Chapter - I

INTRODUCTION
Introduction

Childhood is one of the most important phases of life. In this period a child goes through various aspects like education, building relationships among group members, peers, family, etc. Hence this period is a distinct, transitional and formative phase of personality growth, structured and influenced by social forces, where in patterns of behaviour are acquired, relationships developed and values imbibed.

Despite the importance of this stage in the development of an individual, atrocities against children especially sexual abuse are on increase. The World Health Organization provides a statistics of an estimated 150 million girls and 73 million boys under 18 who have experienced forced sexual intercourse or other forms of sexual violence involving physical contact. One in every four girls and one in every seven boys in the world are sexually abused. In the light of this trend, the concern for welfare and development of children has grown worldwide during the last century. Through International and national policies various countries all over the world are trying to develop better framework, goals and are prioritizing strategies to protect the rights and welfare of children.

However, there still remain multifaceted issues which affect the welfare of the children. One of the major difficulties is the lack of consensus or definition about the age category of a ‘child’. In order to bring unanimity to the definition of a child in reference to the age range the United Nations has come up with its own definition. The United Nations Convention on the Rights of Children now defines a child as an individual below the age of 18.

At an international level, The United Nations Convention on the Rights of Children, ratified by member countries of United Nations including India on 11th December, 1992, requires all its State Parties to undertake all appropriate national, bilateral and multilateral measures to prevent child sexual abuse in
various forms. UNCRC also states that its signatories shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse. Based on these provisions member countries formulated policies to protect the rights of the children in their respective countries. India being a signatory to UNCRC has also been able to come up with policies and laws to protect the rights of the children.

The Constitution of India has in it several provisions to this effect, including clause (3) of article 15, clauses (e) and (f) of article 39, articles 45 and 47, imposing on the State a primary responsibility of ensuring that a child’s basic human rights are completely protected. Whereas Article 39 particularly mentions that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

Although India has the back up of these policies and systems to tackle the issues of child sexual abuse, unfortunately the data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the ‘Study on Child Abuse: India 2007’ conducted by the Ministry of Women and Child Development. In India, 53.22% children reported having faced one or more form of sexual abuse. Of this, 50% abuse is from persons known to the child or those in a position of trust and responsibility.

When it comes to the scenario of Kerala, statistics by the State Crime Bureau states that more than 700 child rape cases were reported in 2014. A total of 637 Child Sexual Abuse cases got registered all over Kerala in 2013. It accounts for an increase of almost 9% of cases compared to the previous year.
In 2012, the number of cases registered was 455 and in 2011 the number of cases was 423. If we compare the above mentioned statistics with the study conducted by the Ministry of Women and Child Development then it’s possible to understand that very few cases are even making it into the justice system. This raises questions on the effectiveness of our systems in addressing such issues. The nature of sexual abuse cases that come into the justice system are also complex. The socio-cultural and religious differences also add to the difficulty of solving the problem in an effective manner. This study is an attempt to analyse how the justice system which represents the state, intervene against child sexual abuse in spite of the complex nature of child sexual abuse cases in Kerala.

**Statement of the problem**

The issue of child sexual abuse has always caught the attention of the mass, media and society. The scars it creates in the mind of the victim and those who related to the child are deep. Long term effects like learning disorders, bipolar disorders, posttraumatic stress disorder, suicidal tendency, absconding, alcohol and drug abuse etc. are found among the victims of child sexual abuse. (Bietchman et al., 1991). Often such cases are analysed by the society based on the cultural system prevailing within them. Many may look at it as a taboo many others consider it based on a moral and ethical background. It has always been a debated matter that whether such exploited children receive justice through the justice system existing in our country. Although there are various provisions within the law intended to protect the child and provide opportunities for rehabilitation and treatment, yet the penetrable power of the legal system in child sexual abuse cases are always questioned by the experts in the field. The interests of the child, both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence. It is also
added that, due regard for safeguarding the interest and well-being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of special courts for speedy trial of such offences has to be made. This aspect of child friendliness has been underlined in section 22 of National Charter for Children, 2003.

Many provisions in the Indian Penal Code or any other law, which are currently used by our justice system to address the issues of child sexual abuse, have different descriptions and definitions for the children, which act as a huge barrier in the provision of justice. The presence of personal laws in the aspect of marriages also adds to the confusion and complexity.

Although the new legal measures like Protection of Children from Sexual Offences Act of 2012 has been enacted recently still, its effectiveness in protecting the children is yet to be tested and it will take time to assess this too. Hence the provision of justice for sexually abused children has always been a path fraught with difficulties for the justice system and also for the victim who has shown the courage to come forward.

The juvenile justice policy in India is structured around the Constitutional mandate prescribed in the language of Articles 15(3), 39(e) & (f), 45 and 47, as well as several international covenants, such as the UN Convention on the Rights of the Child (UNCRC) and the UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules). Juvenile Justice Act of 2000 and related justice providing systems like Child Welfare Committees are playing a crucial role in addressing the issues of child sexual abuse. Section 31 of the Juvenile Justice Care and Protection of Children Act, 2000 states that Child Welfare Committees have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the
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children as well as to provide for their basic needs and protection of human rights. Juvenile Justice Act also mention that Child Welfare Committees shall function as a bench of magistrates and shall have the powers conferred by the code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or as the case may be a Judicial Magistrate of the first class. These can be considered as the few systems to which a child initially comes in to contact in a sexual abuse case. These are the crucial times where the support from justice systems is necessary for the children. Due to the uniqueness of the case coming into the justice system, the professionals within this system have to consider the cultural values of Indian society, concepts of child, family and sexuality while delivering justice to the victims.

A study by Anderson & Franklin Bob (1995) highlight the difference in procedure of justice delivering system for the victims. The professionals have been seen to use various criteria while providing services to the clients, although they work in the same structure of law and services. Such criteria and differences in application by professionals are yet to be recorded appropriately and adequately within the Indian scenario, although such attempts have been made in other countries. A systematic study by McCabe Maryann (1981) portraits such state intervention in the lives of sexually abused children in New York. This study has also come with findings which throw light on the strengths and weaknesses of their justice systems while delivering services to the victims of child sexual abuse. Within the Indian scenario similar studies can throw light at the interaction between the client and justice systems, the various services provided etc. It can also generate ideas regarding child sexuality, cultural and legal aspects. More than the legal aspects of the issue such research can generate findings which assess how our systems respond to child rights, which is of course a national and international concern. Hence the researcher feels that an in-depth study is required in this field to understand and uncover this area.
Significance of the study

Nowadays we see and hear an increase in the reports of children being sexually abused in society. It may be argued that this is due to the disintegration of family system and other support systems. So it lays duty on the state to protect the interest of sexually abused children. Among these, very few reported cases enter the justice systems while the rest are covered up or have never surfaced at all. As the number of atrocities against the children is on the increase, there are questions about the abilities of the child protection systems in Kerala. Thus it has become very essential to assess whether our systems are well equipped with various laws and facilities to handle the diverse nature of child sexual abuse cases in a child friendly manner. The findings of this study can help to plan programmes and shape policies which can address multifaceted issues related to sexuality, child sexual abuse, the effectiveness and efficiency of our justice systems or state intervention mechanisms in Kerala.

But unfortunately the studies in this field in Kerala are scarce and have not been explored in depth. Most of the studies have only scratched the surface of this complex issue. In fact a deep study is what is required in understanding the real issues and such a study can increase the scope for pinpointing unseen problems, developing new theories and findings in the related field.

Another crucial aspect of this study is that Indian legal system has implemented a new law regarding child sexual abuse i.e. The Protection of Children from Sexual Offences Act, 2012. The Act has been approved only recently. This study is well placed to assess the state intervention since the introduction of the new law. Therefore, this study is an attempt to throw light into various untouched areas of state intervention especially by focusing on the functioning of Child Welfare Committees and how it handles the victims of the child sexual abuse in order to protect the rights and welfare of those children.