**India**

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ECPAT International has developed [a legal checklist](https://ecpat.org/wp-content/uploads/2021/09/SECTT-Checklist_ENG-1.pdf) for governments providing guidance for legal interventions and measures to adopt in order to improve their national legal frameworks. This will help to effectively address the crime of sexual exploitation of children in travel and tourism, including its online elements.

The legal checklist was developed based on the recommendations of the first [Global Study](https://ecpat.org/wp-content/uploads/2021/08/Global-Report-Offenders-on-the-Move.pdf) on sexual exploitation of children in the context of travel and tourism. Following the development of this legal checklist, ECPAT International conducted country legal analysis for India and other countries in Africa, as well as Southeast Asia, Asia and the Americas.

The country analysis serves as a baseline to indicate and track the implementation status of the legal interventions within and across the four regions. It provides governments with clear directions for improving their actions with respect to child protection against sexual exploitation in the context of travel and tourism, including its online elements.

The table below allows easy assessment of existing legislation against the 24 measures of the legal checklist. It will be updated as the laws and policies change. An [explanatory note](https://ecpat.org/wp-content/uploads/2021/08/SECTT-Checklist_ENG_Explanatory-note.pdf) and an [assessment matrix](https://ecpat.org/wp-content/uploads/2021/09/Assesment-Matrix_2021SEP_ENG_v2.pdf) can be consulted for further reference.

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|  | **Recommendations** | **Implementation** | **Legislation** |
|  | Establish by law **extra-territorial jurisdiction**, within the parameters of Article 4 OPSC, for all offences of sexual exploitation of children, including those occurring in the online environment. | **Partially** | There is no extraterritorial jurisdiction specifically for offences under the OPSC. Notwithstanding, the provisions of the Indian Penal Code could apply to the offences under the OPSC. Sections 3-4 of the Indian Penal Code establish extraterritorial jurisdiction over offences committed outside India. According to Section 3, “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.” According to Section 4, “the provisions of this code apply also to any offence committed by: 1. Any citizen of India in any place without and beyond India. 2. Any person on any ship or aircraft registered in India wherever it may be. 3. Any person in any place without and beyond India committing offence targeting a computer resource located in India”. Therefore, Section 3 and 4 establishes active extraterritorial jurisdiction. Section 188 of the Code of Criminal Procedure, 1973, states that when an offence is committed outside India- (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed in India. Additionally, for CSAM related offences, the provisions of the Information Technology (IT) Act, 2000 would apply. Accordingly, Section 1(2) of the IT Act, extends the application of the Act to acts committed outside India by any person. Further, Section 75 of the IT Act states: “(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality. (2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India”. From the analysis of the above legal provisions, it appears that the Indian laws do not establish any passive extraterritorial jurisdiction over OPSC offences, but only active extraterritorial jurisdiction.  |
|  | Include in extradition treaties the sexual exploitation of children as **extraditable offences** and apply when appropriate the rules of article 5 OPSC, regardless the nationality of the (alleged) offender. | **No**  | Unable to find information that suggests that. It is noteworthy that Section 3(4) of the Extradition Act, 1962, states that “where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any Convention to which India and a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in that Convention”. |
|  | Do NOT require the principle of **double criminality** for proceeding with extraterritorial jurisdiction or extradition for sexual offences against children. | **No** | Extraterritorial jurisdiction: The principle of double criminality applies to extraterritorial jurisdiction over SEC offences. Extradition: The principle of double/dual criminality is applicable to extradition law in India. This covers all offences in general. More information can be found [here](https://www.mea.gov.in/extradition-faq.htm).  |
|  | Abolish **statutory limitations** for the prosecution of ALL offences of sexual exploitation of children. | **Yes** | There is no time limit as to filing of complaints relating to child abuse cases including CSAM related offences, trafficking related offences, sexual assault, sexual harassment, etc. under the POCSO Act, 2012. Although, Section 468 of the Criminal Procedure Code states that any offence, punishable with 1-3 years in prison must be reported within 3 years, there is no statute of limitations for criminal offences carrying a punishment greater than 3 years. SEC offences criminalised under the IT Act, Immoral Trafficking Prevention Act, Indian Penal Code, etc all carry more than 3 years imprisonment. Therefore, it can be safely concluded that statutory limitations do not apply to SEC offences in India.  |
|  | Set up **conditions for any travel** by persons convicted of sexual exploitation of children. | **No** | Although, there is no provision formally denying entry or leave to foreigners convicted of SEC offences, the new eVisa application rules passed in 2018 may partially regulate their entry/exit. The rules require the applicant to furnish details about his or her involvement in child abuse, cyber-crime, and human trafficking. New eVisa Application sample form can be accessed [here](https://indianvisaonline.gov.in/evisa/images/SampleForm.pdf).Pursuant to Section 14 of the Foreigners Act, 1946, if a foreigner acts in violations of the conditions of the valid visa issued to him for his entry and stay in India, he/she shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine.  |
|  | Ensure **consistency in the definition of a ‘child’** as anyone under the age of 18 for all crimes of sexual exploitation, regardless of the age of sexual consent. | **Partially** | The Protection of Children from Sexual Offences Act (POSCO), 2012 defines a child as any person below the age of 18 years. [Section 2(d)] Juvenile Justice (Care and Protection of Children) Act, 2015 also defines a child as a person below the age of 18. [Section 2(12)]. For CSAM related offences, the explanation to Section 67B of the IT Act, 2000 defines a child as a person who has not completed the age of 18 years. However, Section 2(aa) of the Immoral Traffic (Prevention) Act (ITPA), 1956 defines a child as a person who has not completed the age of 16 years. Further, the Act uses the term minor under Section 2(cb) for children aged 16-18 years.  |
|  | Ensure that the **age of sexual consent** for both males and females is 18 and a close in age exemption (up to 3 years) is provided for consensual sexual relationships between adolescents in order to allow voluntary, well-informed and mutual sexual contact between close in age peers and to prevent criminalization of young people in willing sexual relationships. | **Partially** | The POCSO Act establishes the age of sexual consent as 18 years for boys and girls. The Act does not recognize any close-in-age exception. Further, Section 114A of the Indian Evidence Act provides presumption as to the absence of consent and the burden of proof could lie on the boy to prove that the girl had consented (as rape provision under Section 375 of the Indian Penal Code only protect girls).  |
|  | Have a law or regulation establishing a **mechanism for centrally registering sex offenders** that has been implemented/setup. | **Yes** | On 20 September 2018, the National Database on Sexual Offenders (NDSO) was launched by the Ministry of Home Affairs. This database is accessible only to law enforcement agencies.  |
|  | Establish **bail conditions** that prohibit individual accused of sexual offences against children from traveling outside of the country. | **Yes** | Sexual offences against children in general are non-bailable. In accordance with the provisions of the Extradition Act, 1962, “In the case of a person who is a fugitive criminal arrested or detained under this Act, the provisions of 5 [the Code of Criminal Procedure, 1973 (2 of 1974)] relating to bail shall apply in the same manner as they would apply if such person were accused of committing in India the offence of which he is accused or has been convicted, and in relation to such bail, the magistrate before whom the fugitive criminal is brought shall have, as far as may be, the same powers and jurisdiction as a court of session under that Code”. |
|  | Provide in law that the **mere attempt** to commit a crime of sexual exploitation of children is criminalised. |  |  |
|  | Impose more severe sentences for **reoffending** in case of sexual exploitation against children, e.g. by defining reoffending as an aggravating circumstance, regardless of whether the crimes were perpetrated abroad or in-country. | **Yes** | Under Section 370(6), the Indian Penal Code, persons convicted of the offence of trafficking of minor on more than one occasion are liable to be punished with imprisonment of natural-life and fine. Even otherwise, courts have held recidivism as an aggravating factor especially for offences under the POCSO Act, 2012.  |
|  | Provide for **mandatory reporting** for particular professions that have likelihood to have contact with kids who might disclose. | **Yes** | Pursuant to Sections 19(1) and 21, all persons have a mandatory duty to report offences committed under the POCSO Act. POCSO 2019 Amendment Act has added mandatory reporting duties for private citizens and professionals in relation to CSAM. Private citizens have a duty to report CSAM under Rule 11 of POCSO Rules 2020. - In addition, Section 32 of the Juvenile Justice Act 2015 imposes mandatory reporting duties on certain persons. Accordingly, “any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be”. Failure to do so in an offence. (Sections 33-34) |
|  | Establish obligatory government-regulated child protection standards for the tourism industry for example, attach responsibility to an appropriate regulatory authority and/or implement industry specific **national codes for child protection** as a legal requirement for the travel and tourism industry to operate. | **Partially** | In 2010, the Government of India launched a Code of Conduct for Safe and Honourable Tourism. 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”. The signatories of the Code are “committed to act in a manner that protects the dignity and freedom against exploitation of persons especially women and children and facilitate prevention of incidences of sexual molestation, harassment of their guests and provide assistance in case of an untoward incident”. However, this Code only binds the signatories.  |
|  | Ensure the **liability of travel and tourism businesses** (in operations and supply chains) for criminal conduct including:* Organising travel arrangements or transportation that are explicitly or implicitly meant to create or facilitate opportunities to engage (involve) children in sexual activities;
* Procuring, aiding or abetting the exploitative sexual conduct with a child;
* Advertising or promoting sexual exploitation of children;
* Benefitting, by any means, from any form of sexual exploitation of a child (or children) in the context of their travel and tourism business.
 | **Partially** | Under Section 7(c) of Immoral Traffic Prevention Act, 1956, letting out a hotel or any part there off for prostitution involving a child is an offence for which the license of the hotel can be cancelled.Although there is no exclusive legislation that regulates or establishes the liability of the private travel and tourism sector for SECTT, they could be held liable under various provisions of the existing laws such as ITPA, IPC, POCSO, etc.  |
|  | Criminalise the **grooming of children for sexual purposes** (often called ‘solicitation’ in law) including through Internet and other communication technologies to facilitate either online or offline sexual exploitation. | **No** | The I.T. Act, 2000, does not explicitly criminalise the offence of grooming. However, according to Section 67B(c) of the Act, any person who “cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource” is liable to be punished. 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. 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. |
|  | Establish legislation requiring for a **criminal background check** for every person (national or non-national) applying for work with or for children or who is currently working with or for children. Introduce legislation prohibiting convicted sex offenders to hold positions involving or facilitating contact with children. | **Partially** | According to Rule 3(4) of the POCSO Rules, 2020, “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”. Volunteers do not seem to be included in such provision.However, there is no law or legal provision that prohibits convicted sexual offenders from holding positions involving or facilitating contact with children. |
|  | Regulate and monitor the use of volunteers (including in **‘voluntourism’**) in settings and activities that involve direct contact with children, particularly prohibiting visits to orphanages/residential care settings in favour of redirecting the industry towards solutions that support community-based care. | **No** |  |
|  | Ratify and implement relevant **regional and international instruments** related to child’s rights and sexual exploitation of children. | **Partially** | * Convention on the Rights of the Child (CRC) Ratified in 1992
* Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography Ratified in 2005
* Optional Protocol to the CRC on a Communications Procedure (OP3 CRC) Not signed
* Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Ratified in 2011
* ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No.182 Ratified in 2017
* UNWTO Convention on Tourism Ethics Not signed
* SAARC Convention on Preventing and Combating Trafficking in Women and Children Ratified in 2002
* SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia Ratified in 2002
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|  | Establish **protection measures** for child victims at any stage of the legal process against the suspected offender. | **Yes** | Section 24(3) of POCSO Act, the police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused. Similarly, Section 36 of the Act provides that the child victim should not see the accused at the time of testifying. Furthermore, Rule 4(9) of the POCSO Rules 2020 entrusts support persons with the duty to inform the child of the role they may play in the judicial process and ensure that any concerns that the child may have, regarding child's safety in relation to the accused and the manner in which the support persons would like to provide child's testimony, are conveyed to the relevant authorities. ITPA allows the magistrate to place a rescued child victim of trafficking in any institution established or recognised under any Children Act, for the time being in force in any State for the safe custody of children. (Section 17)The law does not make explicit difference between national and non-national child victims, but it does not even clearly state if relevant provisions would be applied to non-nationals.Pursuant to Section 40 of POCSO Act, a child victim has right to take assistance of a legal practitioner of his/her choice and free legal aid, if he/she is unable to afford the legal services. A similar provision is found Rule 7 of POCSO Rules, 2020. Under Rule 4 of the POCSO Rules, it is the duty of the Special Juvenile Police Unit (SJPU) or the local police to inform the child victim and his parents/guardians/support person about the availability of  support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief.Section 23 of the POCSO Act lays down the procedure for media. It prohibits media from disclosing the identity of the child victim.  |
|  | Establish **child-friendly interviewing practices by professionally trained police.** | **Yes** | Section 37 provides that trial in special courts established under the POCSO Act should be conducted in camera. Further, a child should be provided with expert or interpreter while recoding evidence. (also under Rule 5 of POCSO Rules, 2020)The law does not make explicit difference between national and non-national child victims, but it does not even clearly state if relevant provisions would be applied to non-nationals. |
|  | Ensure that child victims fully enjoy their **right to recovery and rehabilitation**, including by providing tailored support and re-integration services | **Yes** | The Juvenile Justice (Care and Protection) Act, 2015 provides, among other things, “(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection”. Child victims of trafficking and other forms of sexual exploitation come within the meaning of “child in need of care and protection” under Section 2(14) of the Juvenile Justice (Care and Protection) Act, 2015. [see also [Exploitation of children in the orphanages in the State of Tamil Nadu v. Union of India](https://indiankanoon.org/doc/113255681/), 2017] Therefore, they are entitled to receive care and protection as per the provisions of the Juvenile Justice (Care and Protection) Act. Accordingly, Section 29(1) of this Act makes it the duty of the Child Welfare Committee “to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection”. In addition, pursuant to Section 30, the Committee must ensure “care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child’s individual care plan and passing necessary directions to parents or guardians or fit persons or children’s homes or fit facility in this regard”. 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.  |
|  | Establish a **national reporting mechanism (e.g. hotline)** that coordinates access to services, and helps to overcome reluctance to report sexual exploitation of children. | **Yes** | Crimes against children can be reported throughout Childline 1098, a free emergency helpline for children in need of aid and assistance. 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. As of June 2021, Childline services operates in over 598 cities and districts, now covering 83% of India. 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. As of August 2021, 144 Child Help Desk were operating at railway stations across India.  |
|  | Create **data retention and** preservation laws, regulations and procedures, to ensure the retention and preservation of digital evidence and enable cooperation with law enforcement which applies to ISPs, mobile phone companies, digital social media and communication companies, cloud storage companies, based in/operating in national jurisdiction. | **Yes** | Section 7 of the IT Act, 2000 provides for the retention of electronic records. Additionally, Section 67C deals with retention of data by intermediaries. However, these do not specifically relate to digital evidence in cases related to sexual exploitation of children. |
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 | Ensure that national legislation provides the **right for all child victims of sexual exploitation to seek compensation** in national courts from convicted perpetrators who harmed them and/or through state-managed funds. | **Yes** | Section 357 and 357A of the Code of Criminal Procedure provide for compensation to all victims of crimes. Rule 9 of the POCSO Rules, 2020, deals with compensation to child victims of sexual offences. It 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. According Rule 9(4), “The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government”.The law does not make explicit difference between national and non-national child victims, but it does not even clearly state if relevant provisions would be applied to non-nationals |

**LEGAL SOURCES**

[Code of Conduct for Safe and Honourable Tourism](http://tourism.gov.in/sites/default/files/060320111104524_0.pdf)

[Code of Criminal Procedure (CrPC), 1973 (amended in 2014)](http://legislative.gov.in/sites/default/files/A1974-02.pdf)

[Extradition Act, 1962](https://www.indiacode.nic.in/bitstream/123456789/1440/1/196234.pdf)

[Foreigners Act, 1946](https://indiankanoon.org/doc/27376/)

[Indian Evidence Act, 1972 (as amended in 2013)](http://legislative.gov.in/sites/default/files/A1872-01.pdf)

[Indian Penal Code (IPC), 1860 (as amended in 2018)](http://legislative.gov.in/sites/default/files/A1860-45.pdf)

[Information Technology (IT) Act, 2000](https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf) (amended in 2008)

[Immoral Traffic Prevention Act, 1956](http://legislative.gov.in/sites/default/files/A1956-104.pdf).

[Juvenile Justice (Care and Protection of Children) Act, 2015](http://cara.nic.in/PDF/JJ%20act%202015.pdf)

[Protection of Children from Sexual Offences Act (POCSO), 2012](https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf)

[Protection of Children from Sexual Offences Amendment Act 2019](https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf)

[Protection of Children from Sexual Offences Rules (POCSO), 2012.](https://upload.indiacode.nic.in/showfile?actid=AC_CEN_13_14_00005_201232_1517807323686&type=rule&filename=POCSO%20Rules,%202012%2014-Nov-2012%20(2).pdf)

[Protection of Children from Sexual Offences Rules (POCSO), 2020.](http://www.bareactslive.com/ACA/act3646.htm)