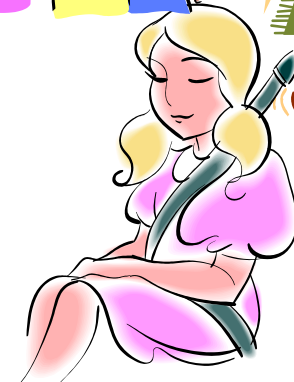


# Effective adjudication and sentencing of crimes against children



Roshan Dalvi  
Judge, Bombay High Court,  
India



Children are little people

Who need **big rights**

- Dr. Klaus Kankel

# Crimes against children

Infanticide  
Infanticide

Child Traffic

Child Labour

Female Foeticide

Aggravated Rape

sodomy

Outraging Modesty

Pornography

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Paedophilia

Sexual Abuse

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# Crimes against children under POCSO

Sexual Assault

Penetrative Sexual Assault

**Aggravated Penetrative  
Sexual Assault**

Sexual Harassment

Aggravated Sexual Assault

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# The Two Tests

- Lesser numbers, Greater attention
  - At Home
  - In School
  - In Countries
  - In Courts
- The 3 Rs
  - Recognize
  - Resist
  - Report

The trouble is too many people grow up.

They don't remember what it's like to be a 12 year old!

# Partners of the System

- Parents
- Teachers
- Friends
- NGOs (Community Service Providers)
- Medical Officers
- Police Officers
- Legal Officers
- Judicial Officers
- Criminal Justice Agencies

**Awareness creation**  
*(for victim needs)*

**Attitudinal change**  
*(for State goals)*

Your children will see you by what you live  
Than by what you say

# Objects of the partnership

- Culture Change
- Talking to men by men (*MAVAW*) (*VAWA, 1994 USA*)
- Anti-violence messages for -
  - Government
  - Faith-based organizations
  - Community groups
  - Work places



Your Attitude determines  
Your *Altitude*



# Legal provisions

- International covenants
  - Universal Declaration of Human Rights
  - Covenant for the Rights of the Child (CRC)
  - Convention for Elimination of all kinds of Discrimination Against Women (CEDAW)
  - Convention on the Elimination of all forms of Racial Discrimination (CERD)
  - Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (CAT)
  - International Covenant on Civil & Political Rights (ICCPR)
  - International Covenant on Economic, Social & Cultural Rights (ICESCR)

# Legal provisions (Contd...)

- National laws
  - Constitution of India
  - Indian Penal Code (IPC)
  - Immoral Traffic Prevention Act (PITA)
  - Bonded Labour (Prohibition) Act
  - Domestic Violence Act (DV Act)
  - Child Labour (Prohibition) Act
  - POCSO Act
  - Juvenile Justice Act (JJA)

# Rights of Children

- ✓ Right against exploitation
- ✓ Right to information
- ✓ Right to representation and hearing
- ✓ Right to assistance
- ✓ Right to privacy and confidentiality
- ✓ Right to protection and safety
- ✓ Right to speedy trial
- ✓ Right to rehabilitation / voluntary repatriation
- ✓ Right to compensation
- ✓ Right against forceful deportation
- ✓ Right to sue for traffickers for compensation

# Impact of abuse / violence

- Destroying psychology
- Devastating life
- Bitter shock
- Disgust,
- Disbelief
- Suspicion
- Helplessness
- Frustration
- Anxiety
- Loss of security
- Feeling of guilt
- Fear of disclosure
- Confusion

*I hold that the more helpless a creature,  
the more entitled it is to protection by men,  
from the cruelty of men – Mahatma Gandhi*

# Re-victimization / Secondary victimization

- Police investigation
- Medical examination
- **Court trial** - Order of re-examination of witnesses  
“India’s Other Daughter re-victimized by law(pla)yers”

Justice without force is powerless;  
Force without Justice is tyranny.

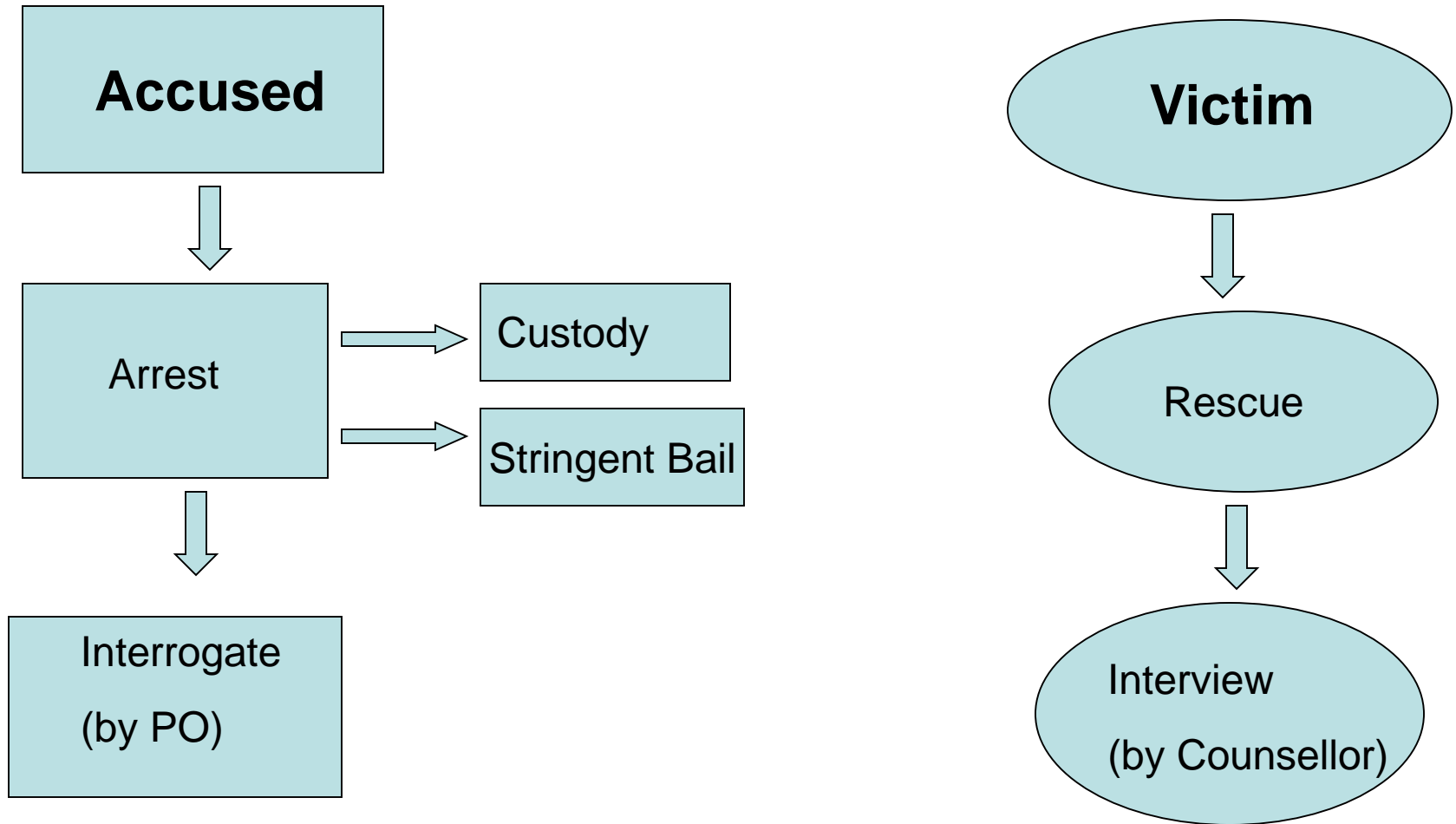
# The child / victim dilemma

- Child v/s. adult syndrome
  - Child friendly atmosphere
- Victim v/s. accused syndrome
  - Victim representation
  - Victim support
  - Victim participation

The concept of fairness to the accused must not be stretched till it is narrowed to a filament

– Justice Benjamin Cardozo,  
US Supreme Court

# Accused v/s. Victim



# Kinds of victims

- Verified minors – below 18 years
- Possible minors – might or might not be a minor, but prima facie, a minor
- Verified majors – above 18 years

## Proof of Age:

**Birth Certificate** (Ravindra Gorkhi Vs. State of UP 2006 INSC 314, Ashwani Kumar Saxena Vs.State of MP AIR 2013 SC 553)

**School Leaving Certificate**

**Medical opinion**



# Troubles of the Judiciary

- Number of cases not reported
- Number of cases not pursued
- Some child witnesses tutored
- Some witnesses turn hostile
- Some cases doctored
- Collusive investigation

The crime problem is in part an overdue debt that a country must pay for ignoring for decades the conditions that breed lawlessness

- Earl Warren

# Requirements of the Criminal Justice System

- Infrastructure
  - Victim Support Centres
  - Victim Examination Suites
  - Video recording of statements
  - Video recording of evidence
- Interpretation
- Sensitivity
  - Court climate
  - Court room conduct

*Mankind owes to the child  
The best it has to give*

# Interpretation / Precedents

- For the kind of crime
  - AIR 1967 SC 63 - Outraging modesty has to do with the intention of the accused and not the state of the victim
- For corroboration
  - 2005 (1) Crimes 37 SC – Since victim is not an accomplice, no corroboration is required
- For victim representation
  - 1987 MLJ 49 @ 58 – Permission to engage Advocate must be given freely to the Complainant
- For disclosure of defence
  - 2006 (1) SCC 283 - Court to draw inference upon the accused not having explained the circumstances for the evidence put to him.

# Interpretation / Precedents

- For degree of doubt
  - AIR 2003 SC 3617 – Reasonable doubt is not an imaginary, trivial or possible doubt, but the doubt based upon reason and common sense
- For sentencing policy
  - 2005 (1) Crimes 40 SC – Sentencing policy should be such as to reflect the conscience of the society
- For extent of punishment
  - 2001 Cr.LJ 1579 (Bom) – Punishment for rape of a 3 year old child should be severe

**Be Cruel to be Kind**

# Interpretation / Precedents

- For reformatory directions
  - AIR 2000 SC 1069 – Psycho therapeutic treatment was ordered for a rapist of a child of 2 years
- For guidelines of lesser punishment
  - AIR 2000 SC 1470 – Significance of adequate and sufficient reasons for lesser punishment explained
- For the test of Justice
  - AIR 2003 SCW 4065 - Held that letting the guilty escape is not doing justice according to law

*Liberation is not deliverance*

# Stages requiring sensitivity

- The stage of bail
  - Hearing the victim, the accused and the State
- The stage of evidence
  - Recording of evidence
  - Appreciation of evidence
- Decision
  - Sentencing
  - Fine
  - Compensation
  - Rehabilitation

To pardon the oppressor,  
is to deal harshly with the  
oppressed.

Law cannot prevent  
what it cannot punish

# Judicial Sensitivity

- Court Climate
  - Special Courts / Officers
  - Priority in disposal
  - Fixed dates / time
  - Victim support & representation
  - Contact with Court officials
  - No contact with accused

*The Child shows the Man  
As Morning shows the Day  
- John Milton*

# Judicial Sensitivity

- Courtroom Conduct – *child friendly*
  - Evidence in Chambers
  - Specific place for all
  - Victim Confidentiality
  - Recording of evidence, through Court
  - Rest time, breaks

Cure the disease and  
kill the patient ?



