in custodial situations.
- Minimum punishment of rape laid down 10 years in case of custodial rape, gang rapes, rape of pregnant women, and girls under 12 years of age and 7 years in all other cases.

3. Aruna Shanbaug, Raped on November 27,1973

25-year-old Aruna, then a nurse working at Mumbai's KEM hospital, was attacked by a ward boy Sohanlal Bhartha Walmiki, while she was changing clothes in the hospital basement. Walmiki first choked her with a dog collar, then raped and robbed her. The asphyxiation cut off the oxygen supply to her brain. As a result, she has become cortically blind — her eyes can see but her brain does not register the images. She was also diagnosed with brain stem contusion injury and cervical cord injury. She cannot speak, emote, use her limbs or control her muscles. For 33 years, she's been living a vegetative existence on a bed in KEM hospital. Walmiki was convicted but while Aruna is serving a life sentence, he served a mere six years in jail. The judgment against the rapist noted "that the victim was menstruating and the accused had gone

there with the intention to rape". But as Bhartha was not charged with rape, he was convicted only for attempt to murder and robbery. He was sentenced to seven years. Aruna's family asked for financial compensation and an apartment. They were refused and that's when they abandoned her. In December 2010, a friend of Shanbaug and an activist-journalist Pinki Virani, who is also the author of a book on Shanbaug – "Aruna's Story" – filed a mercy killing petition in the Supreme Court. Four months down the lane, in March 2007, the Supreme Court rejected the petition. However, in a landmark judgment, the Supreme Court allowed passive Euthanasia for Shanbaug. Euthanasia refers to the practice of intentionally ending a life in order to relieve pain or suffering. For example, taking a patient off the ventilator in case of an irreversible coma. She died this year after a long battle she fought (Kurup, 2006).

4. Shanti mukund hospital case, Raped September 6, 2003

A 19-year-old nurse was on duty at east Delhi's Shanti Mukund hospital one night, taking care of a comatose patient. She awoke in the middle of the night to find a ward boy, Bhura, trying to force himself on her. When she resisted, Bhura plunged his fingers into her eyes, gouging out the right and wounding the left. He then dragged her to an adjacent bathroom, raped her and locked her in. She lay unconscious and bled through the night. The girl who has a temporary job at a Delhi hospital, is yet to overcome her trauma. She's still waiting for compensation. Meanwhile, her family has spent a lot of money on her treatment. She has undergone five to six operations and plastic surgery too, and wears a prosthesis in one eye. The other eye is still painful (Kurup, 2006).

5. Khairlanji Masacre

The **Kherlanji massacre** refers to the 2006 torture and murders of a Buddhist family by Caste Hindus. The killings took place in a small village in India named Kherlanji, located in the Bhandara district of the state of Maharashtra. On 29 September 2006, four members of the Bhotmange family belonging to the Dalit underclass were murdered. The women of the family, Surekha and Priyanka, were paraded naked in public before being murdered. The Indian media did not cover this incident until the Nagpur riots by the Dalits and then uniformly and wrongly ascribed the killings to "upper castes", a claim picked up by Human Rights organisations and the international media, reinforcing the stereotype of "upper castes" versus "lower castes". Later it was discovered that the criminal act was carried out by assailants from the politically powerful. Initial reports suggested that the women were allegedly gang-raped before being murdered (Kurup, 2006).

6. Nirbhaya Case, 16 Dec. 2012

The **2012 Delhi gang rape** case involved a rape and fatal assault that occurred on 16 December 2012 in Munirka, a neighborhood in South Delhi, when a 23-year-old female physiotherapy intern was beaten and gang raped in a private bus in which she was travelling with a male

friend. The woman died from her injuries thirteen days later while undergoing emergency treatment in Singapore.

Feminists have contributed a lot in making the medico-legal system victim friendly such as: -

1. the debate over consent, the importance of injuries during incident
2. Using testimony of victim's behavior against her (changes in the rape law and its impact on the prevalence of the rape incidents, rate of reporting, charging or conviction).

TABLE: 3.1 GENDER BASED VIOLENCE THROUGHOUT THE LIFE CYCLE: - TYPES OF VIOLENCE PRESENT	
Pre-birth	Sex selective abortions, battering during pregnancy (emotional and physical effects of the women, effects on birth outcomes); Coerced pregnancy (for example-mass rapes in war)
Infancy	Female infanticide, emotional and physical abuse, differential access to food and medical care,
Girlhood	Child marriage, genital mutilation, sexual abuse by family members and strangers, differential access to food and medical care, child prostitution.
Adolescent	Dating and courtship violence (for example, acid throwing in Bangladesh, date rape in US), economically coerced sex, sexual abuse at the work place, rape sexual harassment, forced prostitution, trafficking in women.
Reproductive age	Abuse of women by intimate male partner, marital rape, dowry abuse and murders, pattern homicide, psychological abuse, sexual abuse in the workplace, sexual harassment, rape, abuse of women with disabilities.
Elderly	Abuse, of widows, elder abuse (United State, is the only country where data is currently available, elder abuse affects mostly women)
Source: - Heise et al., 1994 (as cited in Nakray, 2013, p. 4)	

TABLE: 3.2**COMMON MYTHS ABOUT RAPE**

MYTH	FACT
Sex is the primary motivation for rape.	Power, anger, dominance and control are the main motivating factors for rape.
Only certain types of women are raped.	Any woman can be a victim of rape. However, many people believe women who are of high moral character ("good girls") don't get raped and that females of low moral character ("bad girls") do get raped.
Women falsely report rape.	Only a very small percentage of reported rapes are thought to be false reports.
Rape is perpetrated by a stranger.	The vast majority of rapes are perpetrated by a known assailant.
Rape involves a great deal of physical violence and the use of a weapon.	Most rapes do not involve a great deal of physical force. The majority of victims report that they were afraid of receiving serious injuries or of being killed and so offered little resistance to the attack. This may also explain why little force or weapons are needed to subdue victims.
Rape leaves obvious signs of injury.	Because most rapes do not involve a significant amount of force there may be no physical injuries. Just because a person has no physical injuries does not mean they were not raped. Only approximately one-third of rape victims sustain visible physical injuries.
When women say "no" to sex, they actually mean "yes".	"No" means no; a woman's wishes in this regard should be respected at all times.
Sex workers cannot be raped.	Any man or woman, regardless of his/her involvement in the commercial sex industry, can be raped. Studies show that a significant proportion of male and female sex workers have been raped by their clients, the police or their partners.
A man cannot rape his wife.	Any forced sex or forced sexual activity constitutes rape, regardless of whether or not the woman is married to the perpetrator. Unfortunately, many jurisdictions have marital rape exemptions in their laws; although married women are subject to rape by their husbands the law does not recognize it as such.
Rape is reported immediately to the police.	The majority of rapes are never reported to the police. Of those that are reported, most are done so more than 24 hours after the incident. Victims do not report at all or delay reporting because they think nothing will be done, the perpetrator may have made threats against them or their families, they are afraid of family or community responses or they are ashamed; some victims simply feel that it is a private matter or do not know where to report the incident.

Source: World Health Organization (WHO). (2003, p. 11). *Guidelines for Medico-legal Care of Victims of Sexual Violence*. France: World Health Organization (WHO).

DEFINITION OF CHILD ABUSE

“Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen and is a globally prevalent phenomenon. However, in India, as in many other countries, there has been no understanding of the extent, magnitude and trends of the problem. The growing complexities of life and the dramatic changes brought about by socio-economic transitions in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse” (Kacker, Varadan & Kumar, 2007).

Sexual abuse, physical and psychological violence, and sexual harassment are forms of violence which occur in all settings. In most societies, sexual abuse of girls and boys is most common within the home or is committed by a person known to the family. But sexual violence also occurs in schools and other educational settings, by both peers and teachers. It is rife against children in closed workplaces, such as domestic labourers employed in private households. It also takes place in institutions and in the community, at the hands people known to the victim and others. Girls suffer considerably more sexual violence than boys, and their greater vulnerability to violence in many settings is in large part a product of the influence of gender-based power relations within society. At the same time, boys are more likely to be the victims of homicide, and particularly of violence involving weapons (Pineiro, 2006).

GENERAL DEFINITION AND CLASSIFICATION

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 [World Health Organization (WHO), 1999, p. 15].

Physical abuse

Physical abuse of a child is that which results in actual or potential physical harm from an interaction or lack of an interaction, which is reasonably within the control of a parent or person in a position of responsibility, power or trust. There may be single or repeated incidents (WHO, 1999, p. 15).

Emotional abuse

Emotional abuse includes the failure to provide a developmentally appropriate, supportive environment, including the availability of a primary attachment figure, so that the child can develop a stable and full range of emotional and social competencies commensurate with her or his personal potentials and in the context of the society in which the child dwells. There may also be acts towards the child that cause or have a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. These acts must be reasonably within the control of the parent or person in a relationship of responsibility, trust or power. Acts include restriction of movement, patterns of belittling, denigrating, scapegoating, threatening, scaring, discriminating, ridiculing or other non-physical forms of hostile or rejecting treatment (WHO, 1999, p. 15).

Neglect and negligent treatment

Neglect is the failure to provide for the development of the child in all spheres: health, education, emotional development, nutrition, shelter, and safe living conditions, in the context of resources reasonably available to the family or caretakers and causes or has a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. This includes the failure to properly supervise and protect children from harm as much as is feasible (WHO, 1999, p. 15).

Sexual abuse

Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to (WHO, 1999, p. 15):

- ___ The inducement or coercion of a child to engage in any unlawful sexual activity.
- ___ The exploitative use of child in prostitution or other unlawful sexual practices.
- ___ The exploitative use of children in pornographic performances and materials.

Exploitation

Commercial or other exploitation of a child refers to use of the child in work or other activities for the benefit of others. This includes, but is not limited to, child labour and child prostitution. These activities are to the detriment of the child's physical or mental health, education, or spiritual, moral or social-emotional development (WHO, 1999, p. 16).

CHILD ABUSE ACROSS THE GLOBE

The United Nations Secretary General's Study on Violence against Children has given the following overview of the situation of abuse and violence against children across the globe (Pineiro, 2006).

- WHO estimates that almost 53,000 child deaths in 2002 were due to child homicide (homicide means, killing of one human being by another human being).
- In the Global School-Based Student Health Survey carried out in a wide range of developing countries, between 20% and 65% of school going children reported having been verbally or physically bullied in school in the previous 30 days. Similar rates of bullying have been found in industrialised countries.
- 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.
- UNICEF estimates that in sub-Saharan Africa, Egypt and Sudan, 3 million girls and women are subjected to Forced Genital Mutilation every year.
- ILO estimates that 218 million children were involved in child labour in 2004, of whom 126 million were engaged in hazardous work. Estimates from 2000 suggest that 5.7 million were in forced or bonded labour, 1.8 million in prostitution and pornography and 1.2 million were victims of trafficking.
- Only 2.4% of the world's children are legally protected from corporal punishment in all settings.

FORMS OF CHILD SEXUAL VIOLENCE

- Severe forms of sexual abuse include:
 - a. Assault, including rape and sodomy (sodomy consisted of anal intercourse)
 - b. Touching or fondling a child
 - c. Exhibitionism- Forcing a child to exhibit his/her private body parts
 - d. Photographing a child in nude

- Other forms of sexual abuse include:
 - a. Forcible kissing
 - b. Sexual advances towards a child during travel or any where
 - c. Sexual advances towards a child during marriage situations
 - d. Exhibitionism- exhibiting before a child
 - e. Exposing a child to pornographic materials

FORMS AND CONTEXTS OF SEXUAL VIOLENCE

A wide range of sexually violent acts can take place in different circumstances and settings. These include, for example, rape within marriage or dating relationships; rape by strangers; systematic rape during armed conflict; unwanted sexual advances or sexual harassment, including demanding sex in return for favors; sexual abuse of mentally or physically disabled people; sexual abuse of children; forced marriage or cohabitation, including the marriage of children; denial of the right to use contraception or to adopt other measures to protect against sexually transmitted diseases; forced abortion; violent acts against the sexual integrity of women, including female genital mutilation and obligatory

inspections for virginity; forced prostitution and trafficking of people for the purpose of sexual exploitation (Krug et al., 2002 p.149).

India with 1.21 billion people constitutes as the second most populous country in the world, while children represents 39% of total population of the country. (Data Source: Census of India 2010-11)

FIRST NATIONAL STUDY ON CHILD ABUSE IN INDIA

In order to find out the extent of the problem of child abuse, first ever-national study was conducted by Ministry of Women and Child Development in 2007. The report discusses incidence of child abuse nationwide. It is estimated that 150 million girls and 73 million boys under 18 have been subjected to forced sexual intercourse or other forms of sexual violence. In 2002 there were 53,000 reported cases of child homicide. The study covered 12447 children, 2324 young adults and 2449 stakeholders across 13 states, Assam, Andhra Pradesh, Bihar, Delhi, Gujrat, Goa, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Rajasthan, Uttar Pradesh and Wes Bengal . It was published in 2007 titled as “Study on Child Abuse: India 2007.” This survey covered the different forms of child abuse which are physical, emotional, sexual and neglect in five evidence group which are children in a family environment, children in school, children at work, children on the street and children in institution. I will be sharing the findings on Sexual Abuse from the study: -

1. 53.22% children reported having faced one or more forms of sexual abuse.
2. Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
3. 21.90% child respondents reported facing severe forms of sexual abuse and 50.76% other forms of sexual abuse.

4. Out of the child respondents, 5.69% reported being sexually assaulted. Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.
5. 50% abuses are persons known to the child or in a position of trust and responsibility.
6. Most children did not report the matter to anyone.

The survey also found that boys and girls were equally at risk. The most frightening aspect was that 50% of the abusers were known to the children and the children trusted them.

People tend to co-relate poverty with child abuse. But if we see poverty is not necessarily the direct cause of the abuse. There are other factors which are associated with poverty such as illiteracy, ignorance, struggle for survival adversely impact the children of poor families (Dabir & Nigudkar, p. 2865). If we take an example of the urban poor, the couples who have migrated to a city they cannot afford to stay in a very good colony. Landlords take advantage of their misery and construct very small rooms. They rent these rooms to such migrated population and there are no security measures in such type of housing. In a family both parents have to work to meet the needs of their day-to-day life. They cannot afford to keep their children at crèche and they have to go to work as well to earn their daily living. We cannot figure out one particular cause of child sexual abuse. We need to look at the broader picture of the in relation to social, cultural, economic and political factors of child sexual abuse. We cannot forget the role of caste and patriarchy in this. These two things directly influence ones accessibility of resources and existence in society.

In Indian context another factor, which is also again very important, is the correlation between gender and child sexual abuse. Even though male and female

child are equally subjected to child sexual abuse, female child is more likely to suffer because of their already low social status and the gender inequality which is very much part of our society. Negligence towards girl child is very common in Indian families. So if we see there is no one particular reason which is causing child sexual abuse. It is a vicious circle of many factors working together and coming out with a picture of current status of child sexual abuse.

There are the few cases, which came out and got attention. But there are many other cases, which do not even come out and do not get reported. After Nirbhaya's case looking at the gravity of the incident and the nationwide protest a Committee was set up. It was called as **Justice Verma Committee on Amendments to Criminal Law**. It was constituted on December 23, 2012 to look into the possible amendments of the criminal law to provide for quicker trial and enhanced punishment for criminal committing sexual assault of extreme nature against women (Verma, J.S.; Seth, L. & Subramaniam, G. 2013).

The main recommendations made by this Committee: -

1. It provided certain recommendation under section 375 of Indian Penal Code which are: -

A man is said to commit rape if he-

- a) Penetrates the vagina or anus or urethra of the person with-
 - i. Any part of his body including his penis or,
 - ii. Any object manipulated by him, except where such penetration is carried out for proper hygienic or medical purposes; or,
- b) Manipulates any part of the body of a person so as to cause penetration of the vagina or anus or urethra of another person; or,
- c) Engages in 'cunnilingus' or 'fallatio'.

2. The committee also recommended about the consent in a marital relationship, it goes by saying that consent will not be presumed in the event of any existing marital relationship between the complainant and the accused.
3. Another recommendation made by the committee was about the amendment in the Armed Forces (Special Powers) Act, 1958 that no sanction shall be required if the person has been accused of committing an offence under certain sections including 376 (punishment of rape). But unfortunately this recommendation was not considered in the final enactment of the Indian Penal Code.

DIFFERENT THEORIES OF SEXUAL ASSAULT (Shannon, 2004)

1. **Evolutionary theory:** As per this theory all men are potential rapists unless societal constraints exist to decrease their motivation. This theory gave the idea that males have more sex drive than the females; this makes them to secure many sexual partners. Females on the other hand are not free to select their partners/ multiple partners. The author supports the argument that, if females were selected to be willing to mate with any male under any circumstance the rape would not occur. This theory also accepts the role of learning and socializing in relation to the rape behavior. It also suggests that rape is not heritable, the traits of rapist do not transfer from one generation to another. In order to understand the rape behavior one's environment, learning, socialization are more important than the genetic differences.

According to this theory, a victim who is young and fertile will experience more psychological, for example they will face more mental agony compared to the victim of a pre or post menopausal period. It discarded the

thought that through the act of rape men try to dominate women in the patriarchal system of society. But rather they focus on to study why men were sexually motivated towards women. In the essence of this theory, it fails to accept the role of society and the rape behavior or the intentions behind one's action.

Critique: For rape prevention programs, this theory focuses on male sexual impulses, instead of looking at the role of society and family and teaching young men the idea behind rape i.e. to control and dominate women. Women should learn the cost related to attractiveness, they should avoid wearing provocative clothes otherwise they will end up getting the attention of the male sexual desire. At the core of this theory, it is targeting women for the act of rape as it was their fault and men cannot control their sexual desire.

2. **Feminist theory:** As per this theory, rape works as a tool for the patriarchy system of society to dominate women and keeping them in state of constant fear. To make them realize that they need a man to protect them; the cost related to their presence in public places and they should be kept in the house. Most of the feminist philosophers believe that motive behind sexual coercion is more to exert control and domination over females rather out of lust. Rape, according to feminist, is not necessarily a sexual act rather and act of violence. Through violence males can dominate women. Under the patriarchal form of society men are the holders of power and wealth, they hold the decision making power.

The socialization of males and females itself is sexist. The so called gender roles, we have been learning these roles and act as per our role. Our speech, body language, clothes, food, everything depends on the gender roles.

It has also tried to look at the victims' perspective rather than the perpetrator's perspective. As sometimes females see rape as an act of sex and do not consider them as rape victims. Certainly, rape is a socially constructed phenomenon, so the definition of rape will differ from one society to the other. The definition of rape will be different in a conservative society than the liberal one. The more radical definition of rape is the assertion that in patriarchal society no woman can consent freely to sex. Even if she does so, that will be further altered by the hierarchical culture which focuses on oppressing women. So, according to this definition of radical feminists, any act of sex between a male and female in patriarchal society is rape.

This theory also emphasizes that any woman can be a victim of rape, no matter what her age, status and appearance is. Rapists should receive harsher sentences; it has been found that where societal regulation and punishment is highest, rape rates are lowest. Feminists believe that rape will not be eliminated until the sex roles will be defined on the basis of the all stereotypical notions of gender role, which fuels the idea of power and domination over females in society. Societal restructure is profoundly required to eradicate the problem of sexual violence and stigma attached to it.

- 3. Synthesized (Biosocial) Theory:** This theory has been designed by taking out the strengths of evolutionary, feminist and social learning theory. This theory differs from the feminist and social learning theories asserting that rape is largely a sexual act.

This theory suggests that sexually coercive behavior is learned and the major part of the learning is experiential rather than attitudinal or imitative. No one is born a rapist, men are more likely to get aroused by visual stimuli than women. If once

woman give in under that physical force, then that man would generalize this behavior with other women.

As men have greater sex drive than women; they will try to secure more number of partners. But women would go for the committed relationship.

The cases of Child Sexual Abuse (CSA) have been increasing drastically by the passage of every year World at large and India in particular. By these increasing numbers of CSA, we should not assume that more cases are happening now, cases were already happening, but now people are coming out and reporting the case. In most of the cases of CSA the perpetrator is very well known to the victim, usually a very close family member either father, brother or uncles. This clearly comes out in the data collected from the capital Delhi by the researcher in this study.

A study was conducted by the doctors of All India Institute of Medical Sciences (AIIMS) in years 2002 in South Delhi. Poor medical evidence is often responsible for the poor conviction rate (Sarkar, Lalwani & Rautji, 2002). This study has addressed the issues of evidence collection through medical examination and how important the role of a physician is. The period of this study is January 2001-September 2002; total 90 victims of sexual offences were examined in Department of Obstetrics and Gynecology of AIIMS. As per the data analysis of this study, a quarter of the victims were brought for medical examination after 5-7 days of the incident. Only 9 (10%) victims were examined on the day of the incident and 9 (10%) were examined after weeks, after the incident. In 39 (43.3%) cases were the invalid consensual sexual intercourse followed by forcible rape in 23 (25.5%) cases, statutory rape in 18 (20%) cases. 10 (11.11%) cases were of unnatural offences. A large number of adult consensual rape cases, the assailants had a friendly living in relationship with their victims and had sexual activities after absconding together (Sarkar, Lalwani & Rautji, 2002)

Sexual assault is a neglected public health issue in most of the developing countries and there is likely to be an even smaller percentage reporting sexual assault. A quarter of the victims had injuries, simple to grievous on their bodies. Six victims had extra genital (means other than genital injuries), ten victims had genital and seven victims had combined genital and extra genital injuries. They were mostly involved in forceful rape (Sarkar, Lalwani & Rautji, 2002).

The absence of physical injuries may not contradict the allegation as absence of general body trauma could be explained by the vulnerability of the victims and by the fact that the assailant could have exercised authority over the victim, so that victim offers minimum resistance. The study highlights the importance of addressing rape as a public health issue and focuses on the demographic profile of victims in an urban area (Sarkar, Lalwani & Rautji, 2002).

Sexual Violence is form of violence, which can cause immediate and long term health consequences for women. Sexual violence is not one single act; it has its variety of acts causing physical and mental injuries to the victim survivor. Sexual violence includes a range of acts such as rape, genital mutilation, and sexual violence in context of arm conflict zones, communal violence and in the emergency situation. In many reports in South Africa and America, it has been found that a large number of women face intimate partner violence both physical and mental (Jeena & Thomas, 2013).

Sexual Violence does not occur in isolation, it falls into the complex web of the gender based violence. This study basically focuses on the health consequence of the sexual violence, but there can be many consequences of sexual violence such as emotional, loss of family support, in case of child sexual abuse problem in the mental health of the child (Jeena & Thomas, 2013)

Immediate health concerns: - looking after the injuries of the victim survivor. Collection of evidences from her body. Providing appropriate care to avoid the long term impact of the violence.

Medium to long term long term consequences: - according to WHO report, gastrointestinal symptoms are found to be common among victim survivor (VS). Studies conducted in the Los Angeles also shown the symptoms of abdominal pain, diarrhea, vomiting and nausea. The sexually violated are more likely to suffer of these compare to the non-violate women. Sexually violate women are also likely to suffer reproductive health problems such as STDs, STIs, HIV/AIDS, unwanted pregnancy, urinal infection etc.

There are psychological health problems as well. If the symptoms gone unnoticed, without care then it can result into a major problem for the victim survivor. And they are also more likely to suffer post traumatic stress disorders. They may also suffer from the risky health behaviors and it is linked to the high risk sexual behavior and also with eating disorder. Such behavior again is the process of re-victimization causing more problem and pain to the victim survivor.

In complex settings such as the arm conflict, communal violence and also at the time of natural/manmade disasters, there is high chances occurrence of the sexual violence which is followed by the physical and mental injuries to the victim survivor. At such type situations, health care facilities would also not be accessible to the people. There is also occurrence of sexual violence in the forced marriages and in case child marriages, the situation get worst.

Social Consequences of Sexual Violence: - If we look in the Indian Context, where we have largely a conservative society and sexuality is seen as taboo and the rape victim is stigmatized, in such conditions a victim survivor would be able to cope with physical injuries caused by the incidence, but she has to struggle to be again accepted in the society. In some cases family abandoned the victim, if family accepts then the family is also boycotted from the community and from the

relatives. In some areas VS forced to get married with the rapists, in such conditions one can understand how much it is hard to tolerate a person for entire life who treated her just as a piece of meat.

Sexual violence is a violence, which can affect an individual at any point of time in the lifetime. It is being committed against men, women and children. Children are the one who are being deeply affected by this, because it directly hinders and affect their overall development and growth as an individual. There are very crucial chances of transmitting Sexual Transmitted Diseases (STDs) during sexual assault. The presence of and sexually transmitted organism would be suggestive of sexual abuse, but many children do not come with the problems related to genitals after the occurrence of sexual violence. The presence of such agent in a child's body after the neonatal period can be the suggestive of sexual assault but there exceptions as well (Hammerschlag, 1998).

When the perpetrator is stranger there are chances of only one episode of abuse. But If there are multiple episodes or the chain of abuse, then it is most often that the perpetrator is known to the child victim, most likely to be father, stepfather, cousin, relative or somebody who is known to the family, who frequently visits home.

While diagnosing the STDs in children, the mode of transmission is very difficult to identify because some STDs are transmissible from mother to child. Here, the responsibility of the doctors increases a lot in this sense; if they find a child suffering from STDs; they need to take history of the child in terms of sexual activity he/she was involved in. Doctor also has to see whether the disease was acquired from mother. Misdiagnosis of the STD can be catastrophic to the child and family as well as the failure to make diagnosis.

Virani (2000) has very precisely explained the aftermath of CSA. Firstly the sexual abuse confuses the child; child would not able to figure out what has

happened to him/her and what he/she has done. The child blames self and starts questioning himself/ herself, that he/she is wrong and he/she is not a good person and he/she can't do anything right. This further leads to self-estrangement. That 'I cannot do anything right, I am not normal, no one cares for me'. This again leads to the difficult part that child starts hiding from the surroundings. Child uses this strategy to protect self because most of the perpetrator directs the child not to disclose anything about the incident to anyone. That is how child also goes into isolation. The child already suffers from trauma and with this type of thinking of self, actually hinders overall growth and development badly.

The long-term effect of CSA can be catastrophic. Mental health problems such as: anxiety, fear, depression, suicidal tendencies, isolation, low self-esteem, smoking, alcohol and drug abuse. The sexualization of the child after growing up can also be very traumatic including both sexual feeling and sexual attitudes (Virani, 2000). The stigmatization child face can affect later on.

Child sexual abuse is a self-perpetuating phenomena and cases suggest that adult males and females who have been victims of Child Sexual Abuse turn promiscuous and enter into unhealthy sexual relationships. Females are more likely to choose husbands who abuse them and their children. As mothers they often show poor parenting skills, neglecting or abusing their own children. As mothers they often show poor parenting skills, neglecting or abusing their own children (Virani, 2000, p. 67). To substantiate her argument she is referring to the international studies conducted in this regard. She referred to a study which showed that many mothers who actually sexually abuse their children; they themselves had been the victims of CSA. Another study showed that mothers who had been the victim of CSA in their childhood they are most likely to choose emotionally inadequate partners.

Police pointed out that, almost all the cases of girl-child rape, which makes it to the police station, are from lower class, lower-middle class and some middle-class homes. There is virtually a deafening silence from upper-middle class and upper-class homes. There is no logic that girl child in their home are not being raped. A large number of cases of rape of girl child never get registered (Virani, 2000, p. 30). At least, a few percentages of these cases from this section of society manage to reach to the legal system. On the other hand cases happening in the upper class of the society find it more difficult to come out and get register.

Boys and Girls Victims

There is not much of a difference between girls and boys, in terms of their reaction to the Child Sexual Abuse and their immediate reaction after the abuse. Perhaps the only difference between the reactions would be that the small girl would be more traumatized than the boys whoever the perpetrator is, men or women. But boys look at this activity with older women-when they are not related- as all right. Also, boys whose sexual orientation is inclined to be homosexual also do not see it as sexual abuse when perpetrator is adult male (Virani, 2000, p. 36).

When perpetrator is the close family member, then it causes deeper pain because some time they are doting father, uncle or brother but suddenly in the other part of day they are the cruel perpetrator. This actually makes child confused and they starts having conflicts within themselves. Boys and girls both have same short-term and long-term effects of Child Sexual Abuse. The nature and extent of the effects depends on the age of the child at the time abuse, relationship of the child with perpetrator, the duration and frequency of abuse, the use of power and force at the time of abuse, penetration and the use of objects for penetration, and power dynamics within family itself (Virani, 2000, p. 37).

Per Vagina Test

Per-vagina test (PV Test), also known as fingers test, has always been the issues of debate and concern for the civil society. This test has been conducted on the victims of sexual assault. The controversy behind conducting this test is that this test being conducted to check the sexual history of the victim as well as whether the victim is habitual of having sex.

The State Health Department has issued guidelines allowing the finger test, also known as the per vagina test, for medical examination of sexual assault for victims when it is deemed necessary. The Department stated that, complete ban on the test 'may result in injustice', after the Central Information Commission had asked the Delhi Government earlier this year to clarify if the test is still being performed in the city (Chatterjee, 2015).

In 2013, the Supreme Court has stated that this test violates the victim's right to privacy and asked the government to provide other better medical procedures to confirm sexual assault. Justice Verma Committee which was formed after the 16 December, 2015 brutal gang rape also recommended stopping finger test on the victims of sexual assault. They also stated that this test 'should not be conducted', and references like 'habitual to sexual intercourse' should not be made. But even after Supreme Court statement and Justice Verma Committee's concerns this test is not banned now.

These guidelines has provided three reasons to perform this finger test on the victims of sexual assault, firstly, examine genital organs to elicit signs of forced penetration, secondly document and evaluate extent of injury and lastly check for infection and treat them, and collect appropriate samples. The guidelines also stated that informed consent of the victim should be taken for conducting finger test.

However, the test is not indicated as routine and has to be performed only if there is external or internal bleeding or unhealthy discharge, presence of mass or tenderness in lower abdomen, fecal or urinary leakage and a history of insertion of foreign bodies in the genitalia. For very young girls, the guidelines stated that the test should be done under anesthesia (The Indian Express, June, 8, 2015, p. 3).

This is a very sad step taken by the government, whatever measure they take but they cannot stop doctors from making reference to sexual habituation of women and this test can leave a grave mark on the memory of the child victim.

UNDERSTANDING CHILD SEXUAL ABUSE FROM PUBLIC HEALTH PERSPECTIVE

Child Sexual Abuse is a very broad area, where the researcher has tried to cover the main themes and debates on this issue in this chapter. CSA as a problem becomes more complicated because most of the times perpetrators are known to the child victim. That makes more difficult to report cases of CSA happening within the family. Most of times perpetrator threatens the child not to disclose about the incident to anyone, this really makes child confused and child starts feeling that something is wrong with him/her. The closed family system, which we have in our country, it does not allow much of the closeness between parents and children, which again makes it difficult for children to share about the incident with their parents. This is one of the reasons for underreporting of cases of sexual violence of both major and minor because our society attaches the family honor with this.

The judicial system would be able to work more freely when we detach the sexual crimes from the honor and pride. But it is not that easy, the interview of the Defense Lawyers of *Nirbhaya* Case recorded in the Documentary “India’s Daughter” make us all feel ashamed that the person who hails from a well worse background actually can be so much gender insensitive and comparing the women

with street food and flowers. The understanding of the lawyer is purely from patriarchal notions, where every woman should be under the proprietary of a male. Individual rights do not exist for women

On the basis of the literature review and discussion in this chapter, it is very clear that CSA is very serious problem for India in particular and World at large. There is no country which is not facing problem of CSA, some countries are becoming more vocal about this issue and other are still struggling to accept that CSA is happening in their societies. However, the gravity of the problem has clearly come out through the studies conducted globally and nationally.

Sexual violence itself is very traumatizing but the gravity of this crime increases when it is done with children. Studies has shown that those children had been sexually abused in their childhood are more likely to experience developmental problems, they are more likely to have sexual dissatisfaction in their romantic relationship. Girls suffer more compare to boys (Smith, 2008). Sexual violence needs to be addressed as public health problem, and CSA needs to be addressed as important aspect of it. A child can sustain physical injuries, mental agony and emotional imbalance out of CSA. If these issues would not address at proper and given particular attention, then it may cause deeper hindrance in growth and development of the child.

It is very difficult to get the number of the cases happening down but one thing we can assure and can work on is the providing proper support to the victim and the family in order to make their journey to get justice little easy.

There was a case happened in year 2013, Gandhi Nagar, in Delhi where a 5 year of girl child was sexually assaulted by her uncle. It was the incident when researcher was working in this field and visited girl child and her family. The child was injured badly, the accuser inserted foreign objects into her anus doctors removed that object through surgery, due to this child was not able to defecate. Doctors had to make an artificial passage through her stomach so that she would defecate. This is the permanent condition of the child, even though she would be

able to recover but she will not be able to regain her normally functioning of her organ. Her father was a daily wage worker and mother was a housewife, she was the only child. They used to live in a very small house and with very few amenities available. The kind of injuries the girl child sustained in that incident led doctors to suggest that they live in some other place so that the better care to the child could be provided. This case was highlighted in media, one NGO offered shelter to the family. In April this year another case happened, a five-year-old girl child was raped brutally and she was taken from one hospital to another before performing a five-hour long surgery. The child was also not able to sit and move properly.

CHAPTER-4
DATA ANALYSIS

INTRODUCTION

When it comes to the incidents of sexual violence, it is very important to know the exact numbers of the cases happening because it will help in designing the programs and appropriate actions would be taken to control the cases. The assistance program for example Rape Crisis Cell run by Delhi Commission for Women will also get benefit as they will have the knowledge of the exact number happening. However, as we know, that it is really not that easy to get the actual number of cases happening. The reason behind this is that a large amount of cases does not get reported out fear of shame, stigma, and culture of silence. Under the culture of silence, it is also not reported, as the honor of the family or its members will come down, so often these incidents are not reported and the child is asked to keep quiet. When perpetrator is stranger people are more likely to report the case compared to, when the perpetrator is known one (family member, distance relative or friend). The relationship of the victim with the perpetrator affects a lot even in reporting the cases and also while coping up with the incident. A very important thing, which has clearly come out of the data collected from Delhi and is the cause of concern, is that, in most number of cases, perpetrator was known to the victim both in the case of major and minor in age. The argument, that women are safer at home, is highly questionable. Further, the opinion that short and revealing clothes worn by women provoke men to harass her does not hold well, when you see small children being molested and raped.

National Crime Records Bureau (NCRB) is the Government body, which collects the crime records and publishes it every year. Specifically talking about the cases related to children, NCRB compiles the data in a section of their report titled “Crime against Children”. The crimes which they cover are as follows:-

- Infanticide (Sec. 315 IPC)
- Murder (Sec. 302 IPC)
- **Rape (Sec. 376 IPC)**
- Kidnapping and Abduction (Sec. 363, 369, 371-373 IPC)

- Feticide (Sec. 315, 316 IPC)
- Abetment to Suicide (Sec. 305 IPC)
- Exposure and Abandonment (Sec. 317 IPC)
- **Procuration of Minor Girl** (Sec. 366A IPC)
- **Buying of girls for Prostitution(Sec. 373 IPC)**
- **Selling of Girls for Prostitution (Sec. 372 IPC)**
- Prohibition of Child Marriage Act 2006
- Other Crimes

Under the whole umbrella of Child Sexual Abuse they only record Rape as a crime, also record buying or selling of minor girl for prostitution and procuration. The reliable data on child sexual abuse is very hard to get because people tend to hide it, which again causes child victims to suffer a dark and isolated life. According NCRB data, Incident of Rape with children in **2012 was 8,541**; in **2013 it increased to 12,363**. Within one year such an increase in rape cases of children is alarming. From this data we can infer that either the reporting of cases has improved or the incidents of rape have actually gone up.

A study conducted by Nayak in 2014, titled “*Preliminary Analysis of Some Statistics Relating to the Offence of Rape as Reported by the National Crime Records Bureau for the Period 2001-2013*”. The purpose of this study is to mark the trends in the number of cases of rape registered across the country over thirteen years period. This study is based on the Government’s own data, which it has sourced from the level of the police station, is intended to hold up a mirror to Governments and politicians alike to reflect the reality and about the magnitude of this violence happening (Nayak, n.d.). The findings of this study are: -

- The senior police personnel and experts on this issue, do not accept the data reported by NCRB thoroughly and there is the reason for that; data is collected by the junior level police officials, which involves the compilation from police station level to district level units and up to State Crime Records Bureaus. There are chances that they do not collect and

submit it in accurate form. This further can lead to misinterpretation of the findings. The methods of data collection should be improved.

- The correctness of this data is only true to the extent how NCRB uploaded the dataset.
- This study does not claim that the NCRB data represents the clear picture of rape committed against women in a given year. There are two reasons for this, *first* experts have pointed out that the data collection exercise, commencing at the police station takes into account, only the principal offence mentioned in the FIR. However, an FIR may contain other offences also committed by the same person(s) during the same event. So, if a woman was raped and subsequently murdered by the culprit, to escape identification, the principal offence noted in the FIR would be that of murder. So, the crime data compilation will reflect only the principal offence of murder and leave out rape. As a result the NCRB dataset for a given year may not be an accurate reflection of the total number of instances of rape that occurred across the country (Nayak, n.d. p. 30).

The data compiled by National Crime Records Bureau provides numbers but numbers can mislead many times. Because many times when a case registered only the principal crime is recorded if there is rape and murder in one single crime only the Murder will be recorded as principal crime rape will not be recorded anywhere. NCRB annual report is providing number with no further analysis. Therefore, there is need to asses this annual report by experts from the field, in order to understand this collected data analytically and make the most out of it (Satija & Datta. 2015)

We cannot totally rely on the data collected by NCRB. Because many cases does not get reported, people struggle to file and First Information Report (FIR), in the remote areas of the villages people still struggle to get the register their complain

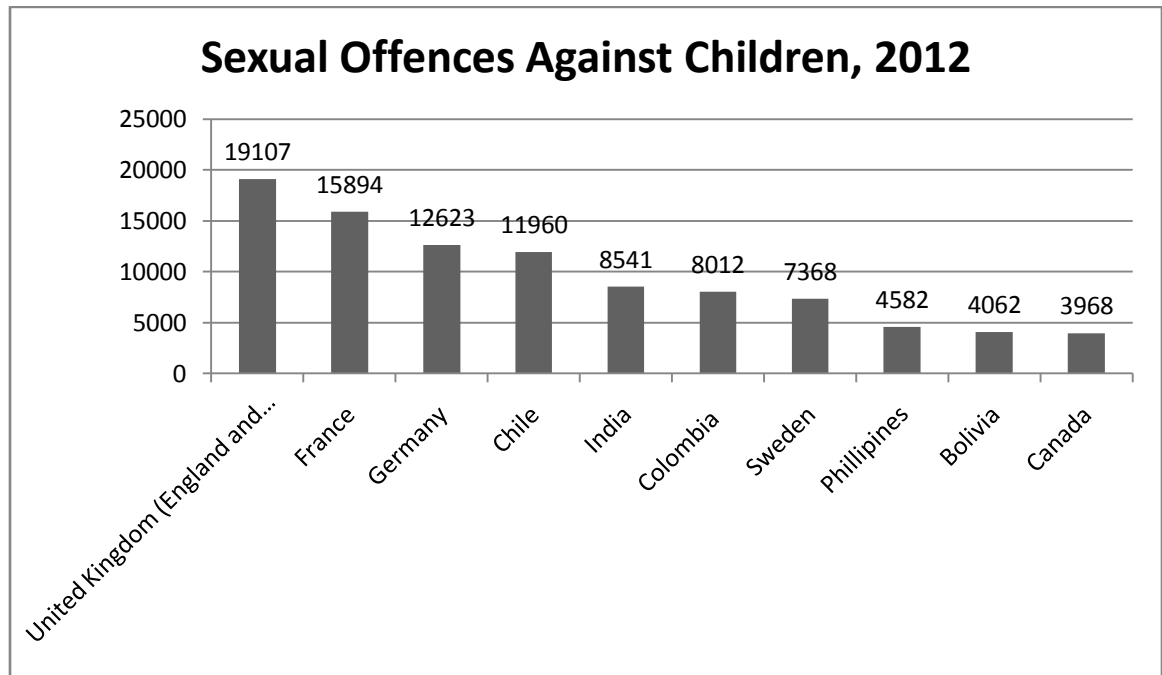
and same problem is faced by the population cities as well (Economic & Political Weekly, 2008)

Delhi has the worst rate of converting complaint into FIRs. There is no separate data available for the rate of conversion of rape complaint into FIR. "Honor Crimes" are not recorded by legal system; there is not concrete data available about the cases and magnitude of the problem. There was a study conducted which showed that over a period of four years 560 couples were threatened and provided state protection and 121 individuals were killed. The FIRs of kidnapping by family members are easily registered compare to the couples who seeks stat protection (Shakil, 2013).

Sexually abused children suffer from more psychological symptoms than normal children. The risk of harm is greater if the abuser is a relative, if the abuse involves intercourse or attempted intercourse, or if threats or force are used (Kumar et al. 2012). Most importantly, these psychological effects prevent the normal development process and positively correlate with mental health problems in later life.

Before moving to the discussion over the cases happening in India, it is pertinent to look at the gravity of problem at the international level. Surprisingly, the highly developed countries are facing the same problem of CSA as the developing countries. The statistics collected for the CSA will not be the representative of actual cases happening because all the cases do not get reported, because, of so many reasons; stigma attached to rape in particular, sexual violence at large, fear, shame, fear of being blamed for the incident, the societal norm of family pride and honor linking to sexual violence, fear of boycotting the family from the society, fear of harm from the accuser, if accuser holds an influential position in the society, fear of harassment at the systems level after reporting the case etc. Therefore, it is very difficult to actually point out the actual cases happening in the society.

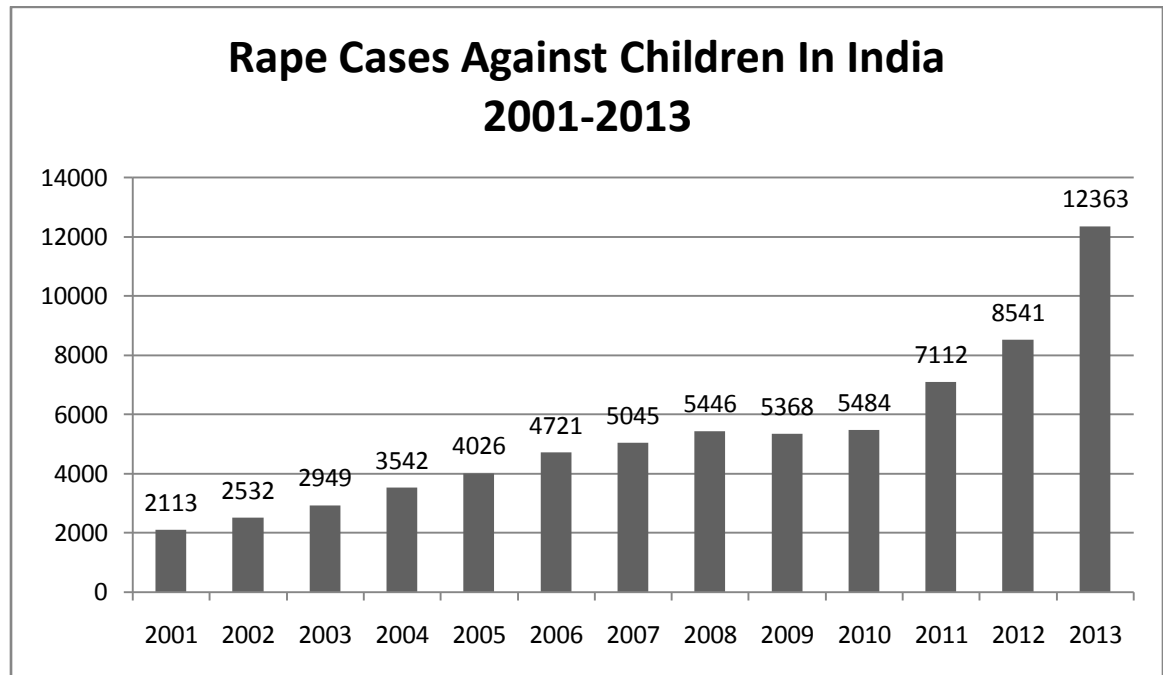
WORLD STATISTICS



Source: - United Nations Office of Drugs and Crime, 2013

Figure: 4.1-The available data of 2012 shows that in UK has highest number of cases of sexual offences against children have been reported. India stands at fifth position worldwide. There can be variations in data because; there is non-availability of data from many countries. This is very surprising to see UK, France and Germany, countries, which are highly developed and civilized facing the same problem when it comes to CSA as the other developing countries. One can easily see that CSA is not only happening in the poor societies, it is much more rampant in highly developed societies. These are the countries, which are collecting the data related to sexual violence against children. In Indian context the above data has taken from the NCRB report and NCRB collects data only for 'rape', therefore a large portion of sexual violence against children are not recorded which does not include rape. There is no evident collection of data other than rape.

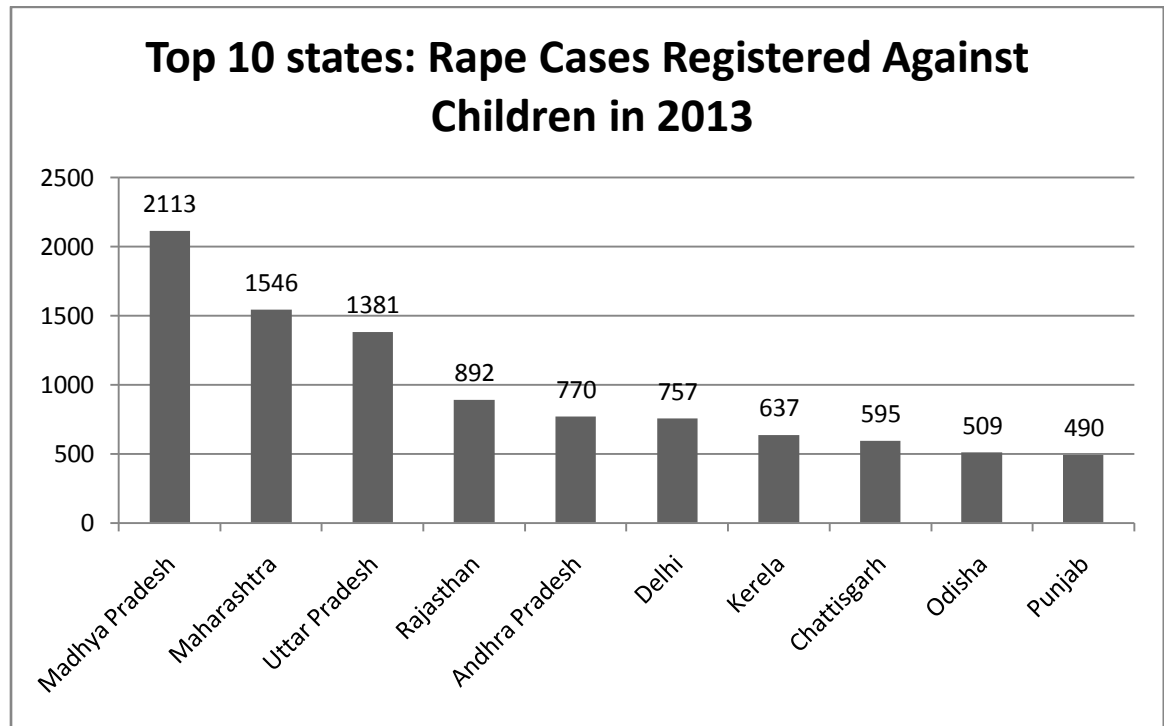
INDIAN STATISTICS



Source: - National Crime Record Bureau, <http://ncrb.nic.in/>

Figure: 4.2-Shows the rape cases registered against children in last 13 years have been steadily increasing and there is more than five times increase in the rape cases between 2001-2013. It is quite clear that people tend to hide such incidents and the reason which forces them to hide CSA cases is that mostly, the perpetrator is known to the child victim and they are not strangers. There it unfolds the dark side of the human relationships; the families, which are considered to be the safest place for any child, are causing the deepest injury both mentally and physically to the child. When the abuse happens in the very early age as that of infants, the child won't be able to remember it. But, when a child is growing up, at that time he/she would not be able to figure out, what has happened to them, but later on when they learn about sexual abuse and imagine the event or the chain of events happened to them they starts feeling guilty and blame themselves and if they do not get enough support to come out of it, it can cause deep wounds in the heart and minds of the children and can have fatal outcomes in their lives.

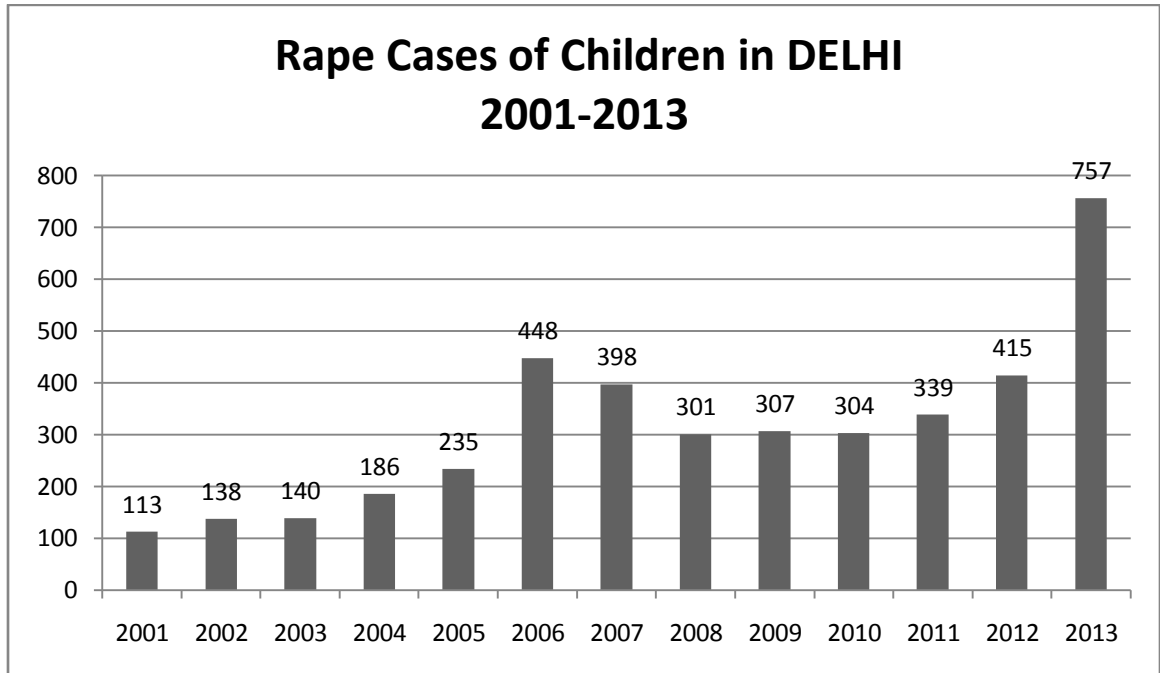
STATE WISE STATISTICS



Source: - National Crime Record Bureau, <http://ncrb.nic.in/>

Figure: 4.3- Above figure is presenting the first ten states as per the number of rape cases registered against children in 2013. First three states are the highly populous states, but still Delhi is not much behind them even though it is less populous compare to these states. There can be many reasons for this, *first* is that people are far more sensitized in Delhi compare to these states when it comes to reporting of the cases, *secondly* it can be the accessibility to resources like the concerned authority where one can lodge complaint i.e. Police and *thirdly*, Delhi being the State Capital of India, gets the intense coverage from the media groups so the authorities have to act in more prompt manner.

DELHI STATISTICS



Source: - National Crime Record Bureau, <http://ncrb.nic.in/>

Figure: 4.4-As seen in the national statistics, the same is being repeated in Delhi, State Capital of India has been always referred as the Rape Capital of India. Compare to other Union Territories, Delhi has the highest cases of rape both in for major and minor age group. These are the cases, which actually paved their way to judicial system. With these figures, we should not assume that the number of incident have gone up, but it also includes the cases which were happening from years, but now have been registered after years of abuse. The main reason of it is that in Child Sexual Abuse cases, perpetrators are mostly known to the child victim, family members, neighbor, and relatives, because of this family become hesitant, when it comes to confront the perpetrator and file case against him. But these numbers are alarming enough, there is almost 50% increase in 2013 compare to 2012, and in last thirteen years, there has been more than seven times increase.

**ANALYSIS OF THE RAPE CASES REGISTERED BETWEEN 2009-2014
IN DELHI**

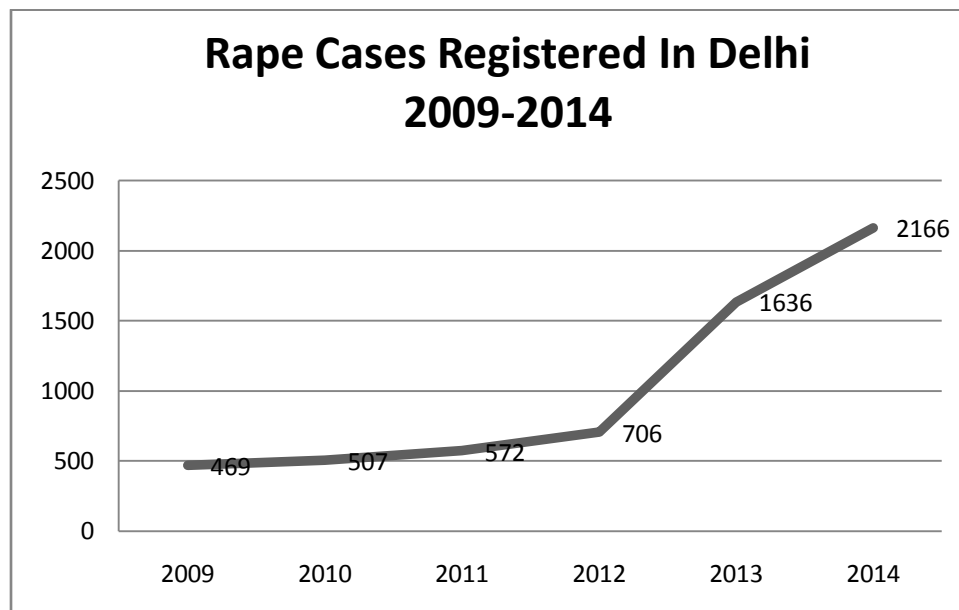
Table: 4.1

**Number of Rape cases registered and
worked out in Delhi between 2009-2014**

		2009	2010	2011	2012	2013	2014
1	Cases Registered	469	507	572	706	1636	2166
2	Cases worked out (accused arrested)	440	471	558	660	1483	1750

Source: Office of the Deputy Commissioner of Police Crime & Railways, Police Headquarters, Delhi

Figure no. 4.5: - Increase in the Rape cases Registered in Delhi



Source: Office of the Deputy Commissioner of Police Crime & Railways, Police Headquarters, Delhi

The above figure shows the trends of the rape cases registered in Delhi in the last 6 years. It contains the cases registered of both major and minor age groups. There is clearly five folds increase in last six years. If we look at the figures between the year 2012 and 2013, the cases increased more than two times, after the *Nirbhaya* Case which happened on 16th December 2012. The case of extreme violence, where 5 men including a Juvenile raped her, mutilated her private body parts and threw her to die. For the first time in history, a huge number of people came on the streets to protest and demanded justice. There have been campaign and efforts though on a very small scale to make the public spaces for women safe. Also putting these men behind the bar and the Criminal Law Amendment Act, 2013 came into place; there is some restoration of faith in the judiciary. On the basis of this, we can say that there has been increase in reporting of the cases. After this case, more women have come forward to report the cases of sexual harassment and rape, which had happened to them recently or in the past. The women who were raped months and years back also came to the police to register their case, reposing faith in judiciary and the courage to speak up. Eventually, this protest-helped woman to come out and register complains against the rapist.

Table: 4.2

Type of the case registered between 2009-2014

		2009	2010	2011	2012	2013	2014
	Cases Registered	469	507	572	706	1636	2166
1	Elopement Cases	84	40	49	62	261	123
2	Live In Relationship					43	84
3	Refusal of Marriage					232	529
4.	Pretext of					5	9

	Providing Job						
5	Incestuous Cases					175	335
6	Acquaintances Rape					1403	1745
7	Strangers Rape Case					58	86

Source: Office of the Deputy Commissioner of Police Crime & Railways, Police Headquarters, Delhi

In table no. 4.2, indicator Live-in Relationship and refusal of Marriage are not clear because in many cases when a couple is in live-in relationship the reason for lodging FIR also is the refusal of marriage. The researcher does not know the reason for the segregation of these two indicators. For the first time post 2013 after *Nirbhya* case, the other categorization has been done like Live-in Relationship, Refusal of Marriage, Pretext of providing job, incestuous cases, Acquaintance rape and Strangers Rape.

The main concern and stark finding is that, which arises out, in most of the cases, that the rapists were known to the victim. A very less number of cases fall under the category of 'stranger' rape cases. This becomes all the more difficult to judge and bring in legal recourse, given the intimacy or privacy issues within the family and with the person known to the victim.

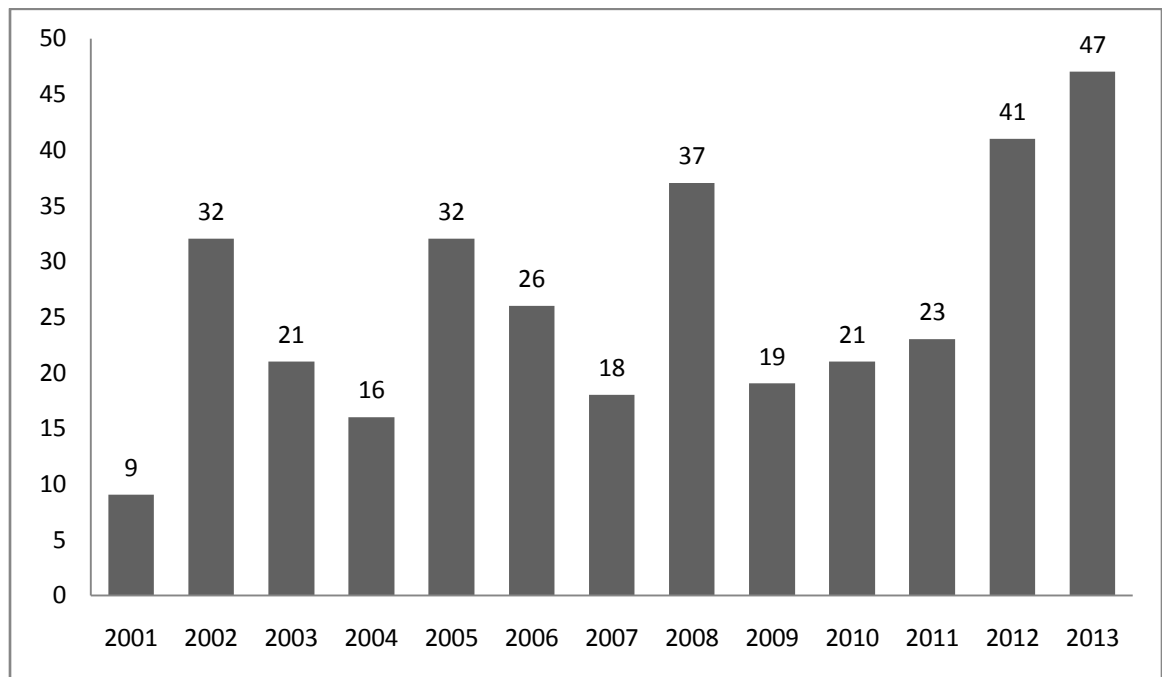
Table :4.3							
Place of Crime							
		2009	2010	2011	2012	2013	2014
	Cases Registered	469	507	572	706	1636	2166
1	House/Premises	276	382	498	633	1371	1801

2	Jhuggi Cluster	26	22	26	23	43	47
3	Vehicle	4	12	13	19	33	45
4	Park/Jungle/Bushes						65
5	Shop/ offices						25
6	Clinic/Hospital/ Nursing home						8
7	Factory/go down/ workshop						16
8	Subway/toilet						1
9	Hotel/Restaurant/ Dhaba						70
10	School/College/ Educational Institution						16
11	In train/platform		1	2	2	1	2
12	Other					188	40
	Total					1636	2166

Source: Office of the Deputy Commissioner of Police Crime & Railways, Police Headquarters, Delhi

The above table indicates very clearly that, the largest number of rape cases happened in home premises. Home is the place where women are supposed to be safe than any other place in the world. It contradicts with the societal notion that girls should not go out and they better stay at home for their own good. Till 2014; there is no place; where the incidents of rape have not happened. However, the frequency varies. Till 2013 data was not collected, about the place of incident, only from 2013, type of places were added for an analysis.

Figure-4.6: - Incest Cases Reported in Delhi in 2013



Source: - National Crime Record Bureau, <http://ncrb.nic.in/>

Figure-4.6 shows the incest cases happened in the year 2013 in Delhi. Incest cases have been reported in Delhi continuously since 2001 to 2013, which clearly shows the visibility of this highly hidden phenomenon. These are cases, which actually paved the way through walls of their home to the system. These numbers would not be the representative of the actual number of incest cases happened in Delhi because a large number of cases never come out in public, because of family and societal barriers.

INTERVIEWS WITH THE KEY INFORMANTS

The researcher covered four Government tertiary care Hospitals of the East District of Delhi. Researcher has interviewed four doctors, one from the each Hospital who has been conducting medical examination of the cases of sexual violence. Names of neither the doctors nor the hospitals are being named to keep them confidential.

The researcher has interviewed two Women Sub-Inspectors (WSI), who have been dealing with the cases of sexual violence. The researcher also had informal discussions with few Constables and Head Constables, who accompany the WSI during their visit to Hospital for Medical Examination.

The researcher has also interviewed two members of Child Welfare Committee and got information about their experience with Hospitals.

CHILD WELFARE COMMITTEE MEMBERS: ISSUES & CONCERNS

Under Juvenile Justice (Care and Protection of Children) Act, 2000, for child in need of care and protection there is the provision for the establishment Child Welfare Committee (CWC) [Section 29(1)]. This is an important body for handling cases of children who are in need of care and protection; it plays a vital role in rehabilitation and restoration of the child in need of care and protection. The bench of CWC consists of one Chairperson and four members. There is one Advocate, one Data Entry Operator and one Welfare Officer. The working timing of the CWC is 10:00 am to 04:00 pm. The researcher interviewed two CWC members.

As informed by the CWC members, eight to ten new cases of various nature comes to them daily and, others are the follow up cases. Mostly cases come from lower socio-economic background. Few months' back they had issued notice to the Medical Superintendent of one of the Government Hospital, because while discussing, the medical examination with the child's mother the researcher came to know about, how doctor scared them by telling them that gynecological examination will hurt. Therefore, child refused to conduct medical examination. Subsequently they took up the matter and issued notice to Medical Superintendent and till now there is no further complaint from that particular hospital received.

They expressed that, there is shared interest between Doctors and Police. Because Doctors scare child victim and the family by telling them that it will hurt so that they can save their time. On the other hand, police also try to lessen their work, in the elopement cases of teenage couple, when police catches them up. Police try not to add the relevant section of sexual assault. They try to keep the principal crime as kidnapping only. Police and Doctors both try to save their time by not performing their duties honestly.

There are many cases which CWC is handling, there is lot of paper work related to it, and work load is very much there. The cases in which, teenage lovers elope together and then the family of the girl child file a complaint against the boy of kidnapping. In such type of cases, girl initially denies for any sort of sexual relationship to save her lover, but her family pressurizes her for mentioning about the sexual relationship. In such cases Police also try to avoid putting in the relevant section of sexual assault. In such cases when child is produced before CWC for giving the custody of the child to her parents or guardian, CWC members try to talk to the girl child about the incident but in most of the cases, girl child do not cooperate with CWC members and parents also do not reveal about the relationship with girl child and how the accuser or juvenile apprehended, used to know each other. Parents also do not cooperate in such matters. Because they do not want to discuss their family matters with CWC. CWC is concerned that such sort of fabricated cases are increasing with passage of time and because of them real/genuine cases have to struggle because they are also considered to be fake or fabricated.

As a member of CWC, they also face situations of emotional outburst, but there is no facility of psychological support available for them. They do not get their honorarium on time; sometimes it takes 3-4 months to get their honorarium. As a committee they also have their limitation, they pass orders, stating few

recommendations further, which needs to be done for the benefit of the child, but there is no follow up for that. They also have workload of so many cases and the Welfare Officer is not able to handle every case single handedly and provide counseling. There are times while dealing with the cases of child labor; they received threats from the owner of the factories, where children have been rescued. Ministers also pressurize them if their relative is involved in the cases for not involving their name.

While discussing about the reason of increasing these elopement cases, they pointed out the problem of parenting, as we have closed family structure, parents do not share a relationship, where a child can share anything with their parents, parents most of the times do not know what is happening in the lives of their children, they do not know who are their friends and who are the new people they are meeting and hanging out with. Family plays a vital role in such type of cases.

In the researcher's point of view, there are reasons of not having a close relationship between parents and child, one reason is already mentioned about is the closed family structure and other is that most of these parents are daily wage laborers, they are not able to give the time and attention to their children, which is required because both the parents are working. It would be good if there is any Community Crèche, or child friendly spaces, available which is also suggested by the CWC members.

Discussing about the Counselors associated with Crisis Intervention Center run by Delhi Commission of Women in each district of Delhi, they mentioned that counselors are of no support to them, as they never accompany the child during production before CWC. They also do not report about the follow up of cases. These counselors could be of so much of help and support for children as well as

the CWC but CWC do not see any dedication in their work. They do not even remember when did the last time any counselor from Crisis Intervention Center visited CWC regarding any case.

INTERFACE WITH THE MEDICAL SYSTEM

Rape cases are always brought by Police personnel for medical examination (ME). But sometimes, when a doctor is doing general check up of the child and doctor found the history of sexual violence; they immediately inform the concerned Police Booth available in the premises of Hospital. Chief Medical Officer (CMO) is assigned to handle Medico-Legal Cases. CMO refer the case to the Gynecology Department for ME and assign a female doctor for the same, it takes 01:30 hours to conduct a complete ME.

Duration of conducting Medical Examination

Usual time of completing medical examination is one an half-hour, as it is already mentioned above and this is what is informed by the Doctors and the Additional Medical Superintendent of one of the hospitals. They said that the priority is given to medico-legal cases. But Investigating officers have different opinion over it, a usual time for conducting medical examination is 01:30 hours but many times it gets extended till 4-5 hours because of non-availability of doctors. During this entire waiting period, the victim and the family have to suffer humiliation, stress and anxiety and police too has to spend time waiting unnecessarily.

Admission of Child Rape Victims in Hospitals

In case any child victim is required to get admitted in the hospital, there is no provision to keep the child in different ward. They are being admitted in the same pediatrics ward with other children. This seems to be very problematic as people

in particular and society at large always stigmatizes the victim and the family. All the people present in the ward will not react in the same manner. The constant gaze of people can affect child's psychology and it can also create hostile environment for the family as well.

There have been cases in which victim is severely injured and being referred by one hospital to another.

Behavior of Doctors with Victim and the family

The behavior of the doctors is found to be very rude and harsh, as shared by the Police as well as the members of the Child Welfare Committee (CWC). Investigating Officer (IO) mentioned about the behavior of the doctors varies with socio economic background of the victims. The doctors behave differently with poor families (of sexual assault case) and especially when they are illiterate. They do not talk to them nicely and politely instead literally shout on them while asking questions for medical examination.

CWC members also shared that Doctors frightens the victim and the family that gynecology/medical examination will be painful and the child will feel very uncomfortable. Due to this many times, victim and family refuse to conduct gynecology examination. In this regards CWC has sent notice to one hospital after getting to know about the doctor's behavior through child and the family when the child was produced before CWC.

Fake Cases versus Real Cases

During the interview, doctor mentioned that out of 100 approximately 10 cases are real; others are like of failing of love affairs, elopement, cases of revenge, case behind usurping property and related matters etc. However, cases which come for medical examination are mostly of children which are real. There are cases in

which couples are into relationship but for quite a long time, but when the boy deny for marriage, girl complaints against the boy, so these cases also gets registered under category of rape.

The other cases of minors, aged between 12-18 years, who fall in love then run away, these cases also gets registered under sexual assault (under respective sections of Protection of Children from Sexual Offences Act, 2012). In such cases parents of the girl child often file case against the boy under the said Act.

IOs also shared how cases of love affairs/promise to marriage, which are being registered under category of rape creating extra work for the police department. Even though, the incident happened long time back, still they have to complete their part of work, such as process of medical examination, search for the accused, filing of charge sheet and so on. Now, girls are taking advantage of the law. So many times they do not have enough time to address the “real” cases. One of the reasons an IO gave of increasing number of rape cases is the objectification of women through entertainment industry. The other reason she gave was that, the communication gap between a child and the parent at the family level and the gap between teacher and student at the school level; this gap is hindering in imparting values/knowledge regarding sexual practices.

Rich Victim and Poor Victim

There have been insights from the interview of the IOs and informal meeting with other police Personnel (Head Constable and Constable, who accompany IO for Medical Examination and other proceedings) that the behavior of the Doctors varies from victim to victim. They behave rudely and harshly to the poor and illiterate victims and with their families, but their behavior changes with the rich and educated victim and with their families. But all the doctors have denied such sort of behavior in the interview. But if we look at this situation, such sort of behavior is common with most of the Government servant and Doctors are no different with them.

Thus, even though all the authorities which are Police, Hospital and CWC are working together for children still there is no inter-sectoral coordination among them, which is the limitation in addressing the issue and getting the justice to the victim on time. Further because of the growing cases, especially fake cases, the legal and the medical systems become vary of cases and thus even genuine cases get left out. Further, the huge patient burden on the medical officers in public hospitals, make it difficult for the victim and thus wait for longer time. There is also general insensitivity to deal with the cases of child victim, in the medical establishment; again, it can be attributed to the doctor's apathy and also the huge work burden.

Initial section of the chapter however, shows an alarming picture of growing number of cases in Delhi, be it general cases of sexual assault or of rape. Also the cases of CSA are on rise, which needs immediate attention by the policy makers. However, there is still lack of better understating of the social values, culture, and modernity on sexuality and how to deal with gender based violence. There is a need for qualitative research to address the issues of masculinity, power, and politics in gender violence.

CHAPTER-5
DISCUSSION

In India, we have plenty of laws, policies and programs for the protection of children and their rights. If they would have effectively implemented and properly monitored the current condition of impoverished children may have improve to a great extent. Till now we are struggling to have a uniform definition of a “child.” We have many laws maintaining different age limits for attaining majority, which is entirely causing great confusion and these loopholes in laws give space to take disadvantage of law which also effect verdict of the Court.

Child sexual abuse is not a new phenomenon for Indian society, there have been studies conducted by the government and non-government authorities and they are sufficient enough to draw our attention towards the growing number of cases of CSA in our society. However, it is alarming to know that in most of the cases perpetrator is known to the child victim and it is same in the cases of sexual assault happening with adult victims. This is the answer to the people who are safeguarding the moral values and culture of Indian society through their moral policing on women.

Literature on sexual violence and child sexual abuse has clearly shows that how sexual assault affect the health of the victims. Victim survivor can sustain injuries after the incident which needs immediate health concern, but in case of incest cases children afraid of sharing anything about the incident to anyone even with their parents because of many reason, as perpetrator is the family member/close relative, threats from the perpetrator, not finding any trustworthy person, not able to have proper understanding of the incident and there are many more. If any physical injury sustained during the assault and not treated on time, it can cause major health problem in near future. Same goes with psychological effects after the incident; if the symptoms of psychological effects get unnoticed for a longer period of time it can have fatal effects in future. There are chances of getting infected with Sexually Transmitted Diseases during incident and Human

Deficiency Virus. Therefore, the promptness of health services is very much needed in these cases.

Ours is a conservative society when it comes to the sexual relationship and this is the reason that crime which involves sexuality gets more attention as well as stigma. This unwanted attention makes the life of the victim survivor more difficult to live and forget the pain caused by the incident. In recent times there is a drastic change which has come up due to development process i.e. disparity among population in terms of economic conditions. We have population from poorest to the richest ones, this materialistic disparity causing a hole of desire in hearts of the people, further the fuelling of thoughts with patriarchal mindsets situation is getting from bad to worse for women. There are no good education facility, employment opportunity, and health care facility so, the population of these areas look up to cities to fulfill their needs. After shifting to cities they cannot afford to live in an area which has safe surrounding, having good constructed houses, they also do not have good working opportunities; mostly they are daily wage laborers such as rickshaw puller, women works as domestic help. They cannot afford to keep their children in crèche, cannot hire a baby sitter, and there are no child friendly places near to their homes. Therefore their kids are more at risk from the stranger perpetrators.

The recording of crimes is solely done by National Crime Records Bureau and it only collects that data which is actually gets registered in the Police Station. The crimes which reached police station but did not convert into FIR are never gets recorded. The authenticity of data is also highly questionable, because the authenticity is reliable on the staff at the police station level. We are aware of the conditions at the police station, till now in a remote district we cannot expect them to have a computer and there is no provision of monitoring. So, the

authenticity of the data is only dependent on the person who provides records from the police station.

There are Guidelines & Protocols for Medico-legal care for survivors/victims of Sexual Violence, issued by Ministry of Health and Family Welfare, Government of India, 2014. Under these guidelines it is clearly written that Doctors can use any method to make the environment child friendly, which is important to take the history of the incident for example use of dolls and other pictorial methods. In reality, Doctors do not make any effort to make the environment child friendly. In a general ME, doctors do not take much time to write history of sexual assault.

Researcher would not say that there are discrepancies only on part of doctors; even the environment of the hospital is not conducive. ME is being done in the gynecology department. Imagine a child seeing pregnant ladies everywhere, hearing the cries of birthing mothers and newly born children. Is this the environment where a child supposed to be taken after such a traumatic incident? Doctors do not have time to spend with the child before conducting ME, because there is a queue of patients whom they are supposed to see.

It is very difficult for a child to actually explain the extent of penetration and doctors do not have time to actually calm down the child and let the child explain whole incident at her/his pace. Even though as per these guidelines doctors need to record entire history of the incident verbatim, as it is the important evidence in the court. But it is not happening in practice and it is also not easy to build rapport with the child so that he/she would explain entire incident to doctor in such a short period of time. For this purpose psychiatric help needs to be there in the hospital whenever a case of sexual assault comes in, psychiatrist might be able to

ask about the history of incident in more efficient manner without hurting the emotions of the child or adult victim.

Even though this help should be provided throughout the course because a victim survivor would not need this help just for once, this is the constant requirement which is only mentioned in papers and not implemented in reality at all. There are no follow up session in hospitals with doctors which are very important for the mental rehabilitation of the child victim, rather there should be timely sessions needs be conducted by the psychiatrist and keep a check on the development of the child after the incident.

Life does not stop after sexual assault, victim survivor has to live his/her daily life has to go to school/work, has to continue the other activities and when people in the surrounding come to know about the incident, and actually they make difficult for victim survivor to live a daily life as they used to live before sexual assault. At the end of the day these people are part of society no matter which class, caste or gender they belong to, they will impose their judgments and their gaze will always try to cut the confidence of the victim survivor. In such conditions a professional psychological support is required in order to build up the lost self confidence and self esteem of the victim survivor and in case of child victims the need of it increases because at this tender age the incident will affect their overall growth and development.

Many times parents also find it difficult to cope up with the situation and they are also not in the condition to help the child from coming out of the memory of that incident. In such situations it is very important to have psychological support for the child victim as well as the family of child victim. Psychiatric support is the

component which is entirely missing from the services provided for cases of sexual assault and actually it has to be there.

After doing field work, visiting hospitals and interviewing doctors, researcher feels that keeping all the things mind for example infrastructural constraints and shortage of human resources, the one thing which certainly needs to be changed is that these Medical Examinations should not be done in the Gynecology Department, as the scenario of this department everyone knows and it is not at all child friendly in any aspect.

- When a child victim is taken to the hospital for medical examination he/she should not be taken directly for conducting ME, there is a need for making the child and the family calm, explain them about the process of ME and its importance in evidence collection. There should be a separate room for that, the room where they conduct medical examination can be used for the pre and post counseling of the victim and family.
- Availability of Psychiatric services is must for sexual assault cases, because many times one cannot get physical injury during the assault but the psychological effects can be fatal. So the need for psychiatric service is must for some quick recovery. Follow up sessions for psychological support in the hospital for the victim as well as for the family should be conducted.
- Counselors which are attached to Crisis Intervention Center are not qualified to provide counseling for the cases of sexual assault. It is important to train them or recruit qualified persons for counseling.

- History of the incident needs to be written fully by the doctor on the Medic-legal Certificate (MLC).
- Training of doctors for being sensitive towards the cases of sexual assault specially children. Making them understand about the importance of privacy and confidentiality. Making them understand that ME are not extra burden on them rather it is their responsibility
- Timely monitoring by the Medical Superintendent, Indian Medical Association and State Health Department, keep a check on the cases come up for medical Examination.
- Finger test: should be banned and some other effective method need to be invented to check the internal injuries rather performing this test.
- A complaint box should be there and one can put their grievances regarding doctors anonymously.

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