

# Alternative Report

## On the implementation Optional Protocol to the CRC on the sale of children, child prostitution and child pornography in INDIA

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## **Background information**

**ECPAT International** (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography, child trafficking and child sex tourism). It represents 81 member organisations from 74 countries. ECPAT International holds Consultative status with ECOSOC.

Website: [www.ecpat.net](http://www.ecpat.net)

**SANLAAP** literally means “dialogue” work to end child prostitution, trafficking and sexual abuse of children. Sanlaap collaborates with different stakeholders, both governmental and non-governmental to end trafficking and punish traffickers. SANLAAP operates from Kolkata and Delhi but networks with civil society organisations, police and governments all over India.

Website: <http://www.sanlaapindia.org/>

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## 1. Introduction

Despite a lack of research and data on the scale of commercial sexual exploitation of children in India, estimates show that many children are victims of sexual violence. UNICEF estimates that 1.2 million children are victims of prostitution in India<sup>1</sup>. The government of India has recently made significant progress in the development of laws and policies to address the different manifestations of commercial sexual exploitation of children, including the adoption in April 2013 of the *National Policy for Children*, which contains specific measures to prevent and combat commercial sexual exploitation of children.

The government of India also adopted, in 2012, the *Protection of Children from Sexual Offenses Act*, which provides a strong legal framework to protect children against child pornography and sexual exploitation through the use of information and communication technologies. In addition, the government adopted, in April 2013, the *Criminal Law (Amendment) Act* to strengthen the laws against trafficking in persons, especially by increasing penalties against offenders. However, it appears that there are still gaps with regard to enforcement of these laws and the number of prosecuted and convicted offenders remains low.

On preventing the manifestations of commercial sexual exploitation of children and trafficking in persons, government efforts are insufficient, especially with regards to child prostitution. The government must be more active in implementing preventive measures to address the tradition of *devadasi*. This tradition is a form of religious prostitution and involves girls from low castes, dedicated to temples, as well as the prostitution of boys, a growing phenomenon in India. Little efforts have been made to prevent children from being solicited online for sexual purposes (grooming) or to prevent child sex tourism, which has expanded into many regions of India, including religious pilgrimage sites.

Despite some efforts made by the government of India to establish shelters and provide services for child victims of trafficking, the number of institutions is limited and standards of care vary from one state to another. Because of this, child victims of trafficking are not able to access adequate care and support services, especially psychosocial counselling. Very few shelters and care and support services have been established that are designed to respond to specific needs of child victims of prostitution, pornography and sexual exploitation through the use of the Internet.

A visit of the Special Rapporteur on the sale of children, child prostitution and child pornography was scheduled in 2012 but for a variety of reasons the country visit has been postponed. ECPAT encourages the government of India to reschedule the country visit of the Special Rapporteur and to invite the Special Rapporteur on trafficking in persons, especially women and children for a country visit.

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<sup>1</sup> US Department of State, Country Reports on Human Rights Practices for 2012. Accessible at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

During the 13<sup>th</sup> session of the Universal Periodic Review (June 2012), a review of the human rights situation in India took place and several governments made recommendations encouraging the government to ratify the *ILO Convention 182 on the Worst Forms of Child Labour*. Governments also called on India to increase its efforts in protecting children from sexual exploitation, trafficking and sexual violence. Specific recommendations were made encouraging the government to prosecute and convict child sex offenders and child traffickers<sup>2</sup>.

## **2. General measures of implementation**

### **2.1 Status of ratification of international legal instruments addressing child protection**

India is party to almost all relevant international instruments addressing CSEC. India acceded to the *Convention on the Rights of the Child* in 1992 and ratified its *Optional Protocol on the sale of children, child prostitution and child pornography* in 2005. India is the only SAARC country to ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (2011).

India has not yet ratified the *ILO Convention 182 on the Worst Forms of Child labour* as well as the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*.

Within the framework of the Universal Periodic Review (UPR) session on India, occurring during the 13<sup>th</sup> session of the UPR, representatives from Uruguay, Ghana, Portugal, Sweden, Ireland, Norway and Hungary made recommendations encouraging the government of India to ratify the *ILO Convention 182 on the Worst Forms of Child Labour*<sup>3</sup>.

At a regional level, India ratified the SAARC convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002.

#### **Recommendation:**

**The government of India should sign and ratify the *ILO Convention 182 on the Worst Forms of Child Labour* as well as the *Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC)*.**

### **2.2 National Plan of Action and Coordination**

#### **2.2.1 National Plan of Action against commercial sexual exploitation of children**

In April 2013, the government of India adopted the *National Policy for Children*, which contains specific provisions addressing the protection of children against sexual exploitation. This new National Policy will be coordinated by a National Coordination and Action group (NCAG) for Children under the Ministry of Women and Child Development. The Ministry of Women and

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<sup>2</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review - India, 2012. Accessible at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement>

<sup>3</sup> Ibid.

Child Development will monitor the implementation of this strategy and adopt a National Plan of Action for Children. This will be monitored by the National, State and District Coordination and Action Groups. In Section 8 of the National Policy for Children, the government “commits to allocate the required, financial, material and human resources, and their efficient use, with transparency and accountability, to implement this Policy”. Section 9 of the Policy states that a comprehensive review of the Policy must take place every five years.

#### **Recommendation:**

**The Government of India should adopt a new National Plan of Action for Children to address gaps in the current Plan. The Plan must contain time-bound objectives and a clear monitoring process, based on a set of relevant and comprehensive indicators and implemented by specific monitoring mechanisms. The required funding should be allocated by the Ministry.**

### **3. Prevention of commercial sexual exploitation of children**

#### **3.1 Prevention of trafficking in persons**

According to latest Trafficking in Persons report released by the US Department of State in June 2013, India is a source, destination, and transit country for trafficking victims, including children who are trafficked for sexual exploitation purposes<sup>4</sup>. In order to prevent trafficking in persons, the Ministry of Women and Child Development implemented UJJAWALA, *Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation*<sup>5</sup> in 2007. The Comprehensive Scheme strives to prevent trafficking of women and children for commercial sexual exploitation through mobilising local communities and raising awareness of the issue. The strategy also facilitates the rescue of victims and provides rehabilitation, reintegration and repatriation services for victims.

It has been reported that a lack of financial resources (In 2010 - 2011, only 0.04% of India’s budget was allocated to the child protection sector)<sup>6</sup>, the implementation of this scheme at the central and state levels had not been sufficient in the last few years. It was also noted that irregular funding has led to a reduction in the willingness of civil society organisations to accept this scheme.

#### **Good practice example: Anti-Trafficking Network**

The Anti-Trafficking Network, managed and administered by district government officials, along with technical assistance from UNICEF, seeks to prevent trafficking by identifying the key vulnerabilities of families and communities that leads to trafficking. The network also supports

<sup>4</sup> US Department of State, Trafficking in Persons Report 2013. Accessible at: <http://www.state.gov/j/tip/rls/tiprpt/2013/>

<sup>5</sup> Government of India Ministry of Women and Child Development, UJJAWALA, A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking for Commercial Sexual Exploitation, 2007. Accessible at: <http://wcd.nic.in/schemes/ujjawala.pdf>

<sup>6</sup>ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

community-based activities to sensitise family members. The network identifies government and other initiatives available to help vulnerable people, including programmes that provide job training, business loans and home finding services to women and youth. Finally, the network supports victims of sexual exploitation who do not want to return to their communities. Community-based teams identify vulnerable children and link them with self-help groups and skill development programmes.

School campaigns inform young people on how to protect themselves against exploitation. *Balika sanghas* (girls' collectives) focus on girls who are out of school and those from vulnerable families. Using a peer-to-peer approach, the collectives promote solidarity among girls and inform them about abuse and trafficking. To date, over 500 girls have participated.

Sensitising police and judicial officials is another key part of network activities. Police officials have been trained on trafficking issues, including relevant laws and victim rights. District administrations maintain databases that house information on vulnerable families, trafficked, rescued and repatriated children and traffickers<sup>7</sup>.

NGOs play a significant role in preventing trafficking in vulnerable persons. For instance, ECPAT affiliate, SANLAAP, focuses on preventing a second generation of trafficking victims from getting involved in prostitution. SANLAAP works with 27 Community Based Organisations (CBOs) in nine districts in West Bengal. SANLAAP activities include raising awareness on the issue of safe migration, trafficking and commercial sexual exploitation and establishing child protection units (more than 70 have been established in West Bengal). These child protection units provide supports for students attending formal schools, non-formal education to children in preparation for their entry into mainstream schools and vocational training for children to pursuing formal schooling. SANLAAP builds the capacity of CBOs to work on issues relating to trafficking and commercial sexual exploitation and provides sensitisation to Panchayat members, district administration personnel, law enforcement agencies and members of the judiciary.

As a result of SANLAAP's sensitisation work, anti-trafficking task forces have been formed in some of West Bengal districts<sup>8</sup>. The scarcity of regular funding creates gaps in prevention programmes and the government should look at providing programs to reduce the vulnerability of children who engage in unsafe migration.

***Recommendation:***

**The government should increase its efforts in ensuring sufficient funding for programmes against trafficking in persons, especially against child trafficking, in order to fulfil international obligations under Article 9 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Prevention of trafficking in persons). The government should work in close collaboration with civil society actors involved in anti-trafficking initiatives.**

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<sup>7</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

<sup>8</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

### 3.2 Prevention of child prostitution

UNICEF estimates that approximately 1.2 million children are exploited through prostitution in India<sup>9</sup>. However, many cases of child prostitution go unreported and the full scale of the problem is unknown.

In India, the prostitution of boys is an emerging trend<sup>10</sup>. According to a UNICEF report, many brothels prostitute boys, including transgendered boys, especially in Western India<sup>11</sup>. In addition, a study released in June 2008 by EQUATIONS, and supported by ECPAT International, provides evidence that the prostitution and sexual abuse of boys takes place in the religious pilgrimage tourist areas of Tirupati (Andhra Pradesh), Puri (Orissa) and Guruvayoor (Kerala).<sup>12</sup> This issue has, however, been ignored by the government. The State initial report on the implementation of the OPSC does not mention the prostitution of boys and specific research is needed on this topic. Additionally, the development of specific prevention and rehabilitation programs are needed for boy victims.

Despite being outlawed<sup>13</sup>, the tradition of *devadasi*, a form of religious prostitution involving girls from low castes dedicated to temples (girls become sexually available for community members), still continues in different regions of India. In 2006, UNICEF estimated that there were about 27,000 *devadasis* in Andhra Pradesh<sup>14</sup>. The government of India has done little to prevent child prostitution, including the practice of *devadasi*.

NGOs conduct the majority of activities against child prostitution, including action against the practice of *devadasi*. For instance, the Andhra Pradesh Anti-Devadasi System Struggle Committee (APJVVPS), started in 1993, is a group of community-based organisations creating awareness about the custom and ensuring children born to *devadasis* are provided with education.<sup>15</sup>

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<sup>9</sup> US Department of State, Country Reports on Human Rights Practices for 2012. Accessible at:

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

<sup>10</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

<sup>11</sup> Frederick, John. *Sexual Abuse and Exploitation of Boys in South Asia: A Review of Research Findings, Legislation, Policy and Programme Responses*. UNICEF. April 2010.

Accessible from: [http://www.unicef-irc.org/publications/pdf/iwp\\_2010\\_02.pdf](http://www.unicef-irc.org/publications/pdf/iwp_2010_02.pdf)

<sup>12</sup> EQUATIONS, *Unholy Nexus: Male Child Sexual Exploitation in Pilgrim Tourism Sites in India: Andhra Pradesh, Kerala and Orissa*. June 2008. Accessible at:

[http://www.equitabletourism.org/stage/files/fileDocuments316\\_uid10.pdf](http://www.equitabletourism.org/stage/files/fileDocuments316_uid10.pdf)

<sup>13</sup> THE KARNATAKA DEVADASIS (PROHIBITION OF DEDICATION) ACT, 1982. Accessible at:

[http://dpal.kar.nic.in/1%20of%201984%20\(E\).pdf](http://dpal.kar.nic.in/1%20of%201984%20(E).pdf)

<sup>14</sup> Maria-Costanza Torri, *Abuse of Lower Castes in South India: The Institution of Devadasi*. 2009.

<http://www.bridgew.edu/SoAS/JIWS/Nov09v2/Costanza.pdf>

<sup>15</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

The Government of India has not looked into the issue of prostitution of girl children from Bedia communities. This prostitution happens in large cities all over India and originates from Madhya Pradesh, Uttar Pradesh and Rajasthan.

**Recommendations:**

**The government should strengthen its efforts to develop and implement, in collaboration with relevant civil society organisations, strategies to prevent child prostitution. Strategies should include specific awareness raising activities, addressing harmful practices relating to child prostitution such as the *devadasi* system and within the ‘Bedia’ Nomadic tribes.**

**The government should also conduct research on emerging trends relating to child pornography, especially the prostitution of boys. The government should develop specific prevention strategies to adequately address these issues.**

### **3.3 Prevention of child pornography**

Although there is a lack of documented evidence of the scale of child pornography, the Ministry of Women and Child Development conducted a study in 2007 which highlights that 4.46% of the 12 000 children participating in the study, reported being photographed in the nude. It has also been reported that child-to-child solicitation for sexual purposes and sexual abuse through the use of information and communication technologies (mobile phones, social media, etc.) is a growing problem in India<sup>16</sup>.

However, the government of India has not conducted further research on the issue nor has it developed strategies to prevent children from being sexually exploited through pornography, especially in the area of raising awareness about the risks and the importance of reporting child abuse materials. Only two websites, “Indian Child” and “India’s Fight Against Online Pornography,” have been established to inform children and parents about online risks and to serve as report centres for online abuse materials.

**Recommendation:**

**The government must conduct further research on the risk of sexual exploitation through the use of information and communication technologies, which are constantly evolving. Research would enable the government to develop, based on the findings, adequate strategies to prevent this phenomenon, including the development of additional tools to inform children and parents about the risks of sexual exploitation through the Internet.**

### **3.4 Prevention of sexual exploitation of children in travel and tourism**

Due to a lack of data, the magnitude of sexual exploitation of children in travel and tourism is not known. However, several research projects, including research from the National Human Rights Commission (2005), have shown that this issue exists in various regions of India such as Goa, Delhi, Uttar Pradesh, Andhra Pradesh and Pondicherry.<sup>17</sup> Research developed by EQUATIONS in 2008 on domestic sexual exploitation in travel and tourism, shows that children

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<sup>16</sup> Mathew, Lina A. Online Child Safety from Sexual Abuse in India. *Journal of Information, Law & Technology* 2009 (1). 28 May 2009. Accessible at : [http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2009\\_1/mathew](http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2009_1/mathew)

<sup>17</sup> Sen, Sankar. *Trafficking in Women and Children in India*. National Human Rights Commission. 2005. N

are sexually exploited in the religious pilgrimage sites of Tirupati (Andhra Pradesh), Puri (Orissa) and Guruvayoor (Kerala).<sup>18</sup>

Under the framework of The Code for the Protection of Children from Sexual Exploitation in Travel and Tourism, several workshops were organized in order to sensitize the Indian tourism sector on how to protect children from sexual exploitation. In 2010, the Ministry of Tourism officially launched its Code of Conduct for Safe and Honourable Tourism aiming to strengthen safe tourism in India<sup>19</sup>. In 2011, guidelines for hotels were revised and a mandatory reporting section in the Code of Conduct was added as a prerequisite for the approval of all licenses<sup>20</sup>. However, it was reported that monitoring mechanisms for this Code need to be strengthened<sup>21</sup>.

The 2013 Trafficking in Persons Report, issued by the US Department of State, mentions that the government did not take adequate measures to prevent its nationals from engaging in child sex tourism abroad, particularly in other South Asian countries, Southeast Asia and the Gulf<sup>22</sup>.

#### **Recommendation:**

**The government should conduct extensive media campaigns, in partnership with the tourism industry, in order to inform tourists and travellers that the sexual exploitation of children is a crime in India. The government should encourage tourists to report cases of abuse. Media campaigns should also inform Indian nationals who travel to foreign countries that they can be prosecuted in India for sexual crimes against children committed abroad if they are not prosecuted or convicted in the country when alleged crimes took place.**

## **4. Prohibition of the manifestations of commercial sexual exploitation of children**

- **Laws addressing child pornography**

In 2012, India adopted the *Protection of Children from Sexual Offenses Act*. Chapter III specifically addresses the issue of child pornography. Section 13 of the Act prohibits the “use of children for pornographic purposes” and provides for a definition of child pornography which is generally in line with Article 2 of the OPSC even though it criminalises “the indecent or obscene representation of a child.” This wording can be left open to many interpretations as the terms “indecent” and “obscene” are vague and subjective. The Act covers child pornography produced and distributed through information and communication technologies. The “explanation” section

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<sup>18</sup> EQUATIONS, *Unholy Nexus: Male Child Sexual Exploitation in Pilgrim Tourism Sites in India: Andhra Pradesh, Kerala and Orissa*. June 2008. Accessible at:

[http://www.equitabletourism.org/stage/files/fileDocuments316\\_uid10.pdf](http://www.equitabletourism.org/stage/files/fileDocuments316_uid10.pdf)

<sup>19</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

<sup>20</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

<sup>21</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

<sup>22</sup> US Department of State, Trafficking in Persons Report 2013. Accessible at: <http://www.state.gov/j/tip/rls/tiprpt/2013/>

provided under Section 13 indicates that all acts related to child pornography covered by Article 3 of the OPSC are also criminalised by the Act. Section 13 of the Act prohibits the mere possession of pornographic materials involving children.

Section 67B of the Information Technology Act, 2000 (ITA), as amended in 2008, punishes whoever “cultivates, entices or induces children to online relationship with one or more children for a sexually explicit act...” This is in line with the definition of the *solicitation of children for sexual purposes* (grooming) as defined in Article 23 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the only international legal instrument addressing this issue.

### **Recommendation:**

**The domestic legal framework must also prohibit the access and viewing of child pornography and should impose reporting obligations upon Internet service providers, mobile phone companies, search engines and financial companies as requested by the *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*,<sup>23</sup> the outcome document of the Third World Congress against Sexual Exploitation of Children and Adolescents, held in Brazil in November 2008.**

- **Laws addressing child prostitution**

The *Protection of Children from Sexual offenses Act* (2012) does not cover child prostitution and the Indian Penal Code fails to provide a specific definition of child prostitution, which is a major gap. The only provision relating to child prostitution is section 366A, which criminalise the procuring of a minor girl (under 18 years old). It also prohibits the selling a minor for the purposes of prostitution. The punishment for this offence is imprisonment of up to ten years.

The Immoral Traffic (Prevention) Act 1956 (ITPA) defines prostitution as “the sexual exploitation or abuse of persons for commercial purposes”. The ITPA does not contain a definition of child prostitution, which is an important legal loophole. The ITPA criminalises the act of selling, procuring and exploiting any person for prostitution but does not specify offences relating to child prostitution. However, the punishment may be more severe if crimes are committed against a child under 16 or a minor under 18.

### **Recommendation:**

**The Indian Penal Code should be amended to contain a comprehensive definition (consistent with Article 2 of the OPSC). The Indian Penal Code should also criminalise the following conducts relating to child prostitution: offering, obtaining, procuring or providing a child for child prostitution. This act only addresses trafficking for prostitution and sexual abuse and should be altered to also address trafficking for child labour.**

- **Laws addressing child trafficking for sexual purposes**

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<sup>23</sup> The *Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents*: [http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII\\_Outcome\\_Document\\_Final.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf)

In April 2013, the government adopted the *Criminal Law (Amendment) Act of 2013* which amends the Indian Penal Code, the Code of Criminal Procedure, the Indian Evidence Act and the Protection of Children from Sexual Offences Act. Under this Act, amended Section 370 of the Indian Penal Code provides a definition of trafficking in persons that is generally in line with the UN Trafficking Protocol. However, child trafficking by the Penal Code definition only occurs if there is force or other forms of coercion, abduction, fraud, deception are involved in recruiting, harbouring, transferring or receiving a child for the purpose of exploitation.

The Act provides for more stringent sentences for offenders. Under the amended section 370 (3) of the Indian Penal Code, child traffickers are liable to “imprisonment for a term which shall not be lower than 10 years, but which may extend to imprisonment for life”. However, the *Criminal Law (Amendment) Act of 2013* does not expressly exempt trafficking victims of criminal prosecution for offenses committed while being victims of trafficking.

It has been reported that Indian law enforcement officials have not effectively implemented anti-trafficking legislation<sup>24</sup> and that convictions of sex traffickers are rare<sup>25</sup>. During the review of the situation of human rights in India, during the 13<sup>th</sup> session of the Universal Periodic Review (June 2012), Canada encouraged the government of India to demonstrate “higher conviction rates for crimes against children such as sexual exploitation (...) and child trafficking”<sup>26</sup>.

### **Recommendation:**

**India should revise the amended Section 370 of the Indian Penal Code (amended under the *Criminal Law (Amendment) Act of 2013*) to ensure that child trafficking is deemed even when force or any other form of coercion, abduction, fraud, deception are not involved in recruiting, harbouring, transferring or receiving a child for the purpose of exploitation. In addition, the amended section should expressly stipulate that child victims of trafficking are never prosecuted for offenses committed while victims of trafficking. They should be treated as victims and given access to all adequate medical, legal and psychosocial care and support services.**

- **Territorial and extraterritorial jurisdiction over CSEC related offenses**

According to Section 4 of the Code of Criminal Procedure, Indian’s laws apply to foreigners who have sexually exploited children on Indian Territory. However, weak law enforcement has resulted in many child sex offenders escaping prosecution in India<sup>27</sup>.

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<sup>24</sup> US Department of State, Trafficking in Persons Report 2013. Accessible at:

<http://www.state.gov/j/tip/rls/tiprpt/2013/>

<sup>25</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

<sup>26</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review - India, 2012. Accessible at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement>

<sup>27</sup> ECPAT International, Global monitoring - status of action against commercial sexual exploitation of children INDIA, 2011. Accessible at: [http://www.ecpat.net/EI/Pdf/A4A\\_II/A4A\\_V2\\_SA\\_INDIA.pdf](http://www.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_INDIA.pdf)

Indian nationals who have committed alleged sexual crimes against children in foreign countries and who were not prosecuted in the country when the alleged crimes took place, can be prosecuted under section 188 of the *Code of Criminal Procedures*, 1973, to treat the offence as if it had been “committed at any place within India at which he may be found”. However, Section 188 stipulates that Indian citizens can only be prosecuted when the allegations are considered an offence in the country where they were committed (legal principle of double criminality). This legal requirement hampers the effective prosecution of travelling child sex offenders from India and encourages travelling sexual offenders to go to countries where they can exploit children without facing legal proceedings once back in their home country.

**Recommendation:**

**Territorial jurisdiction: India should make efforts to systematically prosecute foreign child sex tourists and convict those found guilty of sexually exploiting children in the Indian Territory.**

**Extraterritorial jurisdiction: the requirement of double criminality in relation to sexual exploitation of children in travel and tourism related crimes should be removed from Indian Code of Criminal Procedure in order to strengthen the capacities of law enforcement officials to prosecute Indian travelling child sex offenders who have escaped prosecution in foreign countries for sexual crimes against children.**

## **5. Protection of the rights of child victims**

- **Lack of care and support services for child victims of CSEC/trafficking**

Even though the Indian government has made some efforts with regards to the development of support services for child victims of trafficking, specific support services for children victims of prostitution and child pornography have suffered because of a lack of sufficient financial and technical support and inconsistent care standards from one state to another.

The Ministry of Women and Child Development has established shelters to provide assistance for trafficking victims in all major cities. However, there are not enough shelters to accommodate all child victims of trafficking and care standards provided in these shelters do not always meet the specific needs of child victims. It appears that medical services are available in almost all shelters to which children are referred. However, it remains unclear whether such medical assistance is adequate and systematically provided. In addition, it has been reported that child victims referred to shelter homes lack access to comprehensive psychological counselling<sup>28</sup>.

**Recommendation:**

**More government shelters for child victims of trafficking and commercial sexual exploitation should be established and those shelters, including existing ones, should be**

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<sup>28</sup>ECPAT International, The Body Shop Campaign, Country Progress Card – India, 2010, [http://www.ecpat.net/TBS/PDF/2010\\_India\\_Progress\\_Card.pdf](http://www.ecpat.net/TBS/PDF/2010_India_Progress_Card.pdf)

**adequately equipped and staffed in order to provide systematic assistance and support services. Psychological counselling, tailored to meet the needs of child victims, especially those suffering from physical and mental health problems, is needed.**

- **Lack of reporting mechanisms for child victims**

In 1996, the government of India established the CHILDLINE 1098, a nationwide toll-free 24/7 emergency helpline dedicated to vulnerable children. This helpline is operated by non-governmental organisations, in collaboration with central and state police forces. Even though this reporting mechanism provides assistance, support and orientation to many children in need, it appears that it is not adequately staffed to respond to the specific needs of child victims of trafficking. However, CHILDLINE has been effective in identifying and rescuing missing children.

**Recommendation:**

**The Indian government should strengthen the capacities of the nationwide toll-free 24/7 emergency helpline (CHILDLINE 1098), with appropriate funding and trained staff to ensure that this reporting mechanism is accessible to all child victims and can respond adequately to their individual needs. It is also recommended that the capacities of police and NGOs should be strengthened to allow them to jointly work to rescue trafficked children in labour and forced prostitution.**