

CHAPTER I

INTRODUCTION

“The sexual abuse and exploitation of children is one of the most vicious crimes conceivable, a violation of mankind’s most basic duty to protect the innocent.”

James T. Walsh¹

Every nation, developed or developing links its future with the status of the child. Childhood holds the potential and sets the limit to the future development of the society. Children are the greatest gift to the humanity. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If the children are deprive of their childhood – economically, socially, physically and mentally- the nation gets deprived of the potential human resources for social progress, economic empowerment, peace and order, social stability and good citizenship.

A child is a country’s future. Everywhere in the world, the child is well taken care of, because the future of a country depends on the healthy growth of its children. Universally, children, the would be citizens of tomorrow are disadvantaged in one significant respect- that they are defenseless both physically and mentally. Those children who are born and brought up under conflicting conditions, particularly the orphan, lone, uncared, weaker, are open for exploitation and they fall easy victims to several crimes perpetrated against them.² Innocent, lack of experience, exposure improper care and guidance are some of the key contributing factors for their vulnerability.

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² Frazan Mustafa, “Sexual abuse of child in family-emerging problem” IV *Kashmir University Law Review* 182 (1997).

A registered NGO namely, *Prerana* working in India and specifically Mumbai for victims of commercial exploitation since 1986 in a writ petition had well stated that, “*India is rife with trafficking and exploitation which involves prostitution, pornography and sex tourism, and traffickers often target women and children of low social standing living in poverty as they are vulnerable to exploitation*”.³

Sexual abuses on children are a big blot on society as it shook's the human consciousness of the society and retard the normal healthy growth of children. It leads to grave physical and psychological effects on the body and mind of a child and dismantles the normal growth of a child. It does not leave only physical injuries on the body but also leaves an everlasting scar on the child's mind at a very nascent age. It is a fact that millions of girls and boys worldwide are being sexually abuse within homes and outside. They are often abuse by families and known persons. The perpetrator can be anyone who exploits the child's vulnerability to gain sexual gratification. It involves mental, physical and emotional abuse of a child through overt and covert sexual acts, gestures and disposition - when informed consent or resistance by the child victim to such acts is not possible.⁴ It can also include activities, which do not involve direct touching. Although globally, sexual abuse generally is perceive as a crime committed against women and girls but it is no longer gender centric. In India, research indicates young boys are sexually abuse more than young girls are.⁵

Child Sexual Abuse (CSA) is any kind of physical or mental violation of a child with sexual intent, usually by a person who is in a position of trust or power vis-à-vis the child.⁶ The depraved acts of CSA present peculiar behavior pattern which include the variety of deviances such as sexual victimization of child, sexual assault of

³ *Prerana v. State of Maharastra*, Cri. W.P. No. 788 of 2002 Decided On: 07.10.2002

⁴ Government of India, Report: Study on Child Abuse: India (Ministry of Women and Child Development, 2007) 74-75

⁵ *Ibid.*

⁶ D.K. Carson, J. M. Foster and N. Tripathi, "Child Sexual abuse in India: Current Issues and Research" *PS*, 318 (2013)

the child, sexually misuse the child, sexual exploitation of the child, molestation, sexual maltreatment, rape and the like acts.⁷

Any child below the age of consent may be deemed to have been sexually abuse, when a sexually mature person has by design; or by neglect of the usual societal; or specific responsibilities in respect of the child engaged; or permitted engagement of the child in activity of a sexual nature, which is intended to lead to the sexual gratification of the abusive person.

Historically, child sexual abuse (herein after CSA) has been a hidden problem in India, largely ignored in public discourse and by the criminal justice system. Until recently, CSA was not acknowledge as a severe criminal offence in equal footing with the offence of rape by the substantive law in India. In the absence of specific legislation, a range of offensive behaviors' against a child such as; child sexual assault (not amounting to rape), harassment, and exploitation for pornography were never legally addressed. In the past few years activists, Non-Governmental Organisations' (herein after NGOs) and the central government's Ministry of Women and Child Development have actively engaged in helping break 'the conspiracy of silence' and have generated substantial political and popular momentum to address the issue. The movement, spearheaded by the Ministry of Women and Child Development, led to the enactment of new legislation called the Protection of Children from Sexual Offences (POCSO) 2012.⁸

The Protection of Children from Sexual Offences(herein after POCSO) Act has been birthed out of the very need to enact a specific legislation to tackle with the increasing sexual abuse against children in form of abuses like rape, pornography, various forms of penetration and criminalizes acts of immodesty against children too. The POCSO Act, 2012 has undoubtedly made a significant contribution to tackling the

⁷ Frazan Mustafa, "Sexual abuse of child in family-emerging problem" IV *KULR* 182 (1997).

⁸ J. Belur and B.B. Singh, "Child sexual abuse and the law in India: a commentary" 4 *Crime Sci* 26 (2015). available at: <https://doi.org/10.1186/s40163-015-0037-2> (Visited on october 13, 2018)

problem of CSA in India. It has identified and criminalized a range of unacceptable sexual behaviours that pose a threat to children. The number of reported cases is increasing rapidly, indicating that the law has made a substantial contribution in educating the public, sensitizing the criminal justice system, and making the reporting of CSA not just acceptable, but also mandatory. The law has some unique features and is very comprehensive. However, in spite of a specific law it cannot be said that it achieved its objective in *toto* as because the cases of CSA are increasing day by day in India.

1.1. Definition of Child:

There is no uniformity and universally accepted definition of Child as various international instruments and municipal laws in India give different definition of the term child based on the object with which instrument was prepared or the statute was enacted. Under different statutes, age is considered as the sole criteria for defining child. A few of the important definitions of the term ‘child’ under various international and municipal laws are-

- The term ‘Child’ is defined under the Convention on the Rights Of Child of 1989 as “[...] a child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.”
- Article 2 of the International Convention Concerning the Prohibition and Immediate Action for the Elimination Of the Worst form Of Child Labour of 1999 defines child as, “the term child shall apply to all persons under the age of 18”
- Section 2(aa) of the Immoral Traffic (Prevention) Act, 1956 defines - “child” means a person who has not completed the age of sixteen years.”
- Section 2(12) of the Juvenile Justice (Care & Protection of Children) Act, 2015 defines- “child” means a person who has not completed eighteen years of age”

- Section 2(a) of Prohibition of Child Marriage Act, 2006 defines child as *“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.”*
- Section 2(c) of the Factories Act, 1948 defines child as, *“child” means a person who has not completed his fifteenth year of age.”*
- Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 defines, *“Child means any person below the age of eighteen years.”*

However, it is observe that in maximum statutes, the age of 18 years is taken as margin for determining a human as child and hence, for the purpose of this Research the definition of child is considered as per the Protection of Children from Sexual Offences Act, 2012.

1.2. Types Of Child Abuse:

The term 'Child Abuse' may have different connotations in different cultural milieu and socio-economic situations. A universal definition of child abuse in the Indian context does not exist and has yet to be defined. However, before understanding 'child abuse' it is necessary to understand the concept of abuse as per the various definitions stated below.

Black's law dictionary⁹ defines the word 'abuse' as *“everything which is contrary to a good order established by usage, departure from reasonable use, improper use, physical or mental maltreatment, deception”*.

Oxford Advance Dictionary defines 'abuse' to mean *“wrong or bad use or treatment, exploit, unjust or corrupt practice, acts which are insulting, offensive”*.

Chambers dictionary defines 'abuse' as *“to make a bad use of, to take undue advantage of, to betray, to misrepresent, to deceive, to revile, to maltreat, to violate, an evil or corrupt practice, deceit, hurt, betrayal, ill usages, outrage etc.”*

⁹ Henry Campbell Black, *Blacks law dictionary* 24-25 (West Publishing Company, United States, 4th edn, 1971).

The term ‘abuse’ does not refer to any one specific type of act, but covers a wide spectrum of behavior. There has been difficulty in differentiating in between the acceptable behavior and which may be deem abusive of a child. The term ‘child abuse’ encompasses a broad and wide range of acts and maltreatment of children.¹⁰ Various attempts to define child abuse have not achieved a consensus. There is also no consensus about its various forms, which can include child battering extreme punishment, hard labour, emotional abuse, abandonment and sexual abuse including incest and exploitation.

However, child abuse can be classified into the following types as per the Study on child abuse 2007¹¹ :

- Physical abuse
- Emotional abuse
- Sexual abuse

1.2.1. *Physical Abuse:*

Physical abuse is the inflicting of physical injury upon a child which is quiet common in our society specially in the families and institutions like school, orphanage, shelter homes etc. The term ‘*Physical abuse*’ represents causing serious bodily pain to child bay way of beating, kicking, slapping, punching, burning, pocking and so on.

The pain inflicted upon a child by the family members or school teachers are often justified by the inflictor in the name of discipline or correcting the child to be a good person or rectify his/her mistake. However, from legal point of view these activities are treated as offence and are made punishable under IPC and other special legislation like, The Right to Education Act, 2009.

Physical abuse of a child is classified into the following types¹²-

¹⁰ Ministry of women and Child Development, ‘Study on Child Abuse: India 2007, (Government of India, 2007). *available at:* wcd.nic.in/childabuse.pdf (Visited on 14th September, 2018).

¹¹ *Ibid.*

a) Abuse by guardian and other family members within family:

The word ‘guardian’ should be widely understood to include all types of guardian namely; Natural guardian, Testamentary guardian, De-facto guardian, Court appointed guardian, and Guardian by adoption. Whereas relative include all those persons who are related to the child either through his/her father or mother, irrespective of whether they reside in the same house or not.

The guardian or the relatives who are actually the well-wishers of the child may sometime inflict reasonable pain on the child to give a lesson or correct him/her when they commit habitual mistakes. However, the same pain may amount to physical assault if the pain inflicted is severe in nature and result in long term or internal injury. Again, another form of physical abuse by guardian is physical neglect. Physical Neglect implies a state of carelessness or unwillingness to look after the overall development of the child like no proper medical care, lack of proper shelter, malnourishment, not sending to school, engaging in work etc.

b) Institutional physical abuse-

The children’s are familiar to educational institutions where they get the opportunity to learn and play. However, unfortunately there school s sometimes turns to be a place for physical abuse of a child. Teachers are seen to have adopted practices like corporal punishment to control them that result in severe physical harm to the child resulting in abuse. A few common type of abuse that take place in schools are scolding, insulting, slapping, severe beating, making the child stand in sun, kneeling down for a long period etc.¹³ In order to have a check on these abuse the National Commission for the

¹² Shibnath Deb and Aparna Mukherjee, “Impact of Sexual Abuse on Personality Disposition of Girl Child” 35 *Journal of the Indian Academy of Applied psychology* 125 (2009)

¹³ Hari Om Gautam, *Victims of crime and the Law* 125 (Regal publications, New Delhi, 1st edn., 2011).

Protection of Child Rights has taken strict steps by laying guidelines for school authorities and defining the term ‘Corporal Punishment’.

Simultaneously, the orphans or the child in need of care and protection or the juveniles in conflict with law are often kept in orphanage, shelter homes and children homes. These institutions are responsible for taking care of the child as per the standard fixed by authorities from time to time. But in the name of administration or discipline many times the children’s living in these institutions become victim of physical abuse at the hands of the caretakers, staff or other managerial persons of these institutions.¹⁴

c) Abuse by Employer:

Child labour is itself a physical abuse. In our country child labour is a prohibited practice but still it is in practice from quiet a long time. Even some legislation has permitted children above 14 years to work with certain caution and restriction. The children who work on organised sector, unorganised sector or even in domestic household are often victim of physical abuse in the hands of employer either by making them to work in unsafe hazardous condition or make them work overtime or even by direct physical assault.¹⁵

d) Abuse to Rag Pickers and Street Children:

The rag pickers and the street children’s are the most vulnerable group of children because and they become easy target of any type of abuse or crime. These class of children are the common victim of physical abuse as they do not have any guardian or well wisher to protect them from any unforeseen situation.¹⁶ They are often assaulted or beaten up by police, municipal employees, security guards, shopkeepers or even by the passerby, if they do any activity which

¹⁴ Pinki Virani, *Bitter Chocolate: Child sexual abuse in India* 32 (Penguin Books, New Delhi, 1st edn., 2000).

¹⁵ *Supra* Note 9 at 43

¹⁶ *Supra* Note 13 at 56.

others do not like. Again, there is every possible chance that the Rag pickers suffer from severe diseases due to the unhygienic life condition in which they survive.

e) Abuse during trafficking:

Trafficking of children is a organised crime and it has various purposes. One of the common mode of trafficking is kidnapping, intoxicating and transporting. Whatever may be the purpose or mode of trafficking one thing is common and that is the victim suffer from serious physical injuries and pain because they do not get sufficient food, and often face threatening or beating during the entire process of trafficking or even after that.¹⁷

1.2.2. Emotional Abuse:

Emotional abuse is also known as verbal abuse, mental abuse, and psychological maltreatment. It includes acts or the failures to act by parents or caretakers that have caused or could cause, serious behavioural, cognitive, emotional, or mental trauma.¹⁸ Every child has the right to enjoy his/her life fully without any discrimination, neglect, ill treatment or any such behaviour, which will subject him to emotional abuse. Although emotional abuse is not defines as a crime in any law till date but from psychological point of view such abuse have long term ill effect upon the child mind resulting into abnormal mental health. A few of the common form of emotional abuse are limitation in enjoyment of right, discrimination on the base of colour and sex, comparison with other kids, forcefully sending them to hostels of boarding school and so on.¹⁹

¹⁷ Chatterjee, P. & Chakraborty, “Short and long-term problems faced by trafficked children: a qualitative study”, *Social Science International*, 167(2006).

¹⁸ U.S Department of Health and Human Services, *Child Abuse and Neglect: A shared Community Concern* 18 (NCJRS, Washington DC, 1992)

¹⁹ P. B. Behere, “Sexual abuse in women with special reference to children: Barriers, boundaries and beyond” 55 *Indian J Psychiatry*. 332 (2013)

1.2.3. *Sexual Abuse:*

CSA covers the sexual maltreatment of both infants and adolescents. The conducts vary from acts constituting incestuous abuse to rape to mere sexual assault of a varying intensity starting from mere caressing to fondling of the private parts of the child causing disturbances to the child's well being. It also can include child pornography, exposure of genitals to the child, making indecent overtures to the child. A few of the definition of CSA are:

P.D. Mathews defines child sexual abuse as-

*"CSA includes implying, using, inducing or coercing, any child to engage in illicit sexual conduct. It also includes the use of children in assisting with other persons to engage in explicit sex."*²⁰

Sakshi defined CSA as-

*"Child sexual abuse includes an adult exposing his /her genitals or persuading the child to do the same; and adult touching the child's genitals or making the child touch the adults genitalia an adult involving a child in pornography; an adult having oral, vaginal, or anal intercourse with a child; any verbal or sexual or other suggestion made to a child by an adult and so on. Sexual abuse of children can take place in the family, in the neighbourhood in school, in institutions and on the street. The abuser, generally a male, usually violates a relationship of trust with the child, taking advantage of his power and position."*²¹

Asha Bajpai in her article, "CSA; Need for Law reforms" stated that-

"Child Sexual abuse is an activity relating to sex organs, engaged in for sexual gratification, which takes advantage of and violates or deceives young children".²²

The National Centre on Child Abuse and Neglect (NCCAN)²³ defines 'sexual abuse' as -

²⁰ P.D. Mathews, "Sexual abuse of the children and law" 42 *LNAV* 12 (1996).

²¹ Sakshi, *Child sexual abuse: Beyond fear and secrecy and shame*, 17 (New Delhi, 1999)

²² A. Bajpai, "Children Rights In India: Law, Policy and Practice" 02 *IJOSW* 630 (2003)

“Any childhood sexual experience that interferes with or has the potential for interfering with a child’s healthy development”

The United Nation has defined child sexual abuse as-

“contacts or interactions between a child and an older or more knowledgeable child or adult (a stranger, sibling or person in a position of authority, such as a parent or caretaker) when the child is being used as an object of gratification for an older child or adults sexual needs. These contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure”²⁴.

Prof. Finkelhor an eminent Psychiatrist in the year 1987 stated that-

“Child Sexual Abuse is most commonly used in reference to sexual activity involving a child that has at least one or two characteristics; i.e. it occurs, within a relationship where it is deemed exploitative by virtue of an age difference or caretaking relationship that exist with the child; it occurs as a result of threat, coercion or force”.

The Supreme Court in a case observed that -

“sexual abuse can be in any form like, sexual molestation or assaulted or encouraging, inducing or forcing the child to be used for the sexual gratification of another person, using a child or deliberately exposing a child to sexual activities or pornography or procuring or allowing a child to be procured for commercial exploitation and so on”²⁵.

The latest addition to Indian law on child protection from abuse namely the POCSO Act although does not define the term Child Sexual Abuse but it defines sexual harassment of a child, as:

“A person is said to commit sexual harassment upon a child when such person with sexual intent,-

²³ U.S Department of Health and Human Services, *Child Abuse and Neglect: A shared Community Concern* (NCJRS, Washington DC, 1992)

²⁴ Child line available at: <http://www.childlineindia.org.in> (Visited on November 25, 2018)

²⁵ *Shankar Kisanrao Khade V. State of Maharashtra*, (2013) 5 SCC 546

- i. *Utters 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 the body shall be seen by the child; or*
- ii. *Makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or*
- iii. *Shows any object to a child in any form or media for pornographic purposes; or*
- iv. *Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or*
- v. *Threatens to use in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or*
- vi. *Entices a child for pornographic purposes or gives gratification there for.*²⁶

Thus, in short Sexual abuse is inappropriate sexual behaviour with a child. It includes fondling a child's genitals, making the child fondle the adult's genitals, intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation.

1.3. Types Of Child Sexual Abuse:

Child sexual abuse being a wide term includes various types of activities towards a child. However, for better understanding CSA has been classified into the following types:

- Sexual assault
- Sexual exploitation
- Sexual grooming
- Child marriage

²⁶ Section 11 of Protection of children from sexual offences Act, 2012

a. Sexual assault-

The term ‘Assault’ simply means an act that creates fear upon a person mind that he may be physically harmed in any manner. Similarly, ‘sexual assault’ means any sexual act of a person, which terrorise the victim child.

The US Department of Justice defines ‘sexual assault’ as-

*“.... any type of sexual contact or behaviour that occurs without the consent of the recipient. Falling under the definition of sexual assault are sexual activities such as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape”.*²⁷

Section 7 of the POCSO Act explains the term ‘sexual assault’ in the following words-

*“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.”*²⁸

Hence, an intentional sexual touch with or without the consent of the child is an act of sexual assault. Consent is immaterial because a child is deemed to be unfit for giving consent under the law due to their immaturity of taking reasonable and prudent decision. Thus, when a person touches the genital organs or any any other parts of his body with sexual motive with the consent of the child, he cannot defend himself later by taking the defence of Consent. Wider interpretation of the term ‘sexual assault’ includes sexual harassment, criminal force with intent to disrobe, voyeurism, stalking, attempt to rape, rape and torture of the child in any sexual manner.

²⁷ ‘What is sexual assault?’ available at: <https://www.justice.gov/ovw/sexual-assault> (Visited on february 26, 2019)

²⁸Section 7, Protection of Children from Sexual Offences Act, 2012

b. Sexual exploitation-

‘Sexual exploitation’ is a term which is used to mean an activity of a person who is in a position of power or dominating position makes attempts or actually exploits the sexuality of the child to make some benefit. The benefit may be in any form i.e. monetary, social or even political benefit. Children are easy target of sexual exploiters due to their vulnerability and the situation become worst when the child belong to a poor, uneducated or slum family. The term ‘exploitation’ here means to use or treat someone unfairly for his/her selfish benefit.

Sexual exploitation of children may take place in several form such as child prostitution, child labour, trafficking of child for purposes like dancing in clubs, working in Brothels, working in call girl services, massage parlour, nude or semi nude photo shoot or video, begging, forceful marriage within or outside the nation and so on.²⁹ Child trafficking and child pornography are aiding in the growth of sex tourism in countries like Thailand where tourist visit to engage in sexual relation with such child sex workers.³⁰

c. Sexual grooming-

Grooming simply means preparation. Although grooming is not a offence and do not have any negativity attached to it but, sexual grooming is an offence in itself and also an indication of a upcoming severe type of sexual offence such as trafficking, pornography and many more.

Sexual grooming is a new concept that developed and became popular with the development of science and technology. Sexual grooming mostly takes place through online mode such as; *chat room, messenger, whatsapp, instagram* etc.³¹

²⁹ Belur, J., Singh, B.B. Child sexual abuse and the law in India: a commentary. *Crime Sci* 4, 26 (2015).

³⁰ Deb, S., “Child protection: scenario in India”, 07 *International Journal of Child Health and Human Development*, 339 (2009).

³¹ Deb, S. and A. Mukherjee., “Background and Adjustment Capacity of Sexually Abused Girls and their Perceptions on Intervention,” 04 *Child Abuse Review*, 213 (2012).

Sexual grooming is a process by which the offender with full planning target a child after which will try to draw attention towards him by any sexual behaviour and thereby become friendly with the child. Through grooming the offender, compel the child to think in an unusual sexual manner as that of an adult by sending obscene pictures, adult videos, sexual talk, messages and the like.³² Sexual grooming of a child may lead to sexual relationship with an unknown person in secrecy. To make the situation worst the act response or act of the child are recorded for the purpose of blackmail so that the child become bound to do whatever the offender directs to do. All these activities may lend the child in severe trouble such as being a easy victim of traffickers or engagement in cyber pornography or call girl services from where she could never return back to her family or society due to the social stigma attached to such victims or any other reasons.

d. Child marriage-

Child marriage can be defined as a marriage where either or both the party to the marriage are below the age of majority or minimum legal age required to marry. However, the age of marriage fixed for both the gender is not universal all around the globe. It differs from country to country. In India, the minimum age required for marriage is 18 years for girls and 21 years for boys.

Child marriage is a customary practice in many parts of the world including India. There are various reasons of child marriage in India. A few among them are-

³² *Supra* note 31

- So that, the father of the girl child do not have to pay heavy amount of dowry during her marriage because dowry is not so prevalent in child marriage.³³
- To prevent the girl or boy or both from marring anyone outside their religion or caste of their own choice when they grow up too adult.
- The guardians in case of orphans do not want to take the responsibility of the child. However, this reason is applicable only for girl child.
- When the guardian is poor and has multiple children the child become burden upon him. In such cases, the guardians offer their female child for marriage.
- Sometimes child marriages are perform as an attempt to legalise the contract of buying and selling of child within or outside the nation. The child fall prey to such offence either with the consent of the guardian who sell the child for a sum of money due to extreme poverty or without the consent of the guardian i.e. by trafficking.³⁴

Child marriage performed by whatever reason has physical, sexual and mental impact upon the victim because the word ‘child’ itself indicate that the person is not biologically prepared for sexual activities.³⁵ Thus, when a child is married and his/her spouse tries to enjoy the conjugal rights upon the child he/she are left with no option but to surrender themselves physically or commit suicide. In both these cases the child is abused to the maximum extent. Again

³³ D.K. Carson, J. M. Foster and N. Tripathi, "Child Sexual abuse in India: Current Issues and Research" 13 *Psychological Studies*, 318 (2013)

³⁴ Deepti Shrivastava, 'Child trafficking – A Human Rights Abuse', 44 *Indian Police Journal* 77 (2007).

³⁵ Deb, S., & Walsh, K., "Impact of physical, psychological, and sexual violence on social adjustment of school children in India", 10 *School Psychology International*, 411 (2012).

in many cases child marriage is just a mode of trafficking whereby the child is sold out in the brothels for some considerations.³⁶

Sexual intercourse with a child either by way of rape or marriage the result is same i.e. the child suffers from severe pain and agony which is a serious violation of child right.

1.4. Objective of the Research Work:

- To examine all the existing laws dealing with child sexual abuse.
- To find out whether the legal measures both substantial and procedural laws are adequate to curb the menace of child sexual abuse.
- To find out, whether the provisions available under various laws including POCSO Act are actually implemented in the grass root level of the society or is it just lying within the pages of the statute books.
- To analyse the role of enforcement machinery such as Police, District Child Protection Unit(DCPU), Child Welfare Committee, District Legal Services Authority, NGO's, Special Public Prosecutor and Special Court under various statutes in protection of children from sexual abuse.
- To find out the procedural compliance of Police, District Child Protection Unit(DCPU), Child Welfare Committee, District Legal Services Authority, NGO's, Special Public Prosecutor and Special Court while enforcing the special laws in POCSO cases while dealing with the child victim.
- To find out the challenges faced by Police, District Child Protection Unit(DCPU), Child Welfare Committee, District Legal Services Authority, NGO's, Special Public Prosecutor and Special Court while discharging their duty under special laws such as POCSO Act.
- To give suitable suggestion to sought out the problems.

³⁶ *Supra* note 33

1.5. Significance of the Study:

This study seeks to address one of the burning problem faced by the our country today namely; Child sexual abuse. The researcher has selected, “*Legal Protection of Children against sexual abuse- A critical study with special reference to Dibrugarh, Tinsukia & Dhemaji district of Assam*” as the topic of his study.

This research carries great significance for the children’s who are often abused sexually in there day to day life in places like educational institutions, social institutions and even their own family, because the researcher had attempted to analyse the existing laws and legal mechanism which are available for protection of children from sexual abuse in India.

This research will help to know the efficacy of such laws and the loopholes in the existing laws. It will further help in analysing the role of legal mechanisms like Police, CWC, DCPU, DLSA, SPP and Special Court in protection of children. Further the study will bring into light the problems in enforcement of the law and find out the compliance of procedure by these machineries while dealing with cases related to child sexual abuse. Thus, the researcher will try to find out whether the laws enacted are actually implemented or are within the pages of the statute books.

This research will be useful for all the stakeholders associated with children and more specifically for the Govt. of India, Parliament, State Govt., Gauhati High Court, Assam State Commission for Protection of Child Rights, Special Courts, Special Public Prosecutors, Child Welfare Committee, District Legal Services Authority, District Child Protection Unit and most importantly the Police Department.

1.6. Hypothesis:

Defect in the legal measures and lack of government initiative is primarily responsible for the failure of municipal laws in protecting the children from sexual abuse in India.

1.7. Research Questions:

- Whether the provisions of the municipal laws more specifically the POCSO Act are sufficient enough for the protection of children from sexual abuses in India?
- Whether the state machineries established by the Government of Assam to deal with the incidence of child sexual abuse are adequate enough to implement the laws against sexual abuse of children?
- Whether all the provisions of the POCSO Act are genuinely enforced by the state machinery empowered under the POCSO Act?
- Whether the enforcement machineries face any problem while discharging their functions?

1.8. Methodology & Sources of Data:

The proposed research work comprises of both doctrinal as well as non-doctrinal methods. Doctrinal research method was used to gather information and data stored in library, archives and other databases, which are already in existence. The researcher as a part of doctrinal research visited number of libraries such as Lakshminath Bezbaruah Central Library, Dibrugarh University; Central Library, MSSV Guwahati Campus; Department Library, Centre for Juridical Studies, D.U, Dibrugarh; Tinsukia Law College Library, Tinsukia; Central Library, Dr. R.K.B Law College, Dibrugarh; Jorhat Law College Library, Jorhat; Dibrugarh Bar Association Library, District Judiciary, Dibrugarh; and Centre for Child Rights, NLUJS, Assam.

The researcher uses empirical research method to find out the deficiencies in the law dealing with child sexual abuse and problem of its implementation or enforcement. As a part of non-doctrinal or empirical research, the researcher has adopted qualitative research methodology to study the system of working of enforcement machinery in practice in the district of Dibrugarh, Tinsukia and Dhemaji of Assam by interacting with the subject. Qualitative research is a subjective form of where data is obtained from a relatively small population group. Among the various approaches of qualitative research, the researcher had selected the ‘general qualitative

inquiry approach' as it was found to be most suitable for achieving the object of the research because it gave greater flexibility in terms of sample size and data collection procedures.

In order to collect the primary data as a part of empirical study the researcher has visited the following offices, institutes or places; namely-

- Six Police Stations of each district of study. They are; Namrup Police Station, Rohmaria Police Station, Moran Police Station, Barbaruah Police Station, Dibrugarh Sadar Police Station of Dibrugarh; Tinsukia Sadar Police Station, Margherita Police Station, Makum Police Station, Kakopathar Police Station, Doomdoma Police Station of Tinsukia; and Gorukamukh Police Station, Chengajanghat Police Station, Simenchapori Police Station, Gogamukh Police Station, Jonai Police Station, Dhemaji Sadar Police Station of Dhemaji. The researcher had randomly selected these Police Station considering the power and resource of the researcher. However, the Police Outposts were not taken into consideration.
- Child Welfare Committee(CWC) of Dibrugarh, Tinsukia and Dhemaji
- District Child Protection Unit(DCPU) of Dibrugarh, Tinsukia and Dhemaji
- District Legal Services Authority(DLSA) of Dibrugarh, Tinsukia and Dhemaji
- Special Public Prosecutor(SPP) of Dibrugarh, Tinsukia and Dhemaji Special Court
- Assam State Commission for Protection of Child Rights(ASCPCR)

The questions put to the respondents during interview were pre-determined and open ended but the question in the Questioner were a mixture of open ended and close ended question. Interview method was used to collect data from CWC members, DCPU members, DLSA members, Special Public Prosecutor and Member of

ASCPCR. Whereas; questioner method was used to collect data from the Police to suffice the purpose of the study.

These qualitative data cannot be analyzed with the statistical method as that of quantitative data hence the researcher had systematically arranged the interview transcripts and questioner that were accumulated in the process of collecting the data.

Thus, the study is based on two sources- Primary and Secondary.

Primary sources are -

- primary authorities such as, Constitution of India, International Instruments (Conventions, Declarations, Protocols), statutes, rules, Case laws(cases decided by the Higher Judiciary) and
- qualitative data collected by the researcher with the help of questionnaire and interview.

Secondary sources include Books, Reports, Unpublished Thesis, Research Papers presented in National Seminar, Articles, Commentaries, Journals, News Papers (Editorials and Articles) and Online Databases.

1.9. Scope of the Research:

The purpose of this study is to critically analyze the existing law to protect the children from sexual offences and find out the extent of enforcement of those laws specifically POCSO Act by various agencies empowered under the law. For the purpose of this study the researcher had selected few major enforcement agencies like the Police Officers of different Police Stations who are experienced in dealing with POCSO cases, the CWC members, DCPU officials, DLSA secretary, Special Public Prosecutor of the Special Court and member of the Assam State Commission for Protection of Child Rights. Considering the time, power and resources the researcher has confined the study area only to Indian Sub-continent and more specifically too Dibrugarh, Tinsukia and Dhemaji districts of Assam. Tinsukia covers an area of 3,790 sq. km. with a population of 13.3 lakh followed by Dibrugarh with 3,381 sq. km. with a population of 13.3 lakh and Dhemaji having an area of 3,237 sq. km. with 6.86 lakh population as per 2011 population census of Govt. of India. From population point of

view Dibrugarh and Tinsukia have the highest population whereas, Dhemaji have the lowest population among the districts of Upper Assam. The period of this research work is 2018 to 2020.

1.10. Limitations Of the Study:

Every research has its own limitations and this research study is not an exception to it. The limitations are-

- the study covers only three districts of Assam namely; Dibrugarh, Tinsukia and Dhemaji due to paucity of available resources and communication problem.
- the primary qualitative data was collected from randomly selected small population of various institutions and offices.
- role of School Teachers & Management, Medical Practitioners', Forensic Laboratories and National Commission for Protection of Child Rights were not made the universe for empirical the study.
- Judgement of the trial court of the three districts were not considered for study.

1.11. Scope Of Further Research:

There is an ample possibility of future research in this field. The present research ideology would lay the foundation for many future researchers to build in each block with their own dimensions, as the problem of child abuse and more specifically child sexual abuse can be approached from a number of aspects ranging from legal to social, political to psychological study and so on. In order to do justice to this present research and to have more accurate findings there is scope of widening the universe of the study beyond three districts of upper Assam to the entire state, region and country. Further, there is a scope to conduct empirical study to find out the causes and consequences of child sexual abuse, which can be a gray area of research for future research. There is also probability for adopting case study method wherein the Judgement of the Trial courts can be analysed in detail for finding the compliance of trial court to the POCSO Act. The future researchers can also go for comparative study with the developed nations where the cases of CSA are fewer in number with an object to find the reason for control of such crimes.

1.12. Review Of Literature:

The review of the associated literature assists the researcher in determining the extents of his or her field of study. It assists the researcher in evading unfavorable and troublesome areas and to elude incidental duplication of acknowledged findings. Also it stipulates an appropriate understanding of research methodology along with tools and techniques that has been very beneficial in earlier researches. The researcher, by reviewing the associated literature is permitted to review the suggestions and commendations enunciated by the previous investigators in their inquest for further exploration. It assists in determining the experiments of previous Inquisitions and what has to be done in the future explorations. Furthermore, review of associated literature also helps in drafting hypothesis along with its objectives. It assists in organizing the contents of the thesis and deliberating in an analytical approach. Hence, the review of associated literature such as books, journals, thesis, dissertation, etc. is considered as an essential procedure in administering a research analysis.

In the present study also, an initiation has been made to review the associated literature. The reviews of the associated literature are exhibited in a sequential arrangement.

The author **Richa Asopa**³⁷ is of the opinion that child sexual abuse is usually carried out in various forms of sexual offence like sexual intercourse, carnal intercourse and sexual assault. All the cases bearing testimony of sexual abuses are handled under section 354, 375 & 377 of IPC. He also mentioned even any attempt to commit such sexual offence is punishable under section 511 of IPC. Therefore, it is not necessary to impose any other charges regarding this law.

The author also highlights the fact that while dealing with a case of child abuse, one should give importance on the best interest of the child and not the interest of the offender. Thus, a child centric approach should be adopted in dealing with such issues. On receiving any such cases, the identity should be kept confidential, without imposing any disgrace upon the child or his/her family members. However, if the offender is himself/herself is the family member, he/she should never be spared.

³⁷ Richa Asopa, *Law relating to child abuse* (Kamal Publisher, New Delhi, 2nd edn, 2016).

Sufficient protection should be given to the person who came forward to report such cases to the police or any other body.

Hari Om Gautam³⁸ holds upto view the pressing issue of sexual assault of minor. He elucidated that child abuse is an intended use of violence on a child. The society at large even in cordial and institutional ambit has been responsible for the sexual abuse of a female child and an adolescent. He observed that the enormous fear existing in the minds of such victims has led them not to disclose such cases in public thus failing to report the cases. Many close relatives and teachers reveals such heinous acts. The shame and disgrace that the victim bore in their minds suppresses them to close their mouth without knowing about the consequences. He also observed that the repercussions of sexual abuse can be numerous. It can affect many areas of the victim's psychological functioning. A long term psychotherapy is required for the victims of the age group of ten to get by the psychological wound that have been caused by the offending act. It is seen that the pedophile too have been a victim of child abuse many a times. The author, in his book hints towards the absence of an inclusive legislation which would provide some strict compensation by the state or the convict to the victims of such crime. Also, he spells out about the unimpressive response of the legislature in this regard. The legislative award scheme and payment of compensation to the survivors of sexual abuse neither directs the Court to compensate the victims nor initiates any kind of legal right that can compensate in favour of the sufferers.

It depends completely on the will of the Criminal Court to compensate the victims and to institute legal expedient in order to retrieve the fine out of which the compensation is ordered, or the specified amount of compensation from the convict to pay it to the victims. The author emphasized the importance of paying compensation to the victim and survivor of sexual assault which have been a dearth failure in our country.

³⁸ Hari Om Gautam, *Victims of crime and the Law* (Regal publications, New Delhi, 1st edn., 2011).

Another prominent author, **S. Anuradha**,³⁹ who is remotely associated with the topic states that, child abuse is physical, sexual or emotional maltreatment of children and defines the term “child abuse” as any act or series of acts of commission or omission by a parent or other care giver that results in harm, potential for harm or threat of harm to a child. She further stated that most of such abuses take place in the child’s home, schools, communities, where they usually hang around. As per the author, a child can be exploited in various ways. However, the four major categories of it are Neglect, Physical abuse, psychological/ emotional abuse and sexual abuse.

The Author further engrossed on the elements, which leads to the commission of such crime. According to her, child abuse is a complex phenomenon with multiple causes and for addressing the problems of child abuse, it becomes very much essential to understand the causes of such abuses, in order to have a clear picture of it. Some of the key factors which leads to the commission of such acts are illiteracy, conservative society, gender biasness and cyber crime.

The author also described as to how a minor girl child can be sexually exploited commercially like for prostitution, for porn industry or for other forms of sexual activity. Further emphasizing on child exploitation, the author states that it can take place during early marriages, trafficking, domestic servitude etc. The author emotionally opined that there is a stigma associated with child pornography and nobody wants to be associated with it, which however sometimes leads to overreaction. Although such incidents are rare, it can leave a chilling effect on the society as a whole/ may traumatize the child for life. The author also expressed that, to counter the increasing threat of child pornography or sexual abuse in cyber space, new regulations should be put in place which would deter or otherwise terminate such activities in an initial stage before spreading through the internet and causing irreparable harm.

³⁹ S. Anuradha, *Children; Sale, abuse and pornography* (Medha Shri Publications, Delhi, 2nd edn., 2010).

In an edited book by **Dr. P.K. Pandey**⁴⁰ multiple issues of human rights had been addressed. Among the various chapters of this book the researcher found two most suitable chapters which were on “International Human Rights Instruments for Children” and “Human Rights of the Victims of Child Abuse: National and International perspective”.

In the former chapter of the book, the author had discussed the historical perspective of protection of human rights especially of children through the development of many international laws in the form of Convention, which have aided in protection of child rights in general and protection of children from abuse in particular.

Whereas in the later chapter, the author had dealt in various angle of child abuse and the condition of victims of child abuse. More specifically the chapter focuses on child sexual abuse in various countries worldwide including India.

In the article *‘Impact of Sexual Abuse on Personality Disposition of Girl Child’*⁴¹ as penned by **Shibnath Deb and Aparna Mukherjee**, goes on to explain about the psychology and mental state of the minor girls who went through sexual abuse and to understand the impact of such abuse that occurred on the personality of the minor girl. Further, it also ought to achieve a better understanding of this phenomenon and determine their personality disposition.

To achieve the objectives of the study, data had been collected from a group of participants, which included 120 sexually-abuse minor girls, and 120 non-sexually abused minor girls for comparison. As revealed from their findings through this study, they noticed that that the majority of the girls(93.3%) came from nuclear families and among them a significant number of them were illiterate. Among them, nearly half of the sexually abused girls were between the age of 14-17 years, and about one-third belonged to the age group of 10-13 years while rest of them belong to the age group of

⁴⁰ P.K. Pandey(ed.), *Human Rights* (APH Publishing Corporation, New Delhi, 2012).

⁴¹ Shibnath Deb and Aparna Mukherjee, “Impact of Sexual Abuse on Personality Disposition of Girl Child” 35 *Journal of the Indian Academy of Applied psychology* (2009)

6-9 years who were very young. The study also revealed that most of the perpetrators of this abuse were relatives of the victim, teachers, local acquaintances of the victim and some were even strangers to the victim. It was also revealed through this study that most of the incident went unreported because of social stigma, harassment and also fear of threats or retaliation by the perpetrators. Out of the 120 minor girls who were sexually abused, 58% of them perceived counseling to be beneficial meanwhile the remaining 41.7% perceived it as not being effective.

The study also conducted a Multidimensional Personality Inventory, which explored five personality dimensions of the sexually abused children. Significant differences were found statistically in case of all personality variables in the test, except for dependence-independence. The children who were sexually abused were found to have been more introverted, possessed low self-concept, and more anxious when compared to their counterparts, i.e. non-sexually abused children. However, it was found out that counseling, proved to be helpful in way of improving self-concept of the sexually abused minors and also in reducing their anxiety to some extent.

Sankar Sen⁴² has critically analyzed regarding trafficking of women and children for the purpose of exploitation as incorporated under the Immoral Traffic Prevention Act. The problem of human trafficking, particularly women and children have emerged as a grave social issue, which is one of the most serious affronts to the dignity and human rights of them. With rapid changes in day to day society, the author has clearly pointed out that the continuous changes in the laws of the civilized countries provides a positive sign regarding increase in consciousness of peoples about the problems relating to immoral trafficking. The author has also grabbed attention as to how the underage females are being exploited continuously in a large scale around the globe, especially in sectors like tourism and India is not an exception to it.

Although it is a borderless crime and is known to all but still the hesitation of the masses to openly discuss about the matter has further enlarged the issue, as

⁴² Sankar Sen, *Trafficking in women and children in India* (Orient Longman, New Delhi, 2009)

asserted by the author. The author further expressed that customs like “*devdasi system*” aids in the exploitation of girl child’s.

Exploitation of children’s and women’s violates the basic human rights and therefore the author has suggested certain measures in order to curve down this immoral practice. The measures are as follows:-

1. There must be a “Bench Manual” for guiding the trial courts. However, the manual must contain points apparent from international legal documents.
2. The National Human Rights Commission (NHRC) must take active steps for the prevention of exploitation of human beings especially women and underage females by equating with appropriate agencies. Etc.

The issue of child sexual abuse and the *Protection of Children from Sexual Offences Act, 2012* has been well discussed by **R.P. Kataria**⁴³. The author had in brief threw light on the concepts like child, child abuse, sexual offence, child sexual abuse with the help of definition and judicial decisions. The author recognized the various causes of sex delinquency under the heading poverty, industrial development, urbanization, change in social system, superstitious belief, influence of intoxicants, non-registration of crime etc. he have also forwarded some remedial measure for prevention of sex delinquency such as sex education, stringent laws, Active vigilance by police and many more.

The author highlighted the provisions of the *Protection of Children from Sexual Offences Act, 2012* and *Protection Of Children from Sexual Offences Rules, 2012* with his critical commentaries with the help of case laws. He is of the view the POCSO Act is the most exceptional legislation to protect child from the offence of sexual abuse in India.

⁴³ R.P. Kataria, *Comentary On Protection Of Children From Sexual Offences Act, 2012*, (Orient Publishing Company, Allahabad, 2nd edn. 2017)

Hon'ble Mr. Justice Adarsh Kumar Goel⁴⁴ included an article on the topic “Child Sexual Abuse in India: Legislative and Judicial Response” which gives a brief glimpse of the problem of child sexual abuse in India from the history till the present day. He stated that the problem of CSA is not new to Indian society rather it was present from the old period but was not discussed in length as people were least concern about such problem. However, he is of the view that before the concept of child sexual abuse evolved in the society, the concept of girl child sexual abuse got more popularity whereas, sexual abuse of male child was hardly accepted by the society. People were reluctant to believe that even a male child can be sexually abuse.

The article elaborately discussed the landmark cases that deals with the problem of child abuse namely, *Shashi V. Union of India*⁴⁵, *Shankar Kishan Khade*⁴⁶, *Vishal Jeet V. Union Of India*⁴⁷, which were described by the Apex Court. He admired the role played by the higher judiciary in order to secure the rights of child.

O. P Mishra⁴⁸ typically introduced the concept of position of women and child under the constitution of India where, he briefly discussed about the various constitutional provision which were there in the constitution from the day of its adoption as well as those which were inserted later through amendment for better well being of the women as well as children as they were deemed to be vulnerable group. He laid emphasis on the provision of Article 23 i.e. Right against exploitation which act as a shield to protect the marginalized section of the society.

He emphasized on the landmark case of *Vishaka*⁴⁹, which was decided by the Apex Court, and exhaustive guidelines were issued to prevent sexual harassment of working women.

⁴⁴ Honable Mr. Justice Adarsh Kumar Goel(ed.), *Naya Deep*, (NALSA, Delhi, 2017)

⁴⁵ AIR 2007

⁴⁶ AIR 1990

⁴⁷ AIR 1990

⁴⁸ O.P Mishra, *Law relating to women and child*, (central law Agency, Allahabad, 2nd ed. 2003).

⁴⁹ *Vishaka V. State of Rajasthan*, AIR 1997 SC 3011

The author had also elaborately discussed the problem of Child marriage, Immoral traffic, Child labour and indecent representation of women. He highlighted the causes, effect and the available legal measures against such crime in the society. He is of the view that all these crimes are although different but they ultimately lead to physical, sexual and emotional abuse of a child or women in one way or the other.

P.B. Behera⁵⁰ in his research paper titled “*Sexual abuse in women with special reference to children: Barriers, boundaries and beyond*” published in Indian Journal of Psychiatry stated that more than 70 percent of child sexual abuse are committed by family members and closely connected people, i.e. people in whom the children have trust. His findings clearly pointed out that it is not necessary that the accused and the victim are always of the opposite sex because there are many instances where the accused belong to the same sex as that of the victim.

He explained about the various posttraumatic stress disorders that are seen in a child victim after sexual abuse. In this paper, the researcher has shown concern not only about the condition of child victim but also for the women victim of sexual abuse. He concluded by stating that in India many cases go unreported due to several reasons which stand as barriers from reporting, like fear of re-victimization, shame due to the cultural & social attitude and many more.

Ahmed Siddique⁵¹ in the chapter titled “Sex offences & Deviations” well explained the concept of prostitution by stating that it involved both pleasure and pain, which takes place due to several reasons. He said that the institution of prostitution is as old as human civilization. He cited three kinds of societal responses to prostitution in order to combat the social evil they are:

- ✓ suppression
- ✓ regulation

⁵⁰ P. B. Behera, “Sexual abuse in women with special reference to children: Barriers, boundaries and beyond” 55 *Indian J Psychiatry*. 316-319 (2013)

⁵¹ Ahmed Siddique, *Criminology and Penology* (Eastern Book Company, Lucknow, 6th edn., 2011).

✓ abolition

He highlighted the provision of Suppression of Immoral Traffic Act, 1956 that was passed to remove some of the conditions, which promote prostitution. One important objects of the said Act is to rescue teenage girls who are in need of help and provision has been made for protection homes.

The author had also extensively talked about rape as one of the most popular form of sexual abuse against a female. He defined rape as combination of illegal sex and violence, which is a traumatic experience for the victim. He elaborately discussed the provisions of Section 375 of IPC, which deals with rape. He is of the opinion that the offence of rape is steadily increasing day by day, which was quite low traditionally in comparison to many other western countries.

H.O. Agarwalla in his book⁵² has kept a separate chapter on “Vulnerable Groups and their Human Rights”. In this chapter, the author had justified how child comes under the definition of human being and hence all the right that are granted to an Adult human being is also applicable to a child or adolescent. He have regarded children to be one of the most vulnerable groups within a society whose rights are violated every now and then in several form. Due to this vulnerability, the international community as well as the Govt. of India had enacted laws so that they are protected from being abused.

Authors, **VL Mony and S.K Chaturvedi**⁵³ while providing an analysis on the topic of child prostitution, emphasized on the impacts of such exploitation along with their probable causes. The authors mainly focuses on the issue of sexual abuse of minor girls and came to a conclusion that many of the victims of this abuse were forced into such positions by the social structures or their standing in society, and also through individual agents who exploit such situations. As a result, advantage is taken by preying adults who sense their vulnerability and sexually abuse them. In many of

⁵² H.O. Agarwal, *Human Rights*, (Central Law Publications, Allahabad, 13th edn., 2011)

⁵³ V.L Moni and S.K Chaturvedi, “Child prostitution, Indian context” in P.K. Pandey(eds) '*Children's Rights*' Regal Publications, New Delhi.

such cases, abuse may start at home itself, which is a part of the social structure mentioned earlier.

It was also opined by the authors, that the sexual abuse of minor girls could take place in various environments, which may include brothels, bars, clubs, homes or institutions. It was also found that many of these helpless girls were forced into this field through friends and family members as a source of making money and through criminal networks or gangs which exacerbates the problem even further. The authors further emphasized on the children's upbringing, standard of living and the working conditions as a major cause, which were often found to be poor or sub-standard.

The authors had finally proposed various measures, which can tackle this problem and uplift the sexually abused children towards a better future and to prevent future incidents, such as:

- To provide adequate education required to the children on their rights,
- To provide for an effective juvenile justice system which can guarantee the privacy, honor, respect and reputation of the minor girls,
- Social programs which can educate about protection of children,
- Protection of the civil, social, political and economic rights of the children
- Measures ensuring non-discrimination of the girl child, etc.

S.K. Chatterjee⁵⁴ have widely analysed the status of child around the world and more specifically India. He opined that children being important national assets require special attention and protection against all sorts of neglect & exploitation and it is the social responsibility of the state to work in this direction in a strong and positive manner. He is of the view that we and the State is least concerned about the welfare and protection of our children due to which even after having different legislation, policies in the national level and convention & declaration in the international level to protect children we have failed to protect them which is evident

⁵⁴ S.K. Chatterjee, *Offences Against Children and Juvenile Offences*, (Central Law Publication, Allahabad, 2nd edn. 2016)

from the rising number of offences that are taking place against our children. As per him a few common offences that are victimizing the children are child rape, kidnapping, child prostitution, abandonment, foeticide, child labour, child trafficking, child abuse etc..He strongly advocated in support of a uniform definition of child as because there is inconsistencies among the various legislation depending upon the aims and objectives of each legislation, which always creates confusion among the public as well as judiciary while deciding a case.

He while analyzing the national measures taken in order to protect children emphasized on the plan of Action, 2005 that according to him was developed to protect the vulnerable groups by providing them with the proper facilities and services according to their need. This plan categorized Children into six main groups namely-

- ✓ Children in difficult circumstances
- ✓ Children in conflict with law
- ✓ Child trafficking
- ✓ Combating child labour
- ✓ Children affected by HIV
- ✓ Sexual exploitation & child pornography

Among the various Schemes launched by the Govt. of India for protection of children the author mostly admired the Child Line Services and the Integrated Child Protection Scheme (ICPS). The child line service was launched to help the children in distress and children in need of care and protection to provide medical services, shelter, rescue from abuse, counseling and rehabilitation. The telephone helpline number 1098 was started as India's first 24 hours free and emergency phone outreach services for the children in need of special care and protection.

The ICPS was launched to reduce the risks and vulnerabilities of children so that they do not fall easy prey to action that lead to abuse, neglect, exploitations and abandonment.

Among the various offences that were dealt in the book the most vital from the researcher point of view were the offence of child trafficking, aggravated form of kidnapping, rape of child, child prostitution, child abuse and sexual offences against children.

While discussing child trafficking he identified three factors responsible for trafficking namely-

- Demand factor
- Supply factor
- Expectation factor

The author pointed out that child sex tourism and child pedophilias are busting the sex industry in the countries like India. Commercial sexual exploitation of children is not a new phenomenon or a new term for the third world countries. It mushroomed in a wide scale especially after the Second World War due to massive industrialization and urbanization.

Child pornography, which is the audiovisual material using children in a sexual context, is another form of commercial sexual exploitation of the trafficked children and is in great demand. He demanded for a special legislation in addition to the existing to combat this problem.

Speaking on child rape, he believed that the problem had not received adequate attention and because of silence, fear and shame this kind of offence can go on for years without any punishment and relief to the child. Child prostitution had been tagged as the worst of all form of child abuse, which has assumed the proportion of a multibillion-dollar industry, with children being brought, sold and traded like any other goods or commodity. He classified child prostitution in following categories-

- Common girl prostitution
- Religious prostitution
- Casual prostitution

- Prostitution in brothels
- Call girl

The author had also cited the POCSO Act as a remedial measure to curb the menace of child sexual abuse in any of its form. He very confidently concludes that if the provision of the POCOS Act will be strictly follow than our children could be protected from sexual offences and could develop in a healthy and exploitation free atmosphere.

Pinki Virani⁵⁵ in her research-based work discusses the issue of Child sexual abuse in Indian families. She observed the probable reasons of why and how it happens within a family and its devastating after-effects, which disturb the victims as they gradually, grow up with long term consequences.

Muhammad Faiz A.U⁵⁶ in his research paper presented in a national seminar on “*sexual offences against children and its methods to eradicate it*” found that 24 percent of all children have experienced sexual abuse and half of these were at the hands of the person in the position of trust or family members. He pointed out that signals of child sexual abuse are often subtle and frequently defy detection even by knowledgeable parents and experienced professionals. Hence, additional effort are needed, including parent awareness in method for reducing the risk of child sexual abuse and training for professionals and other caregivers who work with children to recognize and appropriately respond to sexually reactive behavior.

As a post victimization measure the researcher recommend that children who have been sexually abused may face severe and long-term psychological consequences and thus they should be given special mental health services so that the victim could recover sooner. The researcher strongly believes that we must promote

⁵⁵ Pinki Virani, “*Bitter Chocolate: Child sexual abuse in India*”, (Penguin Books, New Delhi, 1st edn., 2000).

⁵⁶ Muhammad Faiz A.U, *Sexual offences against children and its methods to eradicate it*, (2019) (Research paper, ICSSR Sponsored National Seminar on Child rights in India: Issue and challenges).

research, training and public education to strengthen protective factors that buffer risk factors for sexual abuse.

Dr. Nuzhat Praveen⁵⁷ in her book covered the various rights associated with a child which he/she is eligible to enjoy right from his/her birth as a human being. The author tried to explain the concept of child with the help of various international documents' and statutory law in force in India. She discussed several international convention and treaties which declared child right. She also made a thorough study of all the municipal laws and policies meant for the protection of children. She had also undergone case study of various judgement of the apex court through which she came to the conclusion that judiciary had played a pivotal role in safeguarding the rights of children.

Chris Beckett⁵⁸ addressed some of the signs which could help recognize sexual abuse in children. He wrote that only physical symptoms which are evident to the observer is not the sole criterion for determining sexual abuse, as many forms of sexual abuse do not leave any physical evidence. Physical evidence here mainly implies on that of penetrative sex, which can only be found out if it has been brought out to professional attention by the victim or through any other way.

Here, the author gives priority to those signs and symptoms which exclude physical evidence and rather that of behavioral and circumstantial ones that may bring attention to others of the possibility of sexual abuse .Apart from this the only other way of knowing of such abuse is from the child itself, or someone in their behalf, if they make such allegation.

Some of the signs as observed by the author with relation to behavioral symptoms may include:

- a. Depression
- b. Social Isolation or withdrawal from social activities.

⁵⁷ Nuzhat Parveen Khan, *Child Rights and the Law*, (Universal Law Publishing, Haryana, 2nd edn., 2012)

⁵⁸ Chris Beckett, *Child protection: An introduction* (Sage publications, London, 2nd, 2007)

- c. Anxiety and Stress
- d. Self-harm
- e. Inappropriate sexual behavior towards adults.
- f. Age-inappropriate sexual behavior with other children.
- g. Anti-social behavior towards friends or family members.
- h. Aggressive or violent behavior which may include physical aggression, attempt to hurt others etc.
- i. Sexually abusive behavior

It has been made clear by the author, that none of these symptoms independently can be determinant for ongoing sexual abuse, but if a combination of several of these symptoms together, should alert professionals to the possibility of sexual abuse.

In the book of **Debarati Halder**⁵⁹ on “*Child sexual abuse and protection laws in India*” the author have divided and analysed the topic basically into four criteria namely, role of international laws in development of municipal laws against CSA in India, Various forms of CSA in practice & punishment for those offences, procedural practice in such cases and treatment or rehabilitation of the child victim. Among the multiple International Laws, he had emphasized upon the Convention of Child Rights and Optional Protocol regarding sexual abuse of children. He had deeply analysed the consequences of juvenile offenders of sexual offences, the reporting of crimes and the provisions for protection of victims. He advocated in favor of retributive punishment so that the convict pay for his/her mistakes. Further, while a victim is rescued and sent to a shelter or home, possibilities must also be explored for foster care facility in case the assaulter lives in the family itself and the child needs homely atmosphere to come out of the trauma.

The author expressed that only when sentencing and social reintegration scenario is used in a more focused way, the victims may be encouraged

⁵⁹ Debarati Halder, *Child sexual abuse and protection laws in India*, (Sage Law Publication, New Delhi, 1st edn., 2018)

and motivated to report the crimes which in return, may help in stopping the growth of such heinous crime.

Jyoti Belur and Brijesh Bahadur Singh⁶⁰ in their paper highlights the intended benefits and the unintended consequences that might arise from the application of the POCSO law in the Indian context. Passing of the POCSO has been regarded as a major step forward in securing children's rights and furthering the cause of protecting children against sexual abuse in conjunction with a related legislation to clamp down on child marriages called the Prohibition of Child Marriage Act 2006. The letter and spirit of the law, which defines a child as anyone under 18 years of age, is to protect children from sexual abuse. This paper identifies three main issues arising from POCSO: age of consent, age determination, and mandatory reporting; issues that highlight the fact that well-meaning laws can nevertheless have unintended negative consequences.

Sudney Moirangthem & Naveen C. Kumar⁶¹ in their research article "*Child sexual abuse: Issues and concern*" laid emphasis on the various challenges in the problem of CSA both in the pre-victimization period as well as in the post-victimization period. The very first challenge to handle or control the problem of CSA is that it is an under reported offence as far India is concern. Secondly, sexual abuse of children is in the increasing graph and had evolved as a serious problem in India. As per his data analysis sexually transmitted diseases is increasing in the last two decades and the probable reason is sexual abuse or exploitation. Again, it is found that there are certain procedural drawbacks in the present law such as the issues of consent, medical examination, treatment cost, consented sexual intimacy, training of medical staff etc. Thus, he recommends amending the existing law to remove the defects.

⁶⁰ Jyoti Belur and Brijesh Bahadur Singh, "Child sexual abuse and the law in India: A commentary", *4 Crime Science- An Interdisciplinary Journal*, (2015)

⁶¹ Sydney Moirangthem, Naveen C. Kumar & Sures Bada Math, "Child sexual abuse: Issues and concern" *01 Indian Journal Of Medical Research*, 142 (2015).

Neera Bharioke⁶² chalks out some of the reasons of discrimination against a girl child in our nation. It is seen that girls are often treated as an inferior being and trained to put themselves last thus weakening their self-esteem. Society should get hold of the idea that discriminating and neglecting a child from the very childhood can instigate a life-long cascading whorl of destitution and omission from the social conventions. Many Hindu texts reveal that there are three values, which applies to girl only. Explication of these texts unveils hazardous practice that has been working as a dogma against women. Thus a girl was *Dana; a Gift, vikrya* payment as a dowry, the *afisarga*, which means abandonment.

Justice to Children⁶³ is a newsletter, which documents various articles based on Children's Rights. **Swagata Raha**, one of the authors of this newsletter, in an article, emphasized on matters related to compensation under the Prevention of Children from Sexual Offences Act, 2012 (POCSO).

The author stressed the need for the High Court to issue guidelines related to cases regarding award of interim and final compensation under the POCSO Act. These guidelines should clarify the roles of various authorities who are in charge of awarding and disbursement of compensation by the State Government through the State Legal Service Authority and should also ensure that the instructed amount be paid to the victims within 30 days, the author suggests.

She further added as a suggestion, that the Special Court should be prompt in their decision so that minor victims who are in need are not deprived any further of the interim compensation, which will be based on their testimony in court, and they must proactively consider compensation applications and use their suo-moto powers in this regard without hesitation. Further, it was suggested that the Special Court may instruct the District Legal Service Authority to file a compliance report within 30 days of the award of compensation.

⁶² Neera Bharioke, *Rights of Hindu and muslim woman* (Serials publications, New Delhi, 2014)

⁶³ Justice to Children (Bi-annual newsletter) Vol.4 Issue no VII. January 2016 - June 2016

During an interview with some actors within the Criminal Justice System, the author revealed some perilous misconceptions due to which the families of the affected rarely filed any cases for compensation, and even if they do so, compensation is rarely awarded by the Special Courts. It has also been found out that prosecutors avoid filing for compensation from District Legal Services Authority through the Investigating Officer. It was revealed to the author that even private lawyers who attempt to file compensation application have met with resistance.

Dr. S. D. Moharana⁶⁴ in his research paper published in the International Journal of Academic Research focuses primarily upon the concept of child sexual abuse, the extent of the problem, and the legal loopholes in the existing laws to prevent child sexual abuse. He observed that till 2012, there was no specific laws to address the issues of CSA and it was the various provision of IPC or any other laws like the Immoral Trafficking (Prevention) Act, 1956, The Child Labour (Prohibition And Regulation) Act, 2006 etc.

The Protection of Childen from Sexual Offences Act, 2012(POCSO) was passed as a gender neutral legislation so that it could take care of every child irrespective of his/her gender. The POCSO Act has provision for relief and rehabilitation of the child victim as soon as the complaint is lodge in the police. This act also has certain special provision that were new and lacking in IPC or any other legislation.

In an article written by **Barry M. Coldrey**⁶⁵, which was published by a journal, named *Studies: An Irish Quarterly Review* tried to throw light on the historical perspective of CSA. In the findings, he commented that the only known and the popular form of sexual abuse was rape, which again was believed to be committed only against the girls in the period i.e. before the First World War. During that period, it was believed that there is no problem like child sexual abuse

⁶⁴ S.D. Moharana, "Protection Of Children Against Sexual Offences Act, 2012: An Analytical Study", 02 *International Journal Of Academic Research*, 167 (2015)

⁶⁵ Barry M. Coldrey, "The sexual abuse of children: The historical perspective", 85 *Studies: An Irish Quarterly Review*, 370-380 (1996)

because people never believed that a child could be sexually abused with the family. However, draw attention to few of the literature where one could find the glimpses of CSA directly or indirectly. As per the author the concern over child rights got importance only in the late 20th century as because previous to it children were not regarded as independent human being rather were deemed to be the property of their father.

The article “*Towards protection of children against sexual abuse: No child’s play*”⁶⁶ published in the NUJS Law Review addresses some preliminary area of concern relating to the laws dealing with the issue of CSA. While addressing the area off concern the author had briefly analyzed The Offences Against Children (Prevention) Bill, 2005 whereby they highlighted many drawbacks in the Bill which need to be rectified before it is made an Act. As recommendation, they have urged the need for a provision for anonymity of child victims of sexual abuse and establishment of separate special court to try the cases of CSA. They have also suggested to remove the limitation period for lodging a case in cases of CSA.

Surabina Gupta⁶⁷ in her seminar paper presented in a national seminar tried to analyse the rights of children and the role of children homes in guaranteeing or preserving those rights. The researcher had made case study of the condition of children living in the children homes in the Dibrugarh district. It was found that the children home’s which are very important for the child in need of care and protection face a common problem of scarcity of adequate fund in Dibrugarh district. Due to such scarcity of fund the management could not appoint adequate staff which create problem in lack of maintenance. Secondly, the children homes were overburden with over populated. Separate sick room, counseling room etc. is not available as per the requirements prescribed in the J J Rules and manual.

⁶⁶ P. Nautiyal & A. Mal, “Towards Protection Of Children Against Sexual Abuse: No Childs Play”, 3 *NUJS LAW REV.* 77 (2010)

⁶⁷ Surabina Gupta, *Children Rights and Children Homes* (2019) (ICSSR Sponsored National Seminar on Human Rights and Gender justice).

Nayana Teron⁶⁸ has deeply studied the protective measures available for protection of children rights and the challenges that are faced by the mechanism in protecting the rights especially in the State of Assam. Although, the investigator had not directly dealt with the problem of CSA in her research paper but while addressing the problem faced by the children in India she talked about child labour and child labour as the most dangerous form of violation of child rights which got place as a matter of concern even in the international organization such as League of nation and later united nations. She noted that the legislations in India and the constitutional provisions for promotion of child rights were the effect of international convention, declaration and treaties. As per her findings child rights are severely violated in Assam due to ethnic conflicts, illegal immigration and special powers given to the Armed forces under the Armed Forces Special Power Act, 1958.

Loveleen Kacker⁶⁹ in her book discusses the various aspects of child abuse mostly emphasizing on the meaning, nature, causes and effect of child abuse in India. The author critically examines five types of abuse, namely; physical, emotional, sexual, neglect and maltreatment giving concrete examples from case study that she conducted.

In a seminar paper titled, “*Role of Judiciary in protection of rights of the children: A socio-legal study*”⁷⁰ the researchers had thoroughly studied the response of judiciary while considering the problems like right to education, child labour, child marriage, juvenile justice, adoption and sexual exploitation of children. Various landmark cases were discussed whereby the Supreme Court gave a new path to tackle this problem by passing suitable guidelines and direction to the state as well as the central Government as the case may be. It is because of these guidelines and

⁶⁸ Nayana Teron, *Child rights and its protective mechanism: Challenges in the protection of child rights in Assam*” (2019) (ICSSR Sponsored National Seminar on Child Rights in India: Issues and Challenges).

⁶⁹ Loveleen Kacker, *Child hood betrayed: Child abuse and neglect in India*, (Harper Collins, Lucknow, 1st edn. 2015).

⁷⁰ Parbin Hussain & Aisa Begum, *Role of Judiciary in protection of rights of the children: A socio-legal study*, (2019) (ICSSR Sponsored National Seminar on Child Rights in India: Issues and Challenges).

orders that the government took several initiatives in the form of appointment of commission, amending the existing laws and rules for better protection of child rights or in other word for safeguarding the rights of child.

Asha Bajpai, in her book enunciated the meaning, impact, statistics, and the legal regimes along with other problems of sexual abuse of a girl child. The author anticipated that the sexual exploitation of a girl child not only has a devastating and never-ending impact the victim, but also affects the families, community and society as a whole. Many crimes continue to be rampant and uncurbed. Similarly exploitation of children both in-house and organized racket directly connotes the societies health at large.

The author also felt that the children who have been sexually abuse suffer relentless traumas and damage, which can be physical, mental, emotional or psychological. If a proper healing treatment does not take place, the trauma may last lifelong. Sexually transmitted disease such HIV or pregnancy at an early age can be some of the catastrophic and unfortunate outcome of child sexual abuse. Absence of family support might lend the child to face desolation and disgrace by the society. At times, the child is blame for being sexually exploited as it affects the dignity and honor of the family. The author also comprehend that a sexually abused child is often made to feel guilty for such an abominable happening. This leads to the development of a sense of worthlessness' in the mind of the child. These children need to be taken good care and proper nourishment has to be given, as they might feel lonely, powerless, angry and frightened. She also indicated that depression, isolation, and self-destructiveness are also some of the short term and long-term impact of sexual abuse.

Many newspaper like Odisha Post, Sambada, Samaya Odisha Diary and The Times of India are often reviewed to gather information regarding sexual abuse of girl child in the state of Odisha. In almost every newspaper, the sexual abuse of girl child is seen to be echoed in the state on a daily basis. Sexual harassment on the school girls of Odisha emulated intermittently.

Solving the hurdles of humanity justly is not very easy. To give life to the document of law, every generation of our nation must work actively and earnestly to validate the principles of law. The problem of sexual abuse of a girl child is not a new phenomenon. It has been in practice since the early days of civilization, which is evident from our ancient Indian history. Thus, eliminating such an old practice from a country like India would be very difficult. Numerous laws and rules has been made and were envisioned to cope up with such situation from colonial period to this 21st century.

Deborah A. Connolly and J. Don Read⁷¹ had attempted to find out the historical imprints of child sexual abuse in Canada. The investigators in their research addressed the concept of Historical Child Sexual Abuse (HCSA) to indicate those persons who faced CSA in their early childhood but they realized it to be a crime only when he attained his/her majority, which is too late to get justice.

In their study it was found that in maximum cases of CSA that took place in Canada were left unreported and in many cases which were reported the victim did not get justice because of one primary reason i.e. the cases were reported many years later. Due to late reporting, it becomes difficult for the investigating agencies to gather proper medical evidence and prosecution witness with fresh and good memory based on which the prosecution could establish the case.

K. Susheel Barath and Dr. V. Mahalakshmi⁷² in their research paper analyzed the implication of the Protection of Children from Sexual Offences Act, 2012. The investigator in his finding stated that the POCSO Act is a excellent legislation because it widely addresses all the possible form of sexual abuse that may be committed against a child irrespective of his/her gender. However, it was found that even after the enactment of the POCSO Act the enactment of the POCSO Act

⁷¹ Deborah A. Connolly and J. Don Read, "Remembering Historical Child Sexual Abuse" 47 *Criminal Law Quarterly* 438-480(2003)

⁷² K.S. Barath and V. Mahalakshmi, "Legal Implication Of POCSO Act- An analysis", 01 *International Journal of Multidisciplinary Research Review* 155-162 (2016)

the ratio of sexual offence against child had not decreased rather the situation is getting worse. The identified causes for such rise in case and failure of POCSO Act are many but the few among them are lack of awareness about POCSO Act and lack of experience of the police, prosecutor and judicial officer in handling such sensitive cases. The investigator had suggested for a multi-dimensional and multi-tier for approach for holistic care of the victim of CSA so that the victim would not suffer from any psychological agony for a long time.

Nirmala Devi⁷³, in her research article observed that sexual offence against children in India were committed from the ancient period in various forms such as ‘*devadasi system*’ in the name of religion. However, it is not that this type of crime is prevalent in India alone or in among the Hinduism only; rather it is established that it is committed all over the globe even in the developed western countries irrespective of religion, because crime has nothing to do with religion.

Sexual offences against children takes place in several form and few of the identified types as per the researcher are child prostitution, child marriage, unnatural offence, child trafficking, kidnapping, child pornography, buying and selling of child and the most heinous child rape. She claimed that all these crimes are although recognized and punishable under the Indian Penal Code and other specific laws like POCSO Act, Child Marriage (Prohibition) Act, Immoral Trafficking (Prevention) Act etc. but still these crimes are increasing in number when it is compared with the previous year recorded data. The researcher concludes with the finding that poor economic condition and poverty are the primary causes aiding in all forms of exploitation of children including sexual exploitation.

The book “**Law and Child**”⁷⁴ critically studies the status and rights of children not only in India but abroad. The primary objective of this book is to draw attention of the readers of this book towards the helpless condition of children, their

⁷³ Nirmala Devi, “Sexual offences against Children in India: On the Higher Side” , 07 *International Journal of Recent Scientific Research* 13335-13350 (2016).

⁷⁴ Nirmal Kanti Chakrabarty, M. Kumar Nag & S.S Chatterjee, *Law and Child*, (R. Cambray & Co. Private Ltd., Kolkota, 1st edn. 2004).

exploitation and their suffering. In the Indian context the book discusses the constitutional provisions and the varieties legislations that were enacted for welfare and betterment of children in various perspectives like; child labour, children education, juvenile justice and other offences against children. Concisely the author had also discussed on the concept of CSA and its challenges in trial procedure. The book is a combo pack of all child related legal issues and hence the scope is very wide. The authors had tried to analyze every problem that a child faces in the society and the initiative of the Government machinery as well as judiciary in protecting their rights from violation. The authors had also made an effort to understand the causes, effect and challenges to tackle those problems in an effective manner.

Karnika Seth⁷⁵ observed that the laws available to protect children in India from the offence of cyber pornography are inadequate in comparison to the laws existing in U.K and U.S.A. She highlighted that in India we only have the Information Technology Act, 2000 and the POCSO Act, 2012 that deals with cyber pornography but as per her, both these act do not give full proof protection to children from cyber pornography due to the lacunas within the law and enforcement mechanism. On the other hand, she find that the laws like Protection of Children Act, 1978 and Obscene Publication Act, 1959 of U.K and Section 1466 A of Title 18, United State Code of U.S are much more efficient law in comparison to the Indian counterpart. It is because they address almost all the aspects of child pornography and hence there are scope for better protection to children from falling prey to crime like child pornography.

Child abuse although is an old perception but sexual abuse of child was not recognized in the society as a major problem due to which there is scarcity of available literature on child sexual abuse apart from few text books, commentaries and journal articles. Those authors who have dealt with the subject of child abuse have mostly dealt with the meaning, classification, causes and effect of child abuse in general.

⁷⁵ Karnika Seth and Dr. Rama Sharma, “Overview of Laws against online child sex abuse in India, U.K & U.S”, 02 *International Journal Of Research* 142 (2015)

Apart from it, few books were published even before the enactment of the POCSO Act, 2012 and amendment of the criminal law of India due to which the new laws and procedure are missing in those books. However, there were few books which were written after the enactment of the POCSO Act, 2012 and Criminal Law Amendment Act, 2013 but these books concentrated only on the explanation of the bare legal provisions of these laws without any critical observation to the same. The authors have done a very little work on analysis of the working of the enforcement mechanism and most specifically the role of District Child Protection Unit (DCPU). Unfortunately the researcher has not found any specific research work carried out on protection of children from sexual abuse and specifically in districts of upper Assam.

1.13. Chapter Plan:

The researcher has divided the thesis in eight (8) chapters depending on the requirement and classification of various aspects of the subject.

Chapter I- Introduction

Chapter II- Historical perspective of Child sexual abuse and global consensus

Chapter III- Legal provisions against sexual abuse of children in India

Chapter IV- Causes and Consequences of child sexual abuse

Chapter V- Enforcement machinery and the Challenges

Chapter VI- Judicial findings on child sexual abuse

Chapter VII- Summary and concluding observation

Chapter VIII- Suggestions