

ONLINE SEXUAL EXPLOITATION AND ABUSE IN INDIA



India is a growing technology hub. In 2019, it became the second most connected country in the world, with over 560 million internet users.¹ In urban India, the number of internet users in 2020 rose by 4% to 323 million, accounting for 67% of the urban population.²

As internet use in urban India increased during the pandemic, so did online violence on digital platforms, which tripled during the pandemic from 26% to 74%.³ There was also a marked increase in conversations around gender trolling and sexual harassment at 47% and 35%, respectively.⁴ Unfortunately, there are limited resources and assistance for survivors.⁵

Digital technologies have created entirely new forms of online exploitation, including online grooming and solicitation for sexual exploitation and abuse and online sexual coercion and extortion, making it easier for perpetrators to identify and gain access to victims. Online sexual exploitation and abuse (OSEA) is part of the continuum of gender-based violence and is rooted in sex, gender, and intersecting inequalities and abuse of power that perpetuates women's and girls' subordination in society.

In India, many people, especially women and other marginalized groups, have to overcome traditional barriers to participate in the public sphere. These patriarchal norms are replicated online.

Note: The information in this factsheet is largely derived from the report titled *Ending Online Sexual Exploitation and Abuse: A Call for International Standards*, published during November 2021. Please refer to the report for further information on these laws as well as a full list of recommendations. <https://www.equalitynow.org/endosea>.

¹ <https://www.weforum.org/agenda/2019/10/india-technology-development-silicon-valley/>

² <https://economictimes.indiatimes.com/tech/technology/india-to-have-900-million-active-internet-users-by-2025-says-report/articleshow/83200683.cms>

³ <https://www.icrw.org/breaking-the-cycle-of-online-violence-in-india/>

⁴ <https://www.icrw.org/breaking-the-cycle-of-online-violence-in-india/>

⁵ <https://www.icrw.org/breaking-the-cycle-of-online-violence-in-india/>



Unsplash/ Towfiq barbhuiya

LEGAL LANDSCAPE

Overview of International and Regional Treaties

India has ratified a number of treaties which help protect against OSEA. These include:

- The International Covenant on Civil and Political Rights (ICCPR).
- The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).
- The International Labour Organization (ILO) Worst Forms of Labour Convention.
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

Regionally, India has ratified the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (SAARC Convention), which focuses primarily on the trafficking of women and children for the purpose of prostitution.

These instruments obligate governments to put in place measures to address sexual violence, exploitation, and abuse.

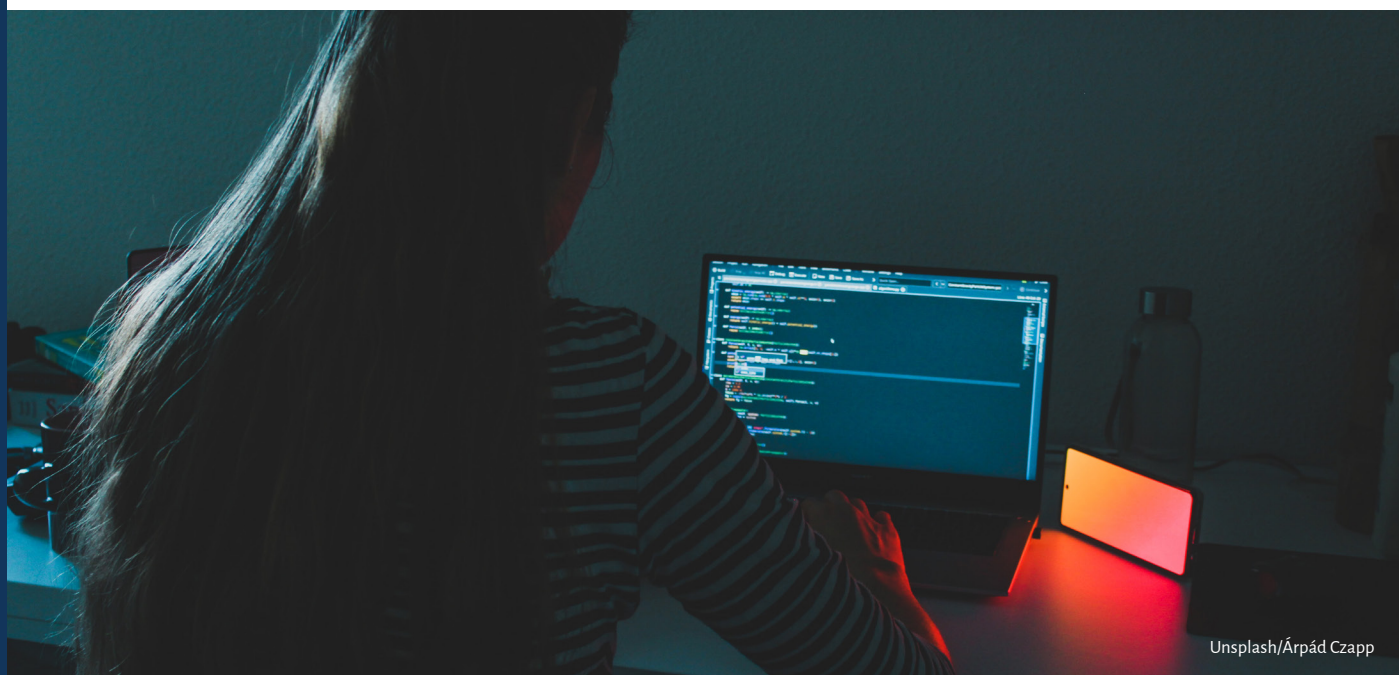
Overview of Existing Laws Covering OSEA

India has also developed and implemented laws to bridge the gender gap and to reduce gender-based violence. These include:

- The Penal Code, which specifically criminalizes speech that is obscene, defamatory, insults the “modesty” of women, and intrudes upon their privacy. The Code also punishes anonymous criminal intimidation, sexual harassment, voyeurism, and non-consensual sharing of sexual images online.
- The Information Technology Act, which criminalizes the publication or transmission of obscene material, sexually explicit acts, or conduct in electronic form. The Act also prohibits the transmission of electronic material depicting children engaged in sexually explicit acts, but also the browsing and downloading of electronic material depicting children in an obscene, indecent, or sexually explicit manner. In terms of the Act, the government may block online content if it is necessary or expedient “in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order, or for preventing incitement to the commission of any cognizable offence relating to above”⁶.
- The Protection of Children from Sexual Offences Act, which prohibits the production, dissemination, and consumption of child sexual abuse images, including in online and networked spaces.⁷

⁶ Section 69A, Information Technology Act, 2000.

⁷ Sections 11, 13, and 15 of the Protection of Children from Sexual Offences Act, 2000.



Unsplash/Árpád Czapp

GAPS IN LAW

Despite India's efforts to act against OSEA, existing law does not adequately address its different forms or impacts, leaving gaps in legal protection against this abuse.



Online Grooming and Solicitation for Sexual Exploitation and Abuse

Indian law recognizes that sexual abuse can take place in electronic form. Section 67B(c) of the Information Technology (IT) Act punishes the enticement of children to an online relationship with the purpose of publishing or transmitting material depicting children engaged in a sexually explicit act in electronic form. In proving the crime, prosecutors must show harassment of the child, which includes “repeatedly or constantly follow[ing] or watch[ing] or contact[ing] a child either directly or through electronic, digital or any other means” with sexual intent. In addition, the Home Ministry defines “cyber grooming” as “when a person builds an online relationship with a young person and tricks or pressures him/her into doing a sexual act.”

Although Indian law recognizes that sexual abuse can take place online, the Act does not protect adults who may also be vulnerable to online grooming and solicitation for sexual exploitation and abuse. It also does not protect exploited children once they become adults, given the long-term nature of online grooming and solicitation for sexual exploitation.

Online Sexual Coercion and Extortion

Sexual extortion and coercion are not specifically addressed by legislation in India. The closest provision is Section 503 of the Penal Code, which defines criminal intimidation as when a person threatens injury to another (including their reputation) with an intent to cause alarm or to cause the victim to do or refrain from doing something. India should adopt a law specific to this type of OSEA to take into account the sexual nature of the offense.

Child Sexual Abuse Material (CSAM)

In India, the Protection of Children from Sexual Offences Act provides for making, distributing, and possessing CSAM. During 2020, new rules under the Act were implemented obligating digital service providers and platforms to report any information received relating to CSAM and provide law enforcement with any relevant material. In addition, both the Act and Penal Code make it an offense to distribute offensive material, such as CSAM.

One of the challenges India faces, like other countries, is addressing how to detect adolescent girls in CSAM on the internet. Automated tools that detect CSAM online and human reviewers cannot always be certain that images of girls who have reached puberty are not images of adults. The laws that address CSAM should include protections for adolescent girls.

Live-Streaming of Sexual Exploitation and Abuse

India's IT Act makes it an offense to “transmit” offensive material. These offenses can include the live-streaming of sexual abuse. However, the Act does not include specific protections for adults. In addition, because the tools used to detect images and videos are not always able to determine the age of survivors, it is likely that images and videos of abused adolescent girls are not being flagged. There are also no specific provisions to address the use of deepfakes in live-streaming. India should adopt a law that specifically penalizes the live-streaming of sexual abuse and include broad protections able to cover new forms of sexual abuse on the internet.

Online Sex Trafficking

In India, the Penal Code makes it a criminal offense to recruit, transport, harbor, transfer or receive a person for the purpose of exploitation by using threats, any form of coercion, abduction, fraud or deception, abuse of power, or inducement of benefits to obtain the person's consent. Further, it is an offense to sexually exploit a person in any manner if there is reason to believe the victim has been trafficked. It is also an offense to sell and buy a child with the

intent to use them for any “unlawful or immoral purpose”. This law should be amended, however, to address the online and digital technology aspects of this crime.



Image-Based Sexual Abuse

In India, cases of image-based sexual abuse may be prosecuted under the IT Act, the Penal Code or the Indecent Representation of Women (Prohibition) Act. Image-based sexual abuse was defined in a judgment of a first instance criminal court in the Indian state of West Bengal (in what is considered to be the first prosecution of this offense in India) as “sexually explicit images of a person posted online without that person's consent especially as a form of revenge or harassment”.

Amendments to India's law should also address deepfakes, which cause harm to survivors and can be used by offenders to coerce or extort victims. Image-based sexual abuse can also be addressed through takedown notices, i.e. when survivors request digital service providers and platforms to remove and stop further sharing of the images. However, this has not been helpful in all situations as service providers and platforms, which are designated as conduits of third-party content, are exempt from liability except in certain circumstances. This may be complicated by the fact different platforms have different standards.

KEY RECOMMENDATIONS

The Indian government should:

- Enact and implement laws that address the root causes of OSEA, in particular gender, sex-based discrimination and intersecting inequalities, and the proliferation of misogyny and abuse of power online.
- Ensure that laws and policies that address all forms and aspects of OSEA are enacted and implemented. They should align with international standards, where they exist, including providing for protection of vulnerable people. Domestic laws should also consider the gendered, technological, and multi-jurisdictional nature and dimensions of OSEA.
- Provide legislative measures enabling law enforcement to investigate and prosecute perpetrators of OSEA including on collaboration between national law enforcement and regional and international agencies such as INTERPOL to enhance skills and capacity to investigate OSEA nationally and across jurisdictions.
- Mandate digital service providers and platforms to implement clear policies and procedures relating to posting, sharing and publication of OSEA material on their platforms, and mandate penalties when they fail to comply with the law.
- Strengthen national institutions through provision of adequate resources to investigate and prosecute OSEA cases.
- Support survivors' access to the legal system, including through providing adequate funding to key institutions including law enforcement, the judiciary, child protection services, and women's rights departments with a goal of supporting investigation and prosecution of cases and support of survivors of OSEA.
- Support civil society and the media to raise understanding of OSEA including information on how to identify violations and report to law enforcement and digital service providers and platforms.



REUTERS/Adnan Abidi