

INDIAN LEGAL POSITION ON CHILD SEXUAL ABUSE

~ *Mansi*

INTRODUCTION

The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their childhood should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and cooperation. Their lives should mature, as they broaden their perspective and gain new experiences”.¹¹

Almost a continent in itself, spread over an area of 32,87,263 sq. kms., extending from snow covered Himalayan heights to the tropical rain forests of the South, with a range of cultural, social, economic and geographical diversities; India is home to one in six of the world's people. From the data available, an analysis of severe forms of sexual abuse arranged age-wise revealed that sexual abuse crossed the 5% mark from the age of 10 years, peaked at 15 years and by the time the child reached 18 years, went below the 5% mark. 73% of the total incidence of child sexual abuse was reported among children between 11 and 18 years of age. Therefore, the pre-adolescent to the adolescent child seems to be most at risk. It is also disturbing to note that children between 6 and 10 years also face severe forms of sexual abuse.

The India Constitution recognizes the child's right to special protection and support from the State. However, the growing incidence of violence against children, especially sexual violence / abuse is a disturbing trend and raises an alarm. What is even more disturbing is the shrinking spaces for children's adequate growth and development. There is no place that can be said to be safe for children today. Even a child's own home is not the safest haven. In a country that is striving to grant equal opportunity and a decent standard of living to every man, woman and child, there is great concern for that fact that despite efforts, a large percentage of our children continue to live and survive in less than adequate means, and further they face violence and exploitation of many kinds. In the privacy of the family and in the wider community, children also suffer systemic abuse of their rights through such practices as child labor, bonded labor, prostitution, trafficking for numerous purposes, and

¹ World Declaration on the Survival, Protection and Development of Children: World Summit for Children. 10 January 2015

sexual abuse due to reasons of child marriages and dedication of young girls. Although the state officials may deny responsibility for such abuse, their complicity, acquiescence and indifference often serve to perpetuate them. There is also a growing concern that perhaps the needs of all children have not been addressed.²

A very significant drawback in the area of sexual abuse and violence committed against children is the lack of awareness and denial of the whole issue, coupled with lack of adequate representative data on the extent and form of sexual violence against children and an analysis of the impact of such violence on children³. There is also a lack of understanding, awareness and information on the various forms of child sexual abuse. Child sexual abuse manifests itself in many forms and in many ways and can be committed against a helpless and innocent child in various situations. There is also a misconception that child sexual abuse takes place only in lower classes and that only girls can be sexually abused and exploited. Existing literature and studies, however, point to the fact that child sexual abuse cuts across caste and class barriers and little boys are also as vulnerable to sexual abuse as are little girls.⁴

Even though, commercial sexual exploitation of children in the form of child prostitution, child sex-tourism, and child pornography is assuming sinister proportions, there are serious inadequacies in the legal framework and the political commitment to address the issue.

The prevalence of sexual abuse of both boys and girls is certainly not as rare as is generally believed and is not confined to the lower classes. Sexual abuse of children cuts across economic and social class and education levels. It is not confined to problem families or problem children. The reported cases of sexual abuse of children in India are a small fraction of the actual incidence. Research by medical and social scientists on sexual abuse in childhood is necessary for a proper understanding of the nature and magnitude of the problem, the situational factors, and the perpetrators to enable suitable intervention programmes to be designed. There is thus, a need to initiate systematic data collection on the extent, magnitude and types of sexual violence against children, to review and examine the access, appropriateness and effectiveness of preventive measures, legislative protection and services of recovery and reintegration.

2. ² https://en.wikipedia.org/wiki/Child_sexual_abuse

3. ³ http://www.unesco.org/webworld/child_screen/links.html

4. ⁴ https://en.wikipedia.org/wiki/Child_sexual_abuse

‘Children’ in any society, constitute the most vulnerable group which needs ‘protection’ and they are a responsibility of the state as well as the members of the society. Despite some commendable efforts and achievements of the Indian state, it is an explicit fact that majority of children in India are suffering, deprived of basic resources.

Despite some commendable efforts and achievements of the Indian state, it is an explicit fact that majority of children in India are suffering, deprived of basic resources and needs for an average human existence. Due to their own incapacity to fight for their rights, the ‘unprotected child’ in India is a collective failure of the Indian state and its society.

The ‘state’ is under a paramount obligation to create support and sustain a ‘protective environment’ for ‘children’. Hence, any failure or lapse in the ‘protection’ frameworks is primarily the failure of state.

JUDICIAL RESPONSE TO CHILD RAPE AND CHILD SEXUAL ABUSE

In our acquisitorial jurisdiction, courts tend to be liberal to the accused on the grounds of ‘benefit of doubt’, or rather, that the extent of proof is not beyond reasonable doubt, and flimsy excuses like injury not on a particular part, relationship with the victim etc., are used as grounds for acquittal even if there is enough medical evidence corroborating the occurrence of sexual assault. The cardinal principle of criminal jurisprudence is that the offence should be proved ‘beyond reasonable doubt’. It is a settled principle of law, that whereas per the evidence produced, two possibilities can be deduced, one which goes in favor of the prosecution and other which benefits the accused, the accused is entitled to the benefit of the doubt. The liberal application of this fundamental and basic principle of law and the severe handicaps suffered by victims of rape have unfortunately, led to the acquittal of many a culprit.

The judiciary in India has been the forerunner in protecting and promoting human rights by expanding the domain of public interest litigation encouragingly and with positive results. The judiciary has created human rights jurisprudence as regards children and has actively promoted the rights of children, especially in areas like education, child labour , children in brothels, inter-country adoption of children , juvenile justice , children in prisons , and the sexual abuse of children.

Enforcement is the Achilles' heel of radical law. The judgments of the Supreme Court in the areas summarized above also bring home the harsh fact that at the implementation level, welfare legislations in favour of children meet their Waterloo.

Paradoxically, in matters of child rape and the sexual abuse of children, courts have sometimes given regressive decisions, which have proved extremely detrimental in providing justice to an abused child. A major complication occurs in the application of Sections 375, 354 and 377 of the IPC to the facts of each case. The application of Section 354 often waters down the severity of the offence resulting in the accused getting away with extremely inconsequential sentences.

The punishment in every criminal case, depends upon multiple factors, such as the circumstances in which the crime was committed, whether it was pre-meditated or was committed at the spur of the moment, whether there was any provocation in the commission of the crime, the gruesome nature of the crime, the age of the offender, the age of the victim(s) etc. Therefore, the hallmark of every legal system is the prescription of punishments for each offence, ranging from the minimum to the maximum that can be awarded in each case. The final grant of sentence is the sole discretion of the judge, which is often guided by the factors brought out above. In child rape cases, many a times, the courts have granted extremely indulgent and lenient punishments to offenders.

At other times, courts have given extremely hard punishments, even to the extent of invoking the death penalty⁵.

Rape is one of the most depraved acts. The iniquitous, flagitious act becomes abominable when the victim is a child. The diabolic act reaches the lowest level of humanity when the rape is followed by brutal murder⁶. Awarding of death penalties in cases where the child dies as a result of the rape, or where the accused kills the child after raping the victim, revives the whole debate of prescribing the death penalty upon commission of rape of women / children.⁷

This also brings about a clash between the two theories of minimum mandatory punishment and leniency towards youth offenders. In such a situation, since our criminal jurisprudence

⁵ Rayassat v/s State of Uttar Pradesh: II (1993) CCR 1369 (DB), Dhanonjoy Chatterjee v/s State of West Bengal: I (1994) CCR 98 (SC) and LaxmanNaik v/s State of Orissa: (1994) 3 SCC 381

⁶ Held in State of Uttar Pradesh v/s Satish: (2005) 3 SCC 114

⁷ The desirability and efficacy or otherwise of the death penalty is not within the purview of this research study

grants all advantages to the accused, leniency towards youth offenders often prevails. Hence, the statutory provision of a mandatory minimum sentence is overruled.

The manner in which some trial courts have interpreted the law and assessed the evidence has often proved to be an obstacle in the trial of rape cases, especially in matters of rape of a child.

In spite of Supreme Court judgments to the contrary, lower court judges often insist on evidence of marks of injuries to hold that a child was raped. Many a times, the trial courts do not believe a child's evidence without corroboration as sufficient.

The case of **Madan Gopal Kakkad v/s Naval Dubey** exhibited the different interpretations of the same set of facts for purposes of charging the accused under the relevant provisions of the IPC.

When the offenders are of young age, the courts have sometimes given lenient sentences with the prime reason being the youthful age of the culprit! Many a times the courts are persuaded by the nature of the injuries either upon the victim or the accused to hold, that penetration could not have taken place and hence no rape was committed. Some cases where this clash of legal theories is evident are cited below. In a [case reported in 1984](#), a boy of 18 raped a 7-year-old girl. She was severely injured and was left in an unconscious condition. The appeal to the High Court to enhance the sentence was dismissed on the following ground: "Although rape warrants a more severe sentence, considering that the accused was only 18 years of age, it would not be in the interest of justice to enhance the sentence of five years imposed by the trial court". What about the victim and the impact of the brutal crime committed upon her at the young age of 7 years?

In **Vinod Kumar v/s State of Madhya Pradesh** an 11-year-old girl was raped by a youth while another gagged her with her own saree. The Sessions Court gave 5-years imprisonment to the accused. Upon appeal the High Court stated, "Increasing cases of personal violence and crime do not justify a severe sentence on young offenders".

On other occasions when the trial courts fail to impose the maximum sentence as prescribed by the law in cases falling under Section 376 (2) (f), the Supreme Court has come down heavily upon the trial courts for awarding lesser sentences. What is pertinent to bear in mind is that a number of years have gone by before the Supreme Court imposes the enhanced

punishment, during which time the offender is a free man. Also, the message that goes down to the others in the society is that it is not very difficult to get away after having committed gruesome crimes of such nature.

In **State of Karnataka v/s Krishnappa** a girl of 7-years was raped by a married man of 49 years. The offence was proved beyond reasonable doubt. The trial court imposed a sentence of 10 years imprisonment on the accused. The High Court, on appeal reduced the sentence to 4 years, lesser than that prescribed by Section 376 of IPC. The reduction of sentence was made on the ground that the accused was “an unsophisticated illiterate citizen belonging to the weaker section of society” and was “a chronic addict of drinking” who committed the crime in a state of intoxication and was the sole earning member of a family comprising of an old mother, wife, and children depending on him. Upon appeal by the state the Supreme Court severely castigated the reasoning of the High Court. “Sexual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female¹⁸⁸. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge is a better statutory armour in cases of crime against women than long clauses of penal provision, containing complex exceptions and provisions. The reasons for reduction of sentence given by the High Court were neither ‘special nor adequate’. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. To show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency would be wholly misplaced. The approach of the High Court in this case, to say the least, was most casual and inappropriate. The High Court exhibited lack of sensitivity towards the victim of rape and the society by reducing the substantive sentence in the established facts and circumstances of the case. The Courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of the offences by others. The socio-economic status, religion, race, caste or creed of the accused or the victim, are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and this is required to be achieved by

~~imposing an appropriate sentence.~~ The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crime of rape on innocent helpless girls of tender years and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court⁸”

The court observed that it has to look into variety of factors like society’s abhorrence, extreme indignation and antipathy of certain types of crimes like sexual assault and murder of minor girls, intellectually challenged minor girls, minors suffering from physical disability, old and infirm women, etc. R-R Test is found satisfied in several cases by this Court like in **Bantu v.State of U. P**⁹., wherein this Court affirmed the death sentence in a case where minor girl offive years was raped and murdered. This Court noticed that the victim was an innocent child, and the murderer was in a dominating position, which the Court found as a vital factor justifying the award of capital punishment. **Mohd. Mannan v. State of Bihar**¹⁰, was a case where a minor girl aged 7 years was kidnapped, raped and murdered by an accused aged between 42-43 years. This Court held that he would be a menace to society and would continue to be so and could not be reformed and hence confirmed the death sentence. **RajendraPralhadrao Wasnik v. State of Maharashtra**¹¹ was a case where a 3-year-old child was rapedand murdered by an accused of 31 years old. This Court noticed the brutal manner in which the crime was committed, and the pain and agony undergone by the minor girl. This Court confirmed the death sentence.

In **Haresh Mohandas Rajput v. State of Maharashtra**¹², this Court opined that the death sentence, in a given case, can be awarded where the victims are innocent children and helpless women, especially when the crime is committed in a most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting. Reference may also be made to the Judgments of this Court in **Anil @ Anthony Arikswamy Joseph vs State of Maharashtra**¹³, this case is concerned with a gruesome murder of a minor boy aged 10 years after subjecting him to carnal intercourse and then strangulating him to death. The Hon’ ble

⁸ . <https://www.nhs.uk/live-well/healthy-body/spotting-signs-of-child-sexual-abuse/>

⁹ (2008) 11 SCC 113

¹⁰ (2011) 5 SCC 317

¹¹ (2012) 4 SCC 37

¹² (2011) 12 SCC 56

¹³ 20 February 2014

court observed that we have no doubt in our mind that such types of crimes preceded by Pederasty are extremely brutal, grotesque diabolical and revolting, which shock the moral fiber of the society, especially when the passive agent is a minor. Recently, this Court in **Suresh Kumar Koushal and Another v. Naz Foundation and Others**¹⁴ has also refused to strike down Section 377, even if such acts are indulged in by consenting individuals. Thus, the court sentenced the accused with thirty years of imprisonment. The case of **Parminder @ LadkaPola vs. State of Delhi**¹⁵ relates to the rape of a fourteen-year-old girl by the father of her school friend. The court while upholding the conviction relied on the following passage from Modi in Medical Jurisprudence and Toxicology (Twenty First Edition):“Thus, to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia major or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genital or leaving any seminal stains.” In **Pamta Tiwari v. State of M.P.**¹⁶, R this Court found that the accused was close to the family of the deceased. The deceased and her siblings used to call the accused uncle and her closeness with the appellant encouraged her to trust him and when the accused had committed the rape and gruesome murder causing numerous injuries on her body, this Court found it to be a fit case for awarding death sentence. In **Bantu @ Naresh Giri v. State of M.P.**¹⁷, while dealing with the case of rape and murder of a six years old girl, this Court found that the case was not one of the 'rarest of rare case'. The Court noticed that, accused was less than 22 years at the time of commission of the offence, there were no injuries on the body of the deceased and the death probably occurred as a result of gagging of the nostril by the accused. Thus, the Court while noticing that the crime was heinous, commuted the sentence of death to one of life imprisonment. **Lillu @ Rajesh &Anr. Vs. State of Haryana**¹⁸,Kidnapping and rape of a girl of 13 years -Conviction of four accused by courts below- Appeal by two convicts - One died pending appeal- **Held** :On the date of incident, victim was of 13 years and 9 months and was a student of 6th standard - To refute the same, no evidence has been led by accused-appellant - The said finding stood affirmed by High Court and in view thereof, it remains totally immaterial whether the prosecutrix was a

¹⁴ (2014) 1 SCC 1

¹⁵ 16 January 2014

¹⁶ AIR 1996 SC 2800

¹⁷ AIR 2002 SC 70

¹⁸ Criminal Appeal No. 1226 of 2011, April 11, 2013

consenting party or not .In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity - Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence - State is under an obligation to make such services available to survivors of sexual violence - Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with victim's privacy. In **Dilip Vs. State Of Madhya Pradesh** ¹⁹ Conviction by High Court with 7 years R.I - Held: Evidence of father of prosecutrix, doctor who medically examined and teacher of night school and school register clearly establish the age of prosecutrix to be 14 years at the time of occurrence - Besides, doctor found that prosecutrix had only 28 teeth, 14 in each jaw, which further indicates that she was 14 years of age - Therefore, question of consent becomes totally irrelevant- There is no reason to interfere with judgment of High Court. Sensitivity to be shown by prosecution and trial court - Directions given by Supreme Court in Delhi Domestic Working Women's Forum's case, reiterated - Further directions given - Director General of Police and Home Ministry of the State to issue proper guidelines and instructions to authorities as to how to deal with such cases and the kind of treatment to be given to prosecutrix. In **Raj kumar vs State Of M.P**²⁰, On 26.12.2012, the appellant, aged 32 years, came to the house of his neighbor Iknis Jojo (PW.1) and stayed with his four children as Iknis Jojo (PW.1) and his wife Albisiya had gone to irrigate agricultural fields in the night. The appellant was on visiting terms with the family and the children used to call him "Mama" i.e., maternal uncle. On the said night, he had taken liquor and meals in the complainant's house and when retiring for the night, the appellant asked the prosecutrix Gounjhi, aged 14 years not to sleep with her three siblings i.e., Sushma, Sanchit and Aric, rather to sleep at some distance from them. Around midnight, he raped prosecutrix Gounjhi. While committing rape, he caused some grievous injuries and consequently she died. The court was of view that in spite of the fact that the appellant had committed a heinous crime and raped an innocent, helpless and defenseless minor girl, who was in his custody, he is liable to be punished severely but it is not a case which falls within a category of rarest of rare cases. In **State of Rajasthan vs. Roshan Khan &Ors.** ²¹, the facts

¹⁹ Criminal Appeal No. 1156 of 2010, April 16, 2013

²⁰ 25 February, 2014

²¹ 15 January, 2014

very briefly are that on 28.04.1999 Ruliram lodged a complaint at the Bhadra Police Station in District Hanumangarh, stating as follows: There was a marriage of the daughter of his brother Gyan Singh for which a feast was arranged by him on 27.04.1999. His 15-16 years old daughter, who was slightly weak-minded, disappeared. When she did not return for quite some time, he and others started searching her. At about 9.00 p.m., a milkman informed him that he had seen six boys taking away a girl towards Kalyan Bhoomi. About 1.00 a.m. on 28.04.1999, when Ruliram was on a scooter with Gyan Singh still looking for his daughter, he noticed five boys in the light of the scooter near the old dilapidated office building of the Sheep and Wool Department and all the five, seeing the light of the scooter fled. When they went into the old building, they found Akbar having sexual intercourse with his daughter and she was shouting. They caught hold of Akbar who later informed them that all the remaining five had also performed sexual intercourse with his daughter and they knew the remaining five persons. The police registered a case under Sections 147 and 376, IPC, and carried out investigation and filed a charge-sheet against the six respondents under Sections 376/34, IPC, and the case was committed for trial. The court observed that the Explanation 1 to Section 376(2)(g), IPC, states that where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of the sub-section. This Court has, therefore, consistently held that where there are more than one person acting in furtherance of their common intention of committing rape on a victim, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim. **Bhupinder Sharma v. State of H.P.**²², **PardeepKumar v. Union Admn**²³. . And thus, the court convicted all the six accused in this case. Recently on Feb 15, 2014, Pune, The court of special judge S D Darne on Friday delivered a judgment that has resulted in the conviction of a 32-year-old man for sexually assaulting a 10-year-old girl, a first in the city under the newly enacted Protection of Children from Sexual Offences Act (POCSOA), 2012. The court sentenced Rajendra Bhima Asudeo, a resident of Dias plot slums in Gultekdi, to 10 years' rigorous imprisonment (RI) for committing an offence under section 6 (penetrative sexual assault) of the POCSO. In **Maruthupandi v. State**²⁴, the Supreme Court has issued a notice on a special leave petition challenging the Madras High Court's ruling (2019). Even if a juvenile girl falls in love with the boyfriend and has a consensual physical

²² (2003) 8 SCC 551

²³ (2006) 10 SCC 608

²⁴ Crl.M.P.No.3209 of 2021 in Crl.A.No.258 of 2019, March 16, 2021

relationship with him, the POCSO Sections will still be invoked against him. Furthermore, it was noted that if a minor girl filed a complaint under the POCSO Act, the offence became an offence against the state, and any later agreement would not absolve the offender. As a result, the petition filed in the Supreme Court raises the question of whether an adult guy who gets into a relationship with an underage girl may be prosecuted under the POCSO Act. The Madras High Court further ruled that a consenting physical relationship with a girl over the age of 16 be excluded from the POCSO Act's scope. It was also suggested that the Act be amended so that the offender's age is no more than five years greater than that of the victim, who must be at least 16 years old, so that the victim's impressionable age is not exploited by an older offender who has passed the age of presumably infatuation or innocence. In the case of **Satish Ragde v. State of Maharashtra**²⁵, the Bombay High Court's Nagpur Bench found that holding a child's breasts without "skin-to-skin contact" was molestation under the POCSO Act, 2012. Justice Pushpa Ganediwala led a single bench that made the statement. The Attorney General of India, the National Commission for Women, and the State of Maharashtra filed appeals against the High Court's controversial decision, which were heard by a bench consisting of Justices Uday Umesh Lalit, S Ravindra Bhat, and Bela M Trivedi in the case of **Attorney General of India v Satish and others**²⁶. The question at hand was how to interpret Section 7 of the POCSO Act, 2012 in order to offer a fair and reasonable remedy to the instances that fell under its purview. The recent judgment noted that Section 7 encompasses both direct and indirect contact, noting how the logic in the High Court's finding trivializes and legitimizes a wide range of undesired behavior that undermines a child's dignity and autonomy through unwanted intrusions. The Supreme Court overruled the Bombay High Court's decision, stating that the case at hand would be an adequate circumstance for using the "mischief rule" of statutory interpretation. It underlines the need of courts interpreting the law on a constant basis in order to avoid harm and promote the remedy. In this regard, the Supreme Court's decision said that the High Court's interpretation not only restricts the legislation's application but also attempts to distort its goal. In the case of **Hari Dev Acharya @ Pranavanand and Ors v. State**²⁷, the Delhi High Court held that because the Protection of Children from Sexual Offenses (POCSO) Act, 2012 is silent on whether two separate incidents can be combined in a single First Information Report (FIR), the provisions of the Code of Criminal Procedure, 1973 (CrPC) would apply, allowing joint

²⁵ Criminal appeal no. 161 OF 2020, January 19, 2021

²⁶ Special leave petition (CRL) NO. 925 OF 2021, November 18, 2021

²⁷ CRL.M.C. 6530/2018 and CRL.M.As. 50336/2018, 14161/2021, November 12, 2021

trial if the offences were committed during the same transaction. Justice Manoj Kumar Ohri of the Hon'ble High Court stated the remarks while dismissing a number of people's petitions contesting the summons and additional charge sheets issued by a special POCSO court. In August 2019, the summons and charge sheets were issued in connection with an incident in which a teenage student at a Gurukul in Delhi was allegedly raped by a higher. The accused kidnapped the student and assaulted him sexually in the teacher's room. After that, the boy told his friend about it. They went back to the police station to file a second complaint, but because his mother and sister were already there, a settlement was reached under the pressure of four people. According to Justice Ohri, Provision 219 of the CrPC enables a person to be tried at the same time if he or she commits three identical offences within a twelve-month period, and because both offences are punishable under the same section of the IPC and POCSO, they comprise the same transaction. The summons orders were upheld, and the petitions were dismissed as a result.

CONCLUSION AND SUGGESTIONS

“This report²⁹ sheds light on the lives in a world that is often hidden and neglected, a world of vulnerability and exclusion. And it calls for us to speak up for the rights of children and to act on behalf of those who need our protection”.

Child sexual abuse includes a wide range of sexual behaviours that take place between a child and an older person. These sexual behaviours are intended to erotically arouse the older person, generally without consideration for the reactions or choices of the child and without consideration for the effects of the behaviour upon the child. Behaviours that are sexually abusive often involve bodily contact, such as in the case of rape, sexual kissing, touching, fondling of genitals, and oral, anal, or vaginal intercourse. However, behaviours may be sexually abusive even if they don't involve contact, such as in the case of genital exposure (flashing), verbal pressure for sex, and sexual exploitation for purposes of prostitution or pornography. Perpetrators of child sexual abuse come from different age groups, genders, races and socio-economic backgrounds. One common denominator is that victims frequently know and trust their abusers. Child abusers coerce children by offering attention or gifts, manipulating or threatening their victims, using aggression or employing a combination of these tactics. Along with sexual abuse, children are also used for commercial sexual exploitation. The manifestations of child sexual exploitation are through prostitution, sex-tourism, child pornography, and trafficking and sale of children for sexual purposes. In India

children are also susceptible to sexual abuse due to religious, social, traditional and cultural practices, manifested through child marriages, and the 'dedication' of young girls to temples which ultimately leads to their entry into prostitution. India also has the largest number of 'working children' in the world. Though several laws prevail dealing with the welfare of child labour, they are conspicuous by their silence on the sexual abuse of working children at their place of work.

The Constitution of India contains provisions for the protection of children. Under the Constitution it is the duty of the State to secure that children of tender age are not abused and forced by economic necessity to enter vocations unsuited to their age and strength and to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. The Constitution also directs the State to enact special legislations and policies for protecting children and youth against exploitation and against moral and material abandonment.²⁸

India is a party to almost all International Conventions and instruments, which deal with children and child rights. To comply with its international commitments and the Constitutional mandate, India has enacted many legislations dealing specifically with children and has made provisions in other statutes for protecting rights of children. Recently enacted the protection of children from sexual offences act, 2012 is a laudatory step.

To expect penal law to solve the problem of child sexual abuse or any other social problem is nothing more than a utopian dream. While the law to protect children from sexual abuse and punishment to the abuser remains inadequate, societal attitudes continue to be an even bigger impediment. How can the children be protected when there is no acknowledgement of the problem? We are talking of the law here as one of the tools, but not the only tool, in the elimination of child sexual abuse and commercial sexual exploitation of children. Therefore, this research study does not limit its vision and approach to recourse to law alone. Law can provide positive results in synergy with other instruments. Child sexual abuse can be made preventable through some prevention strategies. The key elements of the prevention of child sexual abuse and sexual exploitation are as follows:

1. Development of legal and social infrastructure.

²⁸ Article 39 (f)

2. Intervention and role of other professionals.
3. Personal safety education for children.

Save the Children Norway and CWIN Nepal, in a 2003 Report stated:

“Child survivors of sexual abuse should not only be treated as victims. They should be empowered and encouraged to live a dignified life”

SUGGESTIONS.

1. **Legislation should provide definitions of important concepts:** Each of the aspects associated with the sexual abuse and commercial sexual exploitation of children should be defined comprehensively. Terms and expressions, such as ‘sexual abuse’, ‘incest’, ‘persons in power of position and authority’, ‘pedophilia’, ‘child pornography, and ‘child sex – tourism’, which have been hitherto absent in the existing laws, call for precise explanation and definition.
2. **The law should do away with the technical differences between ‘rape’, ‘outraging modesty of a woman’ and ‘unnatural offences’:** Each and every manner of sexual abuse of children should be treated as a “sexual offence”, without its classification into ‘penetrative’ and ‘non – penetrative’ abuse, taking into consideration the ‘impact’ that it has on a child of tender years.
3. **Inclusion of crimes of Incest:** The law ought to differentiate between sexual abuse of a child by a parent or a relative and sexual abuse by a stranger. The new law should make specific provisions dealing with crimes of incest. Incest should be defined clearly by including concepts such as ‘prohibited relationships’, ‘persons in position of power, authority and trust’, and ‘guardian’. The law should provide for extremely stringent and deterrent punishments, due to the inherent sinister nature of the crime.
4. **Amendment in Exception to Section 375 IPC:** The Exception to Section 375 of IPC, which provides that sexual intercourse by a man with his own wife; the wife being not less than fifteen years of age is not rape, should be amended to protect young girls against sexual abuse within their marriage. This provision also needs a re-think in view of the statutory age of rape being kept at 16-years under Section 375 Clause Sixthly.
5. **Inclusion of provisions dealing with related non-penal aspects of child sexual abuse in The Juvenile Justice (Care and Protection of Children) Act, 2000:** When

child sexual abuse is intra-familial, where the father, grand-father, brother or uncle has become the sexual predator, the issues of custody and access of the child victim; injunctions and alternate residence and economic support to the child and / or the mother would play a crucial role in such situations. These issues do not fall within the domain of penal laws. The Juvenile Justice (Care and Protection of Children) Act, 2000 should include specific provisions dealing with the above non-penal issues, because child sexual abuse matters are NOT simply criminal law matters.

6. **New provision in the Indian Evidence Act:** A provision should be inserted in the Evidence Act, 1872 on the lines of Section 114 A, to the effect that if the age of the child is given in a case of sexual abuse and exploitation, the court shall presume it to be so. This of course, will be a rebuttable presumption of law.