

ECPAT



COUNTRY OVERVIEW

*A report on the scale, scope and context
of the sexual exploitation of children*

DECEMBER, 2021



INDIA

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PREFACE

Recent years have seen unprecedented progress towards embedding the child's right to protection from sexual exploitation more deeply into the global agenda, no more so than the global mandate to eliminate the sexual exploitation of children (SEC) enshrined in the Sustainable Development Goals (SDGs) adopted by world leaders in 2015.

ECPAT Country Overviews on SEC provide an effective tool for advocacy at all levels as well as for monitoring, including on government commitments made in the SDGs to end violence against children in all its different forms by 2030.

ECPAT Country Overviews are first and foremost, a desk review exercise that gather and present all the existing publicly available information into a comprehensive summary of all forms of SEC in a country. They do not contain any new primary data. They also provide an assessment of achievements and challenges in implementing counteractions - including the participation of children themselves - to eliminate SEC.

ECPAT Country Overviews also suggest concrete priority actions urgently needed to proactively advance the national fight against SEC and enable the monitoring of the implementation of international instruments on child rights related to sexual exploitation that have been ratified by the State. Furthermore, the ECPAT Country Overviews provide well-organised information and research, which can be used in preparing Alternative Reports and Additional Submissions to the Committee on the Rights of the Child and the Human Rights Council.

During the process, drafts are shared with ECPAT members, relevant local organisations, and experts working on the ground who review the content and supplement the information with other local sources and analysis. ECPAT International greatly relies on the contributions of all those involved in producing these reports and would like to express its profound appreciation for their invaluable inputs.

AT A GLANCE

India has a population of 1.380 billion people, approximately 437 million of whom are under the age of 18. In 2020, the World Bank estimated that the gross domestic product per capita was 140,815 Indian Rupees (\$USD 1,900 as of November 2021) slightly above average for South Asian countries. However, while India has progressed economically, poverty remains a widespread problem, with the latest available estimates from 2015 indicating 176 million people continue to live in extreme poverty.

A complex hierarchical social system exists in India. While discrimination based on caste was made illegal over 70 years ago, discrimination persists. A child from any caste can be vulnerable to sexual exploitation, however, the associated stigma, poverty and social exclusion that persist for some castes can also exacerbate vulnerability. Girls from lower castes are particularly vulnerable to sexual violence and exploitation, which is also a symptom of widespread gender discrimination in India. Gender norms diminish girls, and they can face limited freedoms regarding education, work and marriage, which can result in sexual exploitation – including through instances of child, early and forced marriage. Similarly, gender norms can fuel stigma and discourage disclosure of sexual exploitation by girls as their victimisation may be read as further devaluing of them (for example as virginity of girls is prized). Gender norms may also contribute to stigma and shame around sexual exploitation of boys in a different way. Males are expected to be ‘strong’ and to ‘take care of themselves’, which discourages help seeking and perhaps even brings ridicule if a boy discloses he has been victimised.

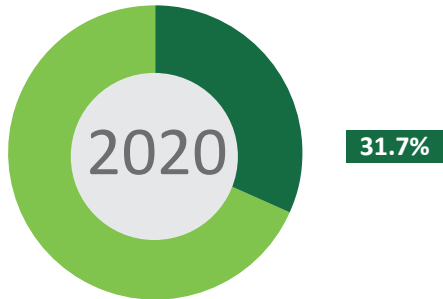
India has ratified most major international conventions against child sexual exploitation and is party to additional international legal frameworks. While national level legislation has gradually adapted to align with its international commitments, limitations still exist. Many offences relating to children are grouped with those relating to adults, and gendered provisions still provide unequal treatment of boys and girls. For example, child rape under the Indian Penal Code only refers to girls, leaving boys legally unprotected for this crime under that law.

The country also lacks any specific national action plans on child sexual exploitation, although some forms of child sexual exploitation are addressed in wider child protection government action plans, such as the National Plan of Action for Children 2016, which covers trafficking, child early and forced marriage and online child sexual exploitation. The plan does note the growing issue of the sexual exploitation of children in the context of travel and tourism, however does not outline any actions to tackle the issue.

POPULATION

SOURCE: UNICEF (2021). *The State of the World's Children 2021*

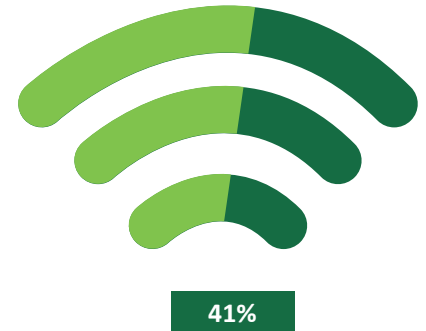
Children under 18 years



INTERNET ACCESS

SOURCE: ITU Statistics 2020: Country Profile

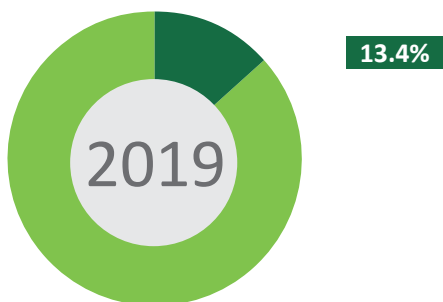
Have internet access



POVERTY RATE

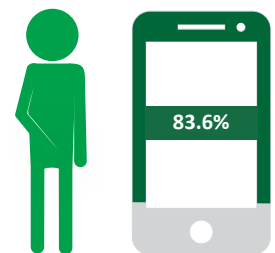
SOURCE: Poverty & Equity Data Portal: World Bank

Living under the national poverty line



MOBILE PHONE USERS

SOURCE: ITU Statistics 2020: Country Profile



83.6 subscriptions
per 100 inhabitants

CHILDREN'S RIGHTS UNDER THE LAW

	Girls	Boys
Age of consent for sex	18	18
Minimum age for marriage	18	21
Legal working age	14	14
Compulsory age of schooling	6-14	6-14

INTRODUCTION

India is an Asian country bordering Afghanistan and Pakistan to the north-west, China, Bhutan and Nepal to the north and Myanmar and Bangladesh to the east.¹ The country is a parliamentary democratic republic² that spans a large geographical area and is made up of 28 states and 8 union territories, with the capital being New Delhi.³ According to the latest available statistics from UNICEF, the population of India was 1.380 billion in 2020, with 31.7% of the population being under 18 and 8.4% being under 5.⁴ Between 2013 and 2019, 3% of Indian boys and 1% of girls were not enrolled in primary education.⁵ Whilst this is below the global average (7% for boys, 9% for girls),⁶ the numbers rise sharply when the focus is shifted toward upper secondary education. Indeed, 47% of boys and 48% of girls were not enrolled in upper secondary education in the same period, numbers that are well above the global average (35% for both boys and girls).⁷ Lower levels of education are associated with risks of sexual exploitation.⁸ Research has found that when young people are not enrolled in education, they feel outside of the social mainstream and are thus more likely to be targeted by adults and peers who may exploit them.⁹ Additionally, the education system also works as a protection mechanism for children, enabling a sense of belonging and stability.¹⁰

India is a religiously, socially and culturally diverse country, with the data from the last Census in 2011 showing that 79.8% of the population were Hindu,

14.2% Muslim, 2.3% Christian, 1.72% Sikh, with the remaining population covered under other religions or not stated.¹¹ The Constitution lists 22 scheduled languages within India,¹² with the 2011 Census highlighting Hindi as the most widely spoken (43.6%) followed by Bengali (8%) and Marathi (6.86%).¹³ A complex social hierarchical caste system exists in India.¹⁴ Although discrimination based on caste was made illegal by the Constitution over 70 years ago,¹⁵ evidence shows that members of scheduled castes, particularly women and girls, continue to face widespread discrimination and vulnerability to sexual violence - including sexual exploitation.^{16,17} A child from any caste can experience sexual exploitation, however, the associated stigma, poverty and social exclusion that persist can also exacerbate vulnerability.^{18,19}

In 2020, the World Bank estimated that the gross domestic product per capita in India amounted to 140,815 Indian Rupees - \$USD 1,900 as of November 2021 - (higher than the average of equivalent of 133,700 Indian Rupees - \$USD 1,800 as of November 2021 for South Asia).²⁰ Further, the 2019 Human Development Index ranked India 131st out of 189 nations, between Namibia (130th) and Honduras (132nd).²¹ Despite substantial progress throughout the 2000's in reducing absolute poverty, this remains a widespread problem in India, with the latest World Bank estimates from 2015 indicating that 176 million Indians were living in extreme poverty.²²

1 Government of India. (n.d.). *India at a glance: Profile*.

2 *Ibid.*

3 *Ibid.*

4 UNICEF. (2021). *The State of the World's Children 2021: On My Mind – Promoting, protecting and caring for children's mental health*. 189.

5 *Ibid.*, 229.

6 *Ibid.*, 231.

7 *Ibid.*, 229.

8 ECPAT International. (2016). *Power, Impunity and Anonymity*. 39.

9 London Metropolitan University. (2017). *Key messages from research on child sexual exploitation: Professionals in school settings*. 5.

10 *Ibid.*

11 Government of India. (2011). *Census Data*.

12 Government of India. (1949). *The Constitution of India*. Eighth Schedule.

13 Government of India. (2011). *Census: Population by Mother Tongue*.

14 BBC. (2019). *What is India's caste system?*

15 Government of India. (1949). *The Constitution of India*. Articles 14-15.

16 International Dalit Solidarity Network. (2016). *Briefing Note: Caste Discrimination in India*.

17 Equality Now. (2021). *Sexual Violence in South Asia: Legal and Other Barriers to Justice For Survivors*. 8.

18 Divyendu Jha & Tanya Sharma. (2016). *Caste and Prostitution in India: Politics of Shame and of Exclusion*.

19 Equality Now. (2021). *Sexual Violence in South Asia: Legal and Other Barriers to Justice For Survivors*.

20 The World Bank. (2020). *GDP per capita - India, South Asia*.

21 UNDP. (2019). *Latest Human Development Index Ranking*.

22 The World Bank. (2020). *Poverty and Equity Brief: India*.

This is an issue that has been exacerbated by the COVID-19 pandemic and subsequent containment measures.²³ High rates of poverty are likely to indicate heightened risk of children being sexually exploited.²⁴ Indeed, given that poverty is so often a driving factor behind the sexual exploitation of children, demand often gravitates towards areas in which economic deprivation is higher.²⁵

Gender discrimination is a major concern in India, with girls facing limitations on their free movement, education, work, marriage and social relationships.²⁶ In its most extreme form, gender discrimination manifests in high levels of sexual violence against women and girls. The 2020 Indian National Crime Record Bureau shows that there were 28,046 recorded cases of rape against women and girls.²⁷ Further, high levels of stigma are attached to rape in India, as well as shame and silence associated with sexual abuse and assault.²⁸ Given that very low levels of reporting²⁹ mean that the true number of sexual violence victims is likely to be much higher,³⁰ it is likely that the same will apply to offences against children. In addition, gender discrimination can manifest itself in the form of social norms such as dowry, which continue to exist within India despite being prohibited by law.³¹ Such practices diminish girls and women and act as an important driver for child marriage.³² Dowry practices symbolically commodify girls. Dowry is often directly proportional to the age of the bride, and families with limited economic resources may feel compelled to marry daughters early in order to keep the dowry within an affordable range while simultaneously reducing the family's financial commitments in raising the child.³³

Although much of the above has focused on girls, boys may also be negatively affected by certain norms within India. Research has shown that there may be a lack of focus on the vulnerabilities of boys to sexual crimes.³⁴ Further, gender norms may also contribute to stigma and shame around sexual exploitation of boys in a different way. Males are expected to be 'strong' and to 'take care of themselves', which discourages help seeking and perhaps even brings ridicule if a boy discloses he has been victimised. Therefore, it is expected that crimes relating to the sexual abuse and exploitation of boys are underreported in India.

Child labour is widespread within India, and many states across India have inadequate legislation addressing the issue.³⁵ Whilst it is difficult to estimate, the International Labour Organisation in 2015 put the number at 12.9 million children between 7-17 in 'employment', primarily working in agriculture and unpaid family work, most of whom are not attending school.³⁶ The number deemed to be in 'child labour' by the International Labour Organisation by their formal definition is 5.7 million.³⁷ In 2020, the former UN Special Rapporteur on the sale and sexual exploitation of children emphasised that globally, sexual exploitation may happen concurrently with labour exploitation, domestic servitude or forced labour.³⁸ This is compounded by contemporary research that highlights sexual abuse and exploitation as possible correlates of child labour in the Indian context.³⁹

India ranked 15th out of 60 countries in the 2019 Out of the Shadows Index on countries' responses

23 Ibid.

24 ECPAT International. (2016). *Power, Impunity and Anonymity*. 42.

25 Ibid.

26 UNICEF. (n.d.). *Gender Equality*.

27 Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*. 216.

28 Centre for Child and the Law, National Law School of India University. (2018). *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues*. 32.

29 Choudhry V, Dayal R, Pillai D, Kalokhe AS, Beier K, Patel V. (2018). *Child sexual abuse in India: A systematic review*. PLoS ONE 13(10).

30 Equality Now. (2021). *Sexual Violence in South Asia: Legal and Other Barriers to Justice For Survivors*. 12.

31 Soni, Suparna. (2020). *Institution of Dowry in India: A Theoretical Inquiry*. *Societies Without Borders* 14 (1), 3.

32 Jejeebhoy, S.J. (2019). *Ending Child Marriage in India, Drivers and Strategies*. New Delhi: UNICEF. 18.

33 ECPAT International. (2020). *Summary Paper on Child, Early and Forced Marriages as a Form of, or Pathway to Sexual Exploitation of Children*. Bangkok: ECPAT International. 6.

34 Choudhry V, Dayal R, Pillai D, Kalokhe AS, Beier K, Patel V. (2018). *Child sexual abuse in India: A systematic review*. PLoS ONE 13(10).

35 Sanlaap India. (2021). Personal Communication.

36 ILO. (2015). *Measuring Children's Work in South Asia*. 50.

37 Ibid.

38 UN Special Rapporteur on the sale and sexual exploitation of children. (2020). *Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*. A/ HRC/43/40. Paragraph 35.

39 Kaur, N & Byard, R. W. (2021). *Prevalence and potential consequences of child labour in India and the possible impact of COVID-19 – a contemporary overview*. *Medicine, Science and the Law*.

to child sexual abuse and exploitation developed by the Economist Intelligence Unit, with a score of 58.2.⁴⁰ This places it just below Serbia (59.1) and one place above South Africa (58.1). This overall score measures how elements in a country's environment exacerbate risks of sexual exploitation and abuse

for children; measures how national systems enable children to seek justice; lists what commitments the government has made to addressing sexual violence against children; and assesses the role that civil society and industry are currently playing in addressing the issue.

40 The Economist Intelligence Unit. (2019). *Out of the Shadows: Shining light on the response to child sexual abuse and exploitation*.

CONTEXT FOR SEXUAL EXPLOITATION OF CHILDREN IN INDIA

EXPLOITATION OF CHILDREN IN PROSTITUTION⁴¹

Article 2 (b) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) defines ‘child prostitution’ as “the use of a child in sexual activities for remuneration or any other form of consideration”.⁴²

Limited specific research on the exploitation of children in prostitution makes it difficult to estimate the scale of this problem. A 2019 study on trends within child trafficking published by Toast Advisory and Global Fund for Children shows that children are exploited in brothels, massage parlours, spas and private houses of big cities such as Mumbai and New Delhi, as well as in the state of West Bengal.⁴³ This is also confirmed by cases reported in the media, in 2018, for instance, six girls exploited in a Mumbai brothel were rescued by the anti-trafficking police.⁴⁴ Moreover, according to the same 2019 study, the exploitation of children in prostitution in Mumbai has been decentralised, moving away from the old red-light district of Kamathipura.⁴⁵ Technology has facilitated these changes to the way customers buy sex. This also means that offenders involved in trafficking and child labour may interact more anonymously in identifying victims to exploit.⁴⁶ In addition, due to this decentralisation, prostitution has become less obviously visible to authorities and organisations providing monitoring, support

and care, increasing the likelihood that the exploitation of children in prostitution settings is going unnoticed.⁴⁷ Media reports also indicate that exploitation in prostitution also occurs in rural areas and can be fostered by financial pressures and few economic alternatives.⁴⁸



Formal crime data should not be used to indicate real prevalence related to sexual exploitation when bearing in mind the underreporting already discussed, yet statistics on crimes related to children exploited in prostitution illustrate this is occurring across India. The 2020 Indian National Crime Record Bureau showed 2,471 reported cases of “procurement of minor girls”; 14 reported cases of “selling of minors for prostitution” and one reported case of “buying of

41 ECPAT prefers the term ‘exploitation of children in prostitution’ instead of ‘child prostitution’ in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 30. Bangkok: ECPAT International.

42 UN General Assembly. (2000, May 25). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. (A/RES/54/263). Art. 2(b).

43 Toast Advisory – Global Fund for Children. (2019). *Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India – Final report*. 18-24.

44 International Justice Mission. (2018). *6 freed from Mumbai brothel amid a busy festival season*.

45 Toast Advisory- Global Fund for Children. (2019). *Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India – Final report*. 18.

46 *Ibid.*, 13, 14.

47 *Ibid.*, 18.

48 Safi, M. (2019). *The Indian village where child sexual exploitation is the norm*. The Guardian.

minors for prostitution”.⁴⁹ Out of 14 cases of “selling of minors for prostitution”, 2 concerned boys and 12 girls; while the only case concerning “buying of minors for prostitution” involved girls.⁵⁰ From this data it seems that boys are not greatly affected by exploitation in prostitution, however, as mentioned earlier in this report, patriarchal society and predominant social norms around masculinity⁵¹ make it difficult for boys to report situations of exploitation.⁵²

In India, sexual exploitation of children in prostitution can be observed in some customary practices. In the Hindu religion,⁵³ girls designated as *devadasi*, servants of God, historically worked in temples carrying out a range of duties, which also included acting as concubines to temple priests.⁵⁴ A study on the implementation of *devadasi* prohibition laws (first introduced nationally by the Scheduled Castes and Scheduled Tribes Act in 1989)⁵⁵ conducted by the National Law School of India University in 2018, highlighted that 92% of the 62 *devadasi* women who participated in the study became *devadasi* when they were minors and all came from scheduled castes.⁵⁶

At the beginning of the first Indian COVID-19 lockdown in March 2020, a massive reverse migration saw around 50,000 to 60,000 people move from urban centres back to their homes over just a few days.⁵⁷ In May 2020, it was reported that 122 million people had lost their jobs.⁵⁸ In the face of this massive economic upheaval, it is highly likely that economic hardship will have increased many children’s vulnerability to sexual exploitation.⁵⁹

ONLINE CHILD SEXUAL EXPLOITATION

Online child sexual exploitation (OCSE) can include child sexual abuse material (CSAM),⁶⁰ live streaming of child sexual abuse, online grooming of children for sexual purposes, sexual extortion of children and various CSAM-related conducts (production, distribution, downloading). Article 2 (c) of the OPSC defines ‘child pornography’ as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”.⁶¹

The Internet and Mobile Association of India reported that there were 504 million active Internet users in 2019 of which 71 million were estimated to be 5-11 years old - predominantly accessing the Internet through the mobile device of a family member.⁶² Of the active Internet users, 14% were 12-15 years old, 17% were 16-19 years old and 34% were 20-29 years old.⁶³ Most Internet usage was through a mobile device in both urban and rural areas.⁶⁴ The same study reported a gender divide in the profile of Internet users.⁶⁵ In 2019, 35% of Internet users were female in India, decreasing to 31% in rural areas.⁶⁶ The increasing use of mobile phones and the proliferation of Internet access,

49 Government of India, National Crime Record Bureau. (2020). *Crime in India 2020*. 3.

50 *Ibid.*, 322.

51 Choudhry, V., Dayal, R., Pillai, D., Kalokhe, AS., Beier, K., Patel, V. (2018). *Child sexual abuse in India: A systematic review*. PLoS ONE 13(10).

52 Stop Trafficking and Oppression of Children and Women (RBC Trust), India. (2021). Personal Communication.

53 Kumar, T. (2019). *The Devadasi system – A tradition India regrets*. IndianFolk.

54 Pandey, S. (2018). *Trafficking of children for Sex Work in India: Prevalence, History, and Vulnerability Analysis*. *E-Journal of the Indian Sociological Society*. vol 2. 24.

55 Government of India. (1989). *Scheduled Castes and Scheduled Tribes Act. Section 3(k)*.

56 Wilson, B. (2019). *A Qualitative Study of the Legal Dimensions of ‘Devadasi’ Dedication Phenomenon*. 24.

57 UNICEF Regional Office for South Asia. (March, 2021). *COVID-19 and Migration for Work in South Asia: Private Sector Responsibilities*. UNICEF, Kathmandu. 18.

58 Caritas India. (2020). *Human Trafficking and exploitation in India during the COVID-19 pandemic*.

59 UNICEF Regional Office for South Asia. (March, 2021). *COVID-19 and Migration for Work in South Asia: Private Sector Responsibilities*. UNICEF, Kathmandu. 18.

60 ECPAT prefers the term ‘child sexual abuse material’, but in a legal context still uses ‘child pornography’ in line with the recently widely adopted Terminology Guidelines, 40.

61 OPSC, Article 2(c).

62 Internet and Mobile Association of India. (2019). *Digital in India 2019 – Round 2 Report*. 3.

63 *Ibid.*, 7.

64 *Ibid.*, 10.

65 *Ibid.*, 6.

66 *Ibid.*, 6.

although bringing huge positives also presents potential risks of child sexual exploitation, offering offenders new ways to groom and exploit children.⁶⁷

With a score of 97.5 on the Global Security Index, which measures the commitment of countries to cybersecurity at a global level, India was ranked an impressive 10th out of 182 countries, and 4th in the Asia-Pacific region in 2020.⁶⁸ Despite this high ranking, concerns were raised in 2020 within the upper house of the Parliament of India, the Rajya Sabha, about the prevalence of CSAM in India.⁶⁹ Growing awareness of the issue has seen increases of recorded incidents of cyber-crimes against children, with the National Crime Records Bureau reporting 1,102 cases of cyber-crimes against children in 2020,⁷⁰ up from 305 cases reported in 2019.⁷¹ Among the 1,102 cases of cyber-crimes against children for the year 2020, 738 cases⁷² were registered as “cyberpornography/hosting of publishing obscene sexual materials depicting children”,⁷³ a sharp increase compared to the 45 cases in 2018⁷⁴ and 102 cases in 2019.⁷⁵ In addition, Childline India Foundation reported that between April 2019 and March 2020, among the 73,165 calls regarding abuse and violence that they received through Childline, a free emergency helpline for children in need of aid and assistance, 489 were flagged as related to cyber-crime, which includes cyber bullying and CSAM.⁷⁶ These numbers are likely the tip of the iceberg. Research indicates very few children impacted by online sexual exploitation tend to report.⁷⁷ In fact, a research study on CSAM in India indicated that there were as many as 5 million searches per month across 100 Indian cities that

included search terms possibly related to CSAM, such as “teen sex”, “child porn” or “schoolgirl sex”.⁷⁸

In January 2020, the Rajya Sabha set up an ad-hoc committee that presented a report with 40 recommendations on addressing child sexual abuse material online and the prevention of the sexual abuse of children.⁷⁹ The report outlines measures Internet service providers and online platforms should take, such as age verification measures for children, as well as incorporating technology that can detect child sexual abuse materials.⁸⁰ This need for improved cooperation of social media platforms with law enforcement is also highlighted by media reporting on groups sharing CSAM via platforms including the encrypted app Telegram.^{81,82} In addition, research has identified technology facilitating the sexual exploitation of children in the context of travel and tourism in Goa, with offenders accessing children through social media platforms.⁸³ After befriending them online, they arrange a meeting with the children in order to exploit them.⁸⁴ According to the same research, offenders also use social media platforms and websites to advertise children for sexual exploitation.⁸⁵

The COVID-19 pandemic has also likely increased vulnerabilities for children online. Reports published by INTERPOL and EUROPOL, among others, demonstrated that during COVID-19 related movement restrictions, when we all spent more time online, there were increases in reported concerns related to some forms of online child sexual exploitation.^{86,87} Indian research regarding confinement measures increasing the amount

67 ECPAT International. (2020). *Summary Paper on Online Child Sexual Exploitation*. Bangkok: ECPAT International. 2.

68 International Telecommunication Union. (2020). *Global Cybersecurity Index 2020*. 25.

69 Government of India, Press Information Bureau. (2020). *Press Release 25 January 2020*.

70 Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*. 805.

71 Government of India, National Crime Records Bureau. (2019). *Crime in India 2019*.

72 Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*. 805.

73 The terminology used by the Government of India is “Cyber Pornography/Hosting or Publishing Obscene Sexual Material depicting children”. ECPAT International advocates for the use of ‘child sexual abuse material’ in line with the *Luxembourg Guidelines*.

74 Government of India, National Crime Records Bureau. (2018). *Cyber Crimes against Children (State/UT-wise) – 2018*.

75 Government of India, National Crime Records Bureau. (2019). *Cyber Crimes against Children (State/UT-wise) – 2019*.

76 Childline India Foundation. (2020). *Childline Calling...Is India Listening? An Analysis of calls to 1098 (2019-20)*. 35.

77 ECPAT, INTERPOL and UNICEF. (2021). *Disrupting Harm in Kenya: Evidence on online child sexual abuse*. Global Partnership to End Violence against Children. 7.

78 India Child Protection Fund. (2020). *Child Sexual Abuse Material in India, report on demand for child pornography and pilot deterrence using artificial intelligence*.

79 Parliament of India, Rajya Sabha. (2020). *Report of the Ad Hoc Committee of the Rajya Sabha to study the alarming issue of pornography on social media and its effect on children and society as a whole*.

80 *Ibid.*, 13.

81 India Today. (2020). *Kerala Police busts online child pornography, arrests 47*.

82 The Week. (2021). *Spike in creation, circulation of child porn calls for stronger law enforcement*.

83 Ferrao, R. (2020). *Sale and sexual exploitation of children in the context of travel and tourism in Goa*. Journal of Victimology and Victim Justice. Vol 3(I). 14.

84 *Ibid.*, 7.

85 *Ibid.*, 14.

86 INTERPOL. (2020). *COVID-19 – Child Sexual Exploitation and Abuse threats and trends*.

87 Europol. (2020). *Exploiting isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic*.

of time children and adults spend online for educational, professional, entertainment and social purposes, indicate the country is no exception.^{88,89} The US based National Center for Missing and Exploited Children, which technology companies based in the USA (such as Facebook, Microsoft etc.) are mandated by law to report to, received 2.7 million notifications of suspected child sexual exploitation material in India via their CyberTipline in 2020, an increase of 37.1% compared to 2019.⁹⁰ Further, according to the India Child Protection Fund, traffic from India for “pornographic content” on the website Pornhub increased by 95% between the 24th and 26th March 2020 (the first days of the COVID-19 lockdown in India) compared to the average traffic pre-COVID-19.⁹¹ As noted above, there was also an increase of searches using keywords related to CSAM in this same time period.⁹²

Positively, investigative mechanisms set up at the state level have illustrated successes in responding to CSAM reports.⁹³ As an example, in April 2020, the Countering Child Sexual Exploitation team of the Kerala Police identified 300 people responsible for uploading and downloading CSAM, with police successfully shutting down groups on Telegram.⁹⁴

There is a lack of specific data on other forms of online child sexual exploitation and abuse such as live-streaming of child sexual abuse, online grooming and sexual extortion. It is therefore difficult to assess their prevalence in India. The latest Netclean Report of 2019 which provides an insight into the profile and location of victims and offenders at the global level, identified that victims of live-streaming of child sexual abuse came primarily from Asia, including India.⁹⁵ The study further reports that among the identified offenders, some come from India.⁹⁶

reported that cases of non-consensual dissemination of sexual images were arising in India, as well as that CSAM was an issue of concern.⁹⁷ Some CSAM may be the result of a grooming process whereby an adult gains the trust of a child and then convinces or coerces them to commit and record sexual acts.⁹⁸ This has been observed through the recent media report of the arrest of a man by the Kurar Police in connection with the sexual extortion of a girl with whom he had been in contact via Instagram.⁹⁹

SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol), defines ‘trafficking in persons’ as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.¹⁰⁰

In 2020, the Union Minister Ravi Shankar Prasad

88 Sarkar, S. (2020). *Sex Trafficking in India: The Politics and Effects of COVID 19 Pandemic*. 3.

89 Stop Trafficking and Oppression of Children and Women (RBC Trust), India. (2021). Personal Communication.

90 National Center for Missing and Exploited Children. (n,d). *By the Numbers. 2019 and 2020 Reports by Country*.

91 India Child Protection Fund. (2020). *Child Sexual Abuse Material in India, report on demand for child pornography and pilot deterrence using artificial intelligence*

92 *Ibid.*, 5.

93 News18. (2020). *Kerala Police Say Rise in Numbers of Those Viewing Child Porn amid Lockdown, 300 People Identified*.

94 *Ibid.*

95 Netclean. (2019). *Netclean Report 2019. A report about child sexual abuse crime*. 15. Distant live-streaming is defined as “webcam shows that are ordered by an adult viewer. In the live-stream an adult is also present and is either physically involved in the abuse, or coercing and forcing the child into conducting sexual acts.

96 Netclean. (2019). *Netclean Report 2019. A report about child sexual abuse crime*. 21.

97 The Indian Express. (2020). *Child pornography, revenge porn are serious issues, government working to curb it: Ravi Shankar Prasad*.

98 ECPAT. (2020). *Summary paper on Online Sexual Exploitation*. Bangkok: ECPAT International. 6.

99 The Free Press. (06 August 2021). *Mumbai: Man from Pune arrested for sextortion of minor teen in Kurar*.

100 UN General Assembly. (2000, November 15). *United Nations Convention against Transnational Organized Crime, Annex 2: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)*. Res. 55/25 of 15. Art. 3 (a).

In case of child victims, Article 3 (c) of the Protocol specifies that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if it does not involve any of the means stipulated in Article 3 (a)”.¹⁰¹ In other words, the Protocol recognises that children can never be willing participants to their own exploitation.

For its part, the OPSC deals with the ‘sale of children’, defined as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.¹⁰²

Both concepts are often used in conjunction and without any clear distinction. However, despite a certain overlap, ‘sale of children’ is not identical to ‘trafficking’. The ‘sale of children’ always involves some form of commercial transaction, which trafficking in children does not require, but does not necessarily include the purpose of exploiting a child (e.g. sale of children for illegal adoption). Therefore, ‘sale of children’ is not necessarily related to sexual abuse and sexual or other forms of exploitation. Lastly, the ‘sale of children’ can take place without physically moving the child out of his/her social environment, whereas trafficking inherently depends on the movement of the child.¹⁰³

India is a source, destination and transit country for trafficking for sexual purposes.¹⁰⁴ In India, the majority of known trafficking occurs domestically.¹⁰⁵ A 2019 report on trafficking for the purpose of sexual exploitation in Goa indicated that girls and

women were trafficked to Goa from 24 states of India, including Goa, during the 2014 to 2019 period.¹⁰⁶ The US Trafficking in Persons Report 2021 further highlights that victims of domestic trafficking in western India came from almost every state of the country, and while some positive counter-trafficking actions are noted, including dedicated government financial commitments to counter trafficking, the country remains at Tier 2 status.¹⁰⁷

Although the majority of trafficking is thought to be domestic, research from 2019 shows that cross border trafficking from places such as Nepal is increasing.¹⁰⁸

Indeed, the Indian National Crime Records Bureau shared that in 2020, among the total number of reported victims trafficked – not disaggregated by age - in India, 4,612 were Indian, followed by Nepalese (20), Bangladeshis (24) and other nationalities (24).¹⁰⁹ A 2017 study published by Caritas on child trafficking at the India-Nepal border reported that Nepalese girls between 14 and 15 years old were trafficked for sexual purposes to Indian metropolises.¹¹⁰

Globally, the illicit and clandestine nature of trafficking makes it difficult to identify the precise number of child victims of trafficking in general, but particularly for the purposes of sexual exploitation.¹¹¹ The Indian National Crime Records Bureau notices that sexual exploitation in prostitution is the most prevalent purpose for human trafficking in India, before forced labour, domestic servitude and forced marriage (the first purpose being identified as ‘other reasons’ in 2019) over the years 2018-2020.^{112,113} The National Crime Records Bureau reported that in 2020, among the 2,222 child victims of trafficking 845 were girls and 1,377 were boys.¹¹⁴ However, these data are not disaggregated by type of exploitation. While trafficking is affecting both boys

101 *Ibid.*, Article 3 (c).

102 OPSC, Article 2 (b).

103 Working Group on Sexual Exploitation of Children (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*. 58. Bangkok: ECPAT International.

104 U.S. Department of State. (2021). *Trafficking in Persons Report*.

105 Toast, Global Fund for Children. (2019). *Final Report: Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India*. 8.

106 ARZ. (2019). *Trafficking of Women and Children for Commercial Sexual Exploitation (CSE) in Goa – A Statistical Analysis (2014 to 2019)*. 3.

107 U.S. Department of State. (2021). *Trafficking in Persons Report*.

108 Toast, Global Fund for Children. (2019). *Final Report: Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India*. 2.

109 Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*. 987-988

110 Caritas India. (2017). *A close look at Indo-Nepal Cross-Border Child Trafficking*. 36.

111 ECPAT. (2020). *Summary Paper on Sale and Trafficking of Children for Sexual Purposes*. Bangkok: ECPAT International. 5-6.

112 Government of India, National Crime Records Bureau. (2019). *Crime in India 2019*.

113 Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*. 989-990.

114 *Ibid.*



and girls, research suggests that most victims of trafficking for the purposes of sexual exploitation in India are girls.¹¹⁵ Disaggregated data on this matter has been shared in a report from 2018 by the Ministry of Women and Development on Child Care Institutions in India.¹¹⁶ Among the 489 children trafficked for sexual exploitation and registered in Child Care Institutions/Homes, 451 were girls and 38 were boys.¹¹⁷

Globally, children in situations of poverty, low socio-economic status and children that are part of minority groups such as ethnic minorities are vulnerable to trafficking for sexual purposes.¹¹⁸ Reports identify that in India, inequality, low status

and discrimination, as well as gender norms, mostly impacting girls, exacerbate children's vulnerability to trafficking.^{119,120} Citizens from the poorest and most disadvantaged backgrounds in India, including lower castes, tribal communities, religious minorities and women and girls from excluded groups are therefore the most susceptible to being trafficked.^{121,122} A study focused on sexual exploitation of children in West Bengal emphasised that in this state, child marriage, child labour, unsafe migration, school dropouts, runaway children and neglect and abuse are key vulnerabilities that increase the risk of child trafficking and sexual exploitation of children.¹²³ The report further added that tribal communities in the state are particularly vulnerable, given their marginalised access to education and economic opportunities.¹²⁴ For example, in the State of Assam, research has found that traffickers exploit victims in districts inhabited by tribal communities, Adivasi communities and tea garden communities for the purposes of labour, marriage and prostitution.¹²⁵ Research and anecdotal evidence from local non-governmental organisations refer to the vulnerability of orphaned children to be trafficked for the purpose of sexual exploitation as well as instances of trafficking linked with adoption and surrogacy in India.^{126,127,128} In this sense, a recent audit from the government on child care institutions for the reporting period 2018-2020 reports that 40% of these institutions didn't have adequate measures to prevent abuse of children.¹²⁹ Recently, media and non-governmental organisations reported posts on social media seeking to arrange adoptions of allegedly orphaned children during the COVID-19 pandemic.^{130,131}

- 115 Toast Advisory, Global Fund for Children. (2019). *Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India*. 8.
- 116 Government of India, Ministry of Women and Development. (2018). *The report of the Committee for Analysing Data and Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes. Volume-I: Main Report*. 64.
- 117 Ibid.
- 118 ECPAT International. (2020). *Summary Paper on Sale and Trafficking of Children for Sexual Purposes*. Bangkok: ECPAT International. 3.
- 119 Pandey, S. (2018). *Review Essay: Trafficking of Children for Sex Work in India: Prevalence, History and Vulnerability Analysis*, in *Explorations, ISS e-journal*, Vol. 2 (1). 30.
- 120 Garden-Monheit., H. Rhoten., K. Ghosh., A. Sundares., G. Dey., M. Bhuyan., R. Moti., S. Liu., B. Kay Serrano., B. Ko., H. Khan., R. (2015). *India's Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity*. 10.
- 121 Toast, Global Fund for Children. (2019). *Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India*. 7-8.
- 122 Pandey., S. (2018). *Review Essay: Trafficking of Children for Sex Work in India: Prevalence, History and Vulnerability Analysis*, in *Explorations, ISS e-journal*, Vol. 2 (1). 31-32.
- 123 Seefar. (2021). *Understanding child trafficking and Commercial Sexual Exploitation of Children in West Bengal, India*. 9.
- 124 Ibid.
- 125 National Commission for Protection of Child Rights. (2020). *Preventing Trafficking Post Lockdown Situation due to COVID-19 Pandemic*. 30.
- 126 Roy, S. and Chaman., C. (2017). *Human rights and trafficking in women and children in India*. 168.
- 127 Toast Advisory - Global Fund for Children. (2019). *Final Report: Scan of Issue Areas, Trends and Organisations Working in the Area of Child Trafficking in India*. 16.
- 128 EQUATIONS. (2021). Personal Communication.
- 129 U.S. Department of State. (2021). *Trafficking in Persons Report*
- 130 Save the Children. (2021). *Save the children fears trafficking and abuse amid social media pleas to adopt India's covid orphans*.
- 131 Hindustan Times. (2021). *Child Trafficking suspected behind pleas for adoption of Covid 'orphans'*.

In addition to this, a study published in 2014 by the Population Council on the trafficking of girls for sexual exploitation in India emphasises that additional factors, such as natural disasters and civil strife, are thought to reinforce the risk of child trafficking because they exacerbate family economic hardship.¹³² As documented by multiple media outlets, the COVID-19 pandemic has increased children's vulnerability to trafficking as they have been forced to leave their households, face violence and have dropped out of schools.^{133,134}

Finally, an important recent trend emphasised in the research is the growing use of the Internet for recruitment, soliciting and advertising of sexual services and receiving payments for the sexual exploitation of children.¹³⁵ The misuse of technology enables offenders to stay anonymous and has increased their ability to contact children and groom them, including via techniques like false propositions related to marriage, jobs or educational opportunities.^{136,137}

India has made several commitments towards eliminating trafficking of children. Indian legislation – as detailed in Chapter 3 - includes provisions for the prevention and combating of trafficking, but there are critical gaps in their implementation. As reported in the US Trafficking in Persons Report 2021, anti-trafficking measures' implementation remain insufficient.¹³⁸ Coordination mechanisms between agencies in source, transit and destination countries should be enhanced and taken into account when formulating policies, planning strategies and designing interventions.

SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM

The sexual exploitation of children in travel and tourism (SECTT) is defined as any "acts of sexual exploitation embedded in a context of travel, tourism, or both".¹³⁹ The UNWTO Framework Convention on Tourism Ethics recognises that the exploitation of children conflicts with the fundamental aims of tourism and should be strongly combated with the cooperation of all the States concerned.¹⁴⁰

Tourism in India makes a significant contribution to the economy. Indeed, the World Travel and Tourism Council estimated that, in 2019 (before COVID-19 heavily impacted the sector), tourism represented 6.9% of the total national economy.¹⁴¹ India was ranked 9th out of 185 countries by the World Travel and Tourism Council, in terms of how much travel and tourism contributed to total gross domestic product in 2019.¹⁴² The Ministry of Tourism's Domestic and Foreign Tourist Visits to States and Union Territories during 2020 report indicates that in 2019 there were 31.41 million international tourist visits and 2.32 billion domestic tourist visits.^{143,144}

A 2020 study on the sexual exploitation of children in travel and tourism in Goa identified that children are increasingly being contacted by offenders through the Internet since it assures anonymity, and makes it difficult for the authorities to intervene.¹⁴⁵ Research has indicated that sexual

132 Santhya., K G. Jejeebhoy., and S J and Basu., S.(2014). *Trafficking of Minor Girls for Commercial Sexual Exploitation in India: A Synthesis of Available Evidence*. 20.

133 AlJazeera. (2021). *India's child victims of COVID-19*.

134 The Hindu. (2020). *Open page. COVID-19 and children. While responding to COVID-19*.

135 ARZ. (2019). *Trafficking of Women and Children for Commercial Sexual Exploitation (CSE) in Goa – A Statistical Analysis (2014 to 2019)*. 4.

136 *Ibid*.

137 *Ibid.*, 19.

138 U.S. Department of State. (2021). *Trafficking in Persons Report*.

139 ECPAT International, Defence for Children, Ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism (hereinafter Global study on SECTT)*. Bangkok: ECPAT International.

140 UNWTO. (2019). *UNWTO Framework Convention on Tourism Ethics*. UN Doc. A/RES/707(XXII). Art. 5 (3).

141 World Travel and Tourism Council. (2020). *Economic Impact Reports – India*. 1.

142 World Travel and Tourism Council. (2021). *Travel and Tourism: Economic impact 2021*. 2.

143 Government of India, Ministry of Tourism. (2021). *Domestic and Foreign Tourist Visits to States and UTs during 2020*.

144 Note: Figures represent the total number of trips completed and not actual number of tourists.

145 Ferrao, R. (2020). *Sale and sexual exploitation of children in the context of travel and tourism in Goa*. Journal of Victimology and Victim Justice. Vol 3(I). 14.

exploitation of children in Goa occurs in different places such as massage parlours, flats, hotels and lodges, casinos, beaches and yoga centres.¹⁴⁶ In Kerala, in the city of Alleppey, the popular houseboat market has been noted as a location in which sexual exploitation of children is occurring.¹⁴⁷ As well as in Goa and Kerala, which historically have been identified as destinations of sexual exploitation of children by travellers,¹⁴⁸ sexual exploitation of children in travel and tourism has been anecdotally reported in other states such as Karnataka, Orissa, West Bengal and Rajasthan.¹⁴⁹ It is also important to underline that SECTT is linked with trafficking,¹⁵⁰ indeed, traditional routes of trafficking are now reportedly changing and they are involving places highly attended by tourists and travellers, such as the city of Mysore.¹⁵¹

An important issue related to the sexual exploitation of children and in particular to the sexual exploitation of children in travel and tourism is 'voluntourism'.¹⁵² Through this practice, children in residential shelters may be vulnerable to foreign travellers arriving as volunteers, some of whom may use this cloak of respectability to sexually exploit the children they are in contact with.¹⁵³ In order to meet demand and maximise profits, volunteering opportunities tend to eschew background checks, child protection policies or training and supervision of volunteers, creating opportunities for travelling child sex offenders to easily access children and commit sexual exploitation.¹⁵⁴ In 2015, a British man was arrested after trafficking boys who lived in a residential centre that he ran for them to attend schools away from their families.¹⁵⁵ The vulnerabilities of children in such facilities in India can also be seen in the Mazaffarpur shelter case. In this shelter, more than 40 girls were hosted, several of them reported not only terrible living conditions but also sexual and physical assault.¹⁵⁶ In 2018, the Tata Institute of Social Sciences

submitted to Bihar's Social Welfare department a report about these sexual assault cases, and it led, in 2020, to the life imprisonment of the owner of the non-governmental organisation which ran the accommodation.¹⁵⁷

As COVID-19 movement restrictions begin to lift and travel and tourism bounces back, travel and tourism organisations and the government of India must take efforts to protect children. For example, travel and tourism operators could become members of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ('The Code').¹⁵⁸ 'The Code' is a multistakeholder initiative to provide awareness, tools and support to companies in the tourism industry to prevent the sexual exploitation of children.¹⁵⁹ To date, only three companies based in India and 31 international companies with operations in the country are members of the Code,¹⁶⁰ but increasing engagement with this initiative from Indian tourism operators would be a good step towards addressing the risks of SECTT in the country.

CHILD, EARLY AND FORCED MARRIAGE

The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Luxembourg Guidelines) define 'child marriage' as "a marriage in which at least one of the parties is a child. It also refers to the act of marrying off children, usually young girls, with or without their consent".¹⁶¹ Some forms of child marriage are related to commercial sexual exploitation of children, in cases where child marriage is linked to forced child labour, slavery and bondage, servitude or payment of a dowry.¹⁶²

¹⁴⁶ *Ibid.*

¹⁴⁷ ECPAT International, ECPAT Netherlands, Defence for Children. (2016). *Global study on sexual exploitation of children in travel and tourism*. Bangkok: ECPAT International. 40.

¹⁴⁸ *Ibid.*

¹⁴⁹ EQUATIONS. (2021). Personal Communication.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² ECPAT International. (2019). *Thematic Note: Sexual Exploitation of Children & Voluntourism*. Bangkok: ECPAT International. 1.

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ The Times of India. (2016). *6 boys rescued from house rent by Brit*.

¹⁵⁶ BBC. (2018). *The horror story inside an Indian children's home*.

¹⁵⁷ India Today. (2020). *Chronology of events in Muzzafarpur shelter home sexual assault case*.

¹⁵⁸ The Code. (n.d.). *The Code: About*.

¹⁵⁹ *Ibid.*

¹⁶⁰ The Code. (n.d.). *Our members – India*.

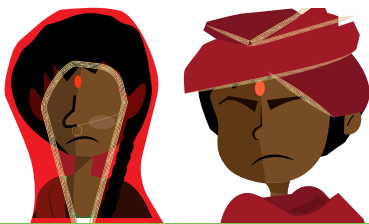
¹⁶¹ Terminology Guidelines, 63.

¹⁶² ECPAT International and Plan International. (2015). *Thematic Report. Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage*. Bangkok: ECPAT International.

Child, early and forced marriage is both a *form of*, and a *pathway* to sexual exploitation of children, as children forced into marriages face several risks such as sexual violence, family violence, early pregnancies and discontinued education.¹⁶³ In general, when analysing child, early and forced marriage, there are some important issues to take into consideration such as inconsistent legal frameworks, economic factors and social norms.¹⁶⁴

UNICEF's 2021 State of the World's Children report estimated that based on data from 2014-2020, 27% of women aged between 20-24 in India were married by 18 and 7% by the age of 15.¹⁶⁵ In India, child, early and forced marriage not only affects girls but also boys, though at a much lower level: 4% of men between 20 and 24 years old were married by 18 years old.¹⁶⁶ In addition, an analysis of calls received by the organisation Childline between April 2019 and March 2020, showed that 90% of the 25,104 calls they received related to child, early and forced marriage involved girls, and 10% involved boys.¹⁶⁷

DATA FROM 2014-2020



**27% OF WOMEN AGED
BETWEEN 20-24 YEARS OLD
WERE MARRIED BY 18**



7% BY THE AGE OF 15



**4% OF MEN BETWEEN 20-24
YEARS OLD WERE MARRIED
BY 18**

Poverty is a significant factor that leads to child, early and forced marriage.¹⁶⁸ Indeed, in 2019, UNICEF reported (based on national data up to 2016) that in the lowest wealth quintile in India, 46% of women between 20-24 married before 18 years old compared to only 10% of women from the highest wealth quintile being married by the same age.¹⁶⁹ The link between poverty and child marriage is highlighted by a case study on the topic in the Anantapur district, Andhra Pradesh.¹⁷⁰ In this district, drought is common and parents from poor families have to migrate to nearby districts in Karnataka state for livelihoods.¹⁷¹ Parents in these situations fear for their daughters' safety if they are left behind or with their grandparents, and feel that it is safer to arrange for marriage instead.¹⁷²

Poverty also impacts child marriage through the practice of "dowry", which – depending on different customs - refers to the price that the groom must pay for his bride or the price the bride's family must pay to the groom's family. Indeed, child, early and forced marriage is often perceived by families through an economic lens.¹⁷³ Dowry price is inversely proportional to the age of the child: the lower the age of the bride, the higher the price the groom's family will pay.¹⁷⁴ In India, even if illegal,¹⁷⁵ one explanation to the persistence of this practice is that it is seen as a means of upward mobility. When a girl's family pay the dowry to the groom, it is paying for his social status.¹⁷⁶ However, the payment is also based on the economic value of both partners, as the groom's family pay a bride price for having the right to her labour and reproductive capabilities, while the bride's family pay for the groom's earning capacity.¹⁷⁷ As mentioned earlier in this report, in a country in which, according to the latest available estimates from 2015, there were 176 million people living in poverty, the risk for children to be forced into marriage is higher. In addition, data suggests

163 ECPAT International. (2020). *Summary Paper on Child Early and Forced Marriage as a Form of, or Pathway to Sexual Exploitation of Children*. Bangkok: ECPAT International. 2.

164 *Ibid.*, 10.

165 UNICEF. (2021). *The State of the World's Children 2021: On My Mind – Promoting, protecting and caring for children's mental health*. UNICEF, New York. 233.

166 *Ibid.*

167 Childline India Foundation. (2020). *Childnet: Analysis of Calls to 1098: Childline calling...is India listening?*. 38.

168 ECPAT International. (2020). *Summary paper on Child Early and Forced Marriage as Form of, or Pathway to Sexual Exploitation of Children*. Bangkok: ECPAT International. 3.

169 United Nation Children's Fund. (2019). *End Child Marriage: A profile of progress in India*. UNICEF, New York. 10.

170 CESS. (2018). *Facing Constraints and Seizing Opportunities: Child Marriages in Andhra Pradesh*. Centre for Economic and Social Studies, Hyderabad. 11.

171 *Ibid.*

172 *Ibid.*

173 ECPAT International. (2020). *Summary paper on Child Early and Forced Marriage as a Form of, or Pathway to Sexual Exploitation of Children*. Bangkok: ECPAT International. 5.

174 *Ibid.*

175 Government of India. (1961). *The Dowry Prohibition Act (Act No. 28 of 1961)*, Sections 3-4.

176 Soni, Suparna. (2020). *Institution of Dowry in India: A Theoretical Inquiry*. Societies Without Borders 14 (1). 5.

177 *Ibid.*

that families play a central role in perpetuating child, early and forced marriage, out of 24,787 cases of child, early and forced marriage reported by Childline between April 2019 and March 2020, 23,131 (93%) cases involved the family of the victim as central in facilitating child, early and forced marriage.¹⁷⁸

Gender and social norms have an impact on child, early and forced marriage too. Firstly, in India, there is the concept of women as subordinates to men and men as powerful and authoritative.¹⁷⁹ Families, in addition, must protect family honour and having a daughter or a sister who is not married could result in potential damage to the family's honour.¹⁸⁰

In India, women may only marry from 18 years old and boys from 21 according to the Prohibition of Child Marriage Act,¹⁸¹ however, there are a number of possible exceptions via other laws which contradict this. The Muslim Act, the Indian Christian Act and the Jewish personal law all allow different age thresholds.¹⁸² Although Indian civil law should take precedence (as discussed in section 3.2.5), it is possible that the contrasting religious laws may result in a situation where the communities feel like legislative changes are targeting their religious beliefs.¹⁸³ Globally, religious and cultural beliefs and practices play a significant role in perpetuating child marriage.¹⁸⁴ Therefore, communities must be engaged in the process of exploring and changing beliefs and practices alongside the legislative approaches.¹⁸⁵

It is also important to understand the relationship between child, early and forced marriage and education as low levels of education restrict girls' economic autonomy, thus increasing their vulnerability to CEFM.¹⁸⁶ The 2019 UNICEF Ending Child Marriage in India report shows 51% of women between 20-24 years with no education married before 18 years old, while only 4% of women between 20-24 years with a higher education married before 18 years old.¹⁸⁷ Due to a lack of educational opportunities, and a lack of awareness of government schemes supporting girls' development, families sometimes consider that there is no alternative to ensure their daughters a future other than marriage.¹⁸⁸ This is also confirmed by the numbers of Indian girls who dropped out during the path to a complete education between 2012 and 2018: 91% of females aged 3 -5 years above the age established for the last grade of primary education have completed the last grade of primary school; this figure drops down to 79% and 40% respectively for the last grade of lower secondary and upper secondary education.¹⁸⁹ It is important to underline that for Indian boys the percentages of completing every level of education are higher.¹⁹⁰

178 Childline India Foundation. (2020). *Childnet: Analysis of calls to 1098: Childline is calling...is India listening?*. 35.

179 Ram, U., Strohschein, L., Gaur, K. (2014). *Gender Socialization: Differences between Male and Female Youth in India and Associations with Mental Health*. International Journal of Population Research. 2.

180 Center for Law & Policy Research, Center for Reproductive Rights. (2018). *Ending impunity for child marriage in India: normative and implementation gaps*. 44.

181 Government of India. (2007). *The Prohibition of Child Marriage Act (Act No. 6 OF 2007)*, Section 2(a).

182 *Ibid.*

183 ECPAT International. (2020). *Summary paper on Child Early and Forced Marriage as a Form of, or Pathway to Sexual Exploitation of Children*. Bangkok: ECPAT International. 9.

184 *Ibid.*

185 *Ibid.*

186 ECPAT International. (2015). *Thematic report: unrecognized sexual abuse and exploitation of children in child, early and forced marriage*. Bangkok: ECPAT International. 19.

187 United Nations Children's Fund. (2019). *Ending Child Marriage: A profile of progress in India*. UNICEF, New York. 10.

188 ECPAT. (2015). *Thematic report: unrecognized sexual abuse and exploitation of children in child, early and forced marriage*. Bangkok: ECPAT International. 19.

189 UNICEF. (2019). *The States of World's Children 2019. Children, food and nutrition: Growing well in a changing world*. UNICEF, New York. 228-231.

190 *Ibid.*

INTERNATIONAL, REGIONAL AND NATIONAL COMMITMENTS AND LEGISLATIVE FRAMEWORK

INTERNATIONAL AND REGIONAL COMMITMENTS

Status of ratification of relevant international and regional instruments, reporting to human rights bodies and engagement with the special procedures of the Human Rights Council		
International Instruments		Date of ratification/accession
Convention on the Rights of the Child - 1989		11 December 1992
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography - 2000		16 August 2005
ILO Convention on the Worst Forms of Child Labour - 1999 (No. 182)		13 June 2017
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children – 2000 (supplementing the UN Convention against Transnational Organized Crime)		5 May 2011
Regional Instruments		Date of ratification/accession
SAARC Convention on Preventing and Combating Trafficking in Women		2002
SAARC Convention on Regional Arrangements for the Promotion of Child Welfare		2002
Human Rights Bodies	Date of latest submitted report	Comments
Committee on the Rights of the Child (CRC review)	2011 (Report for the next reporting cycle overdue since 15 July 2020)	At the last review on 7 July 2014, CRC's key concluding observations related to SEC were: <ul style="list-style-type: none"> India should "take the necessary measures to combat the requirement of dowries, child marriage and the practice of devadasi, with a view to preventing child marriages." "Conduct awareness-raising activities in order to make parents and children aware of the dangers of both internal and external trafficking." Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.¹⁹¹
Committee on the Rights of the Child (OPSC review)	2011	

¹⁹¹ Committee on the Rights of the Child. (2014). *Concluding observations on the report submitted by India under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, CRC/C/OPSC/IND/CO/1.

Human Rights Council – Working Group on the Universal Periodic Review	2017	<p>Key observations of the working group included:</p> <ul style="list-style-type: none"> • Improve the enforcement of the legal provisions prohibiting harmful and discriminatory practices against women and girls, in particular child marriages. • Strengthen the national mechanisms to combat human trafficking and support victims and their rehabilitation.¹⁹² <p>India will next be up for review in May 2022.</p>
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International commitments	
Commitment	Start date
United Nations Sustainable Development Goals	2015
Regional commitments	
Commitment	Start date
South Asia End Violence Against Children (SAIEVAC)	2005
South Asia Coordinating Group on Action against Violence against Children (SACG)	2012

In terms of international cooperation and commitments, it is worth mentioning that India submitted its latest Voluntary National Review on the implementation of the Sustainable Development Goals in 2020.¹⁹³ The report discusses how India developed the national policy for children in 2013, as well as specific laws on issues such as prevention of violence, child trafficking and sexual exploitation.¹⁹⁴ However, beyond discussing the legislative response to preventing sexual exploitation of children, the Voluntary National Review does not provide any evaluation or assessment of the National Plan of Action, 2016 and its strategies and goals relating to the sexual exploitation of children.

At a regional level, India is one of the member countries of the South Asia End Violence Against Children (SAIEVAC). SAIEVAC is an apex body of the South Asian Association for Regional Cooperation and functions as an inter-governmental body that works in five key thematic areas: child marriage, child abuse and exploitation, child labour, corporal punishment and trafficking.¹⁹⁵ India is committed to working on its regionally prioritised issues, especially in relation to child sexual exploitation, child labour, and trafficking. Pursuant to its obligations as a

member of SAIEVAC, in 2014, India formed the National Action and Coordination Group for Ending Violence Against Children.¹⁹⁶ This group operates within the same five thematic areas as SAIEVAC and has conducted a number of workshops and programmes relating to children's rights.¹⁹⁷ For example, in 2020 the group launched the 'Child Protection Workforce Capacity Building to End Child Sexual Abuse in India' to develop the capacities of law enforcement, child welfare committees, local non-governmental organisations, among others, to aid the implementation of child protection policies.¹⁹⁸ In 2016, India hosted the 4th SAIEVAC Ministerial Meeting in which a regional strategy on addressing sexual exploitation of children was discussed,¹⁹⁹ later approved as Regional Action Plan in 2019. India is also part of the South Asian Coordinating Group for Ending Violence Against Women and Children, which brings together UN agencies and international and national-level non-governmental organisations, established with the aim of fighting violence against children at the regional level.²⁰⁰ This group works in collaboration with SAIEVAC through providing technical support, collaborating in regional workshops and supporting advocacy work that is carried out.²⁰¹

192 Human Rights Council. (2017). *Report of the Working Group on the Universal Periodic Review* India*. A/HRC/36/10.

193 Government of India. (2020). *India VNR 2020: Decade of Action Taking SDGs from Global to Local*.

194 *Ibid.*

195 South Asia End Violence Against Children (SAIEVAC). *About us*.

196 SAIEVAC. (2017). *NACG Report to ARO 13.09.2017*.

197 National Action & Coordination Group for Ending Violence Against Children, India. (2020). *Annual Report April 2019 – March 2020*.

198 *Ibid.*

199 ECPAT International. (2016). *4th SAIEVAC Ministerial Meeting on Violence Against Children*.

200 ILO. (n.d.). *South Asia Coordinating Group on Action against Violence against Children (SACG)*.

201 SAIEVAC. (n.d.). *Core Partners*.

NATIONAL LEGISLATION

The Protection of Children from Sexual Offences Act (POCSO) Act establishes the age of sexual consent at 18 for both boys and girls.²⁰² Although the POCSO Act is gender neutral and provides equal protection to boys and girls from sexual offences such as sexual assault, penetrative sexual assault, and sexual harassment, the statutory rape provision under the Penal Code still uses a gendered definition of rape. Section 375 of the Penal Code (as amended in 2013) criminalises the rape of girls below the age of 18, thereby denying boys protection against rape.²⁰³

Whilst it is possible that the rape of boys can now be prosecuted under provisions of the POCSO Act, the continued use of these gendered provisions across different pieces of legislation risks perpetuating harmful social stigma surrounding the sexual abuse of boys within India.

In addition, neither the POCSO Act nor the Penal Code include any close-in-age exemption protecting children from prosecution for willing sexual activity between peers. In these instances, boys could be held liable for the rape of girls under Section 375 of the Penal Code. The Evidence Act provides that in the cases of rape, it would be presumed that there was a lack of consent and the accused would have to prove otherwise.²⁰⁴ Therefore, in cases involving children, boys may have to prove that the girl had consented to the sexual intercourse and the lack of an exemption clause may result in their penalisation.²⁰⁵ According to the latest available crime statistics from 2020, 1,020 boys below the age of 18 were apprehended on rape related charges (under the Penal Code), whilst only two girls were apprehended for this crime.²⁰⁶ Although it is unclear how many of these cases may have involved the prosecution of boys who have engaged in mutually willing sexual activity, it is clear that a close-in-age exemption is required to remove this possibility.

Exploitation of children in prostitution

Whilst India has a number of legislative instruments that may offer some protection to children from being exploited in prostitution, the law prescribing such offences is by no means perfect and important loopholes remain. As a starting point, it is worth mentioning that prostitution, including selling and buying sexual services, is not criminalised in India and so voluntarily offering sexual services should not result in prosecution. However, the Indian legislation does prescribe a number of offences relating to prostitution.

The Immoral Traffic Prevention Act (ITPA) defines prostitution as “the sexual exploitation or abuse of persons for commercial purpose”.²⁰⁷ However, this definition refers to exploitation through prostitution in general and does not relate directly to children. In order to bring the legislation in line with the OPSC it is necessary to adopt a definition that refers exclusively to children and explicitly covers the use of children for sexual purposes for any form of consideration. Properly defining the exploitation of children in prostitution is vitally important in protecting children from being prosecuted as offenders and in raising awareness of the offence and the harm it may cause.

Although the Indian legislation does not criminalise prostitution, it does prescribe a number of related offences. Under the ITPA it is prohibited to keep a brothel or to allow one’s premises to be used as a brothel.²⁰⁸ In addition, the Act makes it illegal to live knowingly on the earnings of prostitution, with higher punishments when these earnings relate to the prostitution of a child.²⁰⁹ The Act states that knowingly living on the earnings of prostitution covers those who live with or are habitually in the company of a prostitute, exercise control, direction or influence over the movements of a prostitute in order to aid, abet or compel their prostitution, or act as a tout or pimp for a prostitute.²¹⁰

202 Government of India. (2012). *The Protection of Children from Sexual Offences Act, 2012*, Section 2(d).

203 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 375.

204 Government of India. (1972). *Indian Evidence Act, 1972 (as amended in 2013)*, Section 114A.

205 Centre for Child and the Law, National Law School of India University. (2018). *Implementation of the POCSO Act, 2012 by Special Courts: Challenges and Issues*, 184.

206 Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*.

207 Government of India. (1956). *Immoral Traffic Prevention Act, 1956*, Section 2(f).

208 *Ibid.*, Section 3.

209 *Ibid.*, Section 4.

210 *Ibid.*

The ITPA also contains provisions that prohibit detaining a person in a place in which prostitution is carried on,²¹¹ carrying out prostitution in public places²¹² and seducing or soliciting for the purposes of prostitution.²¹³ Unfortunately, of these crimes, only carrying out prostitution in public places carries a higher punishment when committed against children. The offences of carrying out prostitution in public places and seducing or soliciting for the purposes of prostitution also fail to indicate that they only apply to adults, potentially leaving children vulnerable to prosecution.

In India, there are also a number of provisions that may offer specific protection to children from being exploited in prostitution. For instance, the ITPA criminalises procuring, inducing or taking a person for the purpose of prostitution, with higher penalties attributed to offenders committing these crimes against children.²¹⁴ Whilst the Indian Penal Code also sets out the offence of procuring a child, it refers only to “minor girls” and so does not offer boys protection from this crime.²¹⁵ The latest available crime statistics from 2020 reported 2,471 incidences of the crime of ‘procurement of minor girls’,²¹⁶ showing that gendered provisions are still heavily used for prosecution efforts and indicating that the same crimes committed against boys may be overlooked. Further, the Penal Code criminalises selling, letting for hire or otherwise disposing of a child for the purposes of prostitution.²¹⁷ Similarly, it is illegal to buy, hire or otherwise obtain a child for the purpose of prostitution.²¹⁸ These crimes refer exclusively to children and offer protection to children of all genders.

Online child sexual exploitation

India has adopted a number of legislative measures in its attempt to protect children from the complex, ever-evolving crimes contained under the umbrella of online child sexual exploitation. Before analysing these crimes, it is important to note that the POCSO Act defines child sexual abuse materials as “any visual depiction of sexually explicit conduct involving

a child which include photograph, video, digital or computer-generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child”.²¹⁹ Whilst it is certainly welcome that the definition covers digitally generated images, including realistic images of non-existent children, it does not explicitly cover “any representation” of child sexual abuse material or depictions of sexual parts of a child for primarily sexual purposes and so cannot be said to be fully in line with the OPSC. This means that offences involving the use of non-visual materials, such as audio or written materials, may not be deemed punishable under this law.

Regarding offences relating to child sexual abuse material, the POCSO Act criminalises using children for pornographic performances,²²⁰ and storing or possessing child sexual abuse material for the purpose of distribution, display or transmission.²²¹ However, these provisions only explicitly cover the possession of child sexual abuse material for these purposes or for a commercial purpose, therefore creating a loophole whereby mere possession for private consumption may not be covered.

In addition to the above, the Information Technology Act criminalises a wide range of conducts relating to child sexual abuse material. It prohibits publishing or transmitting child sexual abuse material, as well as creating, collecting, seeking, browsing, downloading, advertising, promoting, exchanging or distributing CSAM.²²² Given that these conducts are prohibited in relation to material “in any electronic form”, it is possible that they could be invoked to prosecute offences relating to forms of material other than visual. However, it is also possible that this refers only to the use of an electric device to carry out such prohibited conducts. In addition, it is possible that browsing could cover cases in which an offender knowingly accesses child sexual abuse material. Similarly, cases involving possession of child sexual abuse material which is not meant for further distribution or transmission could fall under ‘storing/ downloading’. Moreover, the Penal Code prohibits

²¹¹ *Ibid.*, Section 6.

²¹² *Ibid.*, Section 7.

²¹³ *Ibid.*, Section 8.

²¹⁴ *Ibid.*, Section 5.

²¹⁵ Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 366A.

²¹⁶ Government of India, National Crime Records Bureau. (2020). *Crime in India 2020*.

²¹⁷ *Ibid.*, Section 372.

²¹⁸ *Ibid.*, Section 373.

²¹⁹ Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019)*, Section 2(da).

²²⁰ *Ibid.*, Section 14.

²²¹ *Ibid.*, Section 15.

²²² Government of India. (2000). *Information Technology Act (No. 21 of 2000)*, Section 67B.

the possession of obscene materials in general (including those representing children).²²³ Materials will be deemed to be obscene when they are “lascivious, appeal to the prurient interest or would deprave or corrupt those who come across it.”²²⁴ This definition is vague and so it is unclear whether it would cover all materials deemed to be child sexual abuse material.

The Indian legislation also contains offences that could be used to prosecute other forms of online child sexual exploitation. The POCSO Act punishes anyone who “repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means” with sexual intent.²²⁵ Whilst this provision is categorised under sexual harassment it could be invoked to prosecute online grooming offences. However, it could be improved to offer heightened protection to children by explicitly criminalising the intentional proposal to meet a child for sexual purposes and when the sexual abuse has not occurred in person but online. This would help to bring the legislation not only in line with the online grooming offence set out in the Lanzarote Convention, but also with the subsequent guidance issued by the Lanzarote committee that stated that grooming offences should also cover instances in which the sexual abuse has occurred online.²²⁶ In addition, the same provision criminalises enticing a child for pornographic purposes.²²⁷

The POCSO Act may also be invoked to prosecute online sexual extortion as it criminalises any person who threatens to use a real or fabricated depiction of any part of the body of the child or the involvement of the child in a sexual act through electronic, film or digital or any other mode.²²⁸ Although the Indian legislation contains additional offences relating to online child sexual exploitation, such as facilitating abusing children online²²⁹ and cultivating, enticing or inducing children to online

relationships with one or more children for and on sexually explicit acts,²³⁰ there are no explicit provisions that criminalise the live streaming of child sexual abuse. Further, neither the provisions relating to child sexual abuse material nor those relevant to pornographic performances explicitly cover cases where the sexual abuse is live streamed online. Given the rapid advancement of technology, it is vitally important that the legislation in India be updated to capture these forms of online child sexual exploitation other than child sexual abuse material. Another oversight of the Indian legislation is the lack of a clause which excludes a child’s criminal liability for producing and sharing child sexual abuse material, especially when compelled to do so because they are in an abusive or exploitative situation.

It should be mentioned here that in the 2020 report by government ministers on child sexual abuse material on social media and its effect on children (as discussed in section 2.2), recommendations were made regarding broadening the definition of child sexual abuse material to include audio and written materials, enacting specific online grooming provisions and introducing a clause that excludes a child’s liability for generating self-produced child sexual abuse material.²³¹ However, as of November 2021 there have been no amendments made to the legislation.

Lastly, in regard to the obligations conferred on Internet service providers, the 2020 POCSO Rules provide that intermediaries²³² (including Internet service providers) are under a duty to not only report child sexual abuse material but also handover such material to the police.²³³ However, the legislation is somewhat in conflict on this issue, as under the Information Technology Act, “intermediaries”, including Internet service providers, are not liable for third party information²³⁴

²²³ Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 292(2).

²²⁴ *Ibid.*

²²⁵ Government of India. (2012). *The Protection of Children from Sexual Offences Act, 2012*, Section 11(iv).

²²⁶ Lanzarote Committee. (2015). *Opinion on Article 23 of the Lanzarote Convention and its explanatory note*.

²²⁷ Government of India. (2012). *The Protection of Children from Sexual Offences Act, 2012*, Section 11(vi).

²²⁸ *Ibid.* Section 11(v).

²²⁹ Government of India. (2000). *Information Technology Act (No. 21 of 2000)*, Section 67B(d).

²³⁰ *Ibid.*, Section 67B(c).

²³¹ Parliament of India Rajya Sabha. (2020). *Report of the Ad Hoc Committee of the Rajya Sabha to study the alarming issue of pornography on social media and its effect on children and society as a whole*.

²³² Section 2(w) of the Information Technology Act defines an “intermediary” as “any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes”.

²³³ Government of India. (2020). *Protection of Children from Sexual Offences Rules (POCSO), 2020*, Rule 11(2)

²³⁴ For the purpose of Section 79, the expression “third party information” means any information dealt with by an intermediary in his capacity as an intermediary.

or data made available by them.²³⁵ They only need to prove they had no knowledge or they exercised due diligence to prevent the offence. They are only liable for third-party content if they fail to disable access to illicit content on being ordered by a court or notified by an authorised government agency.²³⁶

Sale and trafficking of children for sexual purposes

The Indian Penal Code penalises anyone who recruits, transports, harbours, transfers, or receives, a person, by the use of threats, force, abduction, fraud, abuse of power or inducement, for the purpose of exploitation.²³⁷ It should be noted here that “exploitation” includes sexual exploitation.²³⁸ Under this offence, child victims are considered under the aggravated penalties, with such offences attracting sufficiently high punishments of ten years to life imprisonment and a fine.²³⁹ However, this provision is inadequate in providing full legislative protection to children and cannot be said to be in line with the UN Trafficking Protocol as it requires one of the means of trafficking provided, i.e. “deception, threat, force, coercion” etc., to be proven in order for an offence to be committed. This may leave children vulnerable to trafficking crimes and, by implication, goes against the principle that a child cannot consent to being trafficked.

In a positive development, 2021 has seen the emergence of the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill aimed at preventing trafficking and focused on rehabilitating victims.²⁴⁰ The trafficking offence contained under this Bill covers both adults and children and is fully in line with the UN Trafficking Protocol and thus does not require the means of trafficking for offences involving children.²⁴¹ In addition, the provision states that the purpose of exploitation includes “the exploitation of the prostitution of others

or other forms of sexual exploitation including pornography”.²⁴² Another important component of this provision is that it states that “a victim need not physically move or be transported from one location to another for determination of the offence of trafficking in persons”.²⁴³ Although trafficking is often associated with being an international, cross border crime, it has been misconstrued that movement is a necessary component of the offence.²⁴⁴ However, this is not the case and it is a positive inclusion that this has been explicitly recognised in the draft legislation. The Bill also contains provisions that criminalise abetting, promoting, procuring or facilitating the commission of trafficking in persons offences.²⁴⁵ In addition, it is prohibited to exploit or benefit from the exploitation of a trafficking victim.²⁴⁶ Currently, this offence is covered in the Penal Code which criminalises anyone who knowingly engages a trafficked minor for sexual exploitation.²⁴⁷ Whilst it is expected that it will pass into law, at the time of writing the Bill has still not received final approval. Further, there has been little clarification as to the implementation and functionality of the Bill, in particular regarding whether its provisions will take precedence over existing trafficking provisions contained under the Penal Code.²⁴⁸ Lastly, whilst this Bill would enhance the level of protection offered to children from trafficking crimes, it does contain important shortcomings. Notably, it includes the death penalty as punishment for certain offences.²⁴⁹

Turning attention to the sale of children, under the Penal Code it is illegal to sell, buy, let for hire or dispose of children for the purposes of prostitution, illicit intercourse or any other unlawful and immoral purpose.²⁵⁰ Here, illicit intercourse means sexual intercourse between persons who are not married to each other, whether under law or custom.²⁵¹ In addition, the Juvenile Justice Act punishes any person who sells or buys a child for any purpose.²⁵²

235 Government of India. (2000). *Information Technology Act (No. 21 of 2000)*, Section 79.

236 Supreme Court of India. (2015). *Shreya Singhal v. Union of India*, (2013) 12 S.C.C. 73.

237 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 370.

238 *Ibid.*, Explanation 1 to Section 370.

239 *Ibid.*, Section 370.

240 Government of India. (2021). *The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill*.

241 *Ibid.*

242 *Ibid.*, Section 23.

243 *Ibid.*

244 ECPAT International. (2020). *Summary Paper Sale and Trafficking of Children for Sexual Purposes*, Bangkok: ECPAT International.

245 Government of India. (2021). *The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill*. Article 29.

246 *Ibid.*, Section 30.

247 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*. Section 370A(1).

248 EQUATIONS (2021). Personal Communication.

249 Government of India. (2021). *The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill*. Section 26.

250 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*. Sections 372-373.

251 *Ibid.*, Explanation II to Section 372.

252 Government of India. (2015). *Juvenile Justice (Care and Protection of Children) Act, 2015*, Section 81.

An oversight of the Indian legislation is the lack of a clause that exempts children from being prosecuted for offences relating to sale and trafficking for sexual purposes. Indeed, the US Trafficking in Persons Report 2021 noted that due to lack of screening procedures for the victims of trafficking among vulnerable populations, the authorities arrested, fined, penalised, and deported some child trafficking victims for crimes their traffickers compelled them to commit.²⁵³ No child victim of trafficking should ever be treated as an offender and it is of vital importance that the laws are amended to reflect this.

Sexual exploitation of children in travel and tourism

Whilst India does not have legislation at a national level that deals directly with the sexual exploitation of children in travel and tourism, there are a number of instruments that could be invoked in seeking to protect children from being sexually exploited in this context. First, the ITPA criminalises renting out a hotel or a part thereof for the purpose of exploitation of children in prostitution and may revoke the license of a hotel found to be engaging in such conduct.²⁵⁴ In addition, in 2010, the government launched a Code of Conduct for Safe and Honourable Tourism.²⁵⁵ The code aims to “aid the prevention of prostitution, sex tourism and forms of sexual exploitations like assaults and molestations in tourism to safeguard the safety of persons, in particular women and children”.²⁵⁶ All tourism service providers who are recognised and registered by the Ministry of Tourism are required to implement this Code.²⁵⁷ However, this Code is not legally binding and thus cannot be said to be an adequate substitute for criminal legislation prescribing offences relating to the sexual exploitation of children in travel and tourism.

Indeed, a major oversight in this area is the lack of provisions that criminalise the organisation of travel arrangements or transportations that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities.

Positively, there are a number of provisions that may be invoked to hold private companies liable when they are complicit in committing offences relating to the sexual exploitation of children. Under the Information Technology Act, companies/legal entities can be held liable for offences related to child sexual abuse material contained within.²⁵⁸ In regard to the Penal Code, the term “person” is used which includes “any company or association or body of persons, whether incorporated or not”.²⁵⁹ This indicates that the provisions are equally applicable to both individuals and companies. Further, the Code of Criminal Procedure, prescribes procedure when a “corporation”, which includes companies which are incorporated and other body corporates, is accused.²⁶⁰ Although the POCSO Act does not indicate explicitly that companies may be found liable for the offences prescribed, a combined reading of the Indian legislation would indicate that it is likely that this is the case.

Given that offences of sexual exploitation of children in the context of travel and tourism are often cross border, international crimes and instances of international volunteers sexually abusing children in childcare institutions is a trend that has been identified as an emerging threat,²⁶¹ it is necessary to have adequate provisions regulating both the movement of offenders and such practices as ‘voluntourism’. With this in mind, in India there are additional provisions which may offer children some protection from falling victim to sexual exploitation of children in the context of travel and tourism. As prescribed in the POCSO rules, “any institution housing children or coming in regular contact with children including schools, crèches, sports academies or any other facility for children must ensure a police verification and background check on periodic basis, of every staff, teaching or non-teaching, regular or contractual, or any other person being an employee of such Institution coming in contact with the child”.²⁶² This provision could also be used to regulate the use of international volunteers (‘volun-tourism’) in children’s care centres and in activities with direct child contact. Additionally, in 2018 a National Database on Sexual Offenders was launched by the Ministry of Home

253 US Department of State. (2021). *Trafficking in Persons Report*. 287-288.

254 Government of India. (1956). *Immoral Traffic Prevention Act, 1956*, Section 7(c).

255 PIB. (2014). *Code of Conduct for Safe and Honourable Tourism*.

256 Government of India. (2010). *Code of Conduct for Safe and Honourable Tourism*.

257 Protecting Children in Tourism. (2018). *Advancing Responsible Business Practices on Child Protection in India*, 4.

258 Government of India. (2000). *Information Technology Act (No. 21 of 2000)*, Section 85.

259 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 11.

260 Government of India. (1973). *Code of Criminal Procedure (CrPC), 1973 (amended in 2014)*, Section 305.

261 ECPAT International. (2020). *Summary Paper on Sexual Exploitation of Children in Travel and Tourism*. Bangkok: ECPAT International.

262 Government of India. (2020). *Protection of Children from Sexual Offences Rules (POCSO), 2020*, Rule 3(4).

Affairs, containing a range of personal details for criminal offenders, including SEC crimes.²⁶³ Lastly, eVisa application rules passed in 2018 require applicants to provide details about their involvement in child abuse, cyber-crime, and human trafficking²⁶⁴ thereby partially regulating the entry/exit of sex offenders in India.

Regarding individual states, Goa is considered a location where offences of sexual exploitation of children in the context of travel and tourism occur (as mentioned in section 2.4). Therefore, it is noteworthy that the Goa Children's Act is the only piece of legislation in the country that explicitly holds the private sector liable for sexual exploitation of children. The Act explicitly outlines the criminalisation of hotel managers and owners in cases involving sexual exploitation of children in their establishments and obligates them to ensure the safety of children staying in their premises from sexual abuse.²⁶⁵ However, whilst this is an example of good practice, it only applies to the state of Goa. Although Goa is a hotspot for such crimes, that does not mean that they occur exclusively within this state and such provisions should therefore be adopted and applied at a national level.

Child, early and forced marriage

Under the Prohibition of Child Marriage Act child marriages are illegal, with the Act defining male children as anyone under 21 and female children as under 18.²⁶⁶ Therefore, the legal age of marriage is set at 18 for girls and 21 for boys. Although it should be noted that it is always preferable that boys and girls are treated equally and without distinction, it can still be counted as positive that no child under 18 is allowed to marry legally within India. This prohibition of child marriages takes precedence over

the various different religious laws that operate in the country. This is evidenced by the decision of the Supreme Court in *Independent Thought v. Union of India* in which the court held that the provisions of the Prohibition of Child Marriage Act would prevail over the personal laws such as the Hindu Marriage Act, Muslim Marriages and Divorce Act as far as children are concerned.²⁶⁷

The Prohibition of Child Marriage Act also criminalises anyone who performs, conducts, directs or abets any child marriage.²⁶⁸ Further, any parent or guardian who permits their child to marry will also be punished.²⁶⁹ Unfortunately, whilst the Act criminalises those who marry a child, it applies only to adult males.²⁷⁰ As discussed in Section 2.5, child, early and forced marriage is an issue that can affect all children and thus gendered provisions that only protect girls are a wholly insufficient legislative response.

Generally, a child marriage is voidable²⁷¹ at the option of the persons who were children when the marriage took place.²⁷² However, in certain cases, the marriage is invalid, such as when the marriage takes place through fraud, deception, coercion,²⁷³ enticement²⁷⁴ or where the child "is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes".²⁷⁵

Although the practice of dowry is prohibited under the Dowry Prohibition Act, 1961,²⁷⁶ it is still practiced – as detailed in section 2.5.²⁷⁷ Deeply entrenched social norms, poor reporting of crimes, and low prosecution under the Dowry Prohibition Act results in the poor implementation of the Act.²⁷⁸

263 PIB. (2018). *Union Home Minister launches two portals to strengthen Women Safety*.

264 *Sample form for Indian eVisa*.

265 *Ibid.*, Section 8(10).

266 Government of India. (2007). *The Prohibition of Child Marriage Act (Act No. 6 OF 2007)*, Section 2(a).

267 Supreme Court of India. (2017). *Independent Thought v. Union of India [(2017) 10 SCC 800]*, para 19.

268 Government of India. (2007). *The Prohibition of Child Marriage Act (Act No. 6 OF 2007)*. Section 10.

269 *Ibid.*, Section 11.

270 *Ibid.*, Section 9.

271 In contracts, voidable is a term typically used with respect to a contract that is valid and binding unless avoided or declared void by a party to the contract who is legitimately exercising a power to avoid the contractual obligations. (*The Free dictionary by Farlex*)

272 Government of India. (2007). *The Prohibition of Child Marriage Act (Act No. 6 OF 2007)*, Section 3.

273 *Ibid.*, Section 12(b)

274 *Ibid.*, Section 12(a)

275 *Ibid.*, Section 12.

276 Government of India. (1961). *The Dowry Prohibition Act (Act No. 28 of 1961)*, Sections 3-4.

277 Soni, Suparna. (2020). *Institution of Dowry in India: A Theoretical Inquiry*. *Societies Without Borders* 14 (1), 3.

278 Centre for Reproductive Rights. (2018). *Ending Impunity for Child Marriage in India: Normative and Implementation gaps*. 26.

Extraterritorial jurisdiction and extradition law

The Indian Penal Code establishes extraterritorial jurisdiction. Whilst not specific to SEC crimes, the Penal Code states “any person liable by any Indian Law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this code for any act committed beyond (India) in the same manner as if such act had been committed within.”²⁷⁹ In addition, it prescribes that “the provisions of this code apply also to any offence committed by any citizen of India in any place without and beyond India.”²⁸⁰ Therefore, active extraterritorial jurisdiction is established, meaning that India can prosecute illegal conduct (including SEC crimes) by its own citizens that has been carried out abroad. However, the Penal Code does not go further so as to apply passive extraterritorial jurisdiction. This means that the Penal Code will not punish those offences committed by foreign nationals abroad against a victim who is an Indian national. Furthermore, the Committee on the Rights of the Child noted in its most recent concluding observations on India that the extraterritorial jurisdiction is subject to the principle of double criminality, which means that the act needs to be an offence in both India and the country where it was committed for the offender to be prosecuted under extraterritorial jurisdiction.²⁸¹ Given that this is not explicitly stated in the legislation it is unclear whether it applies to crimes under all Acts or if there is a minimum sentence requirement. This double criminality requirement may act as an obstacle in prosecuting SEC offenders who have committed crimes abroad.²⁸²

In regard to crimes relating to child sexual abuse material, the Information Technology Act establishes that it will apply to offences committed outside India by any person.²⁸³ Therefore, it would appear that for crimes under this Act the extraterritorial jurisdiction goes further so as to cover universal jurisdiction, meaning that crimes prescribed within may be punishable even when committed abroad and where neither the offender nor victim are from India.

The Extradition Act provides that extradition offences are those which are either provided for in an extradition treaty or punishable with at least one-year imprisonment under the Indian laws or of a foreign state.²⁸⁴ Again, the principle of double criminality is applicable here and so offences must be illegal in both India and the requesting state in order to be deemed extraditable. Whilst all SEC offences currently penalised in India carry more than the minimum of one-year imprisonment, issues could arise when a requesting state has more lenient sentencing for SEC crimes. Lastly, the Extradition Act allows the government to treat any Convention as the legal basis for extradition in the absence of any extradition treaty with any foreign state, in respect of the offences specified in that Convention.²⁸⁵ Therefore, in the absence of any treaty, India could use the OPSC as the legal basis for extradition of SEC offences.

279 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 3.

280 *Ibid.* Section 4.

281 Committee on the Rights of the Child. (2014). *Concluding observations on the report submitted by India under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**, CRC/C/OPSC/IND/CO/1, para 31.

282 ECPAT International, Defence for Children, Ministry of Foreign Affairs of the Netherlands. (2016, May). *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism*.

283 Government of India. (2000). *Information Technology Act (No. 21 of 2000)*, Section 1(2).

284 Government of India. (1962). *Extradition Act, 1962*, Section 2(a).

285 Government of India. (1962). *Extradition Act, 1962*, Section 3(4).

NATIONAL RESPONSE TO THE SEXUAL EXPLOITATION OF CHILDREN

COORDINATION AND COOPERATION

Over time, the Indian Government has adopted specific measures to combat the sexual exploitation of children. In 2005, through the Commissions for Protection of Child Rights Act, two important human rights independent institutions were created: the National Commission for Protection of Child Rights and the State Commissions for Protecting of Child Rights.²⁸⁶ Both institutions have the duty to analyse safeguards of children and investigate complaints of violation of child rights by states, individuals or entities.²⁸⁷ In addition, both commissions have to monitor custodial institutions for children, analysing which factors could impact on children's rights and control the compliance of national laws with the UN Convention on the Rights of the Child.²⁸⁸ Examples of practical actions related to SEC that have been carried out by the National Commission include producing a series of recommendations on how to prevent child trafficking post COVID-19 lockdowns and publishing research relating to child marriage.²⁸⁹ Collaboration with these commissions is deemed paramount by local civil society when engaging the central/state government for advocacy purposes on the said issue.²⁹⁰ An example is the current work conducted by EQUATIONS, one of the four ECPAT members in India, working with the National Commission in order to advocate for a policy that focuses on children in travel and tourism destinations.²⁹¹

In 2009, the Ministry of Women and Children Development established a national platform called the Integrated Child Protection

Scheme to create a strong system for protecting vulnerable children including those who are victims of sexual exploitation.²⁹² At state and district level the Integrated Child Protection Scheme established the state Child Protection Societies and District Child Protection Units which have the duty to implement child protection activities and policies.²⁹³ The Integrated Child Protection Scheme also established in every Indian district a Child Welfare Committee (as discussed further in section 4.3) which has the duty to protect children by reviewing their cases and placing them in foster care.²⁹⁴ Anecdotal evidence suggests that the Integrated Child Protection Scheme and its institutions are important mechanisms for child protection generally and for dealing with sexual exploitation specifically.²⁹⁵ These institutions engage directly with civil society organisations in order to assess issues on the ground and help to formulate policy response.²⁹⁶

In 2013, the National Child Protection Policy was approved.²⁹⁷ According to this national policy, which must be respected by both state and national government, strong and active cooperation and coordination between the different governance levels is essential, as is access to adequate resources and training of all those who work for and with children.²⁹⁸ However, after the Muzaffarpur shelter abuse case (as mentioned in section 2.4), in 2018, the Ministry of Women and Child Development drafted a new national policy which should be applied to organisations and the private sector.²⁹⁹ The policy drafted in 2018 foresaw a code of conduct based on "zero tolerance of child abuse and exploitation" and the nomination of a staff member for every organisation or member in charge of

286 Government of Odisha. (2005). *Introduction to the Commissions for Protection of Child Rights*.

287 Government of India. (2005). *The Commission for the protection of child act. Section 3*.

288 *Ibid.*

289 *Ibid.*

290 EQUATIONS. (2021). Personal communication.

291 *Ibid.*

292 Government of India, Ministry of Women and Child Development Government of India. *Revised integrated child protection scheme (ICPS)*. 11.

293 *Ibid.*, 17-21.

294 *Ibid.*, 50-64.

295 EQUATIONS. (2021). Personal communication.

296 *Ibid.*

297 Childline India Foundation. (2015). *The National Policy for Children 2013*.

298 *Ibid.*

299 Chandra, J. (2018). *Centre drafts child protection policy*. The Hindu.

monitoring the application of the new procedures for protecting children and in charge of reporting any abuse to Childline 1098.³⁰⁰ However, despite the draft policy being released in 2018, it remains a draft and it has not received final approval or yet been implemented.³⁰¹ This means that to date, the only policy still in place is the one adopted in 2013.

In 2016, the Ministry of Women and Child Development adopted the National Plan of Action for Children, with a specific area on child protection which aimed to create a child-friendly environment for reducing children's vulnerabilities and for keeping them safe in all places.³⁰² The plan focused on the creation of adequate infrastructures, rehabilitation and restoration of victims of trafficking and child sexual abuse and on professional and expert help services for victims and offenders.³⁰³ In regard to sexual exploitation of children, the Plan contains some preventive and awareness raising measures the government of India should take for all forms of child abuse, child marriage, and online sexual exploitation.³⁰⁴ However, the National Plan of Action for Children does not include initiatives or strategies on SECTT, considering it only as an emerging problem which needs more research.³⁰⁵ Further, the Plan is completely silent on the issue of the exploitation of children in prostitution.³⁰⁶ For the success of the strategies set by the Plan, effective monitoring and evaluation systems are required and, for this reason, each programme for children under various Ministries has its own monitoring system.³⁰⁷ However, despite the Plan providing an evaluation system, the lack of monitoring reports that are publicly available makes it impossible to assess the efficacy of the plan as of September 2021.³⁰⁸ The impact of the Plan on the sexual exploitation of children issue is therefore unknown.

It's been noted that the plan has no strategy for stronger coordination with law enforcement

agencies and for support by relevant ministries. Further, it does not foresee adequate course-correction in strategies of law enforcement and falls short in the creation of a secure environment for children.³⁰⁹ Moreover, the plan is also silent on prevention of sexual exploitation of children.³¹⁰

In India, civil society organisations also play an important role in fighting sexual exploitation of children and its manifestations. For example, one of the key components identified in the Integrated Children Protection Scheme was collaboration with civil society.³¹¹ One of ECPAT's members in the country, EQUATIONS, is working with police officers in Madhya Pradesh, by undertaking surveys, data and information collection for mapping high levels of vulnerability along with associated risks for children.³¹² However, many other civil society organisations' initiatives are focused on specific manifestations of child sexual exploitation such as trafficking, sexual exploitation of children in travel and tourism and online sexual exploitation. For instance, the organisation SANLAAP, another member of the ECPAT network active in West Bengal, runs a shelter for girl victims of sexual exploitation, the Sneha house, and 14 drop-in-centres with volunteers who help children providing them education, health services, and an opportunity to develop skills and creative faculties.³¹³

PREVENTION MEASURES, AWARENESS-RAISING AND EDUCATION

Despite India having legislation, national and regional mechanisms, bodies and institutions for fighting sexual exploitation of children, and recommendations from the 2014 concluding observations of the CRC Committee in the

300 Government of India. (2018). *Draft National Child Protection Policy*.

301 EQUATIONS. (2021). Personal Communication.

302 National Coalition to Protect Our Children, TISS. (2017). *National Action Plan Against Commercial Sexual Exploitation of Children (NAPCSEC)*. 4.

303 *Ibid.*

304 Government of India, Ministry of Women and Children Development. (2016). *National Plan of Action for Children 2016*. 86-105.

305 *Ibid.*, 14.

306 *Ibid.*

307 *Ibid.*, 110.

308 EQUATIONS. (2021). Personal Communication.

309 National Coalition to Protect Our Children, TISS. (2017). *National Action Plan Against Commercial Sexual Exploitation of Children (NAPCSEC)*. 4.

310 *Ibid.*

311 EQUATIONS. (2021). Personal communication.

312 *Ibid.*

313 Sanlaap India. (n. d.). *Programmes*.

framework of India's review process,³¹⁴ the country has implemented prevention programmes and awareness raising campaigns only on specific manifestations of SEC whilst others have not received necessary attention.

As examples of such awareness campaigns, in 2010, the Indian Government started the SABLA project which aimed to empower young girls between 11 and 18 years old by providing education and enhancing their knowledge of their rights and of laws which could protect them, such as the Prohibition of Child Marriage Act.³¹⁵ In a 2019 report evaluating good practices under the SABLA project written by the International Center for Research on Women, the creation of "safe spaces" by CINI, an ECPAT member in the country, was shared as an example of good practice.³¹⁶ These physical spaces were characterised also by solidarity and collective strength of girls coming together and helped girls build a non-judgmental peer network.³¹⁷ In 2019, the last year of the SABLA scheme implementation, the project was extended to all districts of the country.³¹⁸

In 2016, the Government of India also launched a national project on trafficking called the Ujjawala project.³¹⁹ Implemented then by the Social Welfare or Women and Child Welfare Department of State Government, Women's Development Corporations, Women's Development Centres, private and voluntary organisations, the Ujjawala project aims to prevent trafficking through local community awareness raising and to facilitate rehabilitation and re-integration of victims.³²⁰ The project is still ongoing and the budget for the project is updated every year.³²¹ However, as with the National Plan

of Action for Children, the government has not released monitoring data so it is difficult to assess success.

The National Commission for the Rights of the Child in 2017 launched guidelines on digital safety for children, caregivers and teachers.³²² These guidelines identify a number of risks linked to the online sexual exploitation of children such as online grooming or engaging in activities related to CSAM.³²³ The National Commission for the Rights of the Child also promoted a series of videos for raising awareness among children on sexual abuse and on how to report it. The videos also aimed at helping parents and teachers in understanding early warning signs of sexual abuse.³²⁴ Despite these activities, the Parliament of India, in a 2020 report, recommended to carry on more programmes and campaigns for increasing children's and caregivers' awareness on online safety of children.³²⁵

It is important to mention that central and state governments may also run their own awareness raising campaigns on issues, including related to sexual exploitation of children.³²⁶ At a state level, only a few programmes were identified that focused on broader topics which may have touched on SEC. For example, in 2021 the State Child's Commission of Jaipur launched an awareness campaign on children's rights.³²⁷

In raising awareness on sexual exploitation of children the role of civil society is essential.³²⁸ These organisations often collaborate with the government, including applying for public funding.³²⁹ It is important to underline that not all non-

314 Committee on the Rights of the Child. (2014). *Concluding observations on the report submitted by India under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, CRC/C/OPSC/IND/CO/1.

315 Government of India, Ministry of Women and Child Development. (2010). Approval of Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGEAG).

316 Nanda, S., Sharma, S., Anand, S., Pal, P., Nandi, S. (2020). *What Works for Adolescents' Empowerment: A learning review*. New Delhi: International Center for Research on Women. 25.

317 Ibid.

318 Nayak, D., Koul, P. (2021). *Taking the well-designed SABLA scheme to the next level (Part I)*. MicroSave Consulting.

319 Government of India, Ministry of Women and Children Development. (2016). *Ujjawala*.

320 Ibid.

321 EQUATIONS. (2021). Personal Communication.

322 Government of India, National Commission for the Rights of the Child. (2017). *Being safe online- guidelines for raising awareness among children, parents, educators and general public*.

323 Ibid., 8.

324 Government of India, National Commission for the protection of Child Rights. (2010). *Animated movies on prevention of child sexual abuse*.

325 Parliament of India – Rajya Sabha-. (2020). *Report on the ad hoc committee of the Rajya Sabha to study the alarming issue of pornography on social media and its effect on children and society as a whole*.

326 EQUATIONS. (2021). Personal communication.

327 The Times of India. (2021). *Child rights awareness campaign launched in Raj*.

328 EQUATIONS. (2021). Personal communication.

329 Ibid.

governmental organisations who collaborate with the Indian government receive financial help.³³⁰ Examples of campaigns that addressed issues related to SEC include ActionAid's 2019 campaign "No to child marriage, yes to school".³³¹ The campaign has so far reached almost 2000 schools across 13 districts in Bihar and Odisha and been extended to districts in Rajasthan, Tamil Nadu and West Bengal.³³² ActionAid India reported that 207,081 children were reached through this campaign between October and November 2019.³³³ In addition, they reported that as of August 2020, 1,350 child marriages have been postponed or stopped in the five states in which the campaign was run.³³⁴

Other examples include the Kailash Satyarthi Children's Foundation, which in 2020 launched a survivor-led campaign for raising awareness on trafficking of children and on the laws to combat it amidst the COVID-19 pandemic,³³⁵ and the 'Missing' awareness campaign aims to sensitise the rural and urban population of girls who are trafficked for sexual exploitation through interactive classroom awareness sessions in order to engage young students.³³⁶

With regards to OCSE, The Tulir-Centre for the Prevention and Healing of Child Sexual Abuse extended its engagement in raising public awareness in person to the online space.³³⁷ Also, the Cyber Peace Foundation created a programme for the protection of children, the 'E-Raksha Seminars' projects, to raise children's awareness of the risks and threats of Internet and social media; and the 'I-Safe Project' to sensitise them on cyber-abuse, cyber-harassment and cyber-extremism.³³⁸

CHILD PROTECTION, ACCESS TO JUSTICE AND RIGHT TO REMEDIES

National complaint mechanisms

Chapter V of the POCSO Act lays out the procedure for reporting instances of child sexual exploitation and abuse. All persons have a mandatory duty to report offences committed under the POCSO Act.³³⁹ The POCSO 2019 Amendment Act and POSCO Rules 2020 have added mandatory reporting duties for private citizens and professionals specifically in relation to CSAM-related offences under the Act.^{340,341} Personnel/professionals working in the media, hotel, lodge, hospital, club, studio or photographic facilities are mandated to report any material or object "which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium" to the Special Juvenile Police Unit, or the local police. Failure to do this would result in imprisonment of up to six months, with or without a fine.³⁴² The Juvenile Justice Act 2015 also imposes mandatory reporting duties on private citizens, hospital staff and police officers regarding abandoned or lost children.³⁴³ They are required to either inform the Childline Services, the nearest police station, a Child Welfare Committee or the District Child Protection Unit about the child or hand over the child to a childcare institution registered under the Act within 24 hours of receiving the child.³⁴⁴ Failure to do so is an offence.³⁴⁵ This duty could apply in the case of SEC victims who are either rescued or have been able to escape their offenders.³⁴⁶

330 *Ibid.*

331 Panda, G. (2019). *Say NO to Child Marriage and YES to school!*. ActionAid – India.

332 *Ibid.*

333 ActionAid – India. (2020). *Protecting Children in India from Child Marriage*.

334 *Ibid.*

335 Kailash Satyarthi Children's Foundation. (2020). *Mukti Caravan launched in Bihar to combat child trafficking and child labour during COVID-19 pandemic*.

336 Missing. (n.d.). *What is MASSp?*

337 UNICEF. (2016). *Child online protection in India*. 73.

338 *Ibid.*

339 Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019)*, Sections 19(1) and 21.

340 *Ibid.*, Section 20.

341 Government of India. (2020). *Protection of Children from Sexual Offences (POCSO) Rules, 2020*, Rule 11.

342 *Ibid.*, Section 20.

343 Government of India. (2015). *Juvenile Justice (Care and Protection of Children) Act, 2015*, Section 32.

344 *Ibid.* Section 32.

345 *Ibid.* Sections 33-34.

346 Stop Trafficking and Oppression of Children and Women (RBC Trust), India. (2021). Personal Communication.

In India, public prosecutors do not have to carry out ex-officio investigations.³⁴⁷ Therefore, a criminal case can only be initiated by a Magistrate based on a complaint, a police report or information from any other person, or based on their own knowledge that such offence has been committed.³⁴⁸ However, for cognizable offences³⁴⁹, which also include some offences under the POCSO Act³⁵⁰, police can investigate and make arrests without a court order.³⁵¹ Further, every complaint giving information about a cognizable offence must be signed by the informant and therefore, an anonymous complaint is generally not permitted under Indian criminal law.³⁵² However, an anonymous complaint can be made to the Cyber Crime Reporting Portal. These complaints are dealt with by respective state/union territories police authorities based on information provided by the complainant(s).³⁵³

Several initiatives have been set up to report crimes committed against children. Crimes against children can be reported through Childline 1098, a free emergency helpline for children in need of aid and assistance³⁵⁴ as mentioned in section 2.2. It is managed through the Childline India Foundation, the nodal agency of the Union Ministry of Women and Child Development for implementing and monitoring the Childline 1098 service over the country.³⁵⁵ As of June 2021, Childline services operates in over 598 cities and districts, now covering 83% of India.³⁵⁶ In addition, in 2015-2016, Childline Help Desks were set up at railway stations as an institutional mechanism, with kiosks and booths providing immediate attention to unaccompanied children.³⁵⁷ As of August 2021, 144 Child Help Desk were operating at railway stations across India.³⁵⁸

IN THE PERIOD APRIL 2019-MARCH 2020

75,298

CALLS

REGARDING ABUSE
AND VIOLENCE

34%

OF THESE CALLS
WERE ABOUT CHILD
MARRIAGE

13%

WERE ABOUT
SEXUAL ABUSE



In the period April 2019-March 2020, the helpline received 75,298 calls regarding abuse and violence which represents 22% of the total calls received by Childline.³⁵⁹ 34% of the calls regarding abuse and violence were about child marriage, 28% about physical abuse and 13% were regarding sexual abuse.³⁶⁰ Within the category of sexual abuse, 'pornography' cases account for 2% of the cases (176 cases) and 'commercial sexual exploitation' for 4% of the cases (333 cases).³⁶¹ Similarly to cases of CEFM as mentioned in section 2.5, the helpline reported that for cases of sexual abuse, offenders are often known by the children.³⁶² Of the 9,605 calls for sexual abuse, 32% were committed by neighbours, 12% were committed by family members and 28% by friends, relatives, teachers, institutional staff, hospital staff, police and step parents.³⁶³ The remaining 28% were offenders unknown to the child.³⁶⁴ According to analysis of the data, 87% of the victims of sexual abuse were girls.³⁶⁵ The interventions provided by the helpline included referrals to local child welfare committees

347 Government of India. (1973). *Code of Criminal Procedure (CrPC), 1973 (amended in 2014)*, Section 190(1).

348 *Ibid.*, Section 190(1).

349 Commonwealth Human Rights Initiative. (n.d). *First Information Report*. A cognizable offence is an offence in which the police may arrest a person without a warrant.

350 Government of India. (1973). *Indian Code of Criminal Procedure*. Classification of Offences Against Other Laws. 193.

351 Government of India. (1860). *Indian Penal Code (No. 45 of 1860) (as amended in 2018)*, Section 2(c).

352 Government of India. (1973). *Code of Criminal Procedure (CrPC), 1973 (amended in 2014)*, Section 154(1).

353 Government of India, Press Information Bureau. (2019). *Digital exploitation of children*.

354 Childline India Foundation. (n.d.). *About Childline India*.

355 *Ibid.*

356 *Ibid.*

357 *Ibid.*

358 *Ibid.*

359 Childline India Foundation.(2020). *Childnet: Analysis of Calls to 1098: Childline calling...is India listening?*. 33.

360 *Ibid.*, 36. Note: For 1,634 cases, data on the type of abuse and violence were not available.

361 *Ibid.*, 41.

362 *Ibid.*

363 *Ibid.*, 41. Note: Sexual abuser information was not available for 335 cases.

364 *Ibid.*

365 *Ibid.*, 38.

or requests to police to investigate.³⁶⁶ For the remaining cases, Childline provided legal support, filed first information reports,³⁶⁷ liaised with bonded labour vigilance committee, directly approached magistrates or arranged medical tests.³⁶⁸

Children can also refer to the National Commission for Protection of Children's Rights for complaints of violations of child rights.³⁶⁹ The commission also has the mandate to undertake investigations on its own accord with no request from third parties.³⁷⁰ The Chairperson of the National Commission for Protection of Children's Rights shared that in 2019-2020, due to increased outreach, the commission recorded up to 30,000 complaints, including under the Juvenile Justice Act, the POCSO Act, a six-fold increase compared to the previous year.³⁷¹ Despite this increase, the complaints mechanism is not being used as much as the 1098 hotline, which is used the most by children due to the process' effectiveness.³⁷²

In order to protect children from offences included under the POCSO Act, the Ministry of Women and Child Development introduced the POSCO e-Box, an online complaint management system for reporting child sexual abuse against offenders under the POSCO Act.^{373,374} This e-Box offers the possibility for the user to register a complaint by selecting the category of harassment and to maintain the confidentiality of the complainant. All the complaints filed by the user get assigned automatically by the system to the respective Nodal Officer.³⁷⁵ The National Commission for Protection of Child Rights shared that 356 complaints have been received through the POSCO e-Box during the period 2018-June 2021.³⁷⁶ However, when comparing these figures to the number of calls the hotlines receives,

it is clear that more awareness must be raised of the e-Box mechanism.

Child-sensitive justice

The POCSO Act extensively discusses the various measures for protecting the right of child victims and takes into consideration the special needs of a child at all stages of the investigation, the prosecutorial and judicial processes. With regards to the reporting of offences, the POCSO Act prescribes the implementation of special physical infrastructure in police stations in order to create a favourable environment for the child.³⁷⁷ Cases reported by a child must be recorded by the Police Officer in simple language so that the child understands the content being recorded.³⁷⁸ If the statement is recorded in a language other than the one of the child, a qualified translator must be provided.³⁷⁹ During procedures involving medical examination or giving testimonies in court, procedures "shall be conducted in the presence of the parents of the child or any other person whom the child has trust or confidence".³⁸⁰ Further, the Act permits recording of the statement through audio-video electronic means and provides for confidentiality of the victim during all of the above-mentioned process.^{381,382} The Act further requires that the child must not be brought face to face with the accused during the testimony to the police or the magistrate, or while testifying in court.^{383,384}

Structural modifications required under the POCSO Act related to making child-sensitive infrastructures are difficult to implement and the majority of the special courts do not have child-friendly physical

³⁶⁶ *Ibid.*, 79.

³⁶⁷ Commonwealth Human Rights Initiative. (n.d.). *What is an FIR*. 1. Note: *The First Information Report is a written document prepared by the police when they receive information about the commission of a cognizable offence. The procedure of filing an FIR is described in Section 154 of the Criminal Procedure Code.*

³⁶⁸ *Ibid.*

³⁶⁹ Government of India, National Commission for Protection of Child Rights. (n.d.). *Complaints*.

³⁷⁰ *Ibid.*

³⁷¹ The Hindu. (2020). *With more outreach, complaints of child rights violations up six-fold: NCPCR*.

³⁷² EQUATIONS. (2021). Personal Communication.

³⁷³ India Fillings. (n.d.). *POCSO e-Box*.

³⁷⁴ Government of India, National Commission for Protection of Child Rights. (n.d.). *Online Complaint Management System*.

³⁷⁵ India Filings. (n.d.). *POCSO e-Box*.

³⁷⁶ Government of India, Press Information Bureau. (2021). *Press release: POSCO E-box*.

³⁷⁷ Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019, Section 33(4).*

³⁷⁸ *Ibid.*, Section 19(3).

³⁷⁹ *Ibid.*, Section 19(4).

³⁸⁰ *Ibid.*, Section 27(3) and Section 26(1)f.

³⁸¹ *Ibid.*, Section 33(7).

³⁸² *Ibid.*, Section 26.

³⁸³ Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019).*

³⁸⁴ Supreme Court Observer. (2019). *POCSO Implementation*. In: *Re Alarming Rise in the Number of Reported Child Rape Incidents*.

infrastructure.³⁸⁵ As reported by a Chief Justice during hearings about the implementation of the POCSO Act in July 2019, usually only a mere curtain separates the accused from the child when the victim is questioned by the Special Public Prosecutor.³⁸⁶ In fact, the POCSO Act does not elaborate on structural modifications in order to avoid exposure to the accused outside of the court room.³⁸⁷ The US Trafficking in Persons Report 2021 emphasises that victims have refused to participate in trials due to inadequate implementation of victim protection measures.³⁸⁸

The POCSO Act also prescribes the Central Government to elaborate guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the pre-trial and trial stage.^{389,390} In this sense, the Ministry of Women and Child Development released the Model Guidelines under Section 39 of the Protection of Children from Sexual Offences Act, 2012.³⁹¹ This document provides guidelines on interviewing a child and on the way medical and health professionals, as well as child development experts, legal representatives and social workers perform their work. Examples include the interview setting, like incorporating elements, such as toys, art material or other props in order to make the room appear child friendly.³⁹² The document also prescribes to find a private location (except if the child refuses to separate from caregivers) that

appears to be the most neutral spot if the interview is conducted in the child's home and a room that is simple and uncluttered as possible.³⁹³ However, there is limited training to professionals working in local courts and police stations.³⁹⁴

The POCSO Act also prescribes that the government should establish special courts to handle trials of offences registered under the POCSO Act in order to provide speedy trial.³⁹⁵ The Act provides that child testimony be recorded within a period of thirty days of the special court taking cognizance of the offence.^{396,397} In addition, the special court shall complete the trial, as far as possible within a period of one year from the date of taking cognizance of the offence.³⁹⁸ Despite the legislative provisions on the appointment of special courts, the poor disposal in courts is of concern. The Supreme Court reported that as of 12th July 2019, trial was completed in only 900 of the 24,212 cases registered from 1st of January to 30th June 2019.³⁹⁹ The Supreme Court reported that states lack the requisite infrastructure for conducting trial proceedings in POCSO cases and that basic facilities in the offices of magistrates and presiding officers lead to delays in disposing child rape cases under the POCSO Act.⁴⁰⁰ The special courts can also hear cases relating to children from offences under other acts and also for adults. In fact, judges rarely handle only cases involving children.^{401,402} In general, judges are not specialised in children's rights cases and are dealing with several criminal cases which makes it difficult for them to dedicate their time to cases involving children.⁴⁰³

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- 385 Centre for Child and the Law, National Law School of India University. (2018). *Implementation of the POCSO Act, 2012 by special courts: Challenges and Issues*. 6.
- 386 Supreme Court Observer. (2019). *POCSO Implementation*. In: *Re Alarming Rise in the Number of Reported Child Rape Incidents*.
- 387 Centre for Child and the Law, National Law School of India University. (2018). *Implementation of the POCSO Act, 2012 by special courts: Challenges and Issues*. 4.
- 388 U.S. Department of State. (2021). *Trafficking in Persons Report*.
- 389 Government of India, Ministry of Women and Child Development. (2013). *Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012*.16.
- 390 Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019)*, Section 39.
- 391 Government of India, Ministry of Women and Child Development. (2013). *Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012*.16
- 392 *Ibid.*, 13
- 393 *Ibid.*
- 394 EQUATIONS. (2021). Personal Communication.
- 395 Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019)*, Section 28.
- 396 *Ibid.*, Section 35(2).
- 397 Supreme Court Observer. (n.d.). *POCSO Implementation*. In: *Re Alarming Rise in the Number of Reported Child Rape Incidents*.
- 398 *Ibid.*
- 399 *Ibid.*
- 400 *Ibid.*
- 401 Centre for Child and the Law of the National Law School of India University. (2018). *Implementation of the POCSO Act, 2012 by special courts: Challenges and Issues*. 2.
- 402 EQUATIONS. (2021). Personal Communication.
- 403 *Ibid.*

The Supreme Court instituted a written petition to issue guidelines and directions to improve the speedy disposal of child abuse cases.⁴⁰⁴ Following hearings, the Supreme Court directed the central government and all state government to play a more proactive role in ensuring the completion of trials within a year, including to release funds for setting up special courts in each district of the country with more than 100 cases under the POCSO Act.⁴⁰⁵ It directed the central government and all state government to play a more proactive role in ensuring the completion of trials. In 2019, the state government approved the continuation of a scheme of 2019 for setting up 1,023 fast-track special courts, including 389 exclusive POCSO courts across India in order to enable expeditious disposal of pending cases under the IPC and crimes under the POCSO Act.⁴⁰⁶ However, a report of the Parliamentary standing committee of Home Affairs of 2021 reported that only 597 courts including 325 exclusive POCSO courts have been made operational in 24 states/union territories.⁴⁰⁷

Despite the commitments enshrined in the law, there are limitations observed in the implementation processes. Capacity-building measures should be set up in order to improve awareness and education of professional working on sexual exploitation cases, including on child sensitive measures.

Access to recovery and reintegration

Child victims of sexual exploitation are included under “child in need of care and protection” pursuant to Section 2(14) of the Juvenile Justice Act, 2015.⁴⁰⁸ Therefore, they are entitled to receive care and protection as per the provisions of the Juvenile Justice Act.⁴⁰⁹ The Juvenile Justice Act, 2015 provides

procedures relating to the rehabilitation, adoption, re-integration and restoration of children in need of care and protection.⁴¹⁰ Accordingly, Section 29(1) of this Act empowers state governments to constitute child welfare committees and makes it their duty to provide for the care, protection, rehabilitative and other needs of “children in need of care and protection”.⁴¹¹ Child welfare committees are required to prepare a child’s individual care plan to meet his/her need for care, protection, appropriate rehabilitation or restoration.⁴¹² More specifically, the committee is responsible for taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the committee by the police under the POCSO Act, 2012.⁴¹³ While the Act provides that states must constitute one or more child welfare committees for each district for dealing with children in need of care and protection, civil society reported the lack of child welfare committees in some districts as of September 2021.⁴¹⁴

Emphasis has also been placed on the safety and protection of child victims and witnesses. Under Section 39(3) of the Act, the children in need of care and protection who are not placed in families may be placed in a child care institution registered under the Act.⁴¹⁵ The Special Juvenile Police Unit is authorised to commit a child victim to a place of safety for care or protection.⁴¹⁶ Similarly, the Immoral Traffic Prevention Act (ITPA) allows the magistrate to place a rescued child victim of trafficking in any institution established or recognised under the Indian legislation.⁴¹⁷ Institutions for children in need of care and protection include children’s homes, open shelters, observation homes, special homes, place of safety, specialised adoption agencies and fit facilities.⁴¹⁸

404 Supreme Court Observer. (2019). *POCSO Implementation. In: Re Alarming Rise in the Number of Reported Child Rape Incidents.*

405 Supreme Court of India. (2019). *Alarming rise in the number of reported child rape incidents*, [Writ Petition (Criminal) No. 1/2019].

406 India Today. (2021). *Union Cabinet approves continuation of 1023 fast track special courts.*

407 Parliament of India Rajya Sabha: Department-related parliamentary standing committee of Home Affairs. (2021). *Two Hundred Thirtieth Report on Atrocities and Crimes Against Women and Children*.20.

408 Government of India. (2015). *Juvenile Justice (Care and Protection of Children) Act, 2015*, Section 2(14).

409 Supreme Court of India. (2017). *Exploitation of children in the orphanages in the State of Tamil Nadu v. Union of India*, [Writ Petition (Criminal) No. 102 OF 2007].

410 Government of India. (2015). *Juvenile Justice (Care and Protection of Children) Act, 2015*, Section 1(4)(ii).

411 *Ibid.*, Section 29(1).

412 *Ibid.*, Section 30.

413 *Ibid.*, Section 30(xiii).

414 EQUATIONS. (2021). Personal Communication.

415 Government of India. (2015). *Juvenile Justice (Care and Protection of Children) Act, 2015*, Section 39(3).

416 Government of India. (2015). *Juvenile Justice (Care and Protection of Children) Act, 2015*, Section 10.

417 Government of India. (1956). *Immoral Traffic Prevention Act, 1956*, Section 17.

418 Government of India, Ministry of Women and Child Development. (2018). *The report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and protection of Children) Act, 2015 and Other Homes*, 33.

The primary objective of the institutions is the restoration and protection of the childhood.⁴¹⁹ An audit report commended by the Ministry of Women and Development on child care institutions under the Juvenile Justice Act reported a total of 9,589 homes in India.⁴²⁰ The report further mentions that the number of child care institutions/homes run by non-governmental organisations was significantly higher than those run by the government.⁴²¹ Of the 9,589 child care institutions/homes in India, 91% were run and established by non-governmental organisations, supported or not by the government.⁴²² As an example of a shelter run by non-governmental organisations, Stop Trafficking and Oppression of Children and Women, an ECPAT member in India, operates a government approved shelter in Delhi for child victims of trafficking.⁴²³ In 2017, the STOP home provided safe care, protection and rehabilitative services to a total of 52 girls.⁴²⁴

The Ministry of Women and Development provides financial assistance to shelters through the Ujjawala programme for women and child victims of sexual exploitation and provides rehabilitation services to facilitate their reintegration into society and to facilitate the repatriation of cross border victims and through the Swadhar Greh programme for women in difficult circumstances.^{425,426} According to the US Trafficking in Persons Report 2021, 136 shelters received funding by the government through the Ujjawala programme and 417 shelters through the Swadhar Greh.⁴²⁷ In addition, the Ministry of Women and Development manages One-Stop Centres for female victims of all crimes including trafficking for sexual exploitation.^{428,429} As of December 2020,

700 One-Stop Centres were operating in India, a satisfactory increase compared to the 506 centres established in 2019.⁴³⁰ However, non-governmental organisations have indicated that the centres were not functioning effectively and were difficult to access.⁴³¹

Concerns have also been raised about the oversight of these institutions/homes.⁴³² Child welfare committees are supposed to monitor victim's cases and oversight of child care institutions/homes but their efficacy differs between states and places.^{433,434} In January 2019, the National Legal Service Authority issued a report on the status of the juvenile justice system undertaking a mapping and review of the actual working of child care institutions/homes across the country.⁴³⁵ Despite existing legislative provisions, the report mentions a lack of tailored care and recovery plan individualised for each child victim in child care institutions.⁴³⁶ Regarding the rate of follow-up of children post restoration and release, the report found that it is higher for children leaving observation homes and children's homes comparing to children in other child care institutions.⁴³⁷ Also, some states and united territories are developing individual care plans but are not carrying out follow-up of children post restoration and release from places of safety.⁴³⁸

In addition, media and reports highlight the fact that the safety of children within child care institutions has been called into question.^{439,440} According to an audit commissioned by the National Commission for the Protection of Child Rights, of 9,500 child care institutions for the reporting period 2018-2020, 40%

419 Government of India, Ministry of Women and Child Development. (2018). *The report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and protection of Children) Act, 2015 and Other Homes*, ii.

420 *Ibid.*, 4.

421 *Ibid.*, 40.

422 *Ibid.*, 40.

423 Stop Trafficking and Oppression of Children and Women. (n.d.). *Restoration*.

424 *Ibid.*

425 Government of India, Ministry of Women and Child Development. (2016). *Ujjawala Scheme*.

426 U.S. Department of State. (2021). *Trafficking in Persons Report*.

427 *Ibid.*

428 *Ibid.*

429 Government of Kerala, Department of Women and Child Development. (n.d.). *One stop centers*.

430 U.S. Department of State. (2021). *Trafficking in Persons Report*.

431 *Ibid.*

432 *Ibid.*

433 *Ibid.*

434 EQUATIONS. (2021). Personal Communication.

435 National Legal Services Authority. (2019). *A Quick Overview Status of Juvenile Justice System, Structures, Mechanisms and Processes*.

436 *Ibid.*, 23.

437 *Ibid.*, 25.

438 *Ibid.*

439 The Economic Times. (2018). *Sexual abuse at shelter homes: Existing mechanism not adequate to deal with problem, says SC*.

440 Government of India, Ministry of Women and Child Development. (2018). *The report of the Committee for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and protection of Children) Act, 2015 and Other Homes*. 24.

of the institutions didn't have adequate measures to prevent abuse of children.⁴⁴¹ In February 2020, the Ministry of Women and Child Development shared that 49 complaints of sexual exploitation, torture and violence against children have been reported in child care institutions during the last four years.⁴⁴²

Finally, the COVID-19 pandemic has exposed the lacunae in the functioning of child care institutions.⁴⁴³ Research identified the difficulties to provide essential commodities such as medicine and menstrual hygiene products, as well as the logistical difficulties induced by the social distancing mandates prohibiting the non-resident child care institutions staff to limit or stop their activities.⁴⁴⁴ On April 3rd 2020, the Supreme Court of India issued protective orders to state governments for safeguarding children at care homes from the COVID-19 pandemic.⁴⁴⁵ Child welfare committees have been asked to monitor cases by telephone for children who have been sent back to their families.⁴⁴⁶ In addition, juvenile justice boards and children's courts were asked to consider measures to prevent children residing in various childcare institutions due to risks of harm arising from COVID-19.⁴⁴⁷

Access to compensation

The Indian legislation has explicit provisions for child victims of crime to access financial compensation. However, these provisions are not exclusive to SEC and apply to sexual and other crimes in general. The special courts established under the POCSO Act are authorised to award compensation to the child victims.⁴⁴⁸ The compensation may be awarded

for any physical or mental trauma suffered by them or for their immediate rehabilitation.⁴⁴⁹ More specifically, for the offence of penetrative sexual assault under Section 3 and 4 of the POCSO Act, the courts are permitted to impose a just and reasonable fine which is to be paid by the offender to the child victim to meet their medical and rehabilitative needs.⁴⁵⁰ In addition, Rule 9 of the POCSO Rules, 2020, permits the special courts to pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report.⁴⁵¹ The POCSO Rules state that the compensation awarded by the special court should be paid by the state governments from the Victims Compensation Fund or other scheme or fund established by it for compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, and if no funds exist, by the state Government itself.⁴⁵² It must be noted that Section 357 and 357A of the Code of Criminal Procedure provide for compensation to all victims of crimes.⁴⁵³ Pursuant to Section 357A of the Code of Criminal Procedure, the Government of India has also set up a Central Victim Compensation Fund in 2015 with an initial fund of 2 billion Indian Rupees⁴⁵⁴ for the victims of rape, acid attacks, human trafficking, disabilities and burns affected on them.⁴⁵⁵ Many states and union territories' governments have also started their own victim compensation schemes prescribing compensation to victims of different types of crime.⁴⁵⁶ The Government of India provided guidelines on the minimum amount of compensation for injuries states and union territories have to disburse, including compensation

441 U.S. Department of State. (2021). *Trafficking in Persons Report*.

442 Government of India, Press Information Bureau. (2020). *Press release 07 February 2020*.

443 Roy, S. (2020). *Restructuring Institutional Care: Challenges and Coping Measures for Children and Caregivers in Post-COVID-19 Era*. 65.

444 *Ibid.*, 69.

445 Supreme Court of India. (2020). *Contagion of COVID-19 virus in children protection homes*, [Writ Petition (Civil) No. 4 of 2020].

446 *Ibid.*

447 *Ibid.*

448 Government of India. (2012). *Protection of Children from Sexual Offences Act (as amended by Amendment Act No. 25 of 2019)*, Section 33.

449 *Ibid.*, Section 33(8).

450 *Ibid.* Section 4(3).

451 Government of India. (2020). *Protection of Children from Sexual Offences Rules (POCSO)*, 2020, Rule 9.

452 *Ibid.* Rule 9(4).

453 Government of India. (1973). *Code of Criminal Procedure (CrPC)*, 1973 (amended in 2014), Section 357-357A.

454 \$USD26.5 million as of October 2021.

455 Government of India, Press Information Bureau. (2015). *Central Victim Compensation Fund set up with initial corpus of Rs. 200 crores*.

456 Government of India, Press Information Bureau. (2015). *Victim Compensation Fund Scheme*.

to the victims of sexual offences.⁴⁵⁷ Regarding physical abuse of a minor, compensation must equal a minimum amount of 200,000 Indian Rupees (\$USD 2,690 as of November 2021) for rehabilitation of victim of human trafficking, 100,000 Indian Rupees (\$USD 1,345 as of November 2021) and for sexual assault (excluding rape), 50,000 Indian Rupees (\$USD 680 as of November 2021).⁴⁵⁸ If the victims are less than 14 years old, the amount of the compensation must be doubled.⁴⁵⁹ In addition, the Compensation Scheme for Women Victims/Survivors of Sexual Assault has been set up, upgrading the compensation amounts for women and girl victims of sexual assault.⁴⁶⁰ However, the efficacy of these schemes is doubtful. Research reported that there is

a significant discrepancy between the amount allocated in the fund and the funds used.⁴⁶¹ Additionally, a 2019 study highlighted the issues faced by child victims of rape and their families that affected their rehabilitation and social reintegration.⁴⁶² The study interviewed 100 child victims which included 94 girls and 6 boys.⁴⁶³ The study found that out of the 100 children, only 15 children had received compensation, all of whom were girls.⁴⁶⁴ The study concluded that the benefits of the compensation scheme have not reached all child victims due to low levels of awareness and the compensation amount is inadequate for rehabilitation of affected children.⁴⁶⁵

457 Government of India, Ministry of Home Affairs. (2016). *Central Victim compensation Fund Scheme (CVCF) Guidelines*.

458 Government of India, Ministry of Home Affairs. (2016). *Central Victim compensation Fund Scheme (CVCF) Guidelines*.

459 *Ibid.*

460 Government of India, National Legal Services Authority. (2018). *Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018*.

461 Sanjog. (2020). *Uncompensate victims. A national report on status of victim compensation to survivors of human trafficking in India*. 10-12.

462 Delhi Commission for Protection of Children's Rights. (2019). *Mapping of Needs and Priorities: A Study of Child Rape Victims in Delhi*. xiii.

463 *Ibid.*

464 *Ibid.*, 31.

465 *Ibid.*, xiv.

CHILDREN'S AND SURVIVORS' PARTICIPATION

Within the National Plan of Action for Children 2016 there is the intention of increasing the participation of children in government responses to matters that concern them.⁴⁶⁶ Although the government identifies child participation as an aim in the National Plan of Action for Children, it doesn't actually run directly the programmes which foresee participation of children itself but it is left to civil society to implement.⁴⁶⁷ Though it has been reported that in recent years Integrated Child Protection Scheme officers have dealt with some children directly by going to villages and engaging in direct consultations, the majority of child participation initiatives are still carried out by civil society.⁴⁶⁸

There are few initiatives directly engaging children that are specifically related to SEC. One example of an initiative that does engage children would be the Mukti Caravan Initiative, organised by the Kailash Satyarthi Children's Foundation, which, as explained in section 4.2, is a campaign led by survivors of child trafficking, for raising awareness on this type of child sexual exploitation, since 1997.⁴⁶⁹ Even if consultations specifically related to SEC are rare, issues related to sexual exploitation are sometimes incorporated into consultations. For instance, "It's Time to Talk! – Children's Views on Children's Work", carried out by child focused agencies Kindernothilfe and Terre Des Hommes explored child labour.⁴⁷⁰

From our research, it is possible to deduce that even if child participation is one of the principal points of the Indian National Plan of Action for Children, they are not directly involved in actions, initiatives or projects run by government relevant to combat sexual exploitation and they are not consulted during the creation of legislation to protect them. At a regional and local level, instead, children are involved in projects for raising awareness on their rights, but still there are only few initiatives involving them on specific manifestations of SEC and no initiatives involving children directly addressing sexual exploitation have been identified. Including children in decision-making processes will strengthen the efficacy of measures for fighting sexual exploitation of children.

⁴⁶⁶ Government of India, Ministry of Women and Child Development. (2016). *National Plan of Action for Children 2016*.

⁴⁶⁷ EQUATIONS. (2021). Personal communication.

⁴⁶⁸ Ibid.

⁴⁶⁹ Kailash Satyarthi Children's Foundation. *Mukti Caravan launched in Bihar to combat child trafficking and child labour during COVID-19 pandemic*.

⁴⁷⁰ TimeToTalk. (n.d.). *What is the "It's Time to Talk!" campaign about*,

RECOMMENDATIONS FOR ACTION

International and regional legislation, commitments and coordination to ending sexual exploitation of children

- ➔ Amend all gendered provisions to cover children of all genders, such as Article 366A of the Penal Code to cover procurement of all children and Article 375 of the Penal Code to criminalise the rape of both boys and girls.
- ➔ Amend the definition of child sexual abuse materials given under the Protection of Children from Sexual Offences Act to include “any representation” of child sexual abuse materials and “depictions of sexual parts of a child for primarily sexual purposes” to be in full compliance with international standards.
- ➔ Enact legislation that explicitly criminalises the live streaming of child sexual abuse.
- ➔ Amend the legislation to specifically exclude a child’s criminal liability for sharing child sexual abuse materials especially when compelled to do so in an abusive situation.
- ➔ Enact the recent Trafficking in Persons (Prevention, Care and Rehabilitation) Bill and ensure all provisions related to the trafficking of children take precedence over the trafficking offences contained under the Penal Code.
- ➔ Enact provisions that criminalise the organisation of travel arrangements or transportations that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities.
- ➔ Modify the Prohibition of Child Marriage Act to criminalise all adults who marry a child, not only adult males.
- ➔ Remove the double criminality requirement for both extraterritorial jurisdiction and extradition for sexual exploitation of children offences.

National response to manifestations of sexual exploitation of children

- ➔ Approve the updated National Policy on Children, and implement and monitor the following key measures.
- ➔ Ensure the nomination, within any organisations, of a member who will have to monitor the application of the new procedures for protecting children foreseen by the new National Policy on Children.
- ➔ Create adequate infrastructures, rehabilitation and restoration programmes for victims of trafficking and child sexual abuse.
- ➔ Provide professional and expert help services for victims and offenders.
- ➔ Implement preventive and awareness raising measures and national campaigns on all forms of child abuse, child marriage, and online sexual exploitation.
- ➔ Include initiatives, campaigns and programmes against sexual exploitation of children in travel and tourism, and sexual exploitation of children in prostitution.
- ➔ Develop specific prevention measures on trafficking based on characteristics and trends of the source and destination country.

Access to justice and right to remedies for child victims of sexual exploitation

- ➔ Ensure that all relevant authorities involved are provided with the necessary training to facilitate child-sensitive justice.
- ➔ Establish child-friendly infrastructure. Establish a 'best practice' registry of implementation tools. This could include capacity-building reassessment plans, infrastructures projects with regards to the court settings, costs of the project.
- ➔ Ensure that additional special courts are established at the sub divisional level and that special courts deal exclusively with POCSO cases.
- ➔ Provide the necessary funding to registered child care institutions/homes and close unregistered institutions.
- ➔ Ensure that all states and union territories are in full compliance on developing and updating individual care plans.
- ➔ Make access to compensation and information on procedures to seek it accessible to children by increasing awareness around compensation seeking mechanisms.
- ➔ Ensure that all cases of child sexual exploitation have been heard in court a maximum of within a year from when the offence took place and ensure all courts are positioned to achieve this.

Children's and Survivors' Participation

- ➔ Involve children within actions, programs, initiatives directly related to sexual exploitation specifically.
- ➔ Engage children, including child victims in the drafting and implementation process of various national action plans that contain measures relating to the sexual exploitation of children.

Research needs and agenda

- ➔ Fund and conduct research on sexual exploitation in travel and tourism as the Indian tourism industry rebounds after the COVID-19 pandemic.
- ➔ Fund and conduct research on specific manifestations of online child sexual exploitation such as grooming and live streaming of child sexual abuse.
- ➔ Increase education about the risks of sexual exploitation for vulnerable groups in India, including low caste and tribal communities.
- ➔ Conduct research on issues regarding the discrepancy between funds of states and union territories schemes and the lack of compensation.

ACRONYMS

<i>CEFM</i>	Child early and forced marriage
<i>CINI</i>	Child in need Institute
<i>CRC</i>	Convention on the Rights of the Child
<i>CSAM</i>	Child sexual abuse material
<i>ITPA</i>	Immoral Traffic Prevention Act
<i>POCSO</i>	Protection of Children from Sexual Offences Act
<i>SAIEVAC</i>	South Asia End Violence Against Children
<i>SEC</i>	Sexual exploitation of children
<i>SECTT</i>	Sexual exploitation of children in travel and tourism



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