

Child abuse elimination in pakistan law general essay

[Law](#)



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ABSTRACT

Most of the child protection laws are out-of-date in Pakistan. The Pakistan Penal Code 1860 does not contain punishments for child sexual abuse offences, also does not differentiate offences that relates to children and adults. These facts need comprehensive laws dealing with child sexual abuse offences. This lacuna in the criminal law of Pakistan has given rise to the research question" whether the criminal justice system in Pakistan needs improvements to response child sexual abuse?" This article focus on the issues:-• What is child sexual abuse?• The developments in the child sexual abuse laws and the role of superior Judiciary in different countries. • The laws existing in Pakistan and the role of superior judiciary in dealing with the issue of child sexual abuse. • The amendments required in the criminal law to respond child sexual abuse in Pakistan. • Recommendations for preventing and addressing issues of child sexual abuse. What we need are the comprehensive amendments in the criminal justice system of Pakistan to interpret laws to combat child sexual abuse. Keywords: child sexual abuse, laws, Pakistan, prevention.

1. INTRODUCTION

Sexual abuse of any form has never been tolerated by any religion. Islam forbids homosexual acts and declares these acts as punishable. The Holy Quran teaches that the most sinful act is the act of homosexuality, this is the Message of God conveyed to human beings through the Holy Quran[1]. The people of Lot were destroyed and severely punished by God for committing homosexual acts. There is very strict punishment for illegal sexual

intercourse in Islam. Christianity forbids sexual abuse in the same way and every child is a unique individual created by God. According to Bible[2], God is concerned for children and anybody who causes sexual abuse to a child will be punished heavily. Sexual contact of any kind between a grown up and a minor including fondling and kissing is strictly forbidden in Jewish law[3]. Jewish law is very strict on this subject, forbids intentional illicit thoughts and those activities which may result in sexual stimulation. Jewish law forbids intentional self-stimulation and illicit sexual thoughts. It even forbids a number of gentle activities that may bring about sexual stimulation. Children are the supreme national asset and the future of a nation depends upon its children. No one can ignore child's importance in a society because the growth and development of a nation depends upon the well-being of its children. The term child abuse may include physical abuse, sexual abuse, emotional abuse and neglect. Child sexual abuse is improper sexual behaviour with a child. It includes touching or fondling the genitals of a child or inducing a child to fondle an adult genitals, child molestation (with or without penetration), sodomy, rape and pornography. Child sexual abuse is a major problem in almost all societies and child molestation is increasing day by day. Child sexual abuse exists in Pakistan and the incidence is higher than generally perceived. The purpose of the study is to substantiate that child sexual abuse exists in Pakistan and the laws available in Pakistan are not enough to combat child sexual abuse. This study comparatively analysis the developments made in the child sexual abuse laws in USA, UK, India and Pakistan. This research study uses the primary sources such as pieces of legislation and the relevant constitutional provisions as well as the case-law

of various countries including Pakistan. The secondary sources include literature on customary law such as books and world-wide web. The purpose of this research study is to present the information base that will help government to formulate the necessary legislation, to develop improvements in the criminal justice system of Pakistan to deal with this problem. The overarching responsibility is that of the state and it is the state that has to create a protective environment and presents a safety net for children who fall into vulnerable and exploitative situations.

2. DEFINITION OF CHILD SEXUAL ABUSE

There is no precise and comprehensive definition of child sexual abuse, however, sexual abuse to a child refers to violent sexual acts which will physically and mentally harm a child. Child sexual abuse is a burning problem in almost all countries and especially in Pakistan. Child sexual abuse is a an attempt or sexual assault by a grown up man or by a child of older or same age towards the child to commit sexual act with him without his consent. Kemp[4]in 1978 defines child sexual abuse as," The involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend, to which they are unable to give informed consent or that violates activities that they do not fully comprehend and to which they are unable to give informed consent, or that violate the social taboos of family roles" Salter[5]in 1988 defines sexual abuse as," Sexual activity between a child or adolescent with an adult or another child five years or older than the child." There are two categories of child sexual exploitation or abuse. The first is non-contact which includes exhibitionism, voyeurism, sexual comments, pornography, making

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pornographic films of a child and exploitation. Second category is Contact which includes kissing a child or touching a child with sexual intents, fondling, masturbation, oral sex, intercourse. Most common types of child sexual abuse in Pakistan are abduction for sexual abuse, molestation, rape, sodomy or incest and murder after sexual abuse. The United Nations Convention on the Rights of the Child 1989[6] which is also known as CRC is a treaty to safeguard the human, social, cultural, civil, economic, health and safety rights of the children. The Convention defined a child as a human being under the age of eighteen years, unless a different age of majority is recognised by the law of a country. This convention has a binding effect on all the nations ratified. This Convention consists of 54 articles and two Optional Protocols. This convention recognises the right of a child to survive in society, to have equal opportunities to develop himself, fully protected against any harms likely to occur to him, protection against any form of sexual abuse and the right to fully participate in his family, social and cultural life as the basic human rights of the children. The basic principle of the Convention is that every child has equal rights without any discrimination. The rights describe by the Convention are belong to the human dignity and harmonic development of every child. The basic purpose of the Convention is to protect children's rights. Article 34 declares that the States are responsible to protect children from all forms of sexual abuse and are responsible to take all necessary measures on all levels to eradicate this evil.

3. DEVELOPMENTS IN CHILD SEXUAL ABUSE LAWS IN DIFFERENT COUNTRIES

3. 1. UNITED STATES OF AMERICA

In the United States hearsay evidence is admissible in evidence in child sexual abuse cases with few exceptions. Hearsay evidence is very important in child sexual abuse cases. Generally trials take a long time for their conclusion and a child have the fear of forgetting the evidence which he is going to record in the trial court. Moreover during the trial, the child also disturbed mentally. The Courts must understand this condition of the child and must give value to the hearsay evidence to bring the culprit to justice. The case titled as Ohio v. Robert[7], established the foundation for allowing hearsay evidence, statement of the actual witness who was not available was so trustworthy and reliable that the Court considers it justifiable that another person permitted to repeat it in the Court. The reliability of a statement depends upon the Court to decide whether it is true. In White v. Illinois,[8]the Supreme Court has to settle question of admission of hearsay evidence in the presence of the Confrontation Clause of the Sixth Amendment[9]. In this case Randall White charged with offence of assaulting sexually a four-year-old girl, during theft in a residential building. The occurrence witnessed by the babysitter by hearing the screams of the victim child. White was found guilty by the Court and appealed in the High Court arguing that the hearsay testimony of the babysitter was not valid in presence of the Confrontation Clause[10]. The High Court unanimously decides that the Confrontation Clause has no link with admissibility of hearsay evidence. The US Supreme Court comes to the conclusion that in

this case the hearsay evidence corroborated with the medical evidence and considering the principle of " Res gestae, upheld hearsay evidence as valid. In Coy Versus Iowa[11], the US Supreme Court held that the use of screen between the child and the accused during the cross-examination was not a violation of the Confrontation Clause. The argument that the use of screen was prejudicial and was an infringement of the due process also rejected by the US Supreme Court. In Maryland Versus Craig[12], The Supreme Court declares that it is in the best interest of justice that there should an evidentiary hearing before the commencement of the trial, where it will examine that what affects made on the child giving testimony in the presence of the accused. In Idaho vs. Wright[13], the US Supreme Court considered to examine the question what are the exceptions in the hearsay evidence which are admissible in the presence of the Confrontation Clause. The US Supreme Court set forth a test which comprised of two parts to determine whether hearsay evidence admitted in child sexual abuse cases. Firstly, hearsay evidence has to fall into an exception of the hearsay rule to be admitted in evidence. Secondly, the statement will be inadmissible in evidence if the statement does not fall under a hearsay exception that is not firmly based. The statement will meet the standards of admissibility of the Confrontation Clause, if it is trustworthy. New Jersey Versus Michaels[14], Kelly Michaels convicted of sexually abusing children while they were in a day care Centre and imprisoned for 5 years. He filed an appeal. The victim children in this case interviewed and asked highly leading, suggestive, and coercive questions. The Supreme Court held that the interviews of the victims like interrogations were not proper, and there will be substantial

likelihood that the evidence derived from the victims was unreliable, instead of this practice a pretrial hearing initiated in which the state was bound to prove beyond any shadow of doubt by a clear and convincing evidence that the testimony of the victims was reliable enough to warrant admission of trial. *Coy v. Iowa* and *Maryland v. Craig* set the principles for the arrangements of closed circuit television or screen between the victim and the offender to testify the child without any fear and face to face contact with the accused in child sexual abuse cases. In the cases *Idaho v. Wright* and *White v. Illinois*, hearsay exceptions admitted. The judgment delivered in the *White* case has a wider applicability and threatens the Confrontation Clause rights claimed by all accused. The United States Supreme Court responds to the developments in the child sexual abuse cases by acknowledging the difficulties faced by the prosecution. The US Supreme Court considered the facts that the court rooms atmosphere is not suitable to the child sexual abuse victims damaged by physical as well as psychological effects, and therefore, introducing developments in all levels to make the courtrooms more friendly. The Child Abuse Prevention and Treatment Act[15] is a development in child sexual abuse laws in the United States. CAPTA enacted on January 31, 1974 and amended several times, lastly amended on 20-12-2010 by the CAPTA Reauthorization Act of 2010. CAPTA authorizes the United States Federal Government to play an active role in research, technical assistance and data collection activities. The Offices of Child Abuse and Neglect were established under this Act.

3. 2. UNITED KINGDOM

The Sexual Offences Act, 2003[16] is a great development in child sexual abuse laws in the United Kingdom. The government believed that the existing laws relating to sexual offences have been out dated, therefore, this act introduced to reform the laws, specially laws in child sexual abuse cases. This new Act makes consent the key feature between the sex contacting parties. A clear definition of consent added. The accused has to prove that the sexual act has done with consent of his partner. It widened the definition of rape by including penetration in vagina, anus or mouth with or without consent. It also introduces a new offence of assault by penetration of an object in vagina or annus such as bottle or any other thing. It also includes in sexual assault the intentional sexual touching without consent. This Act declares the age of a child at 18 years and provides protection for all sexual offenses to a child under the age of 16 years. It introduces new criminal offences including familial sexual abuse, offences committed by adult relatives and offences giving protection to persons with mental disorder. This Act also re-designs offence of abuse of a trust position towards a child and introduces effective measures to protect children from sex offenders. This Act introduces for the first time, offence of voyeurism. The Sexual Offences (Scotland) Act, 2009[17] provides a comprehensive framework of laws for sexual offences in Scotland. This Act repeals the old laws relating to rape, sodomy and a several other offences relating to sexual abuse and particularly introduces new statutory laws relating to sexual abuse which take place without consent. This Act defines consent as free agreement. The Social Work (Scotland) Act 1968 introduced the system of children's hearing,

which is now included in the Children's Hearings Scotland Act, 2011. Its aim is to combine justice and welfare for children. In *Re P. B. (a minor)*[18], it was held by the Court that evidence of the doctor about the statement given by a child during the interview cannot be struck out on the ground that it was against the hearsay rule but the court may admit it on its discretion. In the proceedings relating to wardship cases, the most important purpose before a court is the welfare of a child. It is the duty of the court that the rules of procedure and the rules of evidence will not apply in such a manner to prejudice the welfare of the minor. If the evidence available is the only one which could prove the alleged sexual offence with which the accused charged.

3. 3. INDIA

In India children are also victims of sexual abuse like other countries, they are sexually abused by family members, relatives, servants, teachers and friends. The laws relating to sexual offences are found in the Constitution of India[19]and in the Indian Penal Code 1860[20]. But the real developments in the child sexual abuse laws made by the superior judiciary of India through their judgments on this subject. *Sakshi vs. Union of India and Ors*, [21]is a landmark judgment in the judicial history of India relating to the child sexual abuse cases, the Supreme Court holds that the laws in Indian Penal Code are not sufficient enough to cover all sexual offences against women, or child sexual abuse. Previously, the Delhi High Court holds that the penetration by father to his eight years old daughter was neither a rape nor an unnatural offence, and declared it as hurt or an outrage of modesty.

Appeal filed in the Supreme Court of India. Sakshi (an NGO) filed the petition

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in the year 1997 and contended in its petition the scope of sections 375 and 376 of the Indian Penal Code 1860 is very limited and it will extend to include other forms of sexual offences which intends to degrade or humiliate a women or child. Considering the sensitivity of child sexual abuse and rape cases, the Supreme Court established that the victim and witnesses will prevent from face to face contact with the accused during trial by using a screen or similar arrangements. The Court established that the defence side should put their questions in cross-examination to the child in writing through the trial judge and the trial judge should explain those questions to the child victim clearly and in a simple language. The Court holds that in camera proceedings are mandatory in cases even penile penetration have not been occurred. Sheba Abidi versus State of Delhi[22], the Delhi High Court keeping in view the principles established in the Judgment passed by the August Supreme Court of India in the case of Sakshi, established further parameters in cases of child sexual abuse. The Court established that the court is responsible to assure that the child was not psychologically traumatized, and the court should allow the child to give evidence outside the court, if the child was uncomfortable in the court atmosphere and feel reluctant to go inside the courtroom. Further the child entitles to get support of any person including the family member or parent to accompany him during the trial proceedings. The Court established that the child victim can testify outside the Court. In the case State of Punjab vs. Gurmit Singh[23], the Supreme Court has made the observations that the trials relating to the child sexual offences will be held in camera and held that in camera trials are mandatory in cases relating to child sexual abuse. The Court also held that

women judges should conduct the hearing of these types of cases and the court is responsible to consider all these factors and the process of cross-examination will not be a means of harassment to the victim. As a result of these judgments, The Protection of Children from Sexual Offences Act, 2012[24] was passed by the Indian legislature. This Act introduces child friendly procedure for recording the statement of a child, at the place of his choice and by a woman police officer of a higher rank and the police officer will not be in uniform while recording his statement. The child can require the help of a translator or an expert. In case of disability, the child can take assistance of a special educator for communication. No aggressive questions are allowed to be put to the child during his cross-examination. The child statement must be recorded within 30 days. Trials should be conducted in-camera. Special courts will be established for trial of offences under this Act. Under this Act, onus of proof shifts on the accused considering the child's innocence. The period of one year is fixed for conclusion of a trial. The media cannot disclose the child's identity without the prior permission of the Special Court.

4. CHILD SEXUAL ABUSE IN PAKISTAN:

Child sexual abuse exists in Pakistan. It has become a very serious problem in our society. A minor girl or boy is abused or raped every second day in Pakistan. There is no official agency which prepares a data of this crime. Child molestation would certainly be a child abuse but all acts of child abuse would not necessarily be child molestation. Sexual molestation of a child is of various types. It could be fondling of the genital organs of the child, or it could be showing him nude photographs to arouse his sexual emotions or it could be in form of physical nudity with the object of sexually provoking or

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using a child. The child sexual abuse acts or the child sexual molestation have not been categorically defined as offences in the Pakistan Penal Code or in any other law of the State. Child sexual abuse becomes a common and serious problem in Pakistan, the most recognised forms are molestation, sodomy, rape, sexual abuse without penetration and abduction for sexual abuse which sometimes resulted in murder of the child. Commercial sexual exploitation of children is another serious problem in Pakistan. Boys targeted more than girls. Both boys and girls used in the prostitution business. Boys are available for prostitution at bus stops and hotels. However, girls supplied in private homes and hotels. Prostitution is illegal in Pakistan, but existed under the cover of dancing business. In prostitution business, virginity of a girl at an early age has sold on a very high price in Pakistan, called "NathUtrai" or "first night." Sexual abuse is improper sexual behaviour with a child. It includes touching or fondling the genitals of a child or inducing a child to fondle an adult genitals, child molestation (with or without penetration), sodomy, rape and pornography. There are no specific laws about child sexual abuse in Pakistan like The Child Abuse Prevention and Treatment Act in USA, The Sexual Offences Act, 2003 in UK and The Protection of Children from Sexual Offences Act, 2012 in India. Most of the existing laws have not been specifically made offences relating to child sexual abuse or sexual molestation in our criminal law. Equal protection of law envisaged in Article 25 of the Constitution of Pakistan 1973[25] means that no person or class of persons would be denied same protection of law enjoyed by persons or other class of persons in like circumstances in respect of their life, liberty, property or pursuit of happiness. Persons similarly

situated or in similar circumstances treated in same manner. The concept embodied in Article 25 of the Constitution of Pakistan 1973 is similar to Article 7 of the Universal Declaration of Human Rights[26]. No discrimination allowed in case of children. Further, Article 37(e)[27]of the Constitution of Pakistan, 1973 stipulates that the state shall make provisions for ensuring equitable and humanitarian conditions of work for children and women ensuring that they are not employed in vocations which are not suited to their age or sex. Section 82 of the Pakistan Penal Code, 1860[28]provides that a child under the age of seven years is not guilty of a crime. Section 375 PPC[29]provides the definition for rape and section 376 PPC[30]provides punishment for rape. Section 377 PPC[31]deals with unnatural offences, e. g., sodomy. Section 3 of The Police Order 2002[32]provides that it is the duty of police officials to aid individuals who are in danger of physical harm particularly women and children. State versus Abdul Malik[33]is a landmark judgment which establishes the basis for development of laws relating to child sexual abuse in Pakistan. The High Court holds that the rape of a minor would ordinarily result in feeling of fear and insecurity in society, therefore, the offence would be covered by Anti-Terrorism Act, 1997. Secondly no law in Pakistan has defined child molestation. Most of the foregoing acts have not been specifically made child molestation an offence in our criminal law. The rape of a child is a serious form of child molestation and the punishment for zina-bil-jabr provided in Section 7 (Offence of Zina)Enforcement of Hudood Ordinance, 1979[34]. The act of child molestation being a heinous offence tried by a special Court constituted to try terrorist offences. The Court further holds that penal laws should amend to make the child sexual

abuse offences punishable. The High Court Further Holds that section 6 clause (c) Anti-Terrorism Act, 1997,[35]appears to have drafted in haste and child molestation in its various meanings have not been defined nor any punishment prescribed for other types of child molestation. The High Court directs the Government to examine desirability of some affirmative action in the light of this judgment. In another case titled as Akhter Ali Versus The State, it was held that the rape of a minor child is a serious offence and a feature of horror.

5. EFFECTS OF CHILD SEXUAL ABUSE

The sexual abuse of children affects us all. It is very serious problem in our society. Sexual abuse of a child not only physically hurts the child but also demolished them mentally. Child sexual abuse destroy the child's innocence. They will never trust another adult due to the mishap they suffered in their life. Children cannot be used for sexual intercourse as they are not physically or mentally grown up. Sexual intercourse between a grown up man and five years old child can not possible. This unrealistic behaviour shows the mental sickness of the offender who sexually abused a child to satisfy his lust. This is the behaviour of a monster and not a civilized person. The sexual abuse of a child has very bad effects on the victim, it mentally destroyed a child and the child become sexually aggressive. The child lost trust on his family and relatives in case of familial sexual abuse. The child victim psychological suffers more serious and dangerous consequences as compare to physical effects. They will affect by anxiety, aggressiveness, guilty feeling and depression. The sexual abuse of a child involves serious impacts on victim's body, honour, privacy, safety and right to independence. The victim's life

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totally ruined and he becomes unable to live a normal life. The child always feel used and dirty and thus mentally disturbed in his whole life.

6. PREVENTION AND ELIMINATION OF CHILD SEXUAL ABUSE IN PAKISTAN

In the year 2010, a total number of 2595 cases reported of child sexual abuse in Pakistan[36]. Unfortunately, there is no official agency in Pakistan for maintaining the data of child sexual abuse cases. The newspapers only highlighted the brutal nature of child sexual abuse cases such as rape or sodomy resulted in murder of child. Preventive measures against child sexual abuse must improve an increased in number. The most important is the development in the criminal justice system regarding the child sexual abuse offences. The state cannot punish citizens without specific laws warning them that particular conduct will be dealt with by way of punishment in a particular manner. The criminal law is the strongest arm of all the normative systems of the society by which it punishes, controls, curbs and prevents crime in the society. The evil has lived with the mankind from its beginning and the society has to make continuous efforts to keep it at bay and the criminal law keeps undergoing change to meet the new challenges. The basic purpose of the criminal justice is to save the society from evil, to free it of crime. The criminal law will interpret, apply and enforced in a manner to achieve these objectives. We need a comprehensive criminal justice system to eliminate child sexual abuse from our society, and this object should only be achieved by awarding punishment to deter people from committing this crime. Child molestation should include as an offence in the Anti-Terrorism Act, 1997. Judges are particularly accountable to their

conscience and more than this to Almighty Allah. A crime free society can only be set up if every citizen irrespective of his colour, creed, religion and status is to provide justice and in this respect court can play a vital major role. Campaigns will launch to aware society about the child sexual abuse and exploitation. Media and NGO's should play their effective role in these campaigns.

CONCLUSION

Security of persons is an essential function of state and this purpose can only be achieved through the medium of criminal law. Protection of society is the aim of law which must accomplish by imposing proper sentence. Law should adopt the remedial machinery in operating the sentencing system. It will be a denial of justice, when an accused allowed to evade the major penalty while facing such cruel acts. The court is responsible to award a proper sentence considering the nature of the offence and the way in which the offence committed. The social effect of the crime, when it relates to offences against children requires exemplary punishment. Child molestation affects the child's dignity. The physical scar may heal up, but the scar on her soul will always remain. The victim lost her valuable and priceless dignity. This study on child sexual abuse expects to place the subject of child sexual abuse on the national agenda. Need to discuss the issue of child sexual abuse in different forum. The central government, provincial governments, civil society, families and children themselves need to understand the rights perspective and together create the enabling environment wherein a child is protected from abuse and exploitation. The momentum needs to be sustained and should be carried forward in the form of a movement that will

take all stakeholders along the road to sustainable development and create a protective environment for the children of Pakistan. In a democracy, the State includes in three constitutional organs the Legislature, the Executive and the Judiciary, which must play their effective and active role to combat child sexual abuse. It is the fundamental duty of a state to protect children from sexual exploitation. Parliament should legislate laws and these laws effective only with the strict enforcement by the executive authorities. It is, therefore, essential to develop model legislation covering all elements of child sexual abuse.

RECOMMENDATIONS FOR ADDRESSING ISSUES OF CHILD SEXUAL

Based on the findings of the study, the following recommendations for addressing the issue of child sexual abuse are proposed.

RECOMMENDATION RELATING TO LEGISLATURE

A comprehensive law should be enacted which will cover all offences relating to child sexual abuse like the child sexual offences laws in USA, UK and India. Child molestation should include as an offence in the Anti-Terrorism Act, 1997, triable by the special court established under the Anti-Terrorism Act, 1997. The punishment awarded for child molestation is death penalty or imprisonment for life. Parliament will amend the Criminal Procedure Code, 1898 and the Qanun-e-Shahadat order, 1984 to fill gaps in the procedural law. The age of child will declare 18 years instead of 7 years.

RECOMMENDATIONS DURING THE TRIAL

Child friendly procedure should introduce for recording the statement of a child in the court room. The child can require the help of a translator or an expert. In case of disability, the child can take the assistance of a special educator for communication. No aggressive questions will allow to put to the child during his cross examination. Alternative moods of recording evidence will introduce by amending the relevant laws such as video trial, the use of screen, pre-recorded interviews of the victim child. Child evidence will record within 30 days. Trials should conduct in-camera. The maximum period of one year should fix for conclusion of a trial.

RECOMMENDATIONS RELATING TO POLICY

The Juvenile Justice System Ordinance, 2000 needs to implement at every level in Pakistan. The standard operating procedures should use effectively. The sexually abused children should rehabilitate by counseling at the police station and in their houses. Training workshop should conduct to train the judiciary, prosecution, defence lawyers and the law enforcement agencies. Child sexual abuse should include in the law slaybus.

RECOMMENDATIONS RELATING TO LAW ENFORCEMENT AGENCIES

An Anti-Child Sexual Offences Unit should establish in every police sub-division. A monitoring cell should establish at the District Police Office for monitoring and collecting data. Forensic Laboratory should fully equipped with latest equipment. The investigation officer should not below the rank of a sub-inspector, who will be responsible for recording the statement of the child victim and registration of the First Information Report (FIR). The <https://assignbuster.com/child-abuse-elimination-in-pakistan-law-general-essay/>

investigation officers should be supportive and co-operative to the child and the family. The police shall make arrangements for the medical examination and transportation to the hospital of the child victim. The police officer should make proper arrangements for the child's visit to the court room. Make use of proper investigative techniques. A psychologist should be arranged for the child victim. This role should be assumed by the public prosecutor.

SUGGESTIONS FOR FURTHER RESEARCH

Findings of the current study confirm a lacuna in the laws relating to child sexual abuse in Pakistan. Further research is needed to enact laws for the elimination of child sexual abuse in Pakistan.