

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ROLE OF MEDICAL PRACTITIONERS IN CHILD SEXUAL ABUSE CASES

AUTHORED BY: KANIKA UPADHYAYA

Designation: Student (LLM) At Gujarat National Law University

E MAIL: Kanikaupadhyaya44@gmail.com

ABSTRACT

Rameeza Bi, Mathura, Nirbhaya, Geeta Chopra—these names echo through walls of courtrooms and textbooks, as victims of worst form of violation of human right—Sexual Abuse. It is appalling to note that not just in adults, everyday newspapers and news channels are flooded with news of rape and sexual abuse of small children from different parts of country. Instead of bringing measurable changes in legislations and introducing new legislations like POCSO, Child Sexual Abuse (CSA) has seen a rise. As we delve deeper into lower conviction rates and requirement of evidences to prove commission of rape, it is found that not just investigating officers but medical practitioners are also provided with elaborate guidelines to deal with such sensitive cases. How is doctor's role important in the justice dispensation? Expert evidence of a doctor plays a crucial role in determining the conviction or acquittal of the Accused. This Article examines the statutory provisions and detailed guidelines provided for medical practitioners in Indian scenario and throws light on shortcomings which need to be fulfilled in current scenario, by drawing a comparison between statutory provisions and guidelines incorporated in USA and UK.

Keywords: CSA, Consent, Medical Examination, Survivor, Expert Evidence

INTRODUCTION

Children are world's future. They need utmost care and proper nurturing in order to develop into valuable human assets. Often news channels and newspapers highlight plight of children who are poor or were forced to migrate from their homeland due to variety of reasons, living in sub human conditions. WHO, UNICEF alongside other international organizations particularly focus on such vulnerable children in order to ensure availability of decent food, clothing, shelter and education to them, which is their basic human right? Apart from hunger, poverty, protection from war

crimes etc, another menace which is on rise related to children is sexual abuse. It's absolutely condemnable yet it is the gross reality that filthy minded perpetrators target vulnerable children in order to satiate their lust. Reasons for same cannot be accurately enumerated as it depends on intermingling of various socio-economic-personal factors.¹ What is further sickening is that in several cases the perpetrator himself or herself is a minor or someone whom the victim already knew². WHO defines Child Sexual Abuse as any sexual activity carried out by an adult or a minor with a child who doesn't comprehend the nature of such activity owing to his/ her lack of maturity and hence inability to give consent for such activities.³ Child Sexual Activities are alarmingly high particularly in developing Asian and African nations. In India, child sexual abuse saw an approximate 50% surge during the COVID lockdown as per data reported by child aid agencies,⁴ while recent NCRB data presents an average rate of 29%⁵ in matters of child sexual abuse which may actually be even higher, if non-reported cases are taken into account.⁶ Even in developed nations like the USA, around 12-17% adolescent females⁷ have somewhere faced sexual abuse,⁸ in addition to the rampant sex trafficking and prostitution particularly among illegal immigrants.⁹ Child Sexual Abuse has myriad disastrous consequences both physically and psychologically¹⁰, probably extending for a lifetime, (especially if proper care and counselling is not provided timely) in addition to social stigma attached to the offence. This social taboo and fear of ostracisation is one of the primary reasons why victims fail to openly speak about the injustice meted out to them.

Regarding the legal scenario, suitable statutory amendments¹¹ have been made periodically to

¹ Jyoti Belur and BB Singh: CSA and Law in India: a Commentary: <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-015-0037-2>

² Ibid

³ Protection Of Children From Sexual Abuses: Decoding The POCSO Act: <https://legalserviceindia.com/legal/article-8225-protection-of-children-from-sexual-abuses-decoding-the-pocso-act.html>

⁴ Child Sexual Abuse in India: Alarming statistics, lifelong impact, how to heal: <https://www.indiatoday.in/education-today/featurephilia/story/child-sexual-abuse-in-india-alarming-statistics-lifelong-impact-how-to-heal-2416285-2023-08-04>

⁵ S. Tyagi and S. Karande: Child sexual abuse in India: A wake-up call: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8445113/>

⁶ Ibid

⁷ By both stranger as well as known person

⁸ John Briere, Catherine Scott: Principles of Trauma Therapy: Guide to symptoms, evaluation and treatment: <https://books.google.co.in/books?hl=en&lr=&id=VtjsAwAAQBAJ&oi=fnd&pg=PP1&ots=nRlqyflKKnC&sig=NP Oext7IcyGwFaNxQkIH16D>

⁹ Ibid

¹⁰ CSA in India: A systematic Review: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0205086>

¹¹ 1983 and 2013

widen the ambit of definition of rape¹² and provide stringent punishments for rape or sexual assault committed by a person in dominant/ authoritative position or if it is done with a child below age of 12 years.¹³ Nevertheless when provisions of Indian Penal Code 1860 (hereinafter called "IPC") and Code of Criminal Procedure 1973 (hereinafter called "CRPC") fallen short of providing adequate relief to the child victim, Protection of Children from Sexual Offences Act 2012 (hereinafter referred to as "POCSO") was enacted after much deliberation in order to nab the actual culprit and render justice to victim effectively. A detailed analysis of POCSO Act depicts laudable efforts of the legislature by introducing different categories of penetrative, non penetrative sexual assault, using a child for pornographic or similar purposes, separate special courts to proceed with such cases, increasing quantum of punishment till death penalty, as per severity of the case in addition to other elaborate guidelines for police officers and judicial officers as to report the case while comforting and taking victim into confidence, using child friendly measures both at the stage of investigation as well as trial. Nevertheless the question arises that why there are such low conviction rates?¹⁴ What about the doctor who was supposed to examine the victimized child or otherwise himself turned out to be an abuser?¹⁵ This Article explores the role of medical practioners while dealing with child sexual abuse cases.

MEDICAL EXAMINATION OF THE VICTIM:

Right to health has been inferred as a part of Right to life under Article 21 of the constitution.¹⁶ Further 2013 Criminal Law Amendment has expanded definition of Rape to any kind of unwanted penetrative as well as non penetrative act which was done against will.¹⁷ Survivors of Rape or Sexual Assault suffer severe physical and psychological damage, which might have an indelible impact for life. Relevant Provisions in CRPC,¹⁸ POCSO¹⁹ and IPC²⁰ provide for medical examination of the survivor. Apart from this, detailed guidelines²¹ pertain to medical

¹² Mathura Trial: Tukaram Vs. State of Maharashtra AIR 1979 SC 185

¹³ Case Law regarding medical evidence in relation to sexual violence: https://india.unfpa.org/sites/default/files/pub-pdf/casebook_26-12-2018_final.pdf

¹⁴ Sentencing In Rape Cases: A Critical Appraisal Of Judicial Decisions In India: https://jstor-gnlu.refread.com/stable/pdf/26826588.pdf?refreqid=fastly-default%3A164f95f65a787a7a20de324a18d58702&ab_segments=0%2Fbasic_search_

¹⁵ Child abuse carried out under guise of medical treatment, report finds: <https://www.theguardian.com/uk-news/2020/dec/03/child-abuse-carried-out-under-guise-medical-treatment-inquiry-told>

¹⁶ In line with CEDAW, ICESCR and related International Conventions

¹⁷ Ibid

¹⁸ Section 164-A Crpc

¹⁹ Section 27 POCSO

²⁰ Section 92 IPC

²¹ In line with WHO Guidelines on reporting of child sexual abuse: Responding to children and adolescents who have been sexually abused: <https://www.who.int/publications/i/item/9789241550147>

examination, treatment; psychiatric counselling²² with other support and collection of relevant evidences in sexual abuse cases.²³

The examination shall be conducted by a government doctor or any registered medical practioners within 24 hours of the incident (irrespective of complaint lodged with police²⁴ or court or not)²⁵ in presence of parent or any trustworthy individual, after taking due consent of the child ²⁶or someone who can validly consent on behalf of the child except the police officer²⁷ who brought the victim to the health centre.²⁸ Interpreter or relevant expert's assistance for taking consent shall be taken for especially abled or survivors suffering from any other kind of disability.²⁹ If disabled person is often sexually abused by close ones and is capable of narrating chain of events himself/herself, attempt must be made to take history directly from such survivor (depends on the degree of disability).³⁰ Proper documentation of consent given shall be made after explaining the child or person giving consent the process of medical examination and consequent sample collection.³¹ In case some immediate, lifesaving procedure is to be undertaken, consent might not be taken, as per facts and circumstances.³² If the victim is a female, she should be examined by a female doctor or in presence of a female attendant.³³ It is the doctor's responsibility to inform nearest police station having jurisdiction about the incident and also ensure that the samples³⁴ collected are properly packed, so that they reach medico- forensic experts in a good condition, devoid of any damage, decay or deterioration.³⁵ Doctor also needs to correctly get all the precise details of the incident from the victim, with utmost care, in order to prevent revictimisation³⁶and ensure that confidentiality and privacy of the survivor is maintained.³⁷Fine distinction to be made while recording what actually happened and what might have happened –i.e. about what victim himself

²² Dilip vs. State of Madhya Pradesh (2013) 14 SCC 331

²³ SAFE (Sexual Assault Forensic Evidence) Kit to be used

²⁴ State of Karnataka vs. Manjanna (2000) 6 Supreme Court Cases 188

²⁵ Medical Examination of Survivors / Victims of Sexual Violence: A Handbook for Medical Officers: https://india.unfpa.org/sites/default/files/pub-pdf/handbook_final_design.pdf

²⁶ Child with age of 12 years and above : Section 89-90IPC

²⁷ Implementing POCSO Act 2012 in schools: <https://www.nipccd.nic.in/file/reports/pocso12.pdf>

²⁸ Ibid: Parents or Guardian/ Child Welfare Committee/Panel of Senior Doctors in Administrative Position

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Ibid: Section 92IPC

³³ Ibid

³⁴ Section 164 A Crpc: DNA: necessary to collect alongside clothes worn at time of incident and any other material evidences like semen, bodily fluids etc.

³⁵ Supra

³⁶ Supra

³⁷ Supra

or herself is uncertain. Details of previous sexual history³⁸ should be considered irrelevant.³⁹ It is pertinent at the outset to make the victim comfortable and not push victim in an insensitive manner to reveal intricate details of the abuse, it is to be understood that such things take time.⁴⁰ It is not to be presumed that absence of struggle marks imply that survivor in any manner consented to sexual activity.⁴¹ Also no prior presumption of any sort of tutelage or false information being fed to child survivor by parents/ person accompanying for examination shall be made. Any conduct of the medical practioners or usage of coercion or undue influence which is unwanted or not required for the purpose of medical examination is illegal under Section 164A(7) Crpc.⁴² Two Finger Test is forbidden to be used as a means of medical examination.⁴³ Psycho-social support and counselling alongside treatment of physical injuries and other preventive medication as against sexually transmitted diseases or unwanted pregnancy should be timely⁴⁴ and adequately provided. Denial of providing appropriate treatment to victim after receiving information about sexual abuse is punishable under Section 166B IPC⁴⁵. Also any reasonable suspicion of commission of sexual assault and not reporting the same to the relevant police authorities is also a punishable offence.⁴⁶ Apart from this additional guidelines have been laid for if victim belongs to special group like transgender, LGBTQ, sex workers etc so that they are encouraged to come forward and report matters of wrongdoing and that they won't be ridiculed or met with hostility because of their identity.⁴⁷ If sexual abuse is the result of socio-economic- religious discrimination, it shall be duly noted in the medical report. Medical Report shall also clearly mention any other physical injuries sustained during or immediately after the sexual assault as well as verbal threats made to the survivor.⁴⁸ If a reasonable possibility of child survivor being unsafe in his/ her own place, social worker shall be roped in for proper planning of providing alternate accommodation to the survivor.⁴⁹ Child Welfare Committee shall also

³⁸ State of Punjab vs. Gurmeet Singh

³⁹ GUIDELINES & PROTOCOLS Medico-legal care for survivors/victims of Sexual Violence: <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>

⁴⁰ Ibid

⁴¹ Supra

⁴² Supra

⁴³ Supra

⁴⁴ Section 357 Crpc and Rule 5 of POCSO.

⁴⁵ Imprisonment of upto 1 year or fine or both

⁴⁶ Section 19 POCSO: Five things to know about the POCSO Act: <https://idronline.org/article/rights/five-things-to-know-about-the-pocso>

⁴⁷ [act/?gad_source=1&gclid=EAIaIQobChMIrsXPo96TgwMVxKlMh3uZwMeEAAAYASAAEgJ5N_D_BwE](https://idronline.org/article/rights/five-things-to-know-about-the-pocso)

⁴⁸ Supra

⁴⁹ Supra

⁴⁹ Chapter 5: POCSO 2012: Child Welfare Home or any alternate accommodation

provide for support during investigation and trial.⁵⁰ Positive atmosphere must be maintained for survivor's rehabilitation, in order to make him/her realize that their bodily integrity has been violated and the wrongdoer shouldn't go scot free, for which the survivor needs to have an open and well informed communication with other stakeholders of justice system.⁵¹ Doctor deposing on matter of child sexual abuse must be well prepared regarding facts and other significant information about the case so that a precise, detailed testimony could be given, which in turn has a direct relation to acquittal/ conviction and quantum of sentence.⁵² Not just doctors but schools and family too have an important therapeutic role and hence they too need to train students regarding their privacy and security alongside providing counselors in school, instead of covering up under the ruse that children aren't meant for discussions on physical intimacy.⁵³ CCTV Cameras, toll- free helpline numbers are some other safeguards that should be clearly made known to students as well as the staff and other administrators.⁵⁴

Parliament and Supreme Court have made praiseworthy efforts to bring out elaborate guidelines for schools, medical practioners, investigating officers emphasizing on their coordination for widespread community knowledge and rehabilitation of the child victim. However when the question of implementation comes, India still lags behind. It is a sorry state that till today many schools and educational institutions particularly in remote and rural areas of the country sheerly lack proper infrastructure and counselling facilities. People living in such areas still consider sex as a taboo and tend to spurn any sort of training or information related to good touch and bad touch. Parents / guardians fearing societal ostracisation or reprisal from perpetrator tend to cover up, instead of reporting matter of child sexual abuse, believing this will tarnish their reputation and destroy child's future especially if it is a female child. They instead believe they will sort out the matter between themselves specifically if the perpetrator is a known person. Parents/ Guardian accompanying the victim in several cases deny consent for medical examination and attempt to scurry away, even if matter is reported, the whole process turns waste as without consent, medical examination cannot be carried out unless some exceptional situation exists. Doctors do strive to seek parents/ guardian's/ survivor's cooperation citing injury to dignity being a legal crime, yet a flat refusal is the upshot in many a cases fearing waste of time and resources due to lack of confidence in the judicial system in addition to sullyng of honour.

⁵⁰ Supra

⁵¹ Supra

⁵² Supra

⁵³ Supra

⁵⁴ Supra

Survivors or their families even if muster courage to report the matter to the police, in umpteen number of cases, either police refuses to lodge an FIR on the ostensible reason of it being a false complaint especially if it involves some influential person as an accused⁵⁵ or drives the survivor away to go to the health centre in order to obtain medical evidence of sexual abuse. Health Centers principally in rural areas lack appropriate SAFE Kits⁵⁶ and other evidence collection tools⁵⁷ to examine victim and collect evidence. Medical practioners in such areas are either totally uninformed or have some sort of bleak idea of existing statues and guidelines, as a result mechanically treat survivor instead of sensitively handling.⁵⁸ Many a times they lack the pediatric expertise⁵⁹ to examine such case and as a result the reports⁶⁰ prepared by them are not reliable due to inaccurate findings.⁶¹ Samples coming from farther areas in several cases are not properly packed or stored those results in damaging the quality of samples and incorrect conclusions.⁶² Doctors provide expert evidence⁶³, however many a times aren't cross examined or tend to forget or get confused among different cases and drift from their earlier statement in their court testimony, which weakens the case of prosecution to a large extent.⁶⁴ Privacy and confidentiality of the survivor is numerous cases is forgotten and are examined in an utmost distressing fashion,⁶⁵ further agonizing victim and his/her family.⁶⁶ Suitable and sufficient counselling facilities are available only in a handful of areas which is a major deterrent in survivor's proper treatment and recovery. It is provided for transferring the survivor to appropriate shelter homes or any other suitable accommodation after medical examination, in best interest of the child survivor. However these shelter homes in some cases turn out to be those dark dens of rampant sexual

⁵⁵ Hathras Gangrape Case: In UP, Rape Survivors Struggle to Get Police to Register FIRs, Let Alone Investigate Them: <https://thewire.in/women/uttar-pradesh-police-rape-fir-discrimination>

⁵⁶ Guidelines for Forensic Examination in Sexual Assault Case: <https://cghealth.nic.in/ehealth/2018/Instructions/Guide07092018.pdf>

⁵⁷ Supra

⁵⁸ David L. Kerns, Donna L. Terman and Carol S. Larson: The Role of Physicians in Reporting and Evaluating Child Sexual Abuse Cases: [The Role of Physicians in Reporting and Evaluating Child Sexual Abuse Cases on JSTOR](#)

⁵⁹ Ibid

⁶⁰ Clinical Practice Guidelines for Child Sexual Abuse: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6345137/>

⁶¹ Genital examinations for alleged sexual abuse of prepubertal girls: findings by pediatric emergency medicine physicians compared with child abuse trained physicians: <https://www.sciencedirect.com/science/article/abs/pii/S0145213402004192>

⁶² Supra

⁶³ B.L. Chaudhary,, Raghvendra Kr: Medical examination of child of sexual assault under the protection of children from sexual offences (POSCO), act 2012: https://www.academia.edu/36505517/Medical_examination_of_child_of_sexual_assault_under_the_protection_of_children_from_sexual_offences_POSCO_a

⁶⁴ Breaking Silence: CSA in India: <https://www.hrw.org/report/2013/02/07/breaking-silence/child-sexual-abuse-india>

⁶⁵ GUIDELINES FOR MANDATORY REPORTING IN CHILD SEXUAL ABUSE CASE: <https://nimhanschilprotect.in/wp-content/uploads/2021/11/Guidelines-for-Mandatory-Reporting-in-Child-Sexual-Abuse-cases.pdf>

⁶⁶ Ibid

atrocities⁶⁷ where an already traumatized victim is made to suffer same sexual torture again.⁶⁸ CCTV's Doctors and police instead of being sympathetic, often collectively or simultaneously ridicule victim, blaming him/ her for their own plight, asking inappropriate, irrelevant questions under the guise of history taking and preparing MLC Report which further pushes survivor into despair. This horrid behaviour is often found in cases reported by LGBTQ Community or Sex Workers. Some doctors don't want to get into slow-paced, cumbersome trial and turn down survivor by giving some excuse, though it is now punishable. Delay caused in Medical Examination and making survivor and his/her family run from pillar to post to gather evidences, leads to destruction of vital evidences and healing of injuries⁶⁹ which is ⁷⁰then put in medical report as no sexual abuse could be observed.⁷¹ Negative opinions regarding rape or sexual assault commission or casual remarks by doctors that they perceive that child is influenced by his/her family /guardian and made to make false statements given utmost weightage⁷² by trial courts⁷³, thereby acquitting Accused,⁷⁴ giving them benefit of doubt.⁷⁵ Now a day's Courts themselves try to settle the dispute between survivor and the Accused by coaxing both parties to enter into a compromise and eventually compounding the gruesome offence.⁷⁶ Both acquittal and compounding go against well settled principles provided in medical⁷⁷ jurisprudence⁷⁸ which has been reiterated by the Apex Court in countless precedents⁷⁹ that a ruptured hymen, semen presence or strict vaginal penetration isn't essential to constitute rape. A Survivor's testimony is

⁶⁷ Sexual abuse at shelter homes: Existing mechanism not adequate to deal with problem, says SC: <https://economictimes.indiatimes.com/news/politics-and-nation/sexual-abuse-at-shelter-homes-existing-mechanism-not-adequate-to-deal-with>

⁶⁸ How Apna Ghar Sexual Abuse Case Unfolded: <https://www.hindustantimes.com/india-news/all-about-rohtak-s-apna-ghar-sexual-abuse-case-the-horror-tales-and-how-it-unfolded/stor>

⁶⁹ The 10 Biggest Legal Mistakes Physicians Make When Dealing with Suspected Child Abuse and Suspected Sexual Abuse: <https://seak.com/blog/uncategorized/10-biggest-legal-mistakes-physicians-make-dealing-suspected-child-abuse-suspected-sexual-abuse/>

⁷⁰ May doctors refuse to treat rape survivors in order to avoid having to give evidence in court?: [\(PDF\) May doctors refuse to treat rape survivors in order to avoid having to give evidence in court? \(researchgate.net\)](https://www.researchgate.net/publication/354111111_May_doctors_refuse_to_treat_rape_survivors_in_order_to_avoid_having_to_give_evidence_in_court?)

⁷¹ Supra

⁷² In Absence Of Victim's Medical Report, Rape Accused Is Entitled To Get Benefit Of Doubt: Calcutta High Court: <https://bnblegal.com/news/in-absence-of-victims-medical-report-rape-accused-is-entitled-to-get-benefit-of-doubt-calcutta-high-court/>

⁷³ Hari Chand v State: <https://www.livelaw.in/delhi-hc-acquits-rape-accused-benefit-doubt/>

⁷⁴ St State Of Himachal Pradesh v Asha Ram, 2006 Cri.L.J. 139

⁷⁵ State V Rahul (2022)

⁷⁶ Kerala High Court Enunciates Broad Principles For Compounding Of Sexual Offences Against Women & Children Upon Compromise With Accused: <https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-sexual-offences-quashing-compromise-with-accused-non-compoundable-offences>

⁷⁷ Parikh's Textbook of Medical Jurisprudence and Toxicology

⁷⁸ Modi Textbook of Medical Jurisprudence and Toxicology, 23rd Edition: https://www.livelaw.in/pdf_upload/rajesh-vs-state-of-up-and-3-others-criminal-misc-bail-application-no-10336-of-2022-allahabad-high-court-474170.

⁷⁹ Madan Gopal Kakkad vs Naval Dubey And another, 1992 SCR (2) 921

alone sufficient for conviction though medical and other advisory evidences pinpoint otherwise.⁸⁰ Medical evidences are opinion based / advisory in nature⁸¹ and hence survivor's testimony doesn't need any corroboration and should not be viewed with suspicion as it is disparaging to survivor's outraged modesty.⁸² A pertinent question arises here is that can someone's dignity be measured in monetary terms? How much money can absolve guilt of the perpetrator? In cases where Accused marries survivor in guise of compromise, does such marriage ensures stability and security to the survivor? Neither CRPC nor POCSO provides for compounding of such grisly offences.

POSITION IN USA:

History evinces incidents of child abuse since ancient times but its seriousness was realized in 1962 with coinage of the term "Battered Child Syndrome".⁸³ The first and foremost ramification succeeding this article was inclusion of condition of mandatory reporting of child abuse. Guidelines for Medical Practitioners in child abuse cases are mostly similar as to what has been provided in India. If child avows or vaguely hints at being sexually exploited, the concerned child must be taken to local doctor and psychiatrist for immediate treatment and further report the matter to police or child protection units who shall take cognizance of the matter.⁸⁴ Child survivors are encouraged to speak on the matter, making them comfortable and assuring them that they were not responsible for the injustice meted out to them.⁸⁵ Despite its rare to find confirmed evidences of sexual abuse⁸⁶, high quality infrastructure, trained counselors and timely intervention may save the child survivor in the nick of time from long term depression or any other physical-mental infirmity.⁸⁷ Given the serious nature of the offence and the mental blockages the child survivor⁸⁸ may face in articulating his/ her ordeal, the physicians are given specific training to deal and counsel such patients as well as their families.⁸⁹ Proper coordinated

⁸⁰ State v. Rehan, 2020 SCC OnLine Del 172, decided on 21-01-2020]...

⁸¹ State of MP v Dayal Sahu (2005) 8 SCC 122

⁸² Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, AIR 1983 SC 753

⁸³ C. Henry Kempe: The battered-child syndrome. *JAMA*. 1962;181(1):17-24: <https://journalofethics.ama-assn.org/article/why-1962-matters-history-clinicians-responses-abused-and-neglected-children/2023-02>

⁸⁴ Responding To Child Sexual Abuse: [https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Responding_To-Child-Sexual-Abuse-028.aspx#:~:text=The%20examining%](https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Responding_To-Child-Sexual-Abuse-028.aspx#:~:text=The%20examining%20)

⁸⁵ Ibid

⁸⁶ J E Myers: Adjudication of CSA Cases: <https://pubmed.ncbi.nlm.nih.gov/7804772/>

⁸⁷ Dirk Huyer, MD: CSA and Family Physicians: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1479790/>

⁸⁸ Child Abuse and Neglect: Are Future Doctors prepared?: <https://www.sciencedirect.com/science/article/abs/pii/S1344622322000888>

⁸⁹ Ibid

multidisciplinary approach is taken up between police, physicians and other participants of the justice system to strongly keep the viewpoints of the child survivor,⁹⁰ state out his/ her requirements in order to take up the suitable course of action.⁹¹ In order to prevent malicious health care workers to take advantage of vulnerability of small children and demand sexual favours in return to the trust reposed in them, stringent screening is done of physicians as well as other nursing staff previous employment records and behavioural profile is established at each organization where medico works, in order to identify any physician who is engaged in horrible malpractice of sexual exploitation of children or adolescents under the false show of treatment.⁹² The American Academy of Pediatrics (AAP) with American Medical Association (AMA)⁹³ has prescribed strict policies and parameters⁹⁴ (e.g.: use of chaperons) for dealing with sensitive cases in addition to periodic training and upgradation, which must be followed by entire medical personnel of health facility ardently.⁹⁵ Helpline Numbers can be contacted by child survivor or any of his family/ guardian to report any sort of unwanted physical interaction with the physician or nursing staff which they have a reason to believe⁹⁶ falls out of the purview of medical treatment required.⁹⁷ Any history of familial violence or untoward physical discomfort in abdominal or pelvic region, gynecologist or pediatrician do make it a point to screen such patients for sexual violence and if they reasonably suspect the same, the next step is to inquire about the same from alleged victim. If he/ she respond in the affirmative, then provide immediate counselling sessions to relieve them of their mental agony in addition to physical aid.⁹⁸

⁹⁰ DJ Besharov: Responding to child sexual abuse: the need for a balanced approach: <https://pubmed.ncbi.nlm.nih.gov/7804761/>

⁹¹ Supra

⁹² Protecting Children From Sexual Abuse by Health Care Professionals and in the Health Care Setting: <https://publications.aap.org/pediatrics/article/150/3/e2022058879/189218/Protecting-Children-From-Sexual-Abuse-by-Health?autologincheck=redirected>

⁹³ Time to End Physician Sexual Abuse of Patients: Calling the U.S. Medical Community to Action: <https://link.springer.com/article/10.1007/s11606-019-05014-6>

⁹⁴ Child safety and Well Being Clinical Services: <https://unmhealth.org/medical-professionals/child-abuse-response.html>

⁹⁵ Ibid

⁹⁶ Sexual Abuse by Medical Professionals: <https://www.rainn.org/articles/sexual-abuse-medical-professionals>

⁹⁷ Ibid

⁹⁸ Adult Manifestations of Childhood Sexual Abuse: <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2011/08/adult-manifestations-of-childhood-sexual-abuse>

POSITION IN UNITED KINGDOM:

Recent surge in child sexual exploitation (CSE)⁹⁹ led to joint working and information sharing among government and independent health groups in collaboration with government ministers in 2014-15.¹⁰⁰ CSE is challenging both in terms of identification and treatment. Hence in every case of STI, Drug abuse, Familial violence etc, screening for probable sexual abuse is carried out. National Action Plan to Prevent and Tackle Child Sexual Exploitation in Scotland has updated its definition of CSE in 2016 in order to combat the menace more efficiently.¹⁰¹ Adequate treatment and mental counselling facilities are arranged for patients who are indeed abused in their early years and are reeling under its aftermath at later stages in life.¹⁰² Medical personnel's training and initial assessment after induction¹⁰³ to evaluate his performance while dealing with sensitive cases is given supreme importance by the Royal Medical Society.¹⁰⁴ Discouraging Myths and Fake rumors is an important step taken while negotiating with children who are potential suspects of CSE, owing to their disturbed physical- mental state.¹⁰⁵ Even healed injuries are tested using instruments like magnifying colescope, in order to refer any probable victim to requisite child welfare agencies, even if it has been a while since the incident occurred.¹⁰⁶ Ireland in its full fledged guidelines provides for examination of child suspected to have undergone CSE shall be examined as per nature of injuries and behavioural situation, but as far as possible include a senior pediatrician. In case there is a dispute between team of doctors examining the child, the area of controversy shall be outlined and refer the matter to senior practioners for his suggestions and get a final opinion about the case.¹⁰⁷ Detailed full body check-up is carried out including dental, orthopedic, CT scan, nutritional status, signs of neglect¹⁰⁸ etc. in order to find out any

⁹⁹ New guidance for physicians to help tackle child sexual exploitation: <https://www.rcplondon.ac.uk/news/new-guidance-physicians-help-tackle-child-sexual-exploitation>

¹⁰⁰ Ibid

¹⁰¹ Child Sexual Exploitation A Guide for Health Practitioners: https://www.pkc.gov.uk/media/39252/Child-Sexual-Exploitation-A-Guide-for-Health-Practitioners/pdf/Child_Sexual_Exploitation_-_A_Guide_for_Health_Practitio

¹⁰² Ibid

¹⁰³ Child sexual abuse (CSA) forensic medical examinations: INTERIM GUIDANCE REGARDING NUMBERS OF EXAMINATIONS AND THE MAINTENANCE OF COMPETENCE: <https://fflm.ac.uk/wp-content/uploads/2021/03/ARCHIVED-CSA-Examinations-Interim-Guidance-Dr-B-Butler-Feb-2020.pdf>

¹⁰⁴ Quality Standards for doctors undertaking Pediatric Sexual Offence Medicine (PSOM): <https://fflm.ac.uk/wp-content/uploads/2021/03/ARCHIVED-Quality-Standards-for-doctors-undertaking-PSOM-Dr-Cath-White-and-Prof-Ian-Wall-April>

¹⁰⁵ Coventry Safeguarding Children: One Minute Guide Child Sexual Abuse For Paediatricians, Emergency Doctors, and other Health Staff March 2022: <https://www.coventry.gov.uk/downloads/file/38420/child-sexual-abuse-guide-for-paediatricians-emergency-doctors-and-other-health-staff>

¹⁰⁶ Supra

¹⁰⁷ Medical Assessment of Alleged or Suspected Child Abuse: https://www.proceduresonline.com/sbni/p_medical_assess.html

¹⁰⁸ Ibid

other injuries or issues which might be related to the CSE.¹⁰⁹

After a detailed study of laws and guidelines pertaining to medical examination and evidence in India, USA and UK; it can be observed that all 3 nations have attempted to put their best foot forward in consonance with broad principles enunciated by WHO on child sexual abuse. Challenges facing the victim are almost similar in all 3 jurisdictions. Never the less difference arises on the point of execution of policies and guidelines. A multi disciplinary approach, better health infrastructure, easy availability of counselors who are well trained to take up cases of CSA and proper coordination among various players of justice system as in case of USA and UK could be observed rarely in case of India. US and UK understand that after effects of CSA are much more gross and can result over a lifetime and keeping this in view, they screen every suspect which might have a probable history of abuse which is absent in India. This might be one of the reasons why much more accurately cases are reported and taken care of in USA and UK. Full body check-up as in case of Ireland instead of focusing upon obtaining DNA and other forensic samples; sending adolescents and adults for counselling and giving them aid as required for incident that happened with them as a child is missing in case of India. CSA Survivor be examined by a trained gynecologist/ pediatrician/ physician who has received particular training to examine such cases is lacking in Indian perspective. If doctor himself turns out to be perpetrator, action can be taken against him as well. However this isn't the case in Indian scenario. Fine balance has to be drawn between what is essential for medical examination and what can be reasonably construed as undesirable and not required. Installing CCTV Cameras and surprise visits to shelter homes and correctional accommodation in order to ensure safety of children who are kept there for rehabilitation might curb the wrongdoings being carried out at such places.

CONCLUSION:

CSA is a widespread barbaric jeopardy that plagues the entire world as perpetrators are omnipresent. To tackle this situation one stage of recognition and rule formation has been successfully completed but some nations like India lag behind in process of implementation. Periodic studies, suitable amendments, upgradation and maintenance of infrastructure and human resources, public campaigns for mass awareness and information sharing might curb this issue to a significant extent not just in one's own country but across the globe.

¹⁰⁹ Ibid