

JUDICIAL HANDBOOK



ON COMBATING TRAFFICKING OF WOMEN AND CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION

Disclaimer

The report quotes data and information from both Government and Non-Government sources even though the intellectual rigour, accuracy and precision of such data had not been endorsed or authenticated. Also, the views expressed in the report may not necessarily be that of the Ministry of Women and Child Development, Government of India or UNICEF.

Developed by

Centre for Women and the Law
National Law School of India University
Bangalore, India

JUDICIAL HANDBOOK

ON COMBATING TRAFFICKING OF WOMEN AND CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION

KASTURI GUPTA MENON
SECRETARY

भारत सरकार
मानव संसाधन विकास मंत्रालय
महिला एवं बाल विकास विभाग
Government of India
Ministry of Human Resource Development
Department of Women & Child Development



शास्त्री भवन, नई दिल्ली-110001
Shastri Bhavan, New Delhi-110001
Phone : 2338 3586
Telefax : 2338 1495
E-mail : sec.wcd@sb.nic.in
Website : http://www.wcd.nic.in

PREFACE

Trafficking of women and children has been engaging the serious attention of governments all over the world and of the international community. In many ways, India has been a fore-runner in the battle against trafficking of women and children for commercial sexual exploitation. The criminalization of trafficking flows from Article 23(1) of the Constitution, the highest law of the land, which states that – “Traffic in human beings and ‘begar’ and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”.

Though we had necessary legislation in place, namely, The Immoral Traffic (Prevention) Act, 1956, and several provisions in the Indian Penal Code that form a composite legal code for the prosecution and punishment of traffickers, two landmark judgements of the Supreme Court of India – Vishal Jeet Vs Union of India in 1990 and Gaurav Jain Vs. Union of India in 1997 brought the issue into sharper focus. These judgements directed the Government of India, inter alia, to prepare a National Plan to Combat Trafficking and Commercial Sexual Exploitation of Women and Children. As a result of this, the National Plan was drafted in 1998, which provides a comprehensive strategy for the Central and State Governments to address the multifarious issues related to the subject, especially, prevention, rescue, rehabilitation and reintegration.

One of the prescriptions of the National Plan to Combat Trafficking and Commercial Sexual Exploitation of Women and Children, 1998 was to prepare a special module for sensitisation, training and orientation of judicial officials towards the causes of commercial sexual exploitation and the situation of women and child victims.

It is in this context that the Department of Women and Child Development requested the National Human Rights Commission to lead this exercise in collaboration with the UNICEF, under the GOI-UNICEF Master Plan of Operation, coordinated by the Department of Women and Child Development.

I am extremely grateful to the then Chairman, National Human Rights Commission Justice J S Verma, for agreeing to partner the DWCD in this pioneering project, and for placing it under the able leadership of Justice Sujata Manohar, who has steered the entire exercise. This project is all the more significant as India is perhaps the first country to have undertaken such an initiative.

Trafficking and Commercial Sexual Exploitation of Women and Children is a fundamental violation of their human rights. The social, physical, psychological and moral consequences of commercial sexual exploitation on women and child victims are serious, life-long and even life threatening.

It is hoped that this Manual would be the starting point for highlighting to the Judiciary the hidden social dimensions of the exploitation of the unfortunate trafficked women and children when they experience the law from the investigation agencies and judiciary; of the gross violation of their human rights; and of the permanent stigma they are stamped with in society for the future. We are all aware of the fact, which is adequately substantiated by the data brought out in this Manual, that more than 90 percent of the cases registered by the Police are under Section 7 and 8 of the ITPA, section targeting the trafficked, exploited, abused and enslaved women. Following this, routine judicial acts, such as taking cognizance of Police Charge Sheets, granting bail, accepting pleas of guilt, often become tools in the hands of the traffickers to manipulate the law to enable them to continue their control over and exploitation of the trafficked women.

We value the Judiciary as a crucial and powerful ally of the Government and all agencies involved in the common objective of combating trafficking of women and children. I am confident that this Manual will further enable members of the Judiciary, especially at the cutting edge, to discern the actual situation of the women and children accused under Section 7 or 8 of the ITPA, and adopt a sensitive and pro-active approach while using the large measure of discretion available to them under the existing laws, in dispensing justice to the victims of trafficking.



(Kasturi Gupta Menon)

Dr. Justice Shivaraj V. Patil
Member
(Former Judge, Supreme Court of India)



National Human Rights Commission
Faridkot House, Copernicus Marg
New Delhi-110 001
Phone : 91-11-2338 7328
Fax: 91-11-2338 4863
E-mail: patilsv@nic.in


MESSAGE

India being a country of destination, supply and transit for trafficking networks, the issue of trafficking in women and children, more so, severe violations of human rights ensuring from trafficking have engaged the attention of the National Human Rights Commission ever since it came into existence in 1993. In order to give focussed attention to the problem of trafficking, it appointed one of the Members as the Focal Point on Human Rights of Women. One among the several activities initiated by the Focal Point of the Commission was development of a Manual for Judicial Officers on Combating Trafficking of Women and Children for Commercial Sexual Exploitation in collaboration with the Ministry of Women and Child Development and UNICEF along with the assistance of National Law School of India University, Bangalore. This exercise was initiated in the year 2001 and got completed in 2004. The main objective of the Manual is to sensitise the Judicial Officers to the actual situation of the trafficked victims as well as provide them with a perspective so the they could proactively safeguard the rights of victimised children and women through a sensitive interpretation of the relevant law having due regard to their human rights.

The preparation of this Manual has seen the participation of the judiciary at every stage and has taken care to incorporate their inputs. It has been the endeavour of all those who had been associated with the development of the Manual to bring it in a simple and useful manner so as to enable the Judicial Officers all over the country to view a trafficked woman or child as a victim of circumstances instead of an accused. It thus focuses on the relevant provisions of the Immoral Traffic (Prevention) Act, 1956 which need to be invoked by the Judicial Officers along with the relevant provisions of the Indian Penal Code, if traffickers were to be apprehended, prosecuted and suitably punished.

I appreciate and acknowledge the significant contribution made by the then Focal Point on Human rights of Women including Trafficking Justice (Smt.) Sujata V. Manohar under whose able guidance this Manual was prepared with the assistance of Shri Ajit Bharihoke, Registrar and Smt. S. Jalaja, former Joint Secretary of the Commission. Special mention is to be made here as to the dedicated involvement and untiring assistance of Dr. Savita Bhakhry, Senior Research Officer of the Commission. The Commission also places on record its appreciation for the Ministry of Women and Child Development and the UNICEF for their vision and concern in bringing out this Manual as an enabling tool for the Judicial Officers of the country.

It is hoped that the Manual would prove to be useful in understanding the plight of the trafficked victims whereby they could be rescued more effectively and appropriate measures would be taken in view of the age and circumstances of the victims whereby they would be appropriately rehabilitated and reintegrated in the mainstream of the society. I have good reasons to think that the Handbook would be useful to the Judicial Officers and serves the real purpose for which it is being brought out.


(Justice Shivaraj V. Patil)

Mrs. (Justice) Sujata V. Manohar
Member
(Former Judge, Supreme Court of India
Former Chief Justice,
Bombay & Kerala High Courts)



राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

MESSAGE

Trafficking in women and children is arousing concern worldwide. Many factors have contributed to the expanding trade in human beings, whether for sexual exploitation or for labour and services or for activities such as camel jockeying or begging. Alarm bells started ringing when it was realized that transnational organised criminal syndicates were behind trafficking which had generated for such criminal syndicates, earnings comparable to those in the clandestine drugs trade or illicit supply of arms. In India, the young age at which victims are now trafficked – some as young as 8 or 10, is also an additional cause for concern.

Traffickers need to be apprehended, prosecuted and suitably punished. For this to happen, law to prevent trafficking must focus on the trafficker – usually a chain of traffickers that lure the victim, transport her to an unknown city and force her into submission so that she is then exploited by the traffickers, with no available avenues of escape. The abuse, violence and humiliation suffered by the victim who is held in slave-like captivity, are a gross violation of her human rights.

Any serious attempt to prevent such a crime and to prosecute and punish the criminal must start with an effective law against trafficking. Immoral Traffic Prevention Act, 1956 as amended in 1986 must be used along with the relevant provisions of the Penal Code in an effective way if we wish to make any dent in the prevailing traffic. The law may need improvement. But till it is suitably amended the least one can do is to use the existing law properly and implement its existing provisions in an effective way.

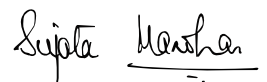
Unfortunately, crimes under the Act are seldom registered. Investigation seldom focuses on traffickers including brothel keepers, pimps and touts. Many states have not appointed special police officers under Section 13 of the Immoral Traffic Prevention Act for dealing with offences under the Act; nor has the Central Government appointed adequate number of trafficking police officers.

Non-official advisory bodies contemplated under Section 13(3) are non-existent. Judicial officers routinely deal with victims of exploitation as offenders “caught” soliciting. Little thought is given to their rescue from the clutches of traffickers and their rehabilitation as normal human beings.

This handbook for the judiciary is an attempt to sensitize judicial officers regarding the effective role that they can play under the Immoral traffic Prevention Act read with the IPC. It is hoped that

a proper reading of the law will lead to its better enforcement; the victims will be rescued more effectively, appropriate protective measures will be ordered looking to the age of the victims and they will have a better chance of reintegration in society. If the handbook helps in achieving even some of those objectives, the effort will have been worthwhile.

I hope that the handbook will be used widely in the education and training programmes of judicial officers, and will help them to understand and handle the law more effectively.

A handwritten signature in black ink, reading "Sujata Manohar". The signature is written in a cursive style with a horizontal line underneath the name.

Sujata Manohar
Focal Point on Trafficking &
Women's Issues
National Human Rights Commission
August 5, 2004

United Nations Children's Fund
Unicef House, 73, Lodi Estate
New Delhi, 110 003 INDIA

Telephone 91 11 2469 0401
Facsimile 91 11 2462 7521
91 11 2469 1410
www.unicef.org

FOREWORD

The trafficking of children for commercial sexual exploitation is a clear violation of child rights, as children who are victims of trafficking suffer indignities and multiple situations of abuse. The Government of India, the State Governments and Union territories, and civil society organizations are initiating preventive and protective measures benefiting children vulnerable to or victimized in trafficking for commercial sexual exploitation. This manual for judicial workers is a major concrete step toward creating a protective environment for these children.

UNICEF has been pleased to support the Department of Women and Child Development through this painstaking work of research and consultations with judicial experts and Magistrates who are in the frontlines of protecting child victims of trafficking under international and national laws. The leadership throughout of then Joint Secretary, DWCD, ensured close collaboration with the National Human Rights Commission and engagement of the judicial authorities and functionaries for whom this manual was developed. These judicial authorities are in a sense the co-authors, and with their colleagues, the end-users of this manual, and for this reason, UNICEF recognizes the strength and value of this manual for judicial workers.

We look forward to the wide distribution and use of this manual in the entire judiciary system of the country. We believe that it will go a long way toward sensitizing Judges and Magistrates on the situation of child victims of trafficking, and helping them in the speedy disposal of trafficking cases and prosecution of traffickers in a manner that takes the best interest of child victims from beginning to end of the judicial process.



(Cecilio Adorna)
Representative



Fax No.: 23381495
Fax No.: 23381800
Fax No.: 23381654
Telegrams: WOMEN CHILD

भारत सरकार
महिला एवं बाल विकास मंत्रालय

GOVERNMENT OF INDIA
MINISTRY OF WOMEN & CHILD DEVELOPMENT
शास्त्री भवन, नई दिल्ली-110 001
SHASTRI BHAWAN, NEW DELHI-110 001

FOREWORD

Trafficking of women and children for commercial sexual exploitation is an organized crime and is said to be most lucrative trade or business after arms and narcotics. Most of the time, innocent women and children, as young as nine years old, are pushed into this trade by people known to them, including their own families. Once in the trade, the victim has no escape route, but to languish in an environment of violence, abuse and exploitation.

India happens to be a source, destination and transit route for trafficking of women and children. Studies have shown that the traffickers are well-equipped with sophisticated communication technology and work in close network and secrecy, that it is difficult to break the nexus. They also keep changing their base and route to escape from being caught. Even if caught, they use legal loopholes to their advantage and escape from being punished. Also, they threaten the victim of dire consequences if she agrees to testify against the trafficker. This gets compounded when the law enforcement agencies and judiciary show insensitivity towards the victim and do not execute their power to punish the real culprit, that is the trafficker. Thus, the victim is further victimized for want of justice and many a times, she is pushed back into the trade by the same traffickers.

During various deliberations with civil society and others, it has come out repeatedly that the Judicial Officers need to be sensitized on the issues of trafficking. The Ministry of Women and Child Development, in collaboration with National Human Rights Commission and UNICEF and the assistance from National Law School of India University, Bangalore has developed this Manual for the Judicial Officers dealing with cases of trafficking of women and children for commercial sexual exploitation.

It is hoped that the Judicial Officers will find this Manual useful in handling cases of trafficking and take pro-active steps in protecting the rights of the victims of trafficking for commercial sexual exploitation.

(Manjula Krishnan)
Economic Advisor



VEENA S. RAO
Additional Secretary

भारत सरकार
अन्तरिक्ष विभाग
अन्तरिक्ष भवन, न्यू बी. ई. एल. रोड
बेंगलूर-560 094 भारत
GOVERNMENT OF INDIA
DEPARTMENT OF SPACE
ANTARIKSH BHAVAN, NEW BEL ROAD,
BANGALORE - 560 094, INDIA
दूरभाष / TEL 080-2341 7009
फैक्स / FAX 080-2351 5850

ACKNOWLEDGEMENTS

The preparation of this Manual has been an intense learning experience that enabled us to go into great depth into the legal provisions existing in our country that address various offences that constitute trafficking of women and children, their actual practice in police stations and law Courts, and the operation of the law as experience by the trafficked victims.

This Manual would not have been possible without the leadership of the National Human Rights Commission (NHRC), and the guidance, support and momentum provided by Justice Sujata Manohar whose personal interventions helped the process of consultation and drafting of the Manual to progress smoothly. I would also like to thank Shri. Ajit Bharihoke, Registrar, NHRC for painstakingly going through the Manual and giving his valuable feedback, and to Dr. Savita Bhakhry, Senior Research Officer, NHRC and Ms. Sakshi Sethi, Intern, NHRC for their support.

We are grateful to the National Law School of India University, Bangalore for conducting the research study to collect and present the preliminary data, and organizing the State Consultations, under the coordination of Ms. Sarasu Thomas. We are particularly thankful to Ms. Sumitra Acharya for painstakingly and repeatedly analyzing the research data with us.

Our special thanks to the Hon'ble Judges, Magistrates and Public Prosecutors, officers of the State Police Departments and the Departments of Women and Child Development, members of the Non-Government Organizations and experts who participated in the State Consultations in Andhra Pradesh, Delhi, Goa, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tamil Nadu and West Bengal, and gave us their valuable inputs.

We are also grateful to the Registrars General of the Supreme Court of India and National Human Rights Commission, Registrars of High Courts, Directors of the National and State Judicial Academies, and Director, NALSAR University of Law, Hyderabad, for their valuable contribution in giving a final shape to this document at the National Consultation.

My thanks also to National Institute for Public cooperation and Child Development, particularly to Dr. A K Gopal, Additional Director, for organizing the National Consultation for finalizing the Manual.

The preparation of this Manual commenced and was developed during my tenure as Joint Secretary, Department of Women and Child Development, Government of India. I would like to express my sincere thanks to Ms. Kasturi Gupta Menon, Secretary, Department of Women and Child Development for her support and for enabling me to complete the work.

I would also like to thank Ms. Maria Claivis, former Country Representative, UNICEF India, Dr. Erma Manoncourt, Deputy Director (Programmes), UNICEF, and Dr. Susan Bissell, UNICEF for their dedicated support and contribution to this exercise.

Finally, I would like to specially thank Ms. Radha Kamath, Consultant, UNICEF for ably assisting me throughout the entire exercise of data compilation, verification and analysis drafting and editing of the document, and for her patient perseverance in our efforts to present the quantitative data without contradiction and as accurately as possible.



(VEENA S. RAO)
Additional Secretary

Table of Contents

I. Introduction	1
1.1 Background	1
1.2 Why Does Trafficking Occur?	2
1.3 How Trafficking Victimises and Violates Human Rights of Women and Children	3
1.4 Challenges and Complexities	4
II. Objectives and Methodology	7
2.1 Objectives	8
2.2 Methodology	8
III. Legal Framework and Policy	11
3.1 Definition of Trafficking	12
IV. The Trafficked Victim and the Law	17
4.1 Legal Provisions in the Immoral Traffic (Prevention) Act, 1956 (ITPA) Used for Prosecution of a Prostitute/Trafficked Victim	18
4.2 Relevant Provisions Applicable for Prosecuting a Prostitute/Trafficked Victim	19
4.3 Section 8 of ITPA—Seducing or Soliciting in a Public Place for the Purpose of Prostitution	20
4.4 Section 4 of ITPA—Living on the Earnings of Prostitution	21
4.5 Legal Provisions Dealing With Procedures for Investigation, Arrest, Search, Removal, and Rescue under Constitution of India, Immoral Traffic (Prevention) Act, 1956 and Criminal Procedure Code.	21
4.6 Courses of Action Available to the Magistrate With Respect to a Prostitute Who is an Accused Person	26
4.7 Safeguards to be Kept in Mind by the Magistrate During Investigation and Trial	27
4.8 Section 10A of ITPA—Detention in a Corrective Institution	30
4.9 Legal Provisions for Search, Removal and Rescue under Sections 15 and 16 of ITPA	33
4.10 Section 7(1A) of ITPA—Stringent Punishment to Child Traffickers	34
4.11 Application for Being Kept in a Protective Home for Providing Care and Protection by Court	35
4.12 Eviction Orders (Section 18 of ITPA) and Removal of a Prostitute/Trafficked Victim From Any Place (Section 20 of ITPA)	36
V. Trafficked Minors/Children and the Law	39
5.1 The Task of the Magistrate	40
5.2 Procedures to be Followed by a Magistrate When the Victim is a Child	44
5.3 Powers of the Child Welfare Committee (CWC) in Respect of a Child in Need of Care and Protection	46
5.4 Powers of the Juvenile Welfare Board	47

VI. The Trafficker and the Law	49
6.1 The Task of the Magistrate/Judge	50
6.2 Trafficking Offences Under the Immoral Traffic (Prevention) Act, 1956 and Indian Penal Code	59
6.3 Points to be Noted	64
Annexure 1	67
Questionnaire	67
Annexure 2	72
Magistrates' views on the working of trafficking related Laws	72
Annexure 3	75
Andhra Pradesh	75
Delhi	83
Goa	88
Karnataka	91
Maharashtra	96
Madhya Pradesh	100
Orissa	103
Rajasthan	104
Tamilnadu	106
West Bengal	109
Annexure 4	113
List of State Homes	113
Annexure 5	126
Guidelines on HIV Testing	126
Annexure 6	129
List of NGOS working in the field of trafficking of women and children	129
Case Capsules	136
Abbreviations	141

I. INTRODUCTION

1.1 Background

Human trafficking has a history coterminous with that of society and has existed in various forms in almost all civilisations and cultures. It is a trade that exploits the vulnerability of human beings, especially women and children, in complete violation of their human rights, and makes them objects of financial transactions through the use of force and duress, whether for the purpose of sex, labour, slavery, or servitude. In today's globalised climate of human rights, the world community has taken a unanimous stand condemning this gross human rights violation and has exhorted governments to take effective action against it.

In the 1990s, intense activity in the international scene brought the issue of trafficking into the realm of public debate. International instruments, conventions and the human rights movement¹ brought the issue into greater international focus and exerted very positive pressure on national governments, facilitating commitment to accelerate awareness and the need for proactive interventions. This sustained international momentum acted as a powerful catalyst for advocacy and for demanding greater accountability from governments to take stringent action against the trafficking of women and children that had for long, eluded serious public attention. The decade also witnessed a growing anti-trafficking NGO movement and national and international recognition of their partnership and services.

In India, public debate on the issue of trafficking of women and children for commercial sexual exploitation emerged in the 1990s after the landmark decisions of the Supreme Court in the cases of *Vishal Jeet vs. Union of India* (1990) and *Gaurav Jain vs. Union of India* (1997), in which the Supreme Court issued directions to the Union and State Governments to study trafficking in depth and prepare a national plan to address the problem. In 1998, the Government of India (GoI) formulated the National Plan of Action to Combat Trafficking and Sexual Exploitation of Women and Children. This prescribes an exhaustive set of guidelines to Central and State Governments, covering the entire spectrum of prevention, law enforcement, awareness generation and social mobilisation, health care, education, child care services, housing, shelter and civic amenities, economic empowerment, legal reform, and rescue and rehabilitation. Today in India, there are seven Public Interest Litigations (PILs) seeking more effective implementation of the Plan by the Central and State Governments.

The 1990s also witnessed a significant shift in the perception of the flesh trade, by differentiating 'prostitution' from 'trafficking', seeing it not merely as a moral or law enforcement problem, but as a human rights (including legal and democratic rights) violation linked to gender discrimination and disparity in development. Attendant causal factors that create fertile ground for trafficking, such as poverty, vulnerability of the girl child, lack of access to education and health care, and lack of livelihood options were also acknowledged.

¹ *The Vienna Declaration and Programme of Action, issued by the World Congress on Human Rights (1993) (Para 18); The World Congress against Commercial Sexual Exploitation of Children held at Stockholm (1996); The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000; World Congress against Commercial Sexual Exploitation of Children at Yokohama (2001); The UN Universal Declaration on Human Rights (1948).*

Concern about human trafficking deepens when we consider its sinister dimensions. It is stated to generate a turnover of US\$ 7 billion annually², a figure said to be next only to the income from arms and drug trafficking³. A shocking trend reported in India is that the minimum age for trafficked persons has fallen below 10 years⁴.

1.2 Why Does Trafficking Occur?

There are several factors that lead to trafficking of women and children or cause them to become victims of trafficking. These factors can be broadly classified into two categories: supply factors and demand factors

Supply Factors

- *Abject poverty* sometimes forces parents to sell their children to traffickers.
- *Harmful cultural practices* often make women and children extremely vulnerable. Child marriage is sometimes the route for a child to be trafficked for sexual purposes. The stigma attached to single, widowed, and abandoned women, or second wives through bigamous marriages, causes such women to be abandoned by society. They become easy targets for traffickers.
- *Female illiteracy* and lack of access to education by girls.
- *Male unemployment* and loss of family income puts pressure on women to earn and support the family.
- *Natural calamities and poor rehabilitation* of disaster victims puts pressure on women to earn and support the family.
- *Dysfunctional families* or families that have difficulty functioning and communicating in emotionally healthy ways; a family that has a negative environment, which contributes little to the personal development and growth of family members⁵.
- *Desertion* by one or the other parent, uncared for or abandoned children.
- *Traditional practices* give social legitimacy to trafficking. These include the *Devadasi* and *Jogin* traditions where *Devadasis* are often trafficked and sexually exploited. This is equally applicable to other communities such as the Nats, Kanjars, and Bedias where traditionally girls are made to earn through prostitution.
- *Porous borders*. Weak law enforcement and inefficient and corrupt policing of the borders ensure that women from neighbouring countries are brought into India and forced into prostitution in different towns.
- *Clandestine nature of the crime and weak law enforcement*. The crime does not come to light very often because of its clandestine nature. Victims are unable to access justice and even when they attempt to do so, weak law enforcement enables the traffickers to escape.
- *Urban opportunities*. Many women are either lured by false promises of jobs in urban areas or they voluntarily migrate to urban areas on hearing about the opportunities in cities from their neighbours and friends.

When a woman is pushed into prostitution due to these causes, the issue of consent of the trafficked person is not relevant. Even if a woman knows that she is being trafficked and gives her full consent, it does not absolve the trafficker of guilt. Trafficking is an offence irrespective of the woman's consent (Sections 5 and 6 of the Immoral Traffic (Prevention) Act, 1956).

Demand Factors

- Rising male migration to urban areas and demand for commercial sex.
- Growth of tourism, which sometimes indirectly encourages sex tourism.
- Scare of HIV/AIDS and prevalent myths on sexuality and STDs (Sexually Transmitted Diseases) leads to greater demand for newer and

² UN estimates, as quoted in Raymond, Janice G., *Guide to the New UN Trafficking Protocol, Coalition against Trafficking in Women (CATW), 2001.*

³ *Trafficking in Women and Children: The US and International Response, 2000, Congressional Research Service Report 98-649 C*

⁴ Ghosh, S.K., *The World of Prostitutes*, A.P.H. Publishing Corporation, New Delhi, 1996.

⁵ www.kent.k12.wa.us

younger girls. The number of trafficked girls thus increases and their age decreases.

1.3 How Trafficking Victimises and Violates Human Rights of Women and Children

Trafficking is an offence and the trafficker is liable to punishment, irrespective of the consent of the trafficked person. Other than the fact of being trafficked, the traffickers deprive the victims of their most basic human rights in the following manner:

- They are subjected to physical violence and sexual abuse, and are held under duress against their will.
- They receive low or no wages. Hence, they have little or no savings. This combined with indebtedness to the trafficker keeps them in a situation of debt bondage and slavery.
- They are forced to work extremely long hours in inhuman working conditions leaving little time for rest.
- They live in conditions of physical confinement similar to imprisonment and have little or no control over their own movement.
- They are subjected to poor living conditions with abysmal hygiene and sanitation facilities.
- The trafficker restricts their access to health or medical facilities.
- They face social stigma and social ostracism in their daily lives and as a result undergo constant humiliation.
- They are exposed to drugs and other addictions, and sometimes forcibly made addicts in order to ensure their continued dependence on the trafficker.
- They face a continuous assault on their physical, psychological, and emotional health.
- They face health risks such as physical injury, STD, HIV/AIDS, unwanted pregnancies, repeated abortions, gynaecological diseases, tuberculosis, and other diseases.

- They also face harassment from the police and prosecution, and convicted by the judicial system under the ITPA.
- When they are no longer in a position to earn, they are abandoned and even the families who lived off their earnings do not support them
- Children of women in prostitution, especially daughters, are prone to being trafficked themselves. They have no access to education and basic needs of life.

In typical instances of trafficking for commercial sexual exploitation, a trafficker would include:

The procurer, who is the first point of contact with the potential victim. This could either be a neighbour or friend who lures the victim with promises of a job in the city; a person who directly purchases the victim from the victim's family; or someone who enters into a sham marriage with the victim in order to later sell her to either a *middleman* or to a *brothel keeper* or to any other *buyer* who may exploit the victim. There may also be *abettors* such as policemen who are paid by the middlemen, employment agencies, transporters or others who detain the victim at the behest of the procurer or seller. Once the victim falls into a trafficker's clutches, she will be exploited without any hope of redressal as long as she is capable of earning. After she becomes old or ill, or is infected with HIV/AIDS, the trafficker abandons her. He no longer arranges for her bail or pays the fine for her pleading guilty, and she is left alone to face trial and the due process of law.

Trafficking occurs not only for prostitution/ commercial sexual exploitation. Women and children are trafficked for several other purposes, some of which are enumerated below. (Legislation addressing the specific offences is indicated in the footnotes)

- Forced labour, including bonded child labour, in the carpet, garment, and other industries/ factories/worksites⁶.
- Forced or bonded domestic work may be bought

⁶ The Child Labour (Prohibition and Regulation) Act, 1986.

and sold or forced to work in inhuman and violent conditions that include sexual abuse⁷.

- Forced labour in construction sites with little or no wages⁸.
- Forced employment in the entertainment industry, including bars, massage parlours, and similar establishments. In addition to poor or no pay and bad living conditions, sexual harassment is common⁹.
- Children are sometimes trafficked for begging¹⁰.
- Organ trade such as sale of kidneys¹¹.
- Fraudulent or forced marriage: this includes sham, fraudulent, and illegal marriages, entered into by the man, residing in India or abroad, with the criminal intention of sexually exploiting the woman. Mail order brides where women are purchased or lured with false promises of a marriage abroad and subsequently recruited into prostitution is also a form of trafficking¹².
- Camel jockeying often involves the sale of young children who are tied on a camel's back for racing. Children are often badly hurt or killed in such races¹³.
- Purchase and sale of babies for adoption, both within the country and abroad, against established laws and procedures for adoption¹⁴.

1.4 Challenges and Complexities

Combating trafficking in India is especially challenging due to its myriad complexities and variations. The initial challenge lies in changing the mindsets of the key protagonists, such as civil society, enforcement agencies, and the judiciary that sometimes trivialise trafficking and perceive it as prostitution, "the oldest profession". The root cause of trafficking in India is poverty that leads to the inherent vulnerability of victims. Poverty, compounded by illiteracy, lack of skills, and few

livelihood options, makes women and children easy targets of organised criminal networks that exploit this vulnerability through fraud and deception, promising jobs and a better life. The matter becomes more complex when trafficking for prostitution is a traditional cultural practice and has the tacit support of family and society, such as in the *Devadasi* and *Jogin* traditions still prevalent in some parts of India. Although these traditions have been declared as illegal by the government and comprehensive preventive and rehabilitative programmes have been initiated for them, they still persist in certain patches.

The multi-causal nature of trafficking, and the size and cultural diversity of India's population, demand multiple customisations for addressing each form of trafficking. The clandestine nature of trafficking and the resultant paucity of data add to the challenge. The erosion of border barriers by globalisation, technology, and improved communication has inadvertently facilitated the trafficking networks.

Further, the ambivalent attitude of society towards trafficking results in a complacent response from the influential sections of society, rural or urban. The tendency to equate trafficking with prostitution keeps respectable opinion leaders away and prevents them from exerting their power. It is often difficult to get witnesses to prosecute traffickers. Enforcement agencies, if not in complicity with traffickers, sometimes remain indifferent, equating trafficking with a 'petty offence' in contrast to crimes such as murder or theft. As the very concept of "trafficking" and "trafficked victim" is questioned in legal proceedings, traffickers exploit this grey area and the loopholes it throws up to escape punitive action.

⁷ *The Bonded Labour System (Abolition) Act, 1976 and The Child Labour (Prohibition and Regulation) Act, 1986.*

⁸ *For women – The Minimum Wages Act, 1948. For children – The Child Labour (Prohibition and Regulation) Act, 1986.*

⁹ *The Immoral Traffic (Prevention) Act, 1956 and The Indian Penal Code (IPC).*

¹⁰ *States have their own laws for prevention on beggary.*

¹¹ *The Transplantation of Human Organs Act, 1994.*

¹² *IPC, 1860.*

¹³ *Ibid.*

¹⁴ *Ibid.*

The question of trafficking of women and children has of late been receiving serious attention by the National Human Rights Commission (NHRC), the Department of Women and Child Development (DWCD) and UNICEF. These agencies have undertaken several activities to study the problem in greater depth, so that more effective steps can be taken to prevent the problem and curb it at source, protect the victims more meaningfully, and provide them sustainable rehabilitation.

During the several discussions and consultations among the NHRC, UNICEF, government counterparts, and NGOs, a recurring complaint that came up was the callousness and lack of sympathy of various functionaries who play a statutory role in the prosecution and punishment of the traffickers. With reference to the District and Taluq (block) level judiciary, the main problems expressed were long adjournments, easy bail for the trafficker, harassment and humiliation of the victim, and the ease with which the trafficker, who is undoubtedly more powerful than the victim, exploits the legal system. It was also commonly felt that the implementation of the Immoral Traffic (Prevention) Act, 1956 (ITPA) clearly revealed that its provisions were being interpreted mechanically and not used against the traffickers but against the trafficked victims, which was against the very intent and spirit of the Act. It was felt necessary that the prevailing procedures and interpretations of the ITPA that tilt the balance heavily against the victim should be replaced by a sensitive and humane interpretation of the law and exercise of

discretion as provided in several Sections of the Cr.P.C so as to not further victimise the victim.

It was decided that a Manual under the aegis of the NHRC containing guidelines regarding the handling of cases pertaining to trafficking of women and children, keeping in view their state of victimisation and vulnerability, might be helpful to sensitise the judiciary. The purpose being to secure speedier justice for the victims and take more stringent action against traffickers. The Manual will be prepared in partnership with the DWCD, Government of India, and UNICEF Country Office, New Delhi. It was also decided to request the Centre for Women and the Law, National Law School, Bangalore, for assistance in drafting the Manual. To facilitate this task and steer the process, a committee was constituted under the Chairpersonship of Justice Sujata Manohar, Member, NHRC and comprising the Joint Secretary, Ministry of Home Affairs, Member Secretary, National Commission for Women, Deputy Director (Programmes), representatives of UNIFEM, Lawyers Collective and Joint Women's Programme. Ms. Veena S. Rao, Joint Secretary, DWCD, Ministry of Human Resource Development, Government of India, was designated as the Member-Secretary of the Committee, and has coordinated the entire exercise during the course of the research, drafting, and finalisation of the Manual.

To undertake the research, National Law School, Bangalore, constituted a three-member team consisting of Ms. Sarasu E. Thomas (Coordinator), and Ms. Rajalakshmi and Ms. Sumitra Acharya as Research Associates.



II. OBJECTIVES AND METHODOLOGY

II. OBJECTIVES AND METHODOLOGY

2.1 Objectives

The primary objective of this Manual is to sensitise magistrates to the actual situation of the trafficked victims and to provide him/her with awareness and a perspective so that s/he can proactively safeguard the rights of victimised women and children, through a sensitive interpretation of the law.

The specific objectives of this Manual are:

1. To sensitise Magistrates and judges on general and generic issues relating to trafficking.
2. To sensitise Magistrates and judges as to how women and children experience the process of law relating to trafficking and the operation of related support services.
3. To enable Magistrates and judges to take proactive decisions and exercise discretion as provided under the law that will be most beneficial and just to the victim and most stringent to the trafficker.
4. To influence positive change in the attitudes of judicial officers, improve their decision-making, and help them to conform to the intention of the law.
5. To focus on procedures for speedier disposal of trafficking cases and taking stringent punitive action against traffickers.

There are three agencies with which a trafficked woman or child comes into contact with during proceedings under the Immoral Traffic (Prevention) Act, 1956 (ITPA):

1. Police
2. Social Agencies
3. Judiciary

Whereas several programmes and guidelines have been formulated and implemented for sensitising

the police and for training social organisations, it is of the utmost importance that the judiciary, which handles trafficking cases at the taluq and district level, should be equipped with relevant and up-to-date information and oriented towards an interpretation of the ITPA whereby the law focuses adequately on the trafficker, and not on the victim. This is especially important because the judiciary is the last hope of a trafficked woman or child, and the last challenge to the power of the trafficker.

2.2 Methodology

Data Sources

1. The basic data of the Manual has been collected after examination of Court registers and police records pertaining to cases under the ITPA in the 10 States of Karnataka, Andhra Pradesh, Goa, Delhi, West Bengal, Tamil Nadu, Rajasthan, Maharashtra, Madhya Pradesh and Orissa.

The data pertained to cases registered for an average period of four years ending 2003, under Sections 3, 4, 5, 6, 7 and 8 of the ITPA, the number of male and female accused, the age group of the accused, and the final outcome of the cases. In Delhi and Orissa, permission to access Court records was not given, but in Delhi, data from police stations was collected, collated, and analysed.

To ensure that the views and perceptions of the Magistrates were ascertained and properly understood, and that the Manual was based on realistic parameters, it was felt necessary that

Details of Data Sources

Karnataka	: 10 Courts in Bangalore City.
Andhra Pradesh	: 8 Courts in Hyderabad city as well as 5 Courts in Anantpur and Kadapa (both major source areas for trafficking).
Goa	: 6 Courts in Panjim and Vasco.
Tamil Nadu	: 2 Courts in Chennai City.
Maharashtra	: 10 Courts in Pune and 1 Court in Sangli.
Madhya Pradesh	: 4 Courts in Jabalpur.
Rajasthan	: 1 Court in Jodhpur.
Delhi	: no access to Court records given; police data used from Delhi Police Headquarters and Kamla Market Police Station.
West Bengal	: a combination of the data from 4 Magistrates Courts in Kolkata as well as data from Police Headquarters was used.
Orissa	: access to Court or police records was not granted.

Magistrates should be involved in all State-level consultations.

2. A questionnaire (Annexure 1) was sent to Magistrates across the 10 States to elicit their views and to get a perception of judicial attitudes. A total of 900 questionnaires were sent, for which 189 responses were received (Responses to the questionnaire are in Annexure 2)
3. Workshops were held in each of the 10 States where the data collected from the Courts/Police Stations was analysed and presented at different consultations held with,

- (a) Magistrates, Public Prosecutors, Police Officers, and State government officials looking after the subject of trafficking. (Twenty Magistrates and five public prosecutors from each State were invited to the consultation.)
- (b) NGOs, social workers, activists, and lawyers.

The suggestions and ideas that emerged at the consultations, particularly from the Magistrates, form an integral part of this Manual.

Details of the State data and analyses is in Annexure 3

4. Data regarding trafficked victims who have been ordered by the Court to be kept in Protective Homes, about their rescue and rehabilitation, and the role of Probation Officers was collected from visits to custodial homes, both governmental and non-governmental.
5. The draft of the Manual was presented at a National Level Consultation, chaired by Justice Sujata Manohar, member, NHRC. It was attended, amongst others, by Directors of the Judicial Academies and Registrars Generals/Registrars of the High Courts and Directors of the National Law Schools. Their valuable suggestions have been incorporated in the Manual.

The preparation of the Manual thus saw the participation of the Judiciary at every stage and incorporates their inputs. It is designed to be a simple and useful tool for the Magistrates all over the country to enable them to implement the law in an equitable manner that views a trafficked woman or child as a victim instead of the accused and focuses the relevant provisions of the ITPA on the trafficker to ensure that he or she does not escape punishment as per law.



III. LEGAL FRAMEWORK AND POLICY

III. LEGAL FRAMEWORK AND POLICY

3.1. Definition of Trafficking

Article 3 of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, 2000, states:

“ ‘Trafficking in Persons’ shall mean 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.”

Article 1 (3), SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, signed by India on January 5, 2002, states:

“Trafficking means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the of the person subjected to trafficking.”

Article 1 (4) of the SAARC Convention defines “Traffickers” as:

“Traffickers” means persons, agencies or institutions engaged in any form of trafficking.

Article 34 of the Convention on the Rights of the Child (CRC) states:

“States Parties undertake to protect the Child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any lawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) The exploitative use of children in pornographic performances and materials.”*

Further, Article 35 of the Convention on the Rights of the Child states:

“States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”

The Immoral Traffic (Prevention) Act, 1956 (ITPA) does not specifically define “trafficking”. However, the ingredients of trafficking, such as sexual exploitation and abuse of persons; running of a brothel; living on the earnings of a prostitute; procuring, inducing or taking a person for the sake of prostitution; detaining a person for prostitution, etc., are contained in Sections 3, 4, 5, 6, and 8 of the Act.

In the ITPA, (amended in 1978 and 1986), even though “trafficking” is not yet defined in accordance with the UN Protocol, To Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized

Crime or as per the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the essential ingredients of trafficking are covered in the provisions contained in the ITPA and the Indian Penal Code (IPC), viz. Sections 2(f), 3, 4, 5, 6, and 9 of the ITPA, and Sections 366, 366 A, 367, 370, 371, 372, and 373 of the IPC.

Most importantly, trafficking of persons is an offence, the prohibition of which flows out of the Constitution of India (Article 23), and not merely through legislation (see Table 1).

“Prostitution” is defined under Section 2(f) of the ITPA. It may be noted that the definition includes “sexual exploitation or abuse of person for commercial purposes”. Hence, the basic ingredients of trafficking, viz. exploitation, abuse, and commercial exploitation, is implicit in the definition of “prostitute”, thereby excluding completely a person who is indulging in prostitution out of one’s free will. In other words, for a person to be defined as a “prostitute”, there must necessarily be the element of “sexual exploitation, or abuse and commercial exploitation.”

As per the ITPA, a “trafficker” would mean a person who is running a brothel under Section 3, and/or a person living off the earnings of prostitution as per Section 4, a procurer/inducer/

transporter as defined under Section 5, and/or a person detaining a woman for prostitution as defined in Section 6.

Relevant provisions pertaining to personal liberty, trafficking in human beings and protection of the dignity of women as contained in the Constitution of India, and in the existing laws in India are contained in Box 1:

Box 1: Constitution of India

Article 21 provides for protection of life and personal liberty – “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 23 (1) prohibits trafficking in human beings and forced labour – “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

Article 51 (e) states that “It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.”

Table 1: Relevant Provisions of ITPA and IPC

S.No.	Law	Main provision
1.	Section 2(f) ITPA, 1956	"Prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly.
2.	Section 3 ITPA, 1956	<p>Punishment for keeping a brothel or allowing premises to be used as a brothel —</p> <ol style="list-style-type: none"> Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. Any person who— <ol style="list-style-type: none"> being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term, which may extend to two years, and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with a fine. <p>2-A For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if —</p> <ol style="list-style-type: none"> a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or a copy of the list of all things found during the search referred to in clause (a) is given to such person. <ol style="list-style-type: none"> Notwithstanding any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.
3.	Section 4 ITPA, 1956	<p>Punishment for living on the earnings of prostitution</p> <ol style="list-style-type: none"> Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years. Where any person over the age of eighteen years is proved— <ol style="list-style-type: none"> to be living with, or to be habitually in the company of, a prostitute; or to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1)

4.	Section 5 ITPA, 1956	<p>Procuring, inducing or taking person for the sake of prostitution —</p> <ol style="list-style-type: none"> 1. Any person who — <ol style="list-style-type: none"> a. Procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or b. Induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or c. takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or d. causes or induces a person to carry on prostitution; <p>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:</p> <p>Provided that if the person in respect of whom an offence committed under this sub-section-</p> <ol style="list-style-type: none"> i. is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and ii. is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years. 3. An offence under this Section shall be triable — <ol style="list-style-type: none"> a. in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or b. in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.
5.	Section 6 ITPA, 1956	<p>Detaining a person in premises where prostitution is carried on —</p> <ol style="list-style-type: none"> 1. Any person who detains any other person, whether with or without his consent — <ol style="list-style-type: none"> a in any brothel, or b in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, <p>shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:</p> <p>Provided that the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term, which may be less than seven years.</p> 2 Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1). 2-A Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes. 3 A person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there — <ol style="list-style-type: none"> a withholds from her any jewellery, wearing apparel, money or other property belonging to her, or b threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person. 4 Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.

6.	Section 9 ITPA, 1956	<p>9. Seduction of a person in custody — Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution of that shall be punishable on conviction with imprisonment of either description for a term, which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.</p>
7.	Section 366 Indian Penal Code	<p>Kidnapping, abducting or inducing woman to compel her marriage, etc. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her. will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.</p>
8.	Section 366A Indian Penal Code	<p>Procuration of minor girl Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.</p>
9.	Section 367 Indian Penal Code	<p>Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>
10.	Section 370 Indian Penal Code	<p>Buying or disposing of any person as a slave Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.</p>
11.	Section 371 Indian Penal Code	<p>Habitual dealing in slaves Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with 152 [imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.</p>
12.	Section 372 Indian Penal Code	<p>Selling minor for purposes of prostitution, etc Whoever sells, lets to hire, or otherwise disposes of any 164 [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.</p>
13	Section 373 Indian Penal Code	<p>Buying minor for purposes of prostitution, etc Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>



IV. THE TRAFFICKED VICTIM AND THE LAW

IV. THE TRAFFICKED VICTIM AND THE LAW

Analysis of the data obtained from the Court Registers in Karnataka, Andhra Pradesh, Goa, West Bengal, Tamil Nadu, Rajasthan, Maharashtra, Madhya Pradesh (Court registers in Delhi and Orissa were not made available) revealed the following:

1. The widespread misapplication and circumvention of the law on trafficking resulting in decisions that are against the intent, letter and spirit of the ITPA.
2. Section 8 of ITPA has been used the maximum for implementation of the ITPA. An examination of conviction orders passed in the Courts of Karnataka, Goa, Tamil Nadu, Rajasthan, and Delhi reveals that maximum convictions occur under Section 8 of the ITPA, where the victim is further victimised.
3. Magistrate responses to the questionnaire by the Magistrates reveal that not all are aware of the relief to which the victim is entitled to under the ITPA. Even if they are aware, other factors such as a heavy case load; the fact that the woman pleads guilty and pays the fine; the fact that the woman is often represented by a lawyer (albeit a lawyer acting for the trafficker or pimp) and time constraints are obstacles in the way of a sensitive Magistrate who is aware of his responsibilities.

4.1. Legal Provisions in the ITPA Used for Prosecution of a Prostitute/Trafficked Victim

Since the very definition of “prostitution” in Section 2(f) of the ITPA includes the element of sexual exploitation or abuse of persons for commercial purposes, the word “prostitute” as defined in the ITPA can be termed as synonymous with a

trafficked victim. However, the provisions under Sections 7 and 8 are very specific to prostitution being carried on in public places (*Bai Shanta vs. State of Gujrat AIR 1967 Gujrat 211; In re Ratnamala AIR 1962 Mad 31; Smt. Rama Devi vs. State 1963 All L.J. 894; T Jacob vs. State of Kerala AIR 1971 Ker 166*)

The trafficked victim who is arrested and brought before the Court can be charged rightly or wrongly under the following provisions:

1. Section 7(1): **Prostitution in or in the vicinity of public places** – “Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises.”
2. Section 8: **Seducing or soliciting for purpose of prostitution** – *Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public places, whether from within any building or house or not:*
 - a. by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavour to tempt, or attracts or endeavour to attract the attention of, any person for the purpose of prostitution, or
 - b. solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may be extended to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with

imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees."

NOTE: Examination of Court records have also revealed that in some Courts, especially in Andhra Pradesh and Karnataka, victims of trafficking were being charged under Section 4 of the ITPA, reproduced below:

Punishment for living on the earnings of prostitution

1. *"Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years."*

(The Magistrates may note that this is a misapplication of the law. Section 4 of the ITPA is applicable **only to a person(s) living off the earning of a prostitute/trafficked victim and is not applicable to the prostitute/trafficked victim herself.**)

4.2. Relevant Provisions Applicable for Prosecuting a Prostitute/Trafficked Victim

1. Section 7(1) – Prostitution in or in the vicinity of public place

Prostitution in or in the vicinity of public place.

1. *Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises:*
 - a. *which are within the area or areas, notified under sub-section (3), or*
 - b. *which are within a distance of two hundred meters of any place of public religious*

worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

Essential ingredients and evidence requirements

- i. Applies both to the person who carries on prostitution and also to the person with whom such prostitution is carried on in any premises in or in the vicinity of a public place¹⁵ as notified by the Commissioner of Police or Magistrate or State Government in terms of this Section.
- ii. What the prosecution needs to prove in order to convict a woman under Section 7(1)

a. Prostitution was being carried on:

"Prostitution" has been defined under Section 2(f) of the ITPA, which states – "prostitution" means the **sexual exploitation or abuse of persons for commercial purposes**, and the expression "prostitute" shall be construed accordingly.

The Act not only punishes prostitution being carried out in public places but also stipulates that both the person who carries on prostitution and the person with whom such prostitution is carried on shall be punishable with imprisonment for a term, which may extend to three months. Thus, Section 7(1) of the ITPA empowers the Magistrate to charge traffickers, pimps and brothel keepers.

When a person is accused of prostitution, the following facts are given importance to prove the same.

- Proof of sexual intercourse is insufficient, unless coupled with proof that the woman offered her body for promiscuous sexual intercourse and that she did so for hire

¹⁵ Public Place is defined under Section 2(h) of the ITPA as any place intended for use by, or accessible to, the public and includes any public conveyance.

[State of Kerala vs. Pathumma, 1969 Cr.L.J. 697 (Ker.)].

- Finding the female accused and the male accused persons in a compromising position will not constitute an offence under this Act. Sexual intercourse by itself is not a punishable offence [State of Orissa vs. Govinda Pradhan 1982 Cr. L.J. (NOC) 16].
- Mere flirtation or behaving to attract the attention of the opposite sex does not by itself amount to prostitution (In Re: Kamala AIR 1966 Mad 312).

b. Public place:

For the above purpose, “public place” has been defined under Section 2(h) of the ITPA as “any place intended for use by, or accessible to, the public and includes public conveyance” (Bai Shanta vs. State of Gujarat, AIR 1967 Guj. 211).

- The customer is also liable for prosecution and punishment under this Section, along with the person carrying on prostitution. However, this is rarely done. Court records reveal that only in Tamil Nadu is the customer being prosecuted, and in no other State is this being done.

4.3. Section 8 of ITPA – Seducing or Soliciting in a Public Place for the Purpose of Prostitution

Seducing or soliciting for the purpose of prostitution – Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not –

- by words, gestures, wilful exposure of her person (whether by sitting by a window or balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of any person for the purpose of prostitution; or*
- solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,*

shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of subsequent conviction, with imprisonment for a term which may extend to one year and also with fine which may extend to five hundred rupees:

Provided that where an offence under this Section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.”

Essential ingredients and evidence requirements

- The essential ingredient of this offence is the act of tempting or attracting, or attempting to tempt or attract the attention of any person in a public place or within sight of, and in such manner as to be seen or heard from, any public place.
- The act of seducing or soliciting must be in a public place* – The act should either have taken place in a public place (as defined under Section 2(b) of the ITPA) or within sight of or hearing distance from any public place.
- Soliciting and seducing have been defined as –*
 - tempting or attracting or attempting to tempt or attract the attention of any person;
 - by words, gestures or wilful exposure;
 - it must be for the purpose of prostitution; and
 - in a public place or within sight of, and in such manner as to be seen or heard from, any public place.
- Testimony of the person solicited along with corroborative evidence is required for conviction* – The accused under this Section cannot be convicted in the absence of testimony of the person who was solicited for prostitution (*Lakshmi Maruthi Yelkeri vs. State*, 1980 Cri.L.J. 1590). At the same time, the accused cannot be convicted merely on the testimony of the person alleged to have been seduced, without any corroborative evidence proving solicitation for the purpose of prostitution (*In Re: Manika Achari*, AIR 1970 Mad 491). There should be wilful exposure of person in a public place and if there is no mention of the

same in the body of the accusation, it amounts to grave illegality. Accused though pleading guilty is entitled to benefit of doubt and acquittal (*In re Babi* 1971 Cri. L.J. 1488).

- v. *Other persons involved in soliciting are also liable* – Soliciting could be done either by the trafficked woman herself, or by some other person(s), i.e. her traffickers (*State of Maharashtra vs. Premchand Khub Chand* AIR 1964 Bom155).

Such persons are liable for the offence of soliciting under Section 8(b) of the ITPA.

- vi. *Women are sometimes wrongly booked for soliciting* – During the State consultations, participants informed that in practice a woman is at times wrongly accused of soliciting in the following circumstances –
 - a. when someone else was soliciting on her behalf; after having been found in a brothel/ hotel room with or without a customer; or
 - c. at times women seen in bus stands and market places are arrested even though they were not soliciting at that time.

4.4. Section 4 of ITPA — Living on the Earnings of Prostitution

1. *Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.*
2. *Where any person over the age of eighteen years is proved –*
 - a. *to be living with, or to be habitually in the company of, a prostitute; or*
 - b. *to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that*

such person is aiding abetting or compelling her prostitution; or

- c. *to be acting as a tout or pimp on behalf of a prostitute,*

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).

The prostitute as defined in Section 2(f) of the ITPA is sometimes wrongly prosecuted under this Section. However, as stated earlier, it should be noted that Section 4(1) of the ITPA applies to a person above 18 years who knowingly lives, wholly or in part, **on the earnings of prostitution of any other person**. Hence, it is illegal for a prostitute/ trafficked victim to be charged under this Section.

The Act does not punish or make liable for action a woman who carries on prostitution for her own gain as long as she does not violate the prohibition of soliciting or seducing in a public place (*Smt. Ram Devi vs. State and Ors* 1963 All L.J. 894). This Section is clearly applicable only to a person living on the earnings of prostitution of another person. It is a Section meant to punish the people living off her earnings only.

4.5. Legal Provisions Dealing with Procedures for Investigation, Arrest, Search, Removal and Rescue Under the Constitution of India, Immoral Traffic (Prevention) Act, 1956 and Criminal Procedure Code¹⁶

Article 22(2) of the Constitution of India states “Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of the Magistrate.”

¹⁶ For purposes of convenience, provisions have been listed in their order of reference in Para 4.6.

Table 2: Legal Provisions for Investigation, Arrest, Search, Removal and Rescue

S.No.	Law	Main Provision
1.	Section 2(i) ITPA, 1956	“special police officer” means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act;
GENERAL PROVISIONS		
2.	Section 2(j) ITPA, 1956	“trafficking police officer” means a police officer appointed by the Central Government under sub-section (4) of Section 13
3.	Section 13 ITPA, 1956	Special police officer and advisory body – (1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that government for dealing with offences under this Act in that area.
4.	Section 57 Cr. P.C	Person arrested not to be detained more than twenty-four hours.-No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.
SECTIONS FROM ITPA		
5.	Section 15 ITPA, 1956	<p>15. Search without warrant: –</p> <ol style="list-style-type: none"> Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant. Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search and may issue an order in writing to them or any of them so to do: <p>Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.</p> <ol style="list-style-type: none"> Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this Section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code (45 of 1860). The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein. The special police officer or the trafficking police officer, as the case may be, after removing person under sub-section (4) shall forthwith produce her before the appropriate Magistrate. <p>5-A. Any person who is produced before a Magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.</p> <p>Explanation – In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).</p> <ol style="list-style-type: none"> The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceeding against them in respect of anything lawfully done in connection with, or for the purpose of, the search. A. The special police officer or the trafficking police officer, as the case may be, making a search under this Section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated it shall be done by woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organization.

		<p>Explanation – For the purposes of this sub-section and Section 17-A, “recognized welfare institution or organization” means such institution or organization as may be recognized in this behalf by the State Government.</p> <p>7. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search under this Section as they apply to any search made under the authority of a warrant issued under 94 of the said Code.</p>
6.	Section 16 ITPA, 1956	<p>Rescue of person – (1) Where a Magistrate has reason to believe from information received from the police or from any other person authorised by State Government in this behalf or otherwise, that any person is living, or is carrying, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce her before him.</p> <p>2. The police officer, after removing the person shall forthwith produce her before the Magistrate issuing the order.</p>
7.	Section 20 ITPA, 1956	<p>Removal of prostitute from any place – (1) A Magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring her to appear before the Magistrate and show cause why she should not be required to remove herself from the place and be prohibited from re-entering it.</p> <p>2. Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the person against whom the notice is issued.</p> <p>3. The Magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the person an opportunity of adducing evidence; take such further evidence as he thinks fit and if upon such inquiry it appears to him that such person is a prostitute and that it is necessary in the interest of the general public that such person should be required to remove herself therefrom and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicate to the person in the manner specified therein, require her after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove herself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit her from re-entering the place without the permission in writing of the Magistrate having jurisdiction over such place.</p> <p>4. Whoever –</p> <ol style="list-style-type: none"> fails to comply with an order issued under this Section, within the period specified therein, or whilst an order prohibiting her from re-entering a place without permission is in force, re-enters the place without such permission, or knowing that any person has, under this Section, been required to remove herself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the place, <p>shall be punishable with fine, which may extend to two hundred rupees and in the case of a continuing offence with an additional fine, which may extend to twenty rupees for every day after the first during which she or he has persisted in the offence.</p>
8.	Section 10 A(b) ITPA, 1956	<p>10-A. Detention in a corrective institution – (1) Where –</p> <p>(b) the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the Court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the Court thinks fit:</p> <p>Provided that before passing such an order –</p> <ol style="list-style-type: none"> the Court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the Court as to the suitability of the case for treatment in such an institution, as also the report of the Probation Officer appointed under the Probation of Offender Act, 1958; and the Court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.

9.	Section 17(1) ITPA, 1956	<p>1. When the special police officer removing a person under sub-section (4) of Section 15 or a police officer rescuing a person under sub-section (1) of Section 16, is for any reason unable to produce her before the appropriate Magistrate as required by sub-section (5) of Section 15, or before the Magistrate issuing the order under sub-section (2) of Section 16, he shall forthwith produce her before the nearest Magistrate of any class, who shall pass such orders as he deems proper for her safe custody until she is produced before the appropriate Magistrate, or, as the case may be, the Magistrate issuing the order:</p> <p>Provided that no person shall be,</p> <ol style="list-style-type: none"> detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or restored to or placed in the custody of a person who may exercise a harmful influence over her.
10.	Section 17 A ITPA, 1956	<p>Conditions to be observed before placing persons rescued under Section 16 to parents or guardians – Notwithstanding anything contained in sub-section (2) of Section 17, the Magistrate making an inquiry under Section 17, may, before passing an order for handing over any person rescued under Section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognized welfare institution or organization.</p>
11.	Section 17(2) ITPA, 1956	<p>(2) when the person is produced before the appropriate Magistrate under sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation.</p>
12.	Section 17(5) ITPA, 1956	<p>In discharging his functions under sub-section (2), a Magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.</p>
13.	Section 17(4) ITPA, 1956	<p>(4) Where the Magistrate is satisfied, after making an inquiry as required under sub-section (2) –</p> <ol style="list-style-type: none"> that the information received is correct; and that she is in need of care and protection, <p>he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three, as may be specified in the order, in a protective home, or in such other custody, as he shall, for reasons to be recorded in writing, consider suitable:</p> <p>Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person, and that those entrusted with the custody of the person, including the persons in charge of a protective home; may be required to enter into a bond which may, where necessary and feasible contained undertaking based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the Court, which will be in force for a period not exceeding three years.</p>
14.	Section 19 ITPA, 1956	<p>Application for being kept in a protective home or provided care and protection by Court – (1) A person who is carrying on, or is being made to carry on prostitution, may make an application, to the Magistrate within the local limits of whose jurisdiction she is carrying on, or is being made to carry on prostitution, for an order that she may be –</p> <ol style="list-style-type: none"> kept in a protective home, or provided care and protection by the Court in the manner specified in sub-section (3).

	SECTIONS OF Cr.P.C	
15.	Section 239 Cr.P.C	When accused shall be discharged – If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.
16.	Section 240 Cr.P.C	Framing of charge – 1. If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. 2. The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.
17.	Section 251 Cr.P.C	Legal Aid to the Accused at State Expenses in Certain Cases – Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.
18.	Section 304(1) Cr.P.C	Legal Aid to the Accused at State Expenses in Certain Cases – Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.
19.	Section 327(1) Cr.P.C	Court to be open – 1. The place in which any Criminal Court is held for the purpose of inquiring into, or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them : Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court. 2. Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D of the Indian Penal Code (45 of 1860) shall be conducted in-camera: Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in the room or building used by Court. 3. Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except with the previous permission of the Court.
20.	Section 465 Cr.P.C	Finding or sentence when reversible by reason of error, omission or irregularity – 1. Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent Jurisdiction shall be reversed or altered by a Court of appeal, confirmation of revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order judgement or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. 2. In determining whether any error, omission or irregularity in any proceeding under this Code, or any error or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.
21.	Section 241 Cr.P.C	Conviction on plea of guilty – If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon. (Warrant Case)
	Section 252 Cr.P.C	Conviction on plea of guilty – If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon (Summons Case)

4.6. Courses of Action Available to the Magistrate With Respect to a Prostitute Who is an Accused Person

Where the prostitute/trafficked victim is the accused under the Act, the Magistrate has the following alternative courses of action available when she is produced before her/him:

- i. She may be discharged under Section 239 of the Cr.P.C.
- b. Information gathered during the research reveals that generally the bail for the accused prostitute/trafficked woman is offered by the trafficker or pimp. The trafficker is, after the release of the victim on bail, in a stronger position to control and manipulate her and her plea in Court, by paying for her legal expenses and bail.
- c. The Magistrate should make detailed inquiries regarding the identity of the person offering bail for the prostitute/trafficked woman and

Table 3: Classification Of Offences Against Other Laws

Offences	Cognisable or Non-cognisable	Bailable or Non-Bailable	By what Court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognisable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years and upwards but not more than 7 years	Cognisable	Non-bailable	Magistrate of the First Class
If punishable with imprisonment for less than 3 years or with fine only	Non-Cognisable	Bailable	Any Magistrate

If the Magistrate finds that the case made out against the accused is groundless, the Magistrate may discharge her under Section 239 of the Cr.P.C. after recording the reasons for doing so.

During the State consultations, Magistrates informed that discharge is given usually if there is no prima facie case or if the ingredients and evidentiary requirements have not been met satisfactorily.

- ii. *She may be released on bail (as prescribed under Chapter XXXIII of the Cr. P. C), pending filing of charge-sheet and trial.*

While examining Court records and during the State consultations, the following observations were made that should act as a caution to the Magistrates:

- a. While the trafficked woman/prostitute is released on bail, the other accused persons, if any, who may also be co-accused under Sections 3, 4, 5, 6 and 8, and relevant Sections of the IPC, such as brothel keepers, pimps, etc., are also usually simultaneously released on bail and the pre-arrest scenario of trafficking is restored.

try to ascertain whether he has links with the trafficker/pimp. If his/her enquiry leads him/her to believe that bail is being offered by the trafficker or a person with links to him, he may refuse bail after recording reasons for doing so in a speaking order.

The Magistrate should keep these factors in mind before granting bail to the trafficked woman/prostitute. If the trafficked woman is released on bail, then further steps are to be taken towards trial of the case, after filing of the charge-sheet by the police.

- iii. *The Magistrate may frame charges against the trafficked woman under Section 240 and 251 of the Cr.P.C. and ask her to plead guilty or not guilty.*

- a. At the time of taking cognizance, the Magistrate should consider and apply his mind over the charge-sheet with an open mind because in most cases the prostitute/trafficked woman booked under Section 8 of the ITPA is acting under duress and is being abused/exploited by the trafficker.

- b. If the Magistrate is convinced by the evidence produced by the investigating officer in the charge-sheet, s/he may frame charges against the prostitute/trafficked woman. In such a case, theoretically the accused has an option of pleading guilty or not guilty.
- c. If the Magistrate is not convinced by the evidence produced by the investigating officer in the charge-sheet against the prostitute/trafficked victim, he has full powers under Section 173(8) Cr.P.C to question the investigating officer in depth as to how he has come to the conclusion that there was no role of the trafficker in the commission of the alleged offence by the victim charged under Section 8 of the ITPA. If the reasons furnished by the police are not satisfactory, the Magistrate may return the charge-sheet to the Police to comply with his observations and do further investigation.

The data gathered during the research reveals the following:

- a. In most cases, the brothel keeper or trafficker who controls the trafficked woman influences/pressurises her into pleading guilty and the matter is taken up routinely by the Court. In such cases, the brothel keeper or trafficker pays the fine imposed on her, so that the trafficked woman is pushed further into debt bondage and thereby further under the control of the trafficker
- b. However, a woman may also plead guilty because of her very real need to support herself and her family, which may include infants and very young children who might suffer if she is away for a longer period of time.
- c. Many trafficked women plead guilty due to fear of verbal, psychological abuse and at times, sexual violence from the police.
- d. In rare cases, where women have contested their cases, the prosecution has failed to prove the offence due to witnesses turning hostile or because of unconvincing investigation done by the police and the public prosecutor.

Where the woman pleads “not guilty”, she will face trial as per Cr.P.C.

4.7. Safeguards to be Kept in Mind by the Magistrate During Investigation and Trial

- i. *Proper application of mind* —While considering the charge-sheet, the Magistrate should apply his mind and seriously look into the aspect of whether or not the police have investigated into the angle of involvement of any trafficker, pimp, or brothel owner. If the Magistrate comes to a conclusion that the involvement of the trafficker has not been investigated, s/he may direct the police to investigate further.
- ii. It was seen during the study that in some States, a common misconception seems to be that any woman who is known to be a prostitute/trafficked victim can be arrested under Section 7 or 8 of the ITPA at any time. This is against the law as offences under Sections 7 and 8 of the ITPA must take place in a public place and unless *mens rea* is established in investigation, the Magistrate has full powers to reject the charge-sheet. During discussions with the trafficked victims in Protective Homes and with NGO representatives, it was revealed that very often, the requirement of proving that soliciting had taken place in public is dispensed with, and the woman is forced or intimidated into pleading guilty either at the behest of the trafficker or the police.
- iii. It was also found that women are booked under Section 8 of the ITPA only because of their past record. In some cases, even the FIRs were on cyclostyled forms. This should lead to the reasonable conclusion that proper investigation has not been conducted and may justify discharge of the accused. Slight diligence on the part of the Magistrate in the initial stage may avoid unnecessary humiliation and harassment to the accused. Magistrates should take serious note of such cases and, if necessary, in extreme cases take action against the officer for lodging a false complaint under Section 211 of the IPC.
- iv. *The woman’s plea of guilt should be voluntary.* Before accepting a woman’s plea of guilt under Section 8 of the ITPA, the Magistrate should ensure that it is voluntary and not induced, forced or coerced. It may be noted that the

Scrutiny of Charge-sheet by Magistrate

- a. Has the police officer applied his mind while preparing the charge-sheet?
- b. Is it a cyclostyled charge-sheet?
- c. Is the evidence convincing?
- d. If the accused woman is charged under Section 8, are the evidentiary requirements met that she was soliciting in public and *mens rea* established?
- e. Has the police officer applied the correct provision of law?
- f. Is the name of the person who is running the brothel under Section 3 of the ITPA, or the person living off the earnings of prostitution as per Section 4 of the ITPA, or the procurer/inducer or others as defined under Section 5 of the ITPA, or the person detaining a woman for prostitution as defined in Section 6 of the ITPA also included in the charge-sheet. If not, the police may be questioned as to the reasons why they have not been included in the charge-sheet. If the reasons furnished by the police are not satisfactory then the Magistrate may return the charge-sheet to comply with his observations and direct the police to do further investigation.

provisions of the ITPA that are directed against the trafficker (Sections 3, 4, 5, 6 and 8) and Sections 241/ 252 Cr.P.C empower a Magistrate to use his discretion before accepting the guilty plea of an accused woman under Section 8 of the ITPA, to satisfy himself beyond doubt that the act of pleading guilty is not under duress. The Magistrate may question the accused prostitute/trafficked woman separately to ascertain whether she is pleading guilty under the directions of the trafficker, and who is paying the fine for her. If the Magistrate is satisfied that the prostitute/trafficked woman is pleading guilty out of fear and servitude to the trafficker, and the trafficker or his agent will be paying the fine for the accused, the Magistrate

has the discretion under Sections 241 and 252 Cr.P.C. to reject the plea of guilt of the accused woman, and pass orders for her intermediate custody to a protective home.

- v. *The woman is entitled to legal aid.* – Every woman produced before the Magistrate under the ITPA, under Section 7 or 8, should be made aware that she is entitled to legal aid as provided under Section 304 of the Cr.P.C.
- vi. *The same lawyer should not represent both trafficker and trafficked woman.* In order to prevent a travesty of justice, the same lawyer must not represent both the trafficker and the victim [*Prerna vs. State of Maharashtra* 2003(2) MHLJ 105].

- vii. *Proceedings should be held in-camera.* Section 327(1) of the Cr.P.C. gives the judge the discretion to hold proceedings in-camera.

During the State consultations, it was strongly felt that while conducting the trial of the accused woman, the judge should have in-camera proceedings and create a supportive physical and psychological atmosphere, using sensitive language. The Magistrates should be sensitive to the fact that the prostituted or trafficked victim is completely under the power of the brothel owner or trafficker even while she is pleading guilty or not guilty. Hence, her evidence should be taken in-camera.

- viii. *Offensive language in a charge-sheet.* It was found during the study of FIRs and charge-sheets that extremely derogatory, offensive, and abusive language is often used against the accused woman while describing the act of soliciting or seducing. This violates the basic human right of dignity enshrined in our Constitution.

- ix. *NGO participation should be encouraged.* As per Section 17(5) of the ITPA, the assistance of NGOs may be used by the Magistrate for the discharge of his duties under Section 17(2) ITPA for the purpose of intermediate custody

of persons removed under Section 15 or are rescued under Section 16 of the ITPA.

- x. *Woman's dignity should be maintained.* During discussions with the trafficked victims in the State Homes and NGOs, it was expressed that the Magistrate should play a role in treating the woman with dignity and maintain a decent Courtroom atmosphere. S/he should not permit any person to humiliate or laugh at or tease the women in open Court, especially when the text of offence, which often has explicit sexual vocabulary, is read out to them. The woman's fundamental right to dignity enshrined under Article 21 of the Constitution of India should always be protected. [Madhukar Narayan Mardikar vs. State of Maharashtra and Others, 1990 SOL Case No. 056]; Vishaka vs. State of Rajasthan, 1997 SOL Case No. 177].
- xi. *Sensitivity in the imposition of fine.* During discussions with the trafficked victims in the State Homes and NGOs, it was expressed that if the Magistrate convicts the woman and in her/his discretion decides to impose a fine, s/he should be sensitive about the quantum of fine imposed. If the fine levied is high, the woman may be forced into greater exploitation in order to repay the debt of the fine amount to the trafficker, who will bear it on her account. This research has shown fines as low as Rs. 25 being imposed by Magistrates thereby indicating their awareness and sensitivity to the exploitation of the woman.
- xii. *If a trial is ordered, the period of detention should be specified.* One of the facts brought to light by the Magistrates was that they had no information regarding the Protection

Legal Aid

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceedings in any Court, tribunal or before an authority.

Rights to Legal Aid:

Article 39A of the Constitution of India states that "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

Further Section 304(1) of the Cr.P.C states "Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State."

Who is entitled to free legal aid:

Section 12 of the Legal Services Authorities Act, 1987, prescribes the criteria for giving legal services to the eligible persons. It states:

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- a. a member of a Scheduled Caste or Scheduled Tribe;
- b. a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- c. a woman or a child;
- d. a mentally ill or otherwise disabled person;
- e. a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f. an industrial workman; or
- g. in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile

home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or

- h. in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a Court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court."

Further, Section 13(1) — Persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.

Section 13(2) – An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

Duties of the Court

The Magistrates and Sessions Judges must inform every accused who appears before them and who is not represented by a lawyer on account of his/her poverty or indigence that he/

she is entitled to free legal services at the cost of the State.

In the case of *Suk Das vs. Union Territory of Arunachal Pradesh* ((1986) 2 SCC 401)) the Court has ruled that failure to provide legal aid to an indigent accused, unless it was refused, would vitiate the trial. It might even result in setting aside a conviction and sentence.

Services offered by the Legal Service Authority:

1. Payment of Court and other process fee.
2. Charges for preparing, drafting and filing of any legal proceedings.
3. Costs of obtaining decrees, judgements, orders or any other documents in a legal proceeding.
4. Costs of paper work, including printing, translation, etc.

Case Law

In the case of *Khatri II vs. State of Bihar* [1981 1 SCC 627, 1981 SCC (Cri) 228; 1981 Cri. LJ 47]), the Supreme Court has ruled that the constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

Further, in the case of *Madhav Hayavadanrao Hoskat vs. State of Maharashtra* [(1978) 3 SCC 544] the Supreme Court has ruled that a person is entitled right to appeal and right to counsel, to prepare and argue the appeal.

and Custodial Homes in the States, to which accused woman could be remanded. The State Departments of Women and Child Development and District Magistrates should regularly provide a list of such institutions to the Registrar of the High Courts, with a request to inform the Chief Judicial Magistrate Courts and District Courts of the same, so that the information is readily available with the Magistrates while hearing

cases. A list of State Homes in 10 States is given in Annexure 4.

4.8. Section 10A of ITPA – Detention in a Corrective Institution

If a woman is convicted of an offence under Section 7 or 8 of the ITPA, the Magistrate may

under Section 10A of the Act, on the basis of her character, state of health, and mental condition and the other circumstances of the case, pass an order for her detention in a corrective institution for a period of not less than two years and not more than five years, in lieu of imprisonment. However, before passing such an order, the Court must

- i. Give her an opportunity to be heard;
- ii. Consider any representation which she may make in this regard and the report of the Probation Officer appointed under the Probation of Offenders Act, 1958;
- iii. Record that it is satisfied that the character, state of health and mental condition and the other circumstances of the case are such that the woman is likely to benefit by such instruction and discipline.

The woman may be discharged from such corrective institution and granted a written licence in the prescribed form, at any time after the expiration of six months from the date of such order by the State Government or authority authorised in this behalf, if it is satisfied that there is a reasonable probability that she will lead a useful and industrious life [Sections 10A(3) and (4) of the ITPA]. Such discharge may be conditional or without condition.

Legal Provisions For Investigation and Arrest

Section 14—Offences to be cognisable—

"Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code:

Provided that, notwithstanding anything contained in that Code –

- i. *arrest without warrant may be made only by the special police officer or under his direction or guidance, or subject to his prior approval;*
- ii. *when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing,*

specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

- iii. *any police officer not below the rank of sub-inspector specially authorised by the special police officer may, if he has reason to believe that on account of delay involved in obtaining the order of the special police officer, any valuable evidence relating to any offence under this Act is likely to be destroyed or concealed, or the person who has committed or is suspected to have committed the offence is likely to escape, or if the name and address of such a person is unknown or there is reason to suspect that a false name or address has been given, arrest the person concerned without such order, but in such a case he shall report, as soon as may be, to the special police officer the arrest and the circumstances in which the arrest was made."*

Power is given to the Special Police Officer under Section 14 of the ITPA to arrest without a warrant once he gets the information about the prostitution being carried on in a public place.

- i. *Special Officers to deal with cases.* Only Special Police Officers or trafficking police officers as defined under Sections 2(i) and (j) of the ITPA and appointed under Section 13 of the ITPA are empowered to deal with cases and offences under this Act (*Delhi Administration vs. Ram Singh* AIR 1962 SC 63).

During the State consultations, the participants said that care should be taken to avoid arbitrary arrests by ascertaining that the woman was committing an offence when she was arrested.

- ii. *Arrest by police.* In practice, the trafficked women may be arrested by the police either by conducting a raid on brothels or other places suspected of prostitution or by arresting them from streets, markets, bus stops and such other public places.

iii. *Cognisable offences.* Offences committed under this Act have been made cognisable within the meaning of the Cr.P.C. and a special police officer or trafficking police officer or officers acting under his direction or guidance

or with his prior approval accordingly have the power to arrest without a warrant. In certain circumstances, officers subordinate to a special police officer or trafficking police officer also have the power to arrest without a warrant.

Principles that constitute a lawful arrest¹⁷

The Court in the case of D.K. Basu vs. State of West Bengal JT 1997 (1) SC 1, has given wider interpretation to Article 21 and 22 of the Constitution and has laid down principles that constitutes a lawful arrest:

1. The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identifications and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in the register.
2. That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested to by at least one witness, who may either be member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of the arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him/her or having interest in his/her welfare being informed, as soon as practicable, that he/she has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself/herself such a friend or a relative of the arrestee.
4. The time place of arrest and avenue of custody of an arrested must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of the arrest or detention as soon as he/she is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so request, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "inspection memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his/her detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the State or Union Territory concerned. The Director, Health Services, should prepare such a panel for all tehsils and districts as well.
9. Copies of all documents including the memo of arrest, referred to above, should

¹⁷ Handbook on Human Rights for Judicial Officers, National Institute of Human Rights, National Law School of India University, Bangalore, 2000.

be sent to the Illleqa Magistrates for his/her record.

10. The arrestee may be permitted to meet his/her lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all districts and State headquarters,

where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 21 hours of effecting the arrest and at the police control room, it should be displayed on a conspicuous notice board.

4.9 Legal Provisions for Search, Removal and Rescue Under Sections 15 and 16 of ITPA

The research findings corroborate that whenever a woman is produced before a Magistrate after search or removal from public places or brothel, the normal procedure followed by police is to charge-sheet the women under provisions such as Sections 3, 4, 5 and 6 of the ITPA, which is not correct. The Magistrates should be sensitive to the fact that the woman is a victim and not an accused and by applying these provisions in the charge-sheet, she is being re-victimised.

- i. *Power to search without warrant [Section 15(1)].* The special police officer or the trafficking police officer has the power to conduct a search without a warrant of premises, if it is suspected that an offence punishable under this Act has been or is being committed in respect of any person living in that premises. The officers making a search of such premises should be accompanied by at least two women police officers (Section 15(6A)) of the ITPA.
- ii. *Witnesses required for a search without warrant [Section 15(2) of the ITPA].* The search must be witnessed by at least two or more respectable inhabitants of the locality in which the premises to be searched is situated, at least one of whom shall be a woman. Such witnesses are bound to assist the officers in such a search and if when they are called upon to do so, they refuse or neglect to attend and witness the search without reasonable cause, they will be liable under Section 187 of the IPC.

- iii. *Right to dignity and privacy must be respected [Article 21 Constitution of India].* The right to privacy is a component of the right to life under Article 21 of the Constitution. The Courts have deprecated the fact that the police officer proceeded to the bedroom of a girl by pushing open the door without even the civility of knocking (*Re Ratnamala* AIR 1962 Mad 31; *T. Jacob vs. State of Kerala*, AIR 1971 Ker. 166)

- iv. *Power to remove persons.* The officers conducting the search may remove all the persons found on such premises and in such event shall forthwith produce such persons before the appropriate Magistrate [Sections 15(4) and 15(5) of the ITPA Act].
- v. *Medical examination should be conducted.* According to Section 15b(5A) of the ITPA, any person who is produced before a Magistrate shall be examined by a registered medical practitioner for the purpose of determination of age or for the detection of injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

Analysis of the data collected during the research brought out the fact that a significant number of cases registered were against trafficked women in the age group of 18-21. This is a fluid age group constituting the thin line between a major and a minor, but is critical to the outcome of the case, because very often the trafficked person may actually be below 18 years but is declared in the age determination report as above 18 years. An inaccurate age determination can make a crucial difference in the conduct of the proceedings and

can result in a miscarriage of justice, as according to the ITPA, trafficking of minors is a more heinous offence warranting more stringent punishment as per Sections 4(1), 5(1), 6(2), 6(2A), 7(1A). Doctors usually determine the age of the accused victim by conducting a bone ossification test. In cases, where the age determination test establishes that the victim is below 18 years of age, the Juvenile Justice (Care and Protection) Act, 2000 (JJA) would automatically apply. In all cases, where the accused trafficked victims fall within the age group of 18-21 years, the Magistrate should be especially vigilant and has power under Sections 291 and 311 of the Cr.P.C to summon the medical officer who conducted the age determination test, and question her/him in detail to satisfy herself/himself beyond any shadow of doubt that the accused is above the age of 18 years*.

Further, while conducting medical examination to determine the presence of sexually transmitted diseases, it is necessary to strictly follow the guidelines formulated by NACO, as given in Annexure 5.

4.10 Section 7(1A) of ITPA – Stringent Punishment to Child Traffickers

“Section 7(1A) – Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine.”

i. Interrogation of trafficked woman or girl. Any woman or girl who is removed from a searched premises under the provisions of this Section may be interrogated only by a woman police officer or in the presence of a lady member of a welfare institution or organisation recognised

in this behalf by the State Government [Section 15(6A)].

- ii. Irregularity or defect in investigation would not vitiate the trial, unless a failure of justice has resulted thereby:
 - Although the language of Section 15 is mandatory in nature, non-observance or non-compliance with the directions contained in this provision would not vitiate the entire legal proceedings and trial (State of Uttar Pradesh vs. Bhagwant Kishore Joshi, AIR 1964 SC 221).
 - A defect or illegality in the investigation, however serious, has no direct bearing on the competence or the procedure relating to cognisance or trial of an offence, which would remain valid pursuant to Section 465 (old 537) of the Cr.P.C., unless the irregularity or the illegality in the investigation or trial can be shown to have brought about a failure of justice (H.N. Rishbud and Inder Singh vs. State of Delhi, AIR 1955 SC 196).
 - Thus, although a search, which is conducted under the Act, must be in compliance with Section 15 of the ITPA, a trial would not be rendered illegal merely on the ground that such search was not conducted in strict accordance with the provisions of this Section. Similarly, a conviction cannot be set aside on the ground of mere irregularity or illegality in the process of investigation, although the Court should be very careful and circumspect in weighing the evidence in such cases (State of Uttar Pradesh vs. Bhagwant Kishore Joshi, AIR 1964 SC 221; Bai Radha vs. State of Gujarat 1970 SCJ 929).
- iii. Rescue under the directions of a Magistrate [Section 16(1) of the ITPA Act]. “Where a Magistrate has reason to believe from information received from the police or from any other person authorised by the State Government in this behalf or otherwise, that any person is living,

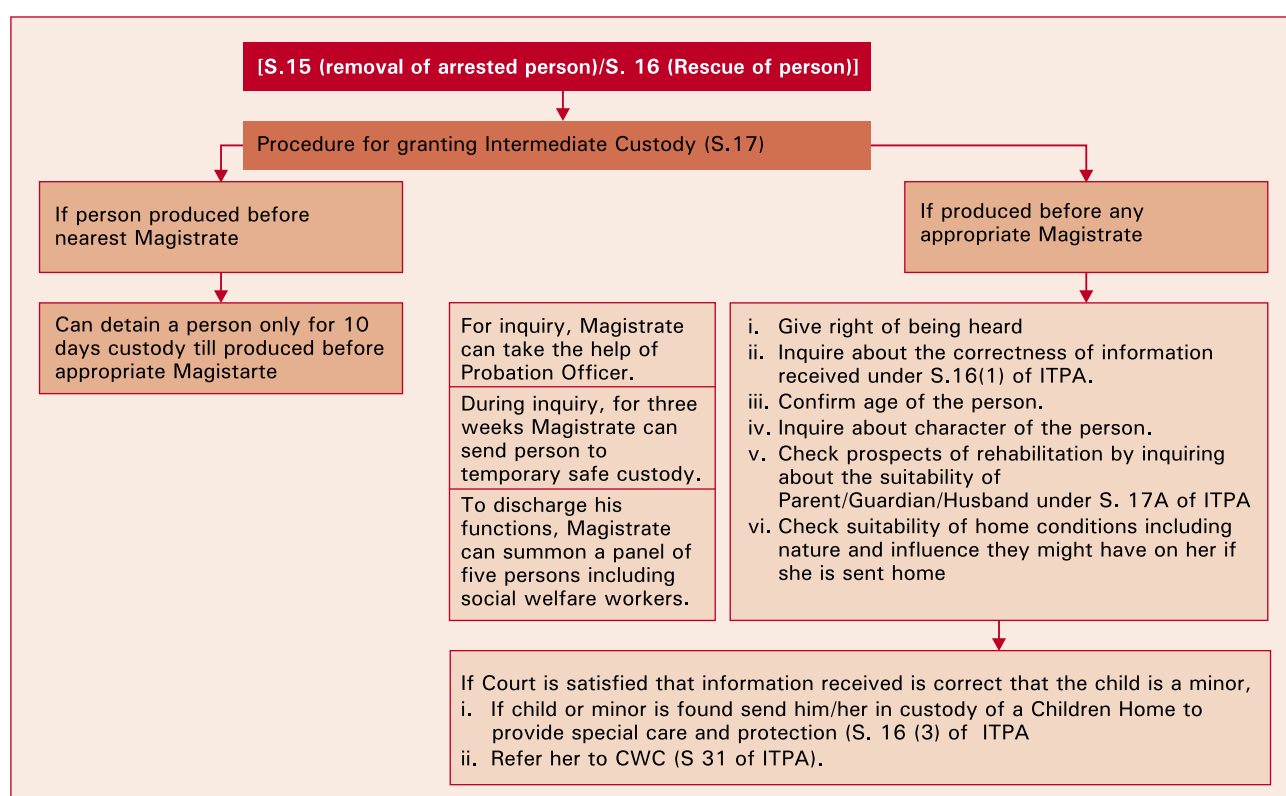
*The subject is dealt with in detail in “Manual for Medical Officers Dealing with Medico-Legal Cases of Victims of Trafficking for Commercial Sexual Exploitation and Child Sexual Abuse”, Department of Women and Child Development, Ministry of Human Resource Development, Government of India.

or is carrying, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce her before him.”

Interviews with trafficked victims in State Homes and NGOs revealed that in practice, women who are rescued are not allowed to even take their children or their valuables. Nor is provision made for the care of the children or to ascertain that what little she has by way of money or valuables such as jewellery to be protected. There have been instances when a woman returns from Court or from the custodial home to find her child missing

without a trace, and often what little she owned almost always disappears before she gets back.

During the State consultations, it was found that in some States such as Delhi, Goa and Andhra Pradesh, Magistrates have used the assistance of reputed NGOs to go along with the police for search under Section 16 of the ITPA. This would assist the woman in taking care of her children and safeguarding her property as well as providing her emotional support. This would also encourage trafficked women to testify against the traffickers. It is strongly felt that such rescued women should not be accused of any offences under the ITPA and should be treated as victims of trafficking.



4.11 Application for Being Kept in a Protective Home for Providing Care and Protection by Court

“Section 19— (1) A person who is carrying on, or is being made to carry on prostitution, may make an

application, to the Magistrate within the local limits of whose jurisdiction she is carrying on, or is being made to carry on prostitution, for an order that she may be—
a. kept in a protective home, or
b. provided care and protection by the Court in the manner specified in sub-section (3).”

Section 19 of the ITPA lays down provisions for a victim to approach the Magistrate for being kept in a Protective Home or for providing care and protection by the Court.

The Magistrate after hearing the applicant and making necessary inquiries shall make an order that the applicant be kept [Section 19(3)]:

- i. in a protective home
- ii. in a corrective institution
- iii. under the supervision of a person appointed by the Magistrate for such a period as may be specified in the order.

4.12. Eviction Order (Section 18 of ITPA) and Removal of Prostitute/trafficked Victim from Any Place (Section 20 of ITPA)

Section 18–“(1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of Section 7 is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord or such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof, and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders –

- a. directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion;*
- b. directing that before letting it out during the period of one year or in a case where a child or minor has been found in such house, room, place or portion during a search under Section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of*

the owner, lessor or landlord shall obtain the previous approval of the Magistrate;

Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place, or portion, he may cause the same to be restored to the owner, lessor or landlord or the agent of the owner, lessor landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.”

Section 20 – “(1) A Magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring her to appear before the Magistrate and show cause why she should not be required to remove herself from the place and be prohibited from re-entering it.”

Section 18 and Section 20 of the ITPA Act empower the Magistrate to (a) close a brothel and evict the offenders from the premise, and (b) remove a prostitute from any place.

At the State consultations, the participants expressed that while applying provisions under Sections 18 and 20 of the ITPA, the Magistrate should be sensitive to the fact that eviction of prostitutes from certain areas may not necessarily stop trafficking but might end up making women more vulnerable to re-trafficking. One such example is the eviction of prostitutes from Mehboob-ki-Mehandi in Secunderabad, Andhra Pradesh, which resulted in number of suicides of women in prostitution.

The Magistrate under Section 20 of the Immoral Traffic (Prevention) Act, 1956 (ITPA) may upon receiving information that there is a prostitute residing in his/her jurisdiction issue a show cause notice as to why he/she should not be required to remove herself/himself from the place and be prohibited from re-entering it. The constitutionality

of this Section was challenged before several Courts across the country as it violates Art. 19 (1) (d) and (e) of the Constitution of India. It has been strongly observed by the High Courts that Section 20 violates the fundamental right to move freely throughout the territory of India and of right to reside and settle in any part of the territory of India. (Smt. Begum vs. The State AIR 1963 Bom 17; State of UP vs. Kaushaliya AIR 1964 SC 416; Shama Bai vs. State of UP AIR 1959 All 57).

Checklist for magistrates while handling ITPA cases, particularly under sections 7 and 8

A quick look through this checklist will help a

Magistrate take careful note of all the critical issues while dealing with cases relating to framing charges against a prostitute/trafficked victim. Details of each aspect have been stated in the main chapter.

The Magistrate must remember that the accused victim is not a wilful lawbreaker, but an exploited victim who is forced to be a prostitute/trafficked victim under duress and fear of the trafficker. The very definition of “prostitution” in the Immoral Traffic (Prevention) Act, 1956 (ITPA) confirms this. This realisation should form the background during appreciation of evidence.

- i. Check how she has been apprehended or rescued, including when she was produced in Court and where or in whose custody she was kept before being produced in the Court.
- ii. Check whether a medical examination, including age determination test has been conducted to decide whether she is a major or a minor.
- iii. If the accused is a minor, the Juvenile Justice (Care and Protection) Act, 2000 would apply. For details please refer to Paras 5.1 and 5.2 (v b).
- iv. If the accused is a major, check whether the correct provisions of law have been applied. If she has been rescued under Section 16 of the ITPA, she should not be charged as an accused. She should be told that she has been rescued and not accused under the ITPA. The Magistrate after making enquiries shall order for rehabilitation as laid down in Section 17(4) of the ITPA.
- v. If necessary, make an intermediate order for her safe custody under Section 17(1) of the ITPA. After making an inquiry as per Section 17(2) of the ITPA, make an order for her rehabilitation as prescribed under Section 17(4) of the ITPA.
- vi. The Magistrate must ensure that the FIR is not stereotyped and there is convincing evidence against the accused prostitute/trafficked woman charged under Section 8 of the ITPA for soliciting and mens rea has been established.
- vii. If the Magistrate is not convinced by the evidence produced by the investigating officer in the charge-sheet against the prostitute/trafficked victim, s/he has full powers under Section 173(8) Cr.P.C, to question the investigating officer in depth as to how s/he has come to the conclusion that there was no role of the trafficker in the commission of the alleged offence by the victim charged under Section 8 of the ITPA. If the reasons furnished by the police are not satisfactory, the Magistrate may return the charge-sheet to the police to comply with her/his observations and do further investigation.
- viii. The Magistrate must talk to the woman privately in order to ascertain:
 - If she is a trafficked victim
 - Who is the trafficker
 - Who is actually controlling her
 - Who is the brothel owner
 - Inform her that she need not plead guilty under fear or pressure from her trafficker. If she pleads guilty, the Magistrate before accepting plea of guilty must satisfy herself/himself that it is voluntary and without any inducement or treat from any quarter.

- The reasons for her pleading guilty for the offence under Section 7 or 8 of the ITPA.
 - Check who will be paying or bearing her bail, or the fine imposed on her. The Magistrate must ensure that under no circumstances should the trafficker or pimp be allowed to pay bail for the accused/victim.
- ix. If at any stages of investigation or inquiry or trial of an offence under ITPA, 1956, the Magistrate is of the view the woman accused under Section 7 or 8 of the ITPA is indeed a woman trafficked and forced into prostitution, s/he may use her/his discretion and grant her pardon under Section 306 of the Cr.P.C and frame charges against the trafficker.
 - x. Involve NGOs and social workers as prescribed under Section 17(5) of the ITPA.
 - xi. Ensure that necessary counselling is provided to the victim. (See Annexure 6 for a list of NGOs in your State).
 - xii. Conduct in-camera proceedings (Section 327 of the Cr.P.C).
 - xiii. Ensure that suitable legal aid is provided to her. Ensure that the same lawyer does not represent both the trafficker and the trafficked woman.
 - xiv. Ensure that the woman is always treated with dignity and courtesy and is not humiliated by the Court or in the presence of the Court.
 - xv. Consider carefully the consequences of each of the alternative courses of action available to the Court.
 - xvi. If she is convicted, exercise sensitivity on the quantum of fine or punishment imposed.



V. TRAFFICKED MINORS/CHILDREN AND THE LAW

V. TRAFFICKED MINORS/CHILDREN AND THE LAW

Although trafficking in children is one of the most heinous crimes both under the ITPA and under the IPC, evidence indicates that child trafficking is taking place on a large scale and managing to escape the dragnet of the law. This is basically because of the fact that age test is seldom properly done and many a time a trafficked child less than the age of 18 years is wrongly classified as an adult above the age of 18 years.

A trafficked child can be brought before the Magistrate under two circumstances, viz.

- i. when the raid/search/removal takes place by police action (Section 15 of the ITPA), or (ii) when the Magistrate herself/himself passes rescue orders. (Section 16 of the ITPA).
- ii. The trafficked child can also be brought before the Magistrate as an accused under Sections 8(a) and 8(b) of the ITPA.

However, it must be noted that as per the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA), a child below the age of 18 years cannot be accused by the police under Section 7 or 8 of the ITPA but can only be addressed as a child in need of care and protection under the JJA.

5.1. The Task of the Magistrate

The Magistrate has a responsibility to ascertain/

confirm that the person produced before her/him is a child by accurate medical examination. According to Section 2(k) of the JJA, a juvenile" or "child" means a person who has not completed the eighteenth year of age. This definition is in harmony with the definition of a 'minor' in the ITPA, and hence there is no ambiguity.

Once the age test as per Section 17(2) of the ITPA establishes that the victim is a child/minor less than 18 years of age, the following action needs to be taken by the Magistrate/Judge.

1. The Sessions Court while framing charges against the trafficker must also take into consideration whether any offence under IPC (Sections 342, 366, 366A, 366B, 367, 368, 370, 371, 372, 373, 375) is also made out and if so he/she must frame those charges in addition.
2. The child should be considered as a child in need of care and protection under the JJA. The Magistrate should order the handing over of the child to the appropriate State Authority, which is the Child Welfare Committee (CWC) to take care of the child. In States where the CWC has not yet been set up, the Magistrate may order the handing over of the child to the Juvenile Welfare Board.
3. Such a child must not be charged with any offence under the ITPA or IPC (Perna vs. State of Maharashtra 2003(2) MHLJ 105).

Table 4: Offences in Respect of a Minor or Child

S.No.	Law	Provisions
1.	Section 4(1) ITPA, 1956	Punishment for living on the earnings of prostitution.(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.
2.	Section 5(1) ITPA, 1956	Procuring, inducing or taking person for the sake of prostitution (1) Any person who— a. procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or b. induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or c. takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or d. causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section – i. is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and ii. is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.
3.	Section 6(2) ITPA, 1956	Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section 6 (1).
4.	Section 6(2A) ITPA, 1956	Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.
5.	Section 7(1A) ITPA, 1956	Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.
6.	Section 23 JJA	Punishment for cruelty to juvenile or child – Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.
7.	Section 342 IPC	Wrongfully confining a person – Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term, which may extend to one year, or with fine, which may extend to one thousand rupees, or with both.

8.	Section 366 IPC	Kidnapping, abducting or inducing woman to compel her marriage, etc Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.
9.	Section 366A IPC	Procuration of minor girl Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.
10.	Section 366B IPC	Importation of girl from foreign country Whoever imports into 161[India] from any country outside India 162[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.
11.	Sections 367 IPC	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
12.	Section 368 IPC	Wrongfully concealing or keeping in confinement, kidnapped or abducted person Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.
13.	Section 370 IPC	Buying or disposing of any person as a slave Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.
14.	Section 371 IPC	Habitual dealing in slaves Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with 152[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.
15.	Section 372 IPC	Selling minor for purposes of prostitution, etc Whoever sells, lets to hire, or otherwise disposes of any 164[person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.
16.	Section 373 IPC	Buying minor for purposes of prostitution, etc Whoever buys, hires or otherwise obtains possession of any 164 [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

17.	Section 375 IPC	<p>Rape</p> <p>A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-</p> <p>First – Against her will.</p> <p>Secondly, – Without her consent.</p> <p>Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.</p> <p>Fourthly – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.</p> <p>Fifthly – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.</p> <p>Sixthly – With or without her consent, when she is under sixteen years of age.</p>
18.	Section 376 IPC	<p>Punishment for rape</p> <p>1. Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:</p> <p>Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.</p> <p>2. Whoever,-</p> <ol style="list-style-type: none"> being a police officer commits rape- <ol style="list-style-type: none"> within the limits of the police station to which he is appointed; or in the premises of any station house whether or not situated in the police station to which he is appointed; or on a woman in his custody or in the custody of a police officer subordinate to him; or being, a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman’s or children’s institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or being, on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or commits rape on a woman knowing her to be pregnant; or commits rape on a woman when she is under twelve years of age; or commits gang rape, <p>shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:</p> <p>Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years.</p>

5.2. Procedure to be Followed by a Magistrate When the Victim is a Child

- i. According to Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA), a juvenile” or “child” means a person who has not completed eighteenth year of age.

The JJA makes a clear distinction between “child in conflict with law” and “child in need for care and protection”. According to Section 2(l) of the JJA, a “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence.”

Section 2(d) (vi) of the JJA defines a child in need of care and protection as one who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal actions.

- ii. Further, according to Section 2(d) (vii) of the JJA, a child is in need of care and protection who is found vulnerable and is likely to be inducted into drug abuse or trafficking or who is being or is likely to be abused for unconscionable gains (Section 2(d) (vii & viii) of the JJA).
- iii. A juvenile girl found soliciting under Sections 8(a) and (b) of the ITPA ought to be classified as a child in need of care and protection, rather than as a juvenile in conflict of law, as she has been exploited and abused, and needs to be rehabilitated rather than accused and penalised.
- iv. Section 7(1) of the JJA lays down the procedure to be followed by a Magistrate not empowered under the Act. The Section states *“When any Magistrate not empowered to exercise the power of a Board under this Act is of the **opinion that a person brought before him** under any of the provisions of this Act (other than for the purpose of giving evidence), **is a juvenile or a child, he shall without any delay** record such opinion and **forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceedings.**”*
- v. However, when a child or minor is produced before the Magistrate in relation to an offence

committed under ITPA, the following steps shall be taken by the Magistrate:

a. Age test is mandatory

Whenever a trafficked child is produced before the Magistrate, the Magistrate must first arrange to have an age test conducted under Section 17(2) of the ITPA.

Section 17(2)–“ when the person is produced before the appropriate Magistrate sub-section (5) of Section 15 or the Magistrate under sub-section (2) of Section 16, he shall, after giving her an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the person and the suitability of her parents, guardian or husband for taking charge of her and the nature of the influence which the conditions in her home are likely to have on her if she is sent home, and, for this purpose, he may direct a Probation Officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of her rehabilitation.”

Similarly, Section 49(1) of the JJA also provides for presumption and determination of age of the victim. The Section states *“Where it appears to a competent authority that a person before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or child, the competent authority shall make due inquiry as to the age of that person and for the purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.”*

b. Minors should be handed over to the Competent Authority

If it is found that if the trafficked person is below eighteen years of age, the Magistrate should immediately order the handing over of the minor to the competent authority, as stipulated under Section 7(1) of the JJA.

Further, Section 29(1) of the JJA defines Child Welfare Committee (CWCs). The Section empowers the State Government to constitute one or more CWCs in every district or groups of district for exercising the powers and discharge the duties conferred on such committees in relation to child in need of care and protection under this Act.

Thus, the Magistrate should immediately order the handing over of the minor to the competent authority i.e., **the CWC**. In States, where a **CWC has not been constituted**, the child may be **handed over to the Juvenile Welfare Board**.

c. Minor trafficked victim should be classified as a “child in need of care and protection”.

Since in most cases, the child has been forced to engage in sexual activities, the Magistrate as per Section 2(d) of the JJA shall classify a minor trafficked victim as a “child in need of care and protection” rather than as a “juvenile in conflict with law” and deal with her accordingly [*Prerna v State of Maharashtra* 2003(2) Mh.L.J. 105].

d. The Magistrate may make an order for intermediate custody of minor under Section 17(3) of the Immoral Traffic (Prevention) Act, 1956 (ITPA.)

Any trafficked child or a minor who is removed or rescued by the police under Sections 15 and 16 of the ITPA, must not be accused of any offence and should be treated as a “child in need of care and protection” under the JJA

Section 17 (3) of the ITPA empowers the Magistrate to pass an order for intermediate custody of the trafficked minor or the child. Section 17 (3) of the ITPA states *“The Magistrate may, while an inquiry is made into a case under sub Section under sub-section (2) of Section 17 of the ITPA, pass such orders as s/he deems proper for the safe custody of the person:*

Provided further that a person rescued under Section 16 of the ITPA is a child or minor, it shall be open to the Magistrate to place such child or

minor 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:

Provided further that no person shall be kept in custody for this purpose for a period exceeding three weeks from the date of such an order, and no person shall be kept in the custody of a person likely to have a harmful influence over her.”

e. No joint proceedings of juvenile and person not a juvenile

“Section 18 Juvenile Justice (Care and Protection) Act, 2002–No joint proceeding of juvenile and person not a juvenile.

1. Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

2. If a juvenile is accused of an offence for which under Section 223 of the Code of Criminal Procedure, 1974 (2 of 1974) or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.”

According to Section 18 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA) a juvenile **should not be charged with or tried** for any offence **together with a person who is not a juvenile**. Further, Section 18 (2) of the JJA states that if a juvenile has been charged with or tried with an adult, then the Board can take cognisance of that offence **and direct separate trials of the juvenile and the other person**.

f. Same lawyer should not represent both trafficker and trafficked minor

In order to prevent a travesty of justice, the same lawyer must not represent both the trafficker

and the victim [Prerna vs. State of Maharashtra, 2003(2) Mh.L.J. 105].

g. Evidence of the child should be taken in-camera

When the evidence of the child/minor is required for the purpose of prosecution of the trafficker, such evidence should be taken in-camera under Section 327 of the Cr.P.C.

h. Child's dignity should be maintained

At the State consultations, the participants expressed that the Magistrate should ensure that the child is treated with dignity, and should maintain a decent Courtroom atmosphere. He should bear in mind that the child has already been traumatised and victimised and subjected to sexual abuse and should not permit any person to humiliate the child in open Court. The child's fundamental right to dignity enshrined under Article 21 of the Constitution of India, should always be protected.

i. Child's best interest should be the priority

To protect the best interest of the child especially in trafficking cases, the Magistrate should be extra cautious while passing orders for safe custody as there will be several "well wishers" eager to take back the child for prostitution. These may sometimes include parents and other relatives. The Magistrate should check their antecedents as prescribed under Section 17(2) of the ITPA, and if the child refuses to go with the "well wishers" the Court should not grant custody of the child to them. In such a case, the Magistrate under Section 17(3) of the ITPA may place such a child or minor in any institution established or recognised under any law pertaining to children in force in the State.

The Supreme Court has held that the right under Article 21 means not just the right to physical survival but the right to live with human dignity and all that will go with it, namely, the bare necessities of life such as adequate nutrition, clothing, shelter and facilities for

reading and writing (Francis Corallie Mullin vs. Territory of Delhi, AIR 1981 SC 746).

5.3. Powers of the Child Welfare Committee in Respect of a Child in Need of Care and Protection

i. Committee is the sole authority to dispose of cases

"Section 31 – (1) Juvenile Justice (Care and Protection) Act, 2000 – The Committee shall have the final authority to dispose of case for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection."

Thus, the Child Welfare Committee (CWC) is the final authority to dispose of the cases for the care, protection, treatment, development and rehabilitation of children as well as to provide for their basic needs and protection of their human rights.

ii Inquiry

"Section 33 (1) Juvenile Justice (Care and Protection) Act, 2000 – On receipt of a report under Section 32, the Committee or any police officer or special juvenile police unit or the designated police officer shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 32, may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer."

(2) – The inquiry under this Section shall be completed within four months of the receipt of the

order or within such shorter period as may be fixed by the Committee:

Provided that the time for the submission of the inquiry report may be extended by period as the Committee may, having regard to the circumstances and for the persons recorded in writing, determine.

When a child in need of care of protection is produced before the Committee, an inquiry is required to be held by the Committee or any police officer or the special juvenile police unit or the designated police officer. The Committee may pass an order to send the child to a children's home for a speedy inquiry by a social worker or child welfare officer. [Section 33(1) of the Juvenile Justice (Care and Protection) Act, 2000 (JJA)].

Such inquiry should normally be completed within four months of its commencement, unless such period is extended in special cases, after recording it in writing the reasons for such extension [Section 33(2) of the JJA].

iii. Power of rehabilitation

Section 33 (3) of the Juvenile Justice (Care and Protection) Act, 2000 – After the completion of the inquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years."

Upon completion of the inquiry, the Committee may make an order to allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years. This will be applicable only

when the Committee is of the opinion that the child has no family or ostensible support.

5.4. Powers of the Juvenile Welfare Board

In the States where Child Welfare Committee (CWC) has been constituted, the Juvenile Welfare Board has no competence to deal with cases of children who are in prostitution/have been trafficked. Such children must be considered as children in need of care and protection. However, in States where the Child Welfare Committee (CWCs) have not been constituted, these matters may be referred to the Juvenile Welfare Board [(*Prerna vs. State of Maharashtra* 2003(2) MHLJ 105)].

- i. Welfare of the juvenile or child is the need of the day and the Board should adopt a sensitive approach oriented outlook (*Kamil vs. State of Uttar Pradesh*, 1994 Cri.L.J. 1491).
- ii. A juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 (ITPA) or found soliciting in a public place should be released only after an inquiry has been completed by the probation officer. [(*Prerana vs. State of Maharashtra*, 2003(2) Mh.L.J. 105).]
- iii. *Inquiry and orders passed by the Board.*
The Board is normally required to complete its inquiry regarding the matter within four months of its commencement, unless such period is extended in special cases, after recording in writing the reasons for such extension [Section 14 of the Juvenile Justice (Care and Protection) Act, 2000 (JJA)].

Upon completion of its inquiry, the Board may, if it is satisfied that the juvenile has committed an offence, pass an order in accordance with Sections 15 and 16 of the JJA.

Checklist for the Magistrate when the trafficked victim is a child/minor

- i. Age Determination – Whenever a trafficked child victim is produced before the Magistrate, s/he must first order an age test to be conducted under Section 17(2) of the Immoral Traffic (Prevention) Act, 1956 (ITPA). This is critical because very often the trafficked child may actually be below 18 years but is declared in the age determination report as above 18 years. An inaccurate age determination can make a crucial difference in the conduct of the proceedings and can result in a miscarriage of justice. According to the ITPA, trafficking of minors is a more heinous offence warranting more stringent punishment against the trafficker as per Sections 4(1), 5(1), 6(2), 6(2A), and 7(1A). In cases, where the age determination test establishes that the victim is below 18 years of age, the Juvenile Justice (Care and Protection) Act, 2000 (JJA) would automatically apply. In all cases where the Magistrate has any doubt regarding the age of the victim, especially victims fall within the age group of 18-21 years, s/he should be especially vigilant and summon the medical officer who conducted the test, and question him in detail to satisfy himself beyond any shadow of doubt that the accused is above the age of 18 years. Check if a minor is booked under the ITPA and if so, all charges should be dropped and the minor should be treated as a child in need of care and protection as per the JJA.
- ii. Ensure that a medical examination has been conducted in order to check for sexual abuse and/or rape.
- iii. Ensure that necessary counselling is provided to the victim
- iv. Enquire who is the parent or guardian of the minor and whether the parent/guardian is responsible for the trafficking of the child. Do not hand over custody of the child to the parent/guardian without involving the probation officer.
- v. If necessary, make an order for the child's intermediate custody in a safe place
- vi. Hand over custody of the child to the Child Welfare Committee (CWC).
- vii. Check if the appropriate Sections of the IPC, ITPA and JJA against the trafficker have been stated in the charge-sheet and refer the matter to the Court of Sessions for trial. For details, see Para 6.1.
- viii. Ensure that the evidence of the child is taken in-camera under Section 327 of the Cr.P.C. During the State consultations, the participants expressed that the Court should arrange for translators if the child is from another State and does not speak the local language.
- ix. Ensure that the Court has a child-friendly and supportive atmosphere while taking the child's evidence.
- x. At the time of taking the child's evidence -
 - Use a screen to avoid the trafficker from looking at the child and thereby protect the child from getting intimidated or afraid during the submission of evidence.
 - Let only lady police in civil dress accompany the girl child to the Court.
- xi. Do not delay repatriation of the child for evidentiary purposes.
- xii. If the child has an objection to going back home, try to determine the reason behind the same and take a decision which will serve the best interest of the child rather than giving custody to claimers such as parents or relatives. The environment in the home itself might have resulted in the child being trafficked.



VI. THE TRAFFICKER AND THE LAW

VI. THE TRAFFICKER AND THE LAW

The Immoral Traffic (Prevention) Act, 1956 (ITPA) (originally known as Suppression of Immoral Traffic in Women and Girls Act 1956) was passed on May 9, 1950. However, even before the enactment of this Act, the Indian Penal Code contained several Sections that criminalise trafficking of persons as a heinous offence, indicating that lawmakers had always been aware of its seriousness. The ITPA and the relevant provisions of the IPC together form a composite code that must be used to prosecute and convict the trafficker.

Though the trafficker is the main focus of the ITPA containing five complete Sections detailing the offences constituting the ingredients of trafficking, (Sections 3, 4, 5, 6, and 8), as stated earlier, in practice it is only the Sections directed against the prostitute/victim that are invoked during implementation of the Act, both at the stage of filing of charge-sheet by the police and of framing of charges by the Magistrate.

Despite the intention and purpose of the law to charge, prosecute and make the trafficker face the consequences of his crime in accordance with law, data reveals that this is not happening. The research study indicates that more than 90 per cent of the cases are registered under Sections 7 and 8 ITPA only, or in combination with other Sections of the ITPA, and around 2 per cent of convictions are under Sections 7 and 8 of the ITPA. The trafficker who is responsible for a woman or child getting into prostitution and who benefits from the exploitation remains beyond the reach of the law. It is thus clear that in practice the main focus of implementation of the ITPA is through the repeated use of Sections 7 and 8 against the prostitute/victim, who in most cases is

under the complete control of the trafficker and is soliciting under his orders.

In the instant study across 10 states, several trends have been noted:

1. Very few cases are registered against the trafficker and hence the basic purpose of the Act of focusing on the trafficker is not being fulfilled. As stated above, maximum use is made of Sections 7 and 8 of the ITPA, to target the trafficked woman/prostitute for soliciting. The State profiles in Annexure 3 give a clear picture of this.
2. Even when a case has been registered against the trafficker, it very rarely ends up in conviction. The trial progresses slowly, and the witnesses are either not traceable or turn hostile. In effect, the traffickers go unpunished and continue to commit the crime of trafficking with impunity.
3. The research study has revealed that conviction under the ITPA almost always refers to convictions of prostitutes/victims and not of traffickers, pimps or brothel owners. This results in re-victimisation of trafficked women and exonerates the main criminal – the trafficker. This is an extremely serious issue and demonstrates that the law is being manipulated to the advantage of the traffickers, and re-victimises the victim/trafficked woman.

6.1. The Task of the Magistrate/Judge

- To verify and ensure that the police reports are properly prepared after due application of mind by the police against the traffickers/brothel owners/pimps and others.

- If the charge-sheet is directed only against the prostitute/woman/ under Sections 7 and 8 of the ITPA, the Magistrate may question the police as to why the brothel owner/pimp or customer have not been charge-sheeted. S/he may direct the Police to do further investigation under Section 173(8) of the Cr.P.C with a view to fix the identity of the person who is running the brothel under Section 3 of the ITPA, or the person living off the earnings of prostitution as per Section 4 of the ITPA, or the procurer/inducer or others as defined under Section 5 of the ITPA, or the person detaining a woman for prostitution as defined in Section 6 of the ITPA
- Before framing charges, he may also question the woman accused under Section 7 or 8 of the ITPA to ascertain whether she has been forced into prostitution or is soliciting under duress. If the Magistrate's questioning leads him/her to believe that the woman is trafficked and is being sexually exploited and abused, and being forced to solicit under duress, s/he may direct the police to do further investigation under Section 173(8) of the Cr.P.C.

(Issues concerning grant of bail to the accused women have been discussed in Para 4.6 (2).

- If the charge-sheet filed by the police is against the prostitute/trafficked victim, pimp, brothel-owner, etc., jointly, then the Magistrate must direct the police to seriously

pursue the evidence against the person who is running the brothel under Section 3 of the ITPA, or the person living off the earnings of prostitution as per Section 4 of the ITPA, or the procurer/inducer or others as defined under Section 5 of the ITPA, or the person detaining a woman for prostitution as defined in Section 6 of the ITPA.

- If at any stages of investigation or inquiry or trial of an offence under ITPA, the Magistrate is of the view the woman accused under Section 7 or 8 of the ITPA is indeed a woman trafficked and forced into prostitution, he may use his discretion and grant her pardon under Section 306 of the Cr.P.C and frame charges against the trafficker who is running the brothel under Section 3 of the ITPA, or the person living off the earnings of prostitution as per Section 4 of the ITPA, or the procurer/inducer or others as defined under Section 5 of the ITPA, or the person detaining a woman for prostitution as defined in Section 6 of the ITPA. The victim pardoned under Section 306 of Cr.P.C shall be examined as a witness against the trafficker as the trial progresses.
- Framing of charges: The Magistrate should frame charges not only under ITPA but also under IPC, so as to ensure that the strongest provisions of law with maximum punishment are made applicable against the trafficker.

Table 5: Provisions that Deal Specifically with Sexual Exploitation

S.No.	Law	Provisions
1.	Section 3 ITPA	<p>Punishment for keeping a brothel or allowing premises to be used as a brothel. (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.</p> <p>(2) a any person who –</p> <ol style="list-style-type: none"> being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term, which may extend to two years and with fine, which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine. <p>(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if –</p> <ol style="list-style-type: none"> a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or a copy of the list of all things found during the search referred to in clause (a) is given to such person. <p>(3) Notwithstanding any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.</p>
2.	Section 4 ITPA	<p>Punishment for living on the earnings of prostitution – (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.</p> <p>(2) Where any person over the age of eighteen years is proved –</p> <ol style="list-style-type: none"> to be living with, or to be habitually in the company of, a prostitute; or to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or to be acting as a tout or pimp on behalf of a prostitute, <p>it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).</p>

3.	Section 5 ITPA	<p>Procuring, inducing or taking person for the sake of prostitution – (1) Any person who –</p> <ol style="list-style-type: none"> procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or causes or induces a person to carry on prostitution; <p>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:</p> <p>Provided that if the person in respect of whom an offence committed under this sub-section –</p> <ol style="list-style-type: none"> is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years. <p>(3) An offence under this Section shall be triable –</p> <ol style="list-style-type: none"> in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.
4	Section 6 ITPA	<p>Detaining a person in premises where prostitution is carried on – (1) Any person who detains any other person, whether with or without his consent –</p> <ol style="list-style-type: none"> in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, <p>shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:</p> <p>Provided that the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term, which may be less than seven years.</p> <p>(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).</p> <p>(2-A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.</p> <p>(3) A person shall be presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there –</p> <ol style="list-style-type: none"> withholds from her any jewellery, wearing apparel, money or other property belonging to her, or threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person. <p>(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.</p>

5.	Sections 7(1) & 7(2) ITPA	<p>(1) Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises:</p> <ol style="list-style-type: none"> which are within the area or areas, notified under sub-section (3), or which are within a distance of two hundred meters of any place of public religious worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, <p>shall be punishable with imprisonment for a term, which may extend to three months.</p> <p>(2) Any person who:</p> <ol style="list-style-type: none"> being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use. <p>shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine, which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:</p> <p>Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.</p> <p>Explanation—For the purposes of this sub-section, “hotel” shall have the meaning as in clause (6) of Section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980).</p>
6.	Sections 8(a) & (b) ITPA	<p>Seducing or soliciting for purpose of prostitution — Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not:</p> <ol style="list-style-type: none"> by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavour to tempt, or attracts or endeavour to attract the attention of, any person for the purpose of prostitution; or solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, <p>shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:</p> <p>Provided that where an offence under this Section is committed by a man he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.</p>
7.	Section 9 ITPA	<p>Seduction of a person in custody – Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution of that shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:</p> <p>Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.</p>
8.	Section 359 IPC	<p>Kidnapping Kidnapping, is of two kinds: kidnapping from India, and kidnapping from lawful guardianship</p>

9.	Section 361 IPC	Kidnapping from Lawful Guardianship Whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.
10.	Section 362 IPC	Abduction Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.
11.	Section 365 Indian Penal Code	Kidnapping or abducting with intent secretly and wrongfully to confine person Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully shall be punished with imprisonment of either description for a term, which may extend to seven years, and also be liable to fine.
12.	Section 366 IPC	Kidnapping, abducting or inducing woman to compel her marriage, etc Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine:
13.	Section 367 IPC	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
14.	Section 368 IPC	Wrongfully concealing or keeping in confinement, kidnapped or abducted person Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.
15.	Section 370 IPC	Buying or disposing of any person as a slave Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.
16.	Section 371 IPC	Selling minor for purposes of prostitution, etc Whoever sells, lets to hire, or otherwise disposes of any 164 [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.
18.	Section 373 IPC	Buying minor for purposes of prostitution, etc Whoever buys, hires or otherwise obtains possession of any 164 [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

19.	Section 375 IPC	<p>Rape</p> <p>A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:</p> <p>First – Against her will.</p> <p>Secondly – Without her consent.</p> <p>Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.</p> <p>Fourthly – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.</p> <p>Fifthly – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.</p> <p>Sixthly - With or without her consent, when she is under sixteen years of age.</p>
20	Section 376 IPC	<p>Punishment for rape</p> <p>(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:</p> <p>Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.</p>

Table 6: Provisions with Respect to a Minor or a Child

S.No.	Law	Provisions
1.	Section 3 ITPA	<p>Punishment for keeping a brothel or allowing premises to be used as a brothel – (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.</p> <p>(2) a any person who –</p> <ol style="list-style-type: none"> being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, <p>shall be punishable on first conviction with imprisonment for a term, which may extend to two years and with fine, which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.</p> <p>(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if –</p> <ol style="list-style-type: none"> a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or a copy of the list of all things found during the search referred to in clause (a) is given to such person.

		(3) Notwithstanding any thing contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.
2.	Section 4(1) ITPA	Punishment for living on the earnings of prostitution – (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both, and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.
3	Section 5(1) ITPA	<p>Procuring, inducing or taking person for the sake of prostitution – (1) Any person who –</p> <ol style="list-style-type: none"> procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ; or causes or induces a person to carry on prostitution; <p>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:</p> <p>Provided that if the person in respect of whom an offence committed under this sub-section –</p> <ol style="list-style-type: none"> is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.
4.	Section 6 (2) ITPA	Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).
5.	Section 6 (2A) ITPA	Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.
6.	Section 7(1A) ITPA	<p>Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:</p> <p>Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.</p>
7.	Section 366 IPC	<p>Kidnapping, abducting or inducing woman to compel her marriage, etc</p> <p>Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her. will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid</p>

8.	Section 366A IPC	Procuration of minor girl Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.
9.	Section 366B IPC	Importation of girl from foreign country Whoever imports into 161[India] from any country outside India 162[or from the State of Jammu and Kashmir] any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, 163[***] shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.
10.	Section 367 IPC	Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subject to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
11.	Section 368 IPC	Wrongfully concealing or keeping in confinement, kidnapped or abducted person Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.
12.	Section 370 IPC	Buying or disposing of any person as a slave Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine.
13.	Section 371 IPC	Habitual dealing in slaves Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with 152[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.
14.	Section 372 IPC	Selling minor for purposes of prostitution, etc. Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall be liable to fine.
15.	Section 373 IPC	Buying minor for purposes of prostitution, etc. Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, of knowing it to be likely that such person will at any age be] employed or used for any purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

16.	Section 375 IPC	Rape A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: First – Against her will. Secondly – Without her consent. Thirdly – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly – With or without her consent, when she is under sixteen years of age.
17.	Section 376 IPC	Punishment for rape (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

6.2. Trafficking Offences Under the Immoral Traffic (Prevention) Act, 1956 (ITPA) and Indian Penal Code

This part identifies the Sections in ITPA and IPC that address various offences related to trafficking. It also discusses the ingredients of each offence and enumerates specific points to be noted by the Magistrate.

6.2.1. Keeping a brothel or allowing premises to be used as a brothel – Section 3 of the ITPA

Ingredients of the offence

- Any person who keeps or manages or acts or assists in the keeping or management of a brothel [Section 3(1)], or
- A tenant, lessee, occupier or person in charge of any premises who uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel [Section 3(2a)], or
- The owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, who lets the same or any part thereof with the

knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel [Section 3(2b)].

Points to be noted

- There may be a presumption of culpability on the part of such persons in certain circumstances [Section 3(2a)] of the ITPA.
- Any lease or agreement under which such premises have been leased out or are held or occupied at the time of commission of an offence under the ITPA is void [Section 3(3)]

6.2.2. Living on the earnings of prostitution – Section 4 of the ITPA

Ingredients of the offence

- The offender must be above eighteen years of age
- The offender knowingly lives wholly or partly on the earnings of prostitution
- Such exploitation of living on the earning of the prostitution is being done by the exploiter/ trafficker and not the prostitute/trafficked victim.

Points to be noted

- This Section **is not** applicable to the prostitute/trafficked victim herself. The Section makes it an offence for any person, and not the prostitute/trafficked victim herself, who is knowingly living on the earnings of prostitution of any other person [Section 4(1) of the ITPA].

(As stated earlier in Chapter 4, data reveals that Magistrate sometimes framed charges and punished the prostitute/trafficked victims under this Section. This is a wrong application of Section 4(1) of the ITPA against the prostitute/trafficked victim.

- If the prostitution is being carried on by a child and a person is living off the child's earnings, the Act provides for stringent punishment of rigorous imprisonment for a term of not less than seven years but may be extended for life.
- There is a rebuttable presumption that a person is living on the earnings of prostitution [Section 4(2) of the ITPA].
 - i. when the person is living with or habitually in the company of a prostitute/trafficked victim.
 - ii. when the person exercises control, direction or influence over the movement of a prostitute/trafficked victim in such a manner as to show that such person is aiding, abetting or compelling her prostitution.
 - iii. acting as a tout or pimp on behalf of a prostitute.

6.2.3. Procuring, inducing or taking a person for sake of prostitution – Section 5 of ITPA

Ingredients of the offence

- Procuring or attempting to procure a person with or without the person's consent for prostitution.
- Inducing a person to become an inmate or frequent a brothel for prostitution.
- Taking or attempting to take a person from one place to another for prostitution.
- Causing or inducing a person to carry on prostitution.

Points to be noted

- Consent of the person who is prostituted is immaterial.
- There is a special provision for punishment of

offences against children and minors [Section 5(1) of the ITPA]. See also Chapter 3.

- False marriages are a common way of luring women into prostitution.
- False promises of employment, marriage and inducement are other common methods employed for inducing and procuring women and children for prostitution.
- The trafficker who is the focus of this Section could be the seller, the buyer, the pimp, the middleman, the brothel owner, or the person who has transported the victim.
- Parents and relatives who abet, sell or cause children to be sold/taken for trafficking or who themselves cause children to become prostitutes are also liable under this Section.

Section 5 of Immoral Traffic (Prevention) Act, 1956 (ITPA) may be used along with Section 367/368 of the IPC (Kidnapping/Abducting) and/or with 370/371 of the IPC (Sexual Slavery) wherever relevant.

➤ *Kidnapping or abducting in order to subject a person to grievous hurt, slavery, etc.*

Section 367 IPC

Ingredients of the Offence

- Kidnapping or abducting a person.
- Knowing it to be likely that such person may be subjected to or put in danger of grievous hurt, slavery or unnatural lust.

➤ *Wrongfully concealing or keeping in confinement, kidnapped or abducted person*

Section 368 IPC

Ingredients of the Offence

- Knowledge that a person has been kidnapped or abducted wrongfully.
- Concealment or confinement of such kidnapped or abducted person.

Points to be noted

- Wrongful concealment or confinement of

persons is an offence by itself. Some aspects of this are discussed in Para 6.2.4.

- Knowledge by a person/persons of wrongful confinement and wrongful concealment of kidnapped or abducted persons are also offences by themselves. Family members and friends of the trafficker may also be culpable of the offence of knowledge of wrongful confinement and concealment of trafficked women and children, as also those who provide transportation or conveyance for the purposes of prostitution.
- These offences are cognisable, non-bailable, non-compoundable and triable by the Court of Sessions.

➤ *Buying or disposing of any person as a slave*

Section 370 IPC

Ingredients of the Offence

- Import, export, removal, buying, selling or disposing persons.
- For the purpose of slavery.

➤ *Habitual dealing in slaves*

Section 371 IPC

Ingredients

- Habitually imports, exports, removes, buys, sells, traffics or deals in slaves.

Points to be noted

- Much of trafficking happens in conditions of slavery.
- This offence is cognisable, non bailable, non compoundable and triable by the Sessions Court.

6.2.4. Detaining a person in premises where prostitution is carried on – Section 6 of the Immoral Traffic (Prevention) Act, 1956 (ITPA)

Ingredients of the offence

- Any person who detains any other person **with or without the person's consent in any brothel**, or
- Any person who detains another person **in any**

premises with intent that such person may have sexual intercourse with a person who is not a spouse of such person.

Points to be noted

- Actual physical restraint need not be proved.
- Something in the nature of control or influence and some kind of persuasion is sufficient proof (Harnam Singh vs. Emperor AIR 1939 Lah 295).
- Consent of the person who is detained is immaterial.
- There is a presumption of the offence in certain circumstances in respect of a child/minor namely [Section 6(2) and 6(2A)]:

"Section 6(2)–Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).

Section 6(2A) Where a child or minor found in a brothel, is, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes."

- There is a presumption of the offence in certain circumstances in respect of a woman [Section 6(3)].
- "Section 6(3) A person shall be **presumed to detain a person in a brothel or in upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there –***
 - a. withholds from her any jewellery, wearing apparel, money or other property belonging to her, or*
 - b. threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person. "*
- No legal proceedings may be instituted against a woman who has been detained for the recovery of any jewellery, clothes, money or property alleged to have been supplied or lent to her [Section 6(4)].

“Section 6(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.”

- Very often, it has been found that brothel keepers and other traffickers attempt to take away the woman's savings, jewellery, etc., to prevent her from giving evidence against them.

6.2.5. Prostitution in or in the vicinity of public places – Section 7 of the Immoral Traffic (Prevention) Act, 1956 (ITPA)

Ingredients of the offence

- The person carrying on prostitution and the person with whom prostitution is being carried on with, is doing so in the vicinity of a “public place” as defined in the ITPA.
- Keeper of a public place, tenant, lessee or occupier, or person in charge of public premises knowingly allows it to be used for the sexual exploitation or abuse of persons for commercial purpose.
- Owner, lessor or landlord of such premises or the agent of such owner, lessor or landlord lets the same or any part with the knowledge that it may be used for prostitution or is willfully a party to such use.

Points to be noted

- If such public place is a hotel, then the licence of the hotel shall be suspended for three months to one year. However, if the offence is in respect of a child or minor, the license shall be liable to be cancelled [proviso to Section 7(2) of the ITPA].
- Public place has been defined in the ITPA as any place intended for use by or accessible to the public and includes any public conveyance [Section 2(h) of the ITPA].
- There is evidence that sometimes, tourism also involves sexual exploitation of women and often children (paedophilia). Hotels sometimes connive with the trafficker in such situations.

6.2.6. Seducing or soliciting for the purpose of prostitution – Section 8(a) of the Immoral Traffic (Prevention) Act, 1956 (ITPA)

Ingredients of the offence

- Seduction or soliciting must occur in a public place or within the sight of and in such manner as to be seen or heard from any public place.
- Seduction or soliciting may be done through words, gestures, and wilful exposure of person.
- Also, through tempting/attracting or attempting to tempt/attract for the purpose of prostitution.

Section 8(b) of the Immoral Traffic (Prevention) Act, 1956 (ITPA)

Ingredients of the offence

- Soliciting/molesting/loitering for the purpose of prostitution.
- Causing obstruction/annoyance in a public place.
- Offending against public decency.

Points to be noted

- Traffickers in general and pimps or brothel keepers in particular are liable to be punished under this Section (*State of Maharashtra vs. Premchand Khubchand* AIR 1964 Bom 155).
- Data collected during the research clearly indicates that Sections 7 and 8 are the most commonly used Sections for the implementation of the ITPA, both of which are directed against the prostitute/trafficked women.

6.2.7. Seduction of a person in custody – Section 9 of the ITPA

Ingredients of the offence

- The offender is a person having custody, charge, care of or a position of authority over another person.
- That offender causes or aids or abets the seduction for prostitution of that person in his custody.

Points to be noted

- This Section is comprehensive and includes parents, relatives or any *de facto* guardian of a child or woman who is responsible.

Practice and Procedure for Investigation and Trial of Traffickers

Table 7: Provisions for Investigation and Trial of Traffickers

S.No.	Law	Provisions
1.	Section 11 ITPA	<p>Notification of address of previously convicted offenders. – (1) When any person having been convicted –</p> <ol style="list-style-type: none"> by a Court in India of an offence punishable under this Act or punishable under Section 363, Section 365, Section 366, Section 366A, Section 366B, Section 367, Section 368, Section 370, Section 371, Section 372 or Section 373 of the Indian Penal Code (45 of 1860), with imprisonment for a term of two years or up wards; or by a Court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act, or under any of the aforesaid sections with imprisonment for a like term, <p>is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those Section with, imprisonment for a term of two years or upwards by a Court, such Court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from, such residence, after release, be notified according to rules made under Section 23 for a period not exceeding five years from the date of expiration of that sentence.</p> <p>(2) If such conviction is set aside on appeal or otherwise, such order shall become void.</p> <p>(3) An order under this Section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.</p> <p>(4) Any person charged with a breach of any rule referred to in sub-section (1) may be tried by a Magistrate of competent jurisdiction in the District in which the place last notified as his residence is situated.</p>
2.	Section 15 ITPA	<p>Search without warrant – (1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.</p>
3.	Section 18(1) ITPA	<p>Closure of brothel and eviction of offenders from the premises – (1) A Magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of Section 7 is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord or such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof, and if, after hearing the person concerned, the Magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the Magistrate may pass orders –</p> <ol style="list-style-type: none"> directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion; directing that before letting it out during the period of one year or in a case where a child or minor has been found in such house, room, place or portion during a search under Section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the Magistrate; <p>Provided that, if the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place, or portion, he may cause the same to be restored to the owner, lessor or landlord or the agent of the owner, lessor landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.</p>

4.	Section 18(2) ITPA	2) A Court convicting a person of any offence under Section 3 or Section 7 may pass orders under sub-section (1), without further notice to such person to show cause as required in that sub-section.
5.	Section 57 Cr.P.C	Person arrested not to be detained more than twenty-four hours – No police officer shall detail in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
6.	Section 156 Cr.P.C	Police officers power to investigate cognisable case – (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognisable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate. (3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.
7.	Section 202 Cr.P.C	Postponement of issue of process – (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made, - a. where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or b. where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200. (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.
8.	Section 240 Cr.P.C	Framing of charge – (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

6.3. Points to be Noted

- *The trafficker may be arrested by the police during a raid or a search of premises.* The police may conduct a raid upon a brothel or a search of any premises under Section 15 of the ITPA, during which the brothel keeper or trafficker may be arrested.
- *Arrested persons must be produced before a*

Magistrate within 24 hours. Under Section 57 of the Cr.P.C., the accused person must be produced before the Magistrate within 24 hours after her arrest by the police.

- The Magistrate has the following four alternative courses of action available to her/him when the trafficker is produced before him:
 - a. *Certain offences must be tried only by a Court*

of Sessions – Where the trafficker is accused of offences committed under Sections 366, 367, 368, 370, 371, 372, 373 and 375 of the IPC, and/or under Sections 4, 5(i), 5(ii), 6, 7(1A) ITPA, in view of the punishment prescribed for these offences, and as per Schedule II CrPC- Classification of Offences against Other Laws, the Magistrate does not have the power to try these matters and must commit such cases to the Court of Sessions.

- b. *The trafficker may be discharged under Section 239 of the Cr.P.C.* – If the Magistrate finds that the case made out against the accused is groundless, the Magistrate may discharge him/her under Section 239 of the Cr.P.C. after recording the reasons for doing so.
- c. *The trafficker may be released on bail*, pending filing of charge-sheet and trial
If the trafficker is released on bail, then further steps are to be taken towards trial of the case, after filing of the charge-sheet by the police. During the State consultations, it was found that in many States, Magistrates refuse bail, knowing the dangers in granting bail to the trafficker.

The study of Court records and analysis of data indicates that after the release of trafficker on bail during investigation, witnesses against the trafficker are either not traceable or they turn hostile or otherwise get influenced by the trafficker. For these reasons the trial seldom progresses, cases remain pending and there is a low rate of disposal of cases against the trafficker. Evidence also revealed that after release on bail, the trafficker manipulates the trafficked woman and her plea in Court, and manipulates the minor or child trafficked victims and tries to gain custody of them by posing as their parent or guardian. The trafficker also gains a stronger control over the trafficked woman by paying or bearing the legal expenses and bail for her.

Keeping in view the above data and evidence, and its sinister consequences, the Magistrate should comply with the intent, letter and spirit of Sections 4, 5, 6 of the ITPA and Schedule II (Classification of Offences Against

Other Laws) of the Cr.P.C, and refuse bail to the trafficker, so as to prevent her/him from exercising her/his control over the victim and attempts to manipulate witnesses or tamper with the evidence.

- d. The Magistrate may at the earliest frame charges against the trafficker under Section 240 of the Cr.P.C. and ask him to plead guilty or not guilty.
- It is noticed that in most of the cases, the police file charge-sheets under one or two Sections of the ITPA without including relevant Sections of the IPC. It may be noted that the Magistrates/Session Courts are not bound by the classification of offences committed given by the investigating agency and they should frame charges for the offences under other provisions of the ITPA/IPC or any other Act, if commission of such offence is prima facie revealed by the investigating report.
- After framing of charges, the trafficker has an option of pleading guilty or not guilty
- If he pleads guilty, he may be fined and punished according to the law. However, in the discussions with Magistrates from all over the country, it was noted that there was not a single instance where the trafficker had pleaded guilty
- If he pleads not guilty, the Magistrate must proceed to conduct the trial of the matter.
- The Magistrate should not try adults and minors together. The Magistrate should separate the minor/child victims from the trafficker so that the latter cannot control or manipulate the minor/children in any manner. Due process of law in accordance with the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA) as explained in Para 5.1 may be followed in the case of minor/child.
- Paras 4.6, 4.7 and 6.1 may also be read with this Section.
- The Magistrate should not permit the same Counsel to appear and plead for both the trafficker and the trafficked woman/child.

In order to prevent a travesty of justice, the same lawyer should not be permitted to represent both the trafficker and the victim [Perna vs. State of Maharashtra, 2003(2) Mh.L.J.105].

Checklist for Dealing with the Trafficker

- i. The Magistrate should verify and ensure that the police reports are properly prepared after due application of mind by the police against the traffickers/brothel owners/pimps and others.
- ii If the charge-sheet is directed only against the prostitute/trafficked woman under Section 7 or 8 of the ITPA, the Magistrate may issue an order for further investigation so that the names of the traffickers are also included.
- iii Before framing charges, the Magistrate may also question the woman, accused under Section 7 or 8 of the ITPA to ascertain whether she has been forced into prostitution or is under duress by the trafficker. If the Magistrate's questioning leads her/him to believe that she is, he may direct the police to do further investigation, and produce the names of the traffickers in the charge-sheet.
- iv If the charge-sheet filed by the police is against the prostitute/trafficked victim, pimp, brothel-owner, etc., jointly, the Magistrate must direct the police to seriously investigate and pursue the evidence against the traffickers to ensure that they are prosecuted and convicted as per law.
- v After framing of charges, if the evidence after questioning of the trafficked victim leads the Magistrates to believe that the woman accused under Section 7 or 8 of the ITPA is indeed a woman trafficked and forced into prostitution, he may use his discretion to offer and grant her pardon under Section 306 of the Cr.P.C, to elicit evidence and frame charges against the trafficker.
- vi The Magistrate should frame charges not only under the ITPA but also under the IPC, so as to ensure that the strongest provisions of law with maximum punishment are made applicable against the trafficker.
- vii The Magistrate must ensure that bail is not granted as a matter of course to the trafficker, if it is evident that s/he is trafficking in women and children, particularly in children. If released on bail, there can be a likelihood that the evidence will be tampered with, and the trafficker will continue to control/network/ live on the earnings of trafficked women and children.
- viii The Magistrate must ensure that same lawyer should not be permitted to represent both the trafficker and the trafficked woman or child
- ix The Magistrate must ensure that the trial progresses at a fast pace to ensure that witnesses do not disappear or turn hostile.
- x The Magistrate must ensure that where the victim is a child, the child must be dealt with in a sensitive manner while taking evidence and questioning the child (See Paras 5.1 and 5.2 (vb) for details). The child must be immediately handed over to the Child Welfare Committee (CWC) and in States where the CWC has not been set up, she should be handed over to the Juvenile Welfare Board.

ANNEXURE 1

QUESTIONNAIRE

- Each question carries multiple choices. You are requested to tick only one of the choices, which you feel is the most appropriate answer.
- If you want to choose two or more options, please tick 'combination of the above' and write the choices you want to include.

An illustration is given below:

Who in your experience are generally convicted for offences related to prostitution?

- Procurers
 - Pimps and brothel keepers
 - Landlords/house owners
 - Prostitutes
 - ✓ Combination of the above (please specify)-(a) and (b)
 - Others (please specify)
- If the answer you have in mind has not been listed, you can choose 'others' and write your answer next to it.
 - There are no right or wrong answers to the questions in this survey. This survey aims to gather honest opinion of the learned Magistrates to each question. We request you to not spend more than a minute on each question and feel free to indicate what comes to you spontaneously.

QUESTIONNAIRE NO.

BACKGROUND INFORMATION

(Please note that you need not indicate your name on this questionnaire)

- Age:
- Sex:
- Educational Qualification:
- Experience as Magistrates (No. of years)
- Location of Court: (please tick)
☐ Urban ☐ Rural ☐ Semi-urban
- IPTA, 1956
- IPC, 1890 (Please specify relevant sections below)
- State Laws (please specify them below)
- Prostitution is:
 - indiscriminate sexual intercourse with several persons
 - sexual intercourse with someone who is not a lawful husband
 - sexual intercourse in exchange for cash or kind
 - combination of the above (please specify)
 - others (please specify)

Please indicate your choice by ticking under the relevant column:

	Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
10. Prostitution is a crime					
11. Clients of prostitutes should also be punished					
12. Prostitution is a necessary social evil					
13. Men go to prostitutes to satisfy their unmet sexual needs					
14. Possession of condoms amounts to soliciting					

15. Prostitution is a crime if

- (a) it involves force or induces someone to carry on prostitution
- (b) it involves persons living on the earnings of the prostitute
- (c) prostitution per se is a crime
- (d) combinations of the above (please specify)
- (e) others (please specify)

16. Who in your experience are generally convicted for offences related to prostitution

- (a) Procurers
- (b) Pimps and touts
- (c) Brothel keepers
- (d) Landlords/persons in charge of premises
- (e) Prostitutes
- (f) Combination of the above (please specify)
- (g) Others (please specify)

17. How do you understand 'soliciting'?

18. When does a woman plead guilty under PITA?

- (a) to avoid the delay in proceedings
- (b) for fear of police harassment
- (c) due to financial constraints
- (d) due to absence of a supportive Court atmosphere to speak out
- (e) when she has actually committed the offence
- (f) combination of the above (please specify)
- (g) others (please specify)

19. When a woman alleged with soliciting for the purpose of prostitution is found

guilty, the punishment is usually in the form of

- (a) fine only
- (b) imprisonment only
- (c) fine and imprisonment
- (d) detention in corrective institution
- (e) others (please specify)

20. In Court rooms, prostitutes normally

- (a) plead guilty
- (b) take a bail
- (c) have lawyers to represent them
- (d) ask for legal aid
- (e) others

21. A lady X was seen in a bus stop at night and was charged by the police for soliciting.

To decide the case,

- (a) prima facie evidence of soliciting necessary to convict
- (b) fact that lady was found alone in night is relevant
- (c) soliciting for the purpose of prostitution needs to be established
- (d) bona fide of the charge against prostitution needs to be established.
- (e) combinations of above (please specify)
- (f) others (please specify)

22. A 12-year-old female child was brought to the designated Court after a brothel raid. The parents claim her back.

- The Court should
- (a) investigate genuineness of the claim
 - (b) fact that child was found alone in night is relevant
 - (c) soliciting for the purpose of prostitution needs to be established
 - (d) bona fide of the charge against prostitution needs to be established
 - (e) combination of above (please specify)
 - (f) others (please specify)

23. A lady Y was caught red handed while having sexual intercourse in a hotel room. In adjudicating the case,

- (a) character of woman is relevant
- (b) being caught red handed while indulging in sexual intercourse is sufficient
- (c) proof of promiscuity is relevant
- (d) commission of act in a public place is relevant
- (e) money consideration is relevant
- (f) combination of above
- (g) others (please specify)

24. How do you understand 'promiscuity'?

25. Can a prostitute ask the Court for being in a protective home?
(please tick)

☐ Yes ☐ No ☐ I don't know

26. How many such requests have you come across? (please specify)

27. The custody of a rescued adult prostitute produced in Court was claimed by a relative. Before handing over the custody:

- (a) the fact that the claimer is relative is sufficient to grant custody
- (b) the probation officer's report is a must to select the proper custodian
- (c) being an adult, the choice is that of the woman
- (d) executing a bond by relative is sufficient
- (e) combination of the above (please specify)
- (f) others (please specify)

28. Cases involving child prostitution are usually brought under

- (a) Rape Laws
- (b) ITPA
- (c) (a) and (b)
- (d) Others (please specify)

Please indicate your choice by ticking under relevant column:

		Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
29.	Children need specialised counselling to help them prepare to face legal proceedings					
30.	There is a stigma on women and children who have been kept in State/Juvenile Homes					
31.	Prostitutes are responsible for spread of HIV					
32.	An adult prostitute should not be detained in the protective home beyond the specified period if she is unwilling					
33.	There should be a separate school for children of sex workers					
34.	Rescued child prostitutes need to be kept in a separate home away from other children					
35.	Coercion can be used to separate children of prostitutes from their mother					

36. When a case is proved against pimps, procurers, brothel owners, etc., usually most of them are:

- (a) fined only
- (b) imprisoned only
- (c) fined and imprisoned
- (d) acquitted because of lack of evidence or legal loopholes
- (e) others (please specify)

37. Normally a prostitute is sent to a corrective home in lieu of imprisonment

- (a) if she is habitual offender
- (b) if she is suffering from infectious diseases
- (c) if her relatives are unwilling to take her back
- (d) if she is rescued during a raid
- (e) combinations of the above (please specify)
- (f) others (please specify)

38. How do you understand the 'character of a woman'?

39. Has there been any complaints given to the Court regarding the presence of prostitute(s) in lieu of imprisonment,

- (a) if she is a habitual offender
- (b) if she is suffering from infectious diseases
- (c) if her relatives are unwilling to take her back
- (d) if she was rescued during a raid
- (e) combinations (please specify)
- (f) others (please specify)

40. If yes, what action is generally taken?

41. How do you understand 'immorality'?

42. Has there been any occasion where the Court has issued orders for raid of brothels, hotels, etc.
(please tick)

☐ Yes ☐ No ☐ I don't know

43. If Yes, how many?
(please specify)

44. Is there a Special Police Officer functioning in your jurisdiction for offences related to prostitution?
(please tick)

☐ Yes ☐ No ☐ I don't know

45. Is there a Trafficking Police Officer functioning in your State for such offences?
(please specify)

☐ Yes ☐ No ☐ I don't know

46. Is there an official gazette notification directing the areas where prostitution shall not be carried out?
(please specify)

☐ Yes ☐ No ☐ I don't know

47. Are prostitutes entitled to freedom of residence and movement?
(please tick)

☐ Yes ☐ No ☐ I don't know

48. Do you think it is important for the Court to involve social welfare workers in adjudicating a case related to trafficking?
(please tick)

☐ Yes ☐ No ☐ I don't know

49. In the current scenario, which of the following is recommended?

- (a) prohibition of prostitution
- (b) prohibition of trafficking
- (c) legalisation of prostitution
- (d) combination of the above (please specify)
- (e) others (please specify)

50. How successful do you think laws have been in curbing the trafficking of women and children?

☐ Very successful ☐ To some extent ☐ Not at all

51. Please write below any suggestions or clarifications on the issue of trafficking of women and children for commercial sexual exploitation.

ANNEXURE 2

MAGISTRATES' VIEWS ON THE WORKING OF TRAFFICKING RELATED LAWS¹

In order to obtain data regarding the current perceptions vis-à-vis the provisions of the ITPA and its implementation, a questionnaire (**Annexure 1**) was sent by post as well as circulated to the magistrates during the consultations. From a total of 900 questionnaires, 189 responses were received which were then analysed.

The responses received from magistrates² across the 10 States to some critical questions on the law relating to trafficking are reflected below.

1. *Is prostitution a crime?* 182 out of 189 magistrates answered this question.

Table 1 – Is prostitution a crime?	
Responses	No. of Persons
Strongly agree	66
Agree	76
Not Sure	11
Disagree	23
Strongly Disagree	6
Total	182

¹ This data was collected by means of a questionnaire, which was circulated by post as well as in person to 900 judges across 10 states. A total of 189 responses were received which were then analysed. Figures have been rounded off for convenience.

² Background of the magistrates: 21% were from rural areas, 53% from urban areas and 24% from semi urban areas; 83% were men and 17% were women; all fell within the age group of 30-55 years.

2. *Is prostitution per se a Crime?* 177 out of 189 magistrates answered this question.

Table 2 – Is prostitution per se a Crime?		
Responses		No. of Persons
a	If it involves force or induces someone to carry on prostitution	10
b	If it involves persons living on the earnings of the prostitute	3
c	Prostitution per se is a crime	92
d	a & b	16
e	a & c	31
f	b & c	16
g	a & b & c	9
Total		177

3. *Under what law should child prostitution cases be registered?* 175 out of 189 magistrates answered this question.

Table 3 – What law should child prostitution cases be brought under?		
Responses		No. of Persons
a	Provisions related to Rape under Indian Penal Code	38
b	Immoral Traffic (Prevention) Act, 1956	68
c	A & b	65
d	Others	4
Total		175

4. *What is the usual punishment awarded to a woman who is found guilty of soliciting for the purpose of prostitution?* 175 out of 189 magistrates answered this question.

Table 4 – What is the usual punishment awarded to a woman who is found guilty of soliciting for the purpose of prostitution?		
Responses		No. of Persons
a	Fine only	73
b	Imprisonment only	6
c	Fine and Imprisonment	76
d	Detention in Corrective Home	21
e	Others	5
Total		181

5. *What is the proof required for establishing the offence of soliciting?* 183 out of 189 magistrates answered this question.

Table 5 – What is the proof required for establishing the offence of soliciting?		
Responses		No. of Persons
a	prima facie evidence of soliciting is necessary for conviction	22
b	the fact that the lady was found alone in night is relevant	4
c	soliciting for the purpose of prostitution needs to be established	89
d	bona fide of the charge against prostitution needs to be established	20
e	combination of the above	5
f	a & b	2
g	a & c	13
h	a & d	6
i	a & e	1
j	b & c	1
k	c & d	16
l	a & c & d	3
m	a & b & c & d & e	1
Total		183

6. *What is relevant to establish if an act of sexual intercourse amounts to prostitution in a public place?* 178 out of 189 magistrates answered this question.

Table 6 – What is relevant to establish if an act of sexual intercourse amounts to prostitution in a public place		
Responses		No. of Persons
a	Character of woman is relevant	14
b	Being caught red-handed while indulging in sexual intercourse is sufficient	18
c	Proof of promiscuity is relevant	17
d	Commission of act in a public place is relevant	6
e	Money consideration is relevant	21
f	Combination of the above	19
g	a & b	4
h	a & c	5
i	a & e	12
j	b & c	7
k	b & d	1
l	b & e	14
m	c & d	6
n	c & e	9
o	d & e	2
p	a & b & c	2
q	a & c & d	1
r	a & c & e	7
s	b & c & d	2
t	b & c & e	3
u	b & d & e	2
v	c & d & e	3
w	a & b & c & d	1
x	a & c & d & e	1
y	a & b & c & d & e	1
Total		178

7. *If the custody of a rescued adult prostitute produced in Court is claimed by a relative, what conditions must be met before handing over custody?* 183 out of 189 magistrates answered this question.

Table 7 – Who must have the custody of a rescued adult prostitute?

Responses	No. of Persons
a The fact that the claimant is a relative is sufficient to grant custody	9
b The probation officer's report is a must to select the proper custodian	14
c Being an adult the choice is that of the woman	98
d Executing a bond by relative is sufficient	4
e Combination of above	8
f Others	2
g a & b	1
h a & c	6
i a & d	3
j a & e	2
k b & c	11
l b & d	4
m b & e	1
n c & d	7
o a & b & c	1
p a & b & d	2
q a & c & d	1
r b & c & d	5
s b & c & e	1
t c & d & e	1
u a & b & c & d	2
Total	183

8. *For what reasons is a woman usually ordered to be sent to a corrective home?* 170 out of 189 magistrates answered this question.

Table 8 – Reasons for sending the women to a corrective home

Responses	No. of Persons
a If she is a habitual offender	33
b If she is suffering from infectious diseases	12

c	If her relatives are unwilling to take her back	34
d	If she is rescued during a raid	23
e	Combinations of the above	8
f	Others	2
g	a & b	4
h	a & c	8
i	a & d	3
j	b & c	9
k	b & d	1
l	c & d	16
m	a & b & c	8
n	a & c & d	6
o	a & b & c & d	3
Total		170

9. *How successful do you think the laws have been in curbing the trafficking of women and children?* 182 out of 189 magistrates answered this question.

Table 9 – How successful do you think the laws have been in curbing the trafficking of women and children

Responses	No. of Persons
Very successful	4
Successful to some extent	128
Not successful at all	50
Total	182

10. *How do you understand 'soliciting'?* Only 14% were completely aware of the ingredients of soliciting as defined in the ITPA. Another 32% had some but not complete knowledge. However, the majority of 54% had no knowledge at all.
11. *Can a prostitute apply to the Court for being kept in a protective home?* While the majority of 67% said Yes, 18% said No and 15% said they didn't know.

During the State consultations, most of the magistrates expressed their inability to give proper attention to cases related to trafficking due to lack of time and overburden of cases. Almost all magistrates recommended the setting up of special Courts to deal with cases on trafficking of women and children for commercial sexual exploitation.

ANNEXURE 3

ANDHRA PRADESH

In Andhra Pradesh, data was collected by scrutinising Court registers of eight Courts in Hyderabad, five in Kadapa and Anantpur together.

A total number of 135 cases involving 462 accused in Hyderabad and 12 cases from district Courts of Anantpur and Kadapa involving 42 accused were analysed for the period 1996 to 2001.

The methodology followed was:

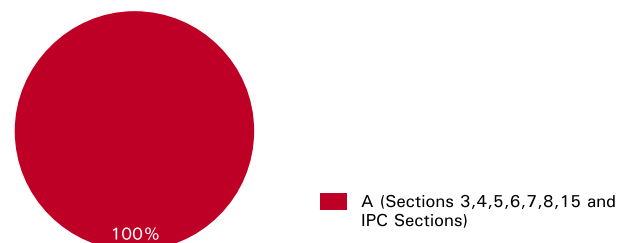
- (1) Page by page scrutiny of criminal case registers.
- (2) Study of FIRs, charge-sheets, depositions of witnesses, statements of accused and judgements of 9 disposed off cases.

A summary of the findings is presented below:

I. ANDHRA PRADESH (RURAL)

Distribution of ITPA Cases

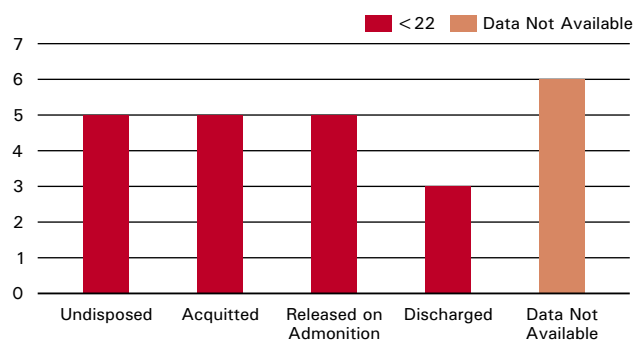
Cluster	No. of Persons	Per cent (rounded off)
A (Sections 3,4,5,6,7,8,15 and IPC Sections)	42	100
Data Not Available	0	0
Total	42	100



a. Kadapa

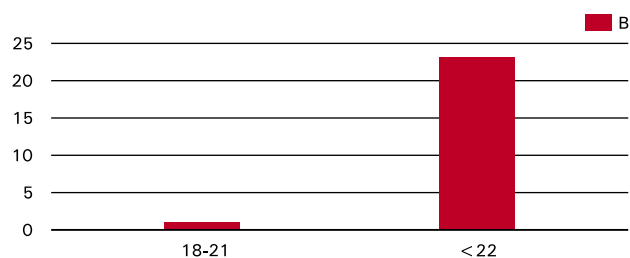
1. Age of the Accused in relation to Outcome of Cases

Outcome	Age of Accused (in years)		Total
		Above 22	
Undisposed		5	5
Acquitted		5	5
Released on Admonition		5	5
Discharged		3	3
Data Not Available		6	6
Total			24



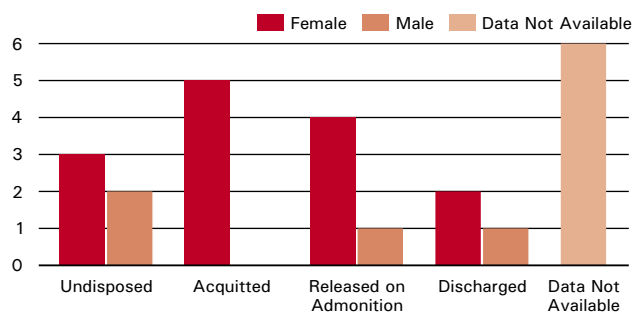
2. Age of the Accused in relation to Cluster of Cases

Cluster	Age of Accused (in years)		Total
	18-21	above22	
B (Section 3,4,7 of the ITPA)	1	23	24
Data Not Available	0	0	0
Total			24



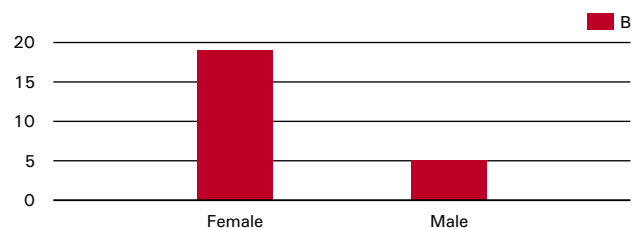
3. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total
	Female	Male	
Undisposed	3	2	5
Acquitted	5	0	5
Released on Admonition	4	1	5
Discharged	2	1	3
Data Not Available			6
Total			24



4. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused (in years)		Total
	Female	Male	
B (Section 3,4,7 of the ITPA)	19	5	24
Data Not Available			0
Total			24



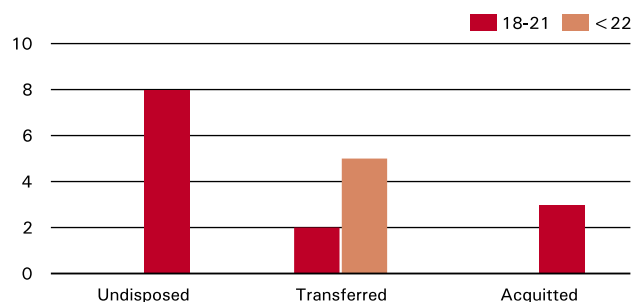
5. Outcome under various sections of ITPA/IPC

Section of the ITPA	Undisposed	Acquitted	Released on Admonition	Discharged	Pending	Total
3 (1)	1	-	-	-	0	1
3, 4	-	-	-	3	0	3
3, 4, 7	-	2	-	-	0	2
3, 7	6	3	5	-	0	14
4 (1)	1	-	-	-	0	1
7 (1)	3	-	-	-	0	3
Data Not Available					0	
Total						24

b. Anantpur

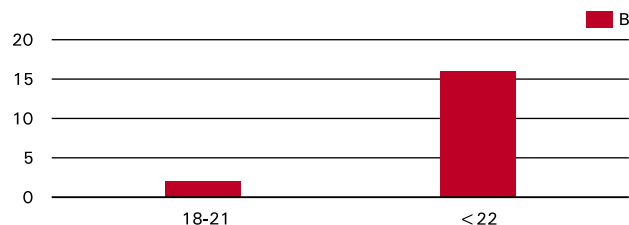
1. Age of the Accused in relation to Outcome of Cases

Outcome	Age of Accused (in years)		Total
	18-21	Above 22	
Undisposed	-	8	8
Transferred	2	5	7
Acquitted	-	3	3
Data Not Available	-	-	0
Total			18



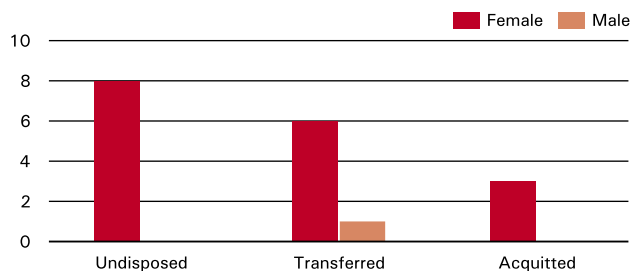
2. Age of the Accused in relation to Cluster of Cases

Cluster	Age of Accused (in years)		Total
	18-21	Above 22	
B (Section 2, 3, 4, 5, 6, 7, 8 of ITPA)	2	16	18
Data Not Available	-	-	0
Total			18



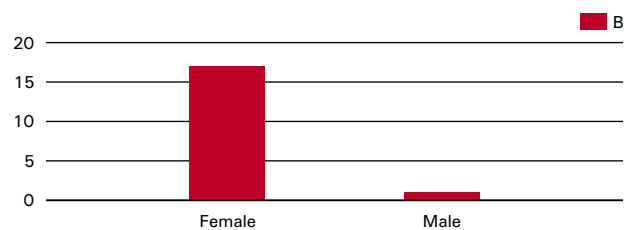
3. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total
	Female	Male	
Undisposed	8	0	8
Transferred	6	1	7
Acquitted	3	0	3
Data Not Available	0	0	0
Total			18



4. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused (in years)		Total
	Female	Male	
B (Section 2, 3, 4, 5, 6, 7, 8 of ITPA)	17	1	18
Data Not Available	0	0	0
Total			18



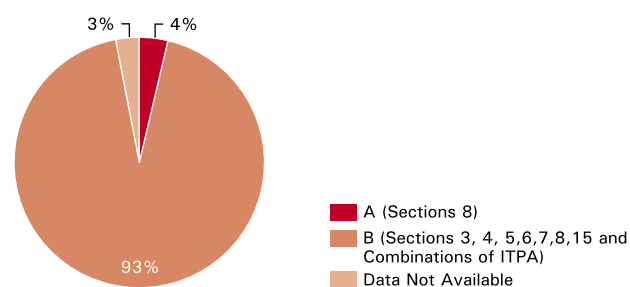
5. Outcome under various sections of ITPA/IPC

Sections of Law	Undis-posed	Trans-ferred	Acquitted	Total No. of Persons
3,4,5,6,7 of ITPA	-	4	0	4
3,4,6 of ITPA	4	-	0	4
3,4,7, 8 of ITPA	-	2	0	2
3,4,8 of ITPA	4	1	3	8
Data Not Available	-	-	0	0
Total	8	7	3	18

II. ANDHRA PRADESH (URBAN)

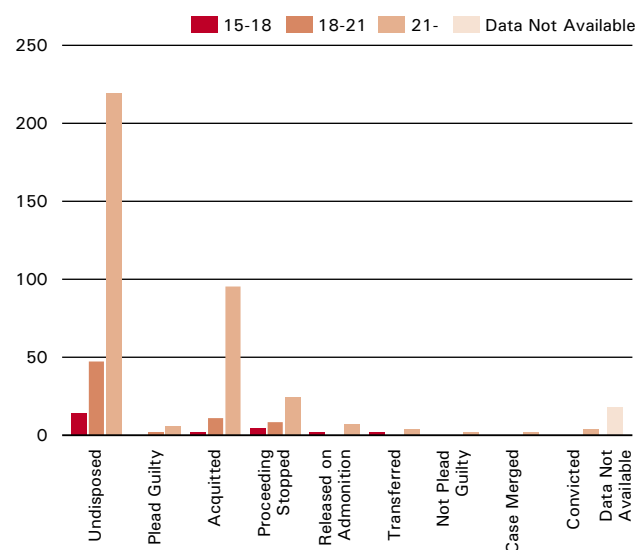
1. Distribution of ITPA Cases

Cluster	No. of Persons	Per Cent (rounded off)
A (Sections 8)	17	4
B (Sections 3, 4, 5, 6, 7, 8, 15 and Combinations of ITPA)	431	93
Data Not Available	14	3
Total	462	100



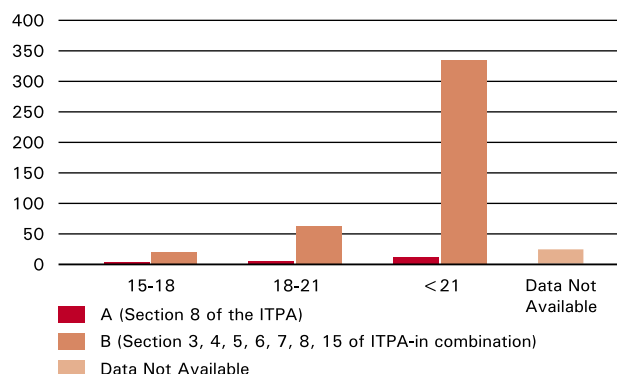
2. Age of the Accused in relation to Outcome of Cases

Outcome	Age of Accused (in years)			Total
	15-18	18-21	Above 21	
Undisposed	14	47	218	279
Plead Guilty	-	1	6	7
Acquitted	1	10	95	106
Proceeding Stopped	4	8	24	36
Released on Admonition	1	-	6	7
Transferred	1	-	3	4
Not Plead Guilty	-	-	1	1
Case Merged	-	-	1	1
Convicted	-	-	3	3
Data Not Available	-	-	-	18
Total				462



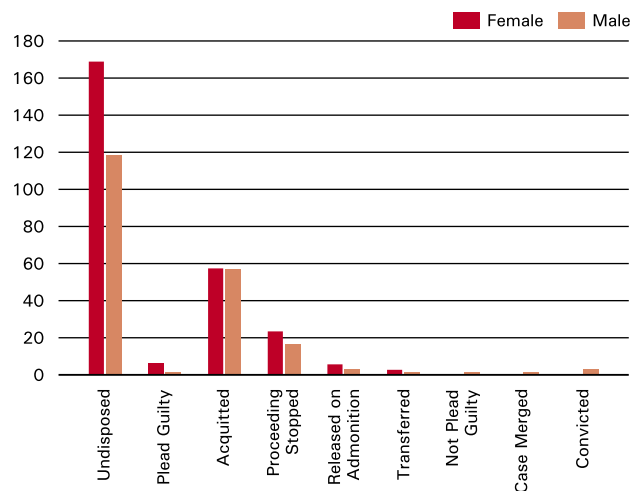
3. Age of the Accused in relation to Cluster of Cases

Cluster	Age of Accused (in years)			Total
	15-18	18-21	Above 21	
A (Section 8 of the ITPA)	1	3	13	17
B (Section 3, 4, 5, 6, 7, 8, 15 of ITPA—in combination)	20	63	335	418
Data Not Available				27
Total				462



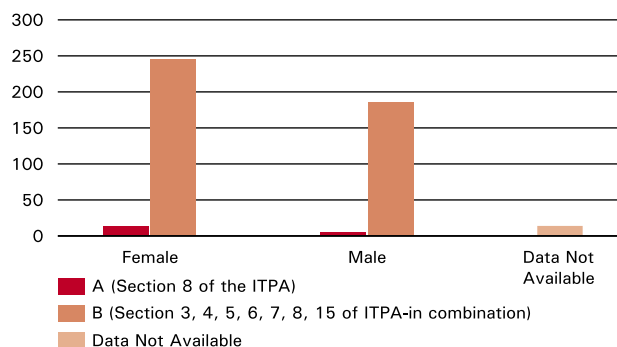
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total
	Female	Male	
Undisposed	169	118	287
Plead Guilty	6	1	7
Acquitted	57	56	113
Proceeding Stopped	23	16	39
Released on Admonition	5	2	7
Transferred	3	1	4
Not Plead Guilty	-	1	1
Case Merged	-	1	1
Convicted	-	3	3
Data Not Available	-	-	0
Total			462



5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused (in years)		Total
	Female	Male	
A (Section 8 of the ITPA)	13	4	17
B (Section 3, 4, 5, 6, 7, 8, 15 of ITPA—in combination)	245	186	431
Data Not Available			14
Total			462



6. Outcome under various sections of ITPA/IPC

Sections of Law	Undisposed	Plead guilty	Acquitted	Proceeding Stopped	Released on Admonition	Transferred	Not Plead Guilty	Case Merged	Convicted	Total
3, 4, 5, 6, 7, 8, 15 of ITPA—in combination	232	7	103	38	7	4	1	1	3	396
ITPA Sections in Combination with IPC Sections	49	0	7	0	0	0	0	0	0	56
Data Not Available										10
Total										462

Findings from Data Collection and Analysis, and Suggestions/Opinions received from NGOs/Advocates/Police Officers/Superintendents of State Homes in Andhra Pradesh:

- Even though Anantpur and Kadapa are known to be supply zones, there were no cases recorded for procuring of women and children. Only raids in hotels were conducted. There are no special efforts taken to tackle this situation traceable through the Courts.
 - One of the commonest reasons for acquittal of traffickers was that the decoy witness turned hostile. Since traffickers were out on bail and the cases takes a long time, this gives scope for manipulation of witnesses.
 - The scrutiny of FIRs revealed several discrepancies. For example, a FIR mentions occupation as 'Business' for the man and 'Prostitution' for the woman. Further, prostituted women have been pronounced as 'brothels'.
 - Sections were used singularly, i.e., just Section 3 or 4, whereas other sections of the ITPA and the IPC could have been used to take stringent action against the traffickers.
 - Only five cases have been filed under the IPC.
 - Section 4 of the ITPA provides for punishment for those living on the earnings of prostitution.
- This section cannot be used against the victim herself but the Court registers show that the victims are booked under this section.
- All cases in rural areas were registered after raids on premises. No attention was given to stop commercial sexual exploitation under Section 5, dealing with procuring. Instead all were booked under Section 4, on living off the earnings of prostitution and, here too, the victims were booked.
 - One case has been booked under Section 15 of the ITPA, which is a procedural section.
 - There are political connections in some cases. The police, public prosecutor, rehabilitation authorities need to join hands to tackle this.
 - Magistrates accord less priority to trafficking cases as they are over burdened. Special Courts are needed to handle cases like this. If special Courts are not possible, at least a designated Court so that the magistrates concerned will have ample time to address all aspects.
 - It was agreed that the magistrate is fully empowered to change the charge if he feels so.

- Police should bring along a charge-sheet for pimps but they all take bail on the same day.
- In Kadapa, which is a known source area for trafficking, there has not been a single case brought to Court in the last two years. This shows the apathy of the police and the community at large.
- In one case after a raid, all the men were left free and only women were produced before the Court. They could not produce any surety.
- More women police officers and area officers should be involved.
- There is no system of involvement of social workers.
- It was noticed that Section 8 of the ITPA was indiscriminately being used by the police to book the women for purpose of soliciting, rather than using Section 3, 4, 5, 7 against the trafficker.
- It is necessary that magistrates before proceeding with the case should give the victim some time to recover from post-arrest psychological as well as physical trauma (caused by substance abuse withdrawal phase). This period could also be utilised by counsellors and social workers to counsel the victims of the importance becoming witnesses against their traffickers.
- Court proceedings should be in-camera to avoid the victims from being influenced by the traffickers.
- The paucity of protective homes often forced the magistrates to send their victims to judicial custody. The examples of Anantpur and Kadapa were cited, where the nearest home is located in Rajahmundry.
- There is no fear among traffickers as the State who as a complainant is weak. The police is the only witness and cannot be taken as independent and reliable witness.
- The magistrates do not have a list of NGOs/ social workers who can be approached to assist the Court in trafficking cases.
- The magistrates do not have a list of protective homes, which could help them in sending the victims to the correct and nearest Home.
- Many times, the victims are non-locals and are bailed out by non-locals. This helps the victims to jump bail and abscond. This adversely affects the case.

DELHI

In Delhi, access to Court registers was not given by the Courts. Hence, the data was collected from police headquarters and the Kamala market police station.

A total number of 611 cases involving 1,590 accused from 125 Police Station in nine areas for the period 1996 to 2002 were studied.

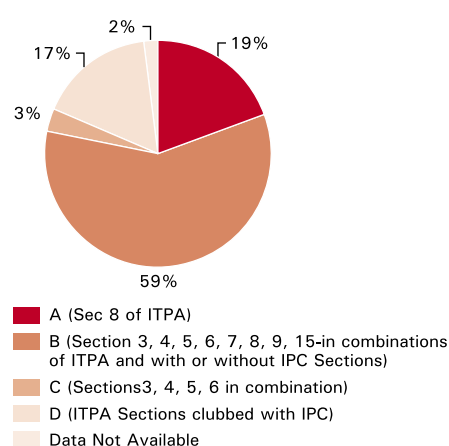
A summary of the findings are presented below:

1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Sec 8 of ITPA)	308	19
B (Section 3, 4, 5, 6, 7, 8, 9, 15-in combinations of ITPA and with or without IPC Sections)	935	59
C (Sections 3, 4, 5, 6 in combination)	52	3
D (ITPA Sections clubbed with IPC)	263	17
Data Not Available	32	2
Total	1590	100

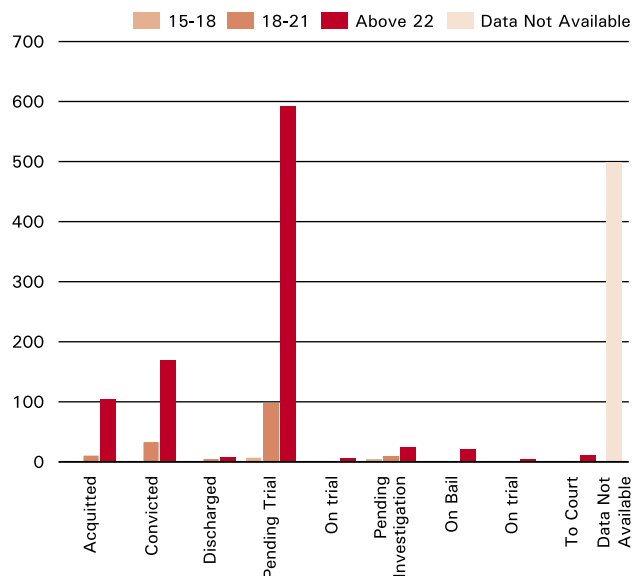
The methodology followed was:

- (1) Page by page scrutiny of criminal case registers, disposed cases in Tis Hazari Courts.
- (2) Study of FIRs, charge-sheets, statements of witnesses, accused and judgements of certain disposed cases.



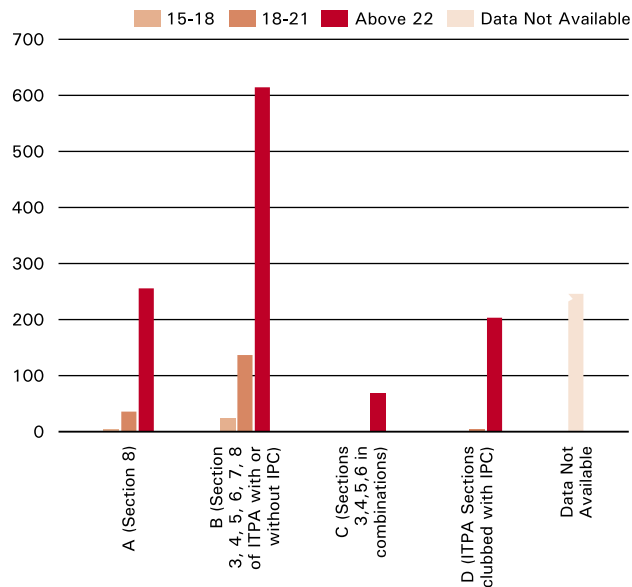
2. Age of the Accused in relation to Outcome of Cases

Outcome	No. of Accused			Total No. of Accused
	15-18 years	18-21 years	Above 22 years	
Acquitted	0	10	105	115
Convicted	0	33	168	201
Discharged	0	1	7	8
Pending Trial	4	98	593	695
On trial	0	0	4	4
Pending Investigation	1	8	24	32
On Bail	0	0	20	20
On Trial	0	0	4	4
To Court	0	1	11	12
Data Not Available				499
Total				1590



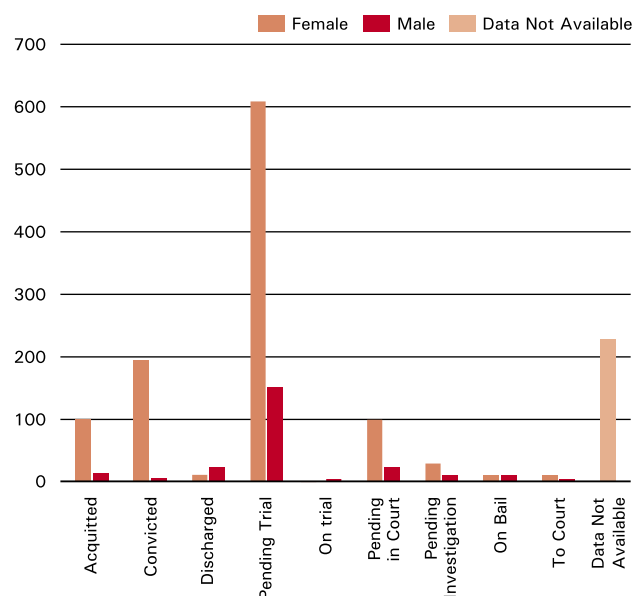
3. Age of the Accused in relation to Cluster of Cases

Cluster	No. of Accused			Total No. of Accused
	15-18 years	18-21 years	Above 22 years	
A (Section 8)	5	37	255	297
B (Section 3, 4, 5, 6, 7, 8 of ITPA with or without IPC)	24	135	614	773
C (Sections 3,4,5,6 in combinations)	0	0	70	70
D (ITPA Sections clubbed with IPC)	0	3	202	205
Data Not Available				245
Total				1590



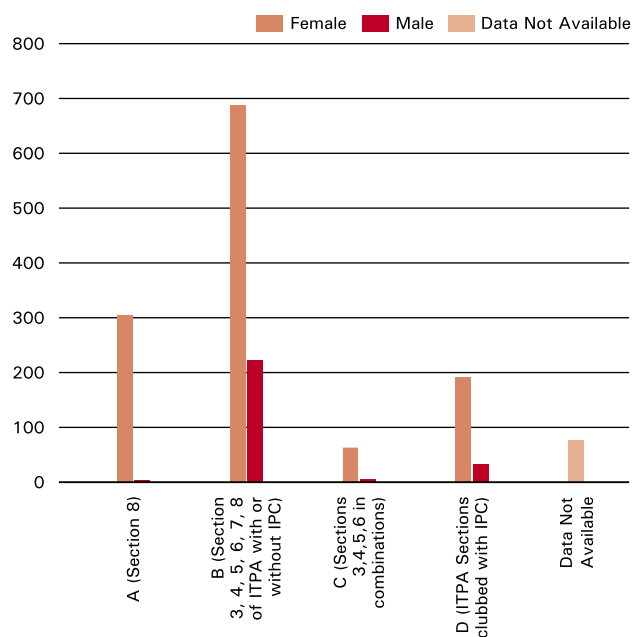
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Female	No. of Male	
Acquitted	100	15	115
Convicted	196	6	202
Discharged	10	22	32
Pending Trial	608	151	759
On trial	1	3	4
Pending in Court	97	23	120
Pending Investigation	28	10	38
On Bail	10	10	20
To Court	9	3	12
Data Not Available			288
Total			1590



5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Female	No. of Male	
A (Section 8)	304	3	307
B (Section 3, 4, 5, 6, 7, 8 of ITPA with or without IPC)	688	222	910
C (Sections 3,4,5,6 in combination)	64	6	70
D (ITPA Sections clubbed with IPC)	192	34	226
Data Not Available			77
Total			1590



6. Outcome under various sections of ITPA/IPC

[illegible]

Suggestions/Opinions from NGOs/Advocates/Police Officers/ Superintendents of State Homes:

- It is important to make the magistrates understand that the victims are controlled behind the screen.
- In Delhi, it was seen that in the initial stages of Court proceedings, the victims do not “plead guilty” but prefer to defend themselves. However, when the case comes to the Lok Adalat, they “plead guilty”. The reason being that on “plead guilty”, the victims are sent to jail and to escape this, the victims prefer to plead not guilty initially.
- Why advertisements on massage parlours are not banned? They carry messages for friendship and that satisfaction from their services is guaranteed. What does this mean? It could be a modern style of running brothels.
- It is better to have a designated Court to deal with matters pertaining to the ITPA.
- It is often seen that police take a long time in filing charge-sheets and in the process there are chances of witness turning hostile or disappearing.
- Identification parade should be carried out keeping safety of the victim in mind. The current practices of making the victim stand five feet away from the offenders could cause mental trauma to the victim and also expose her to physical harm.

GOA

In Goa, data was collected by scrutinising Court registers of six Courts—Vasco (a, b, c, d) and Panaji (c, d).

A total number of 101 cases involving 301 accused was analysed for the period 1996 to 2002.

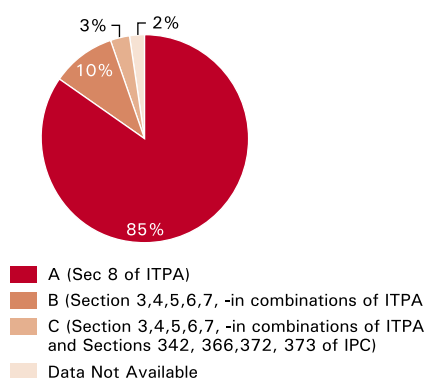
A summary of the findings is presented below:

1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Sec 8 of ITPA)	255	85
B (Section 3,4,5,6,7, -in combinations of ITPA)	30	10
C (Section 3,4,5,6,7, -in combinations of ITPA and Sections 342, 366,372, 373 of IPC)	9	3
Data Not Available	7	2
Total	301	100

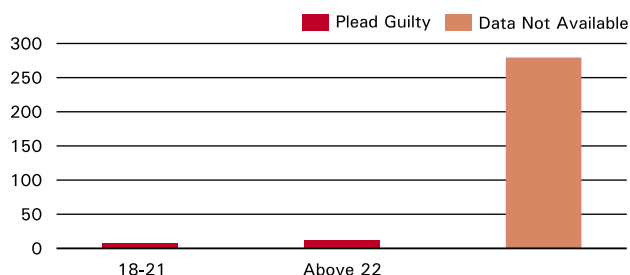
The methodology followed was:

- (1) Page by page scrutiny of criminal case registers
- (2) Study of FIRs, charge-sheets, depositions, statements and judgements of 7 selected cases.



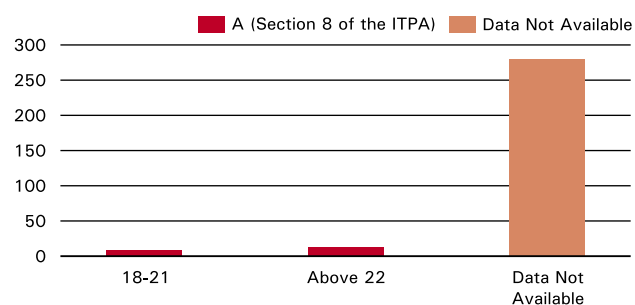
2. Age of the Accused in relation to Outcome of Cases

Outcome	No. of Accused		Total No. of Accused
	18-21 years	Above 22 years	
Plead Guilty	8	14	22
Data Not Available			279
Total			301



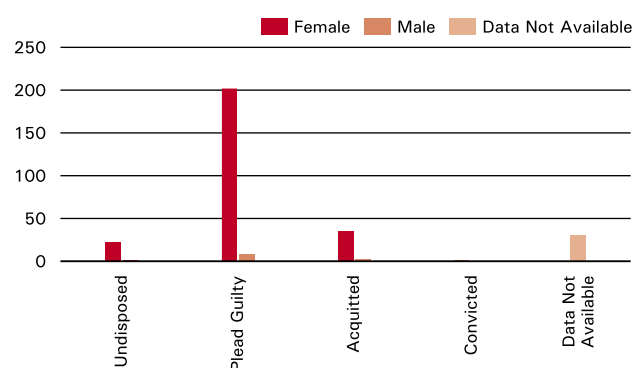
3. Age of the Accused in relation to Cluster of Cases

Cluster	No. of Accused		Total No. of Accused
	18-21 years	Above 22 years	
A (Section 8 of the ITPA)	8	14	22
Data Not Available			279
Total			301



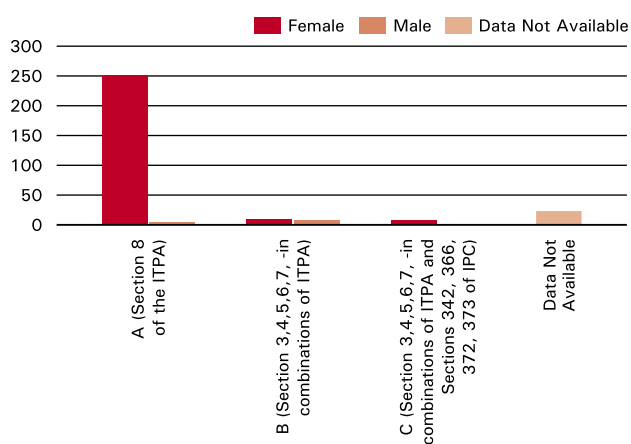
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Undisposed	22	1	23
Plead Guilty	202	8	210
Acquitted	35	2	37
Convicted	1	-	1
Data not Available			30
Total			301



5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
A (Section 8 of the ITPA)	251	4	255
B (Section 3,4,5,6,7, -in combinations of ITPA)	9	7	16
C (Section 3,4,5,6,7, -in combinations of ITPA and Sections 342, 366, 372, 373 of IPC)	7	0	7
Data not Available			23
Total			301



6. Outcome under various sections of ITPA/IPC

Sections of Law	Undisposed	Plead guilty	Acquitted	Convicted	Total No. of Accused
3 (2) (a)	1	-	-	-	1
3(2) (a), 7 (1) (a)	-	-	2	-	2
3(2)(b)	1	-	-	-	1
3,4,5,7,8	14	9	1	-	24
4,5,7,8	-	-	6	-	6
7(1) (a)	1	-	-	-	1
8	11	201	28	1	241
366, 366 A, 372, 342, 373 of IPC	0	0	0	0	0
366A, 372, 373 of IPC and 4, 5,6 of ITPA	1	0	0	0	1
366A, 372 of IPC and 5 of ITPA	1	0	0	0	1
366 A of IPC and 4,5,6 of ITPA	1	0	0	0	1
Data Not Available	0	0	0	0	22
Total					301

Summary of Observations in Goa State consultations:

- The complaining and investigating officer is often the same.
- There are no independent witnesses.
- Use of terms "Prostitute" for occupation and "Red Light Area" for address in the FIR.
- Splitting up of the case against the women and traffickers, wherein women are victimised and traffickers acquitted.

KARNATAKA

In Karnataka, data was collected by scrutinising the Court registers of 10 Courts—i, ii, iii, iv, v, vi, vii, viii, ix and xi.

A total number of 2,037 cases involving 3,834 accused was analysed for the period 1996 to 2002.

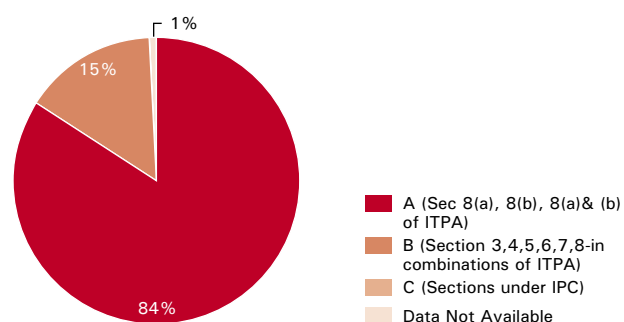
The methodology followed was:

- (1) Page by page scrutiny of criminal case registers
- (2) Study of FIR, charge-sheets, depositions, statements and judgements of 14 selected cases.

A summary of the findings is presented below:

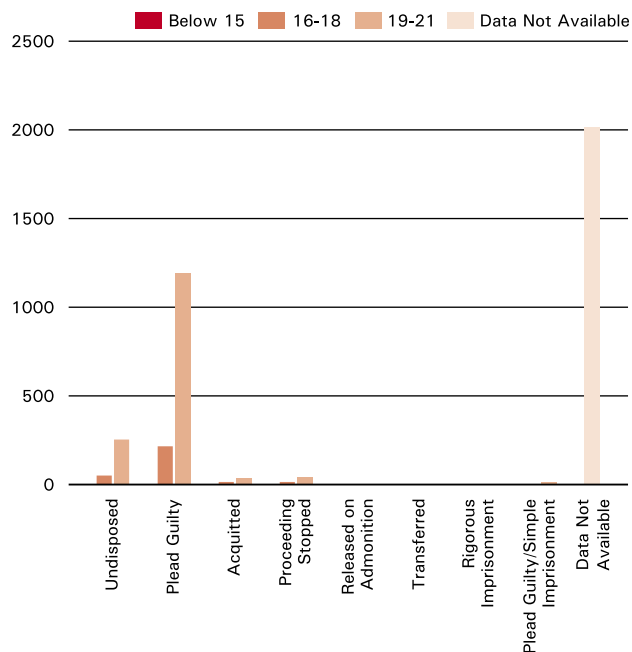
1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Sec 8(a), 8(b), 8(a)& (b) of ITPA)	3226	84
B (Section 3,4,5,6,7,8-in combinations of ITPA)	577	15
C (Sections under IPC)	1	0.02
Data Not Available	30	1
Total	3834	100



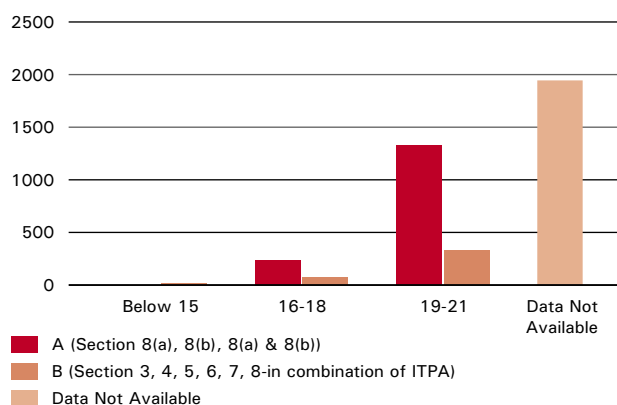
2. Age of the Accused in relation to Outcome of Cases

Outcome	No. of Accused			Total No. of Accused
	Below 15 years	16-18 years	19-21 years	
Undisposed	2	49	248	299
Plead Guilty	0	211	1199	1410
Acquitted	0	9	33	42
Proceeding Stopped	0	9	36	45
Released on Admonition	0	1	0	1
Transferred	0	2	5	7
Rigorous Imprisonment	0	0	3	3
Plead Guilty/Simple Imprisonment	0	1	7	8
Data Not Available	0	0	0	2019
Total				3834



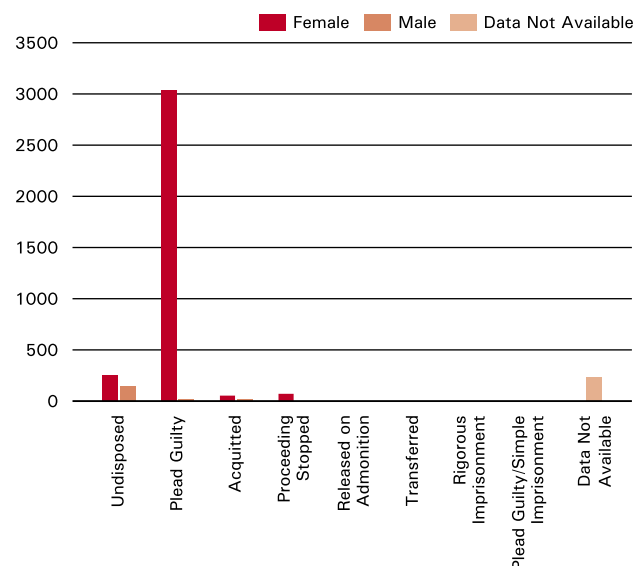
3. Age of the Accused in relation to Cluster of Cases

Cluster	No. of Accused			Total No. of Accused
	Below 15 years	16-18 years	19-21 years	
A (Section 8(a), 8(b), 8(a) & 8(b))	1	225	1276	1502
B (Section 3, 4, 5, 6, 7, 8—in combination of ITPA)	4	64	321	389
Data not Available	-	-	-	1943
Total	-	-	-	3834



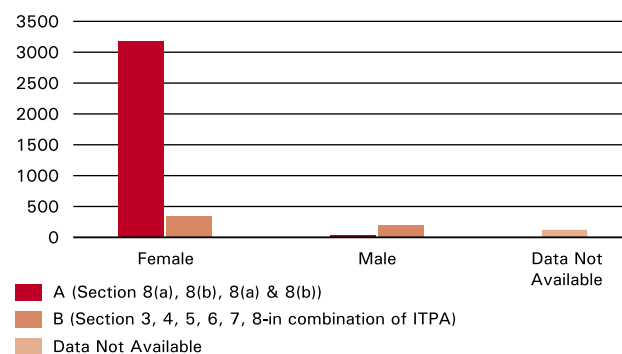
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Undisposed	248	138	386
Plead Guilty	3037	17	3054
Acquitted	45	19	64
Proceeding Stopped	67	2	69
Released on Admonition	2	0	2
Transferred	7	3	10
Rigorous Imprisonment	4	0	4
Plead Guilty/Simple Imprisonment	6	2	8
Data Not Available			237
Total			3834



5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
A (Section 8(a), 8(b), 8(a) & 8(b))	3172	15	3187
B (Section 3, 4, 5, 6, 7, 8—in combination of ITPA)	336	190	526
Data Not Available			121
Total			3834



6. Outcome under various sections of ITPA/IPC

[illegible]

Observations from Karnataka State consultations:

- Cases under Cluster B were usually split up, and trafficked women were convicted, and cases against brothel keepers, pimps, and customers ended in acquittal.
- Cases under Cluster B were often closed on grounds that they were 'petty cases'.
- A greater focus was given to procedural aspects of police raids, and less was given to components of trafficking.
- Trafficked victims arrested during police raids were charged under Section 4 of the ITPA, which is meant to be used against any 'other person' living on the earnings of a prostitute.
- First Information Reports (FIR) were drafted in a mechanical fashion, sometimes photocopied with individual details inserted.
- While detaining her under Section 10A, as above, the period of detention must be specified.
- The accused must be heard personally.
- If the Magistrate thinks fit, hearing of the plea may be postponed.
- Where framing of the charges is concerned, Sections 239, 240, 241 of the Cr.P.C must be looked into. The ultimate authority is the concerned Magistrate. The law makes it clear that the concerned judge 'may' accept the plea, not 'shall'. Filling up lapses in this regard is therefore well within the powers of the Magistrates.
- Under Section 8 of the ITPA, the police report need not be accepted by the Magistrate if circumstances justify it.
- In 1,943 cases, age was not recorded.
- Age proof in borderline cases must be looked into more carefully to avoid any mishap to a child. If no proof is available, a medical examination should be ordered.
- Private complaint of the trafficked women and police report can be clubbed under Section 210 of the Cr.P.C.
- Juveniles must be questioned in the chamber and handled with great sensitivity.
- Occupation in the column is often listed as "Prostitution". Judges must discourage this practice, as it is demeaning to a woman.
- Living on the earnings of a prostitute does not mean the prostitute herself but others who make money by exploiting her.
- Judges can also make use of provisions in the Probation of Offenders Act or the ITPA itself for admonishing the offender instead of more drastic steps like conviction.
- The general opinion of the Magistrates was that they are understaffed and overworked and, therefore a Special Court or atleast a designated Court must be constituted. In the current scenario, given the load of cases, a Magistrate may not be able to completely put into action all these suggestions, even if he/she may want to.

Consensus after meeting with magistrates:

- The magistrate has considerable discretion under Section 327 of the Cr.P.C. If he/she feels that the proceedings could be obstructed by the presence of the trafficker or pimp, he/she can take steps to render justice. Therefore, he/she must speak privately to the accused after sending the others out of the room and not allowing any onlookers, who might threaten her.
- The fact that the victim is entitled to legal aid must also be made known to her.
- In-camera proceedings can be arranged even without a specific request from the accused.
- If a woman is pleading guilty, the Judge may refuse plea of guilty and put the matter to trial. He/she must make an attempt to know as much as ascertainable before he/she accepts her plea of guilty, to make sure it is voluntary.
- Under Section 10A of the ITPA, the magistrate has the power to detain the women in a corrective institution. This could be one of the ways of getting her out of the trafficker's clutches. Under the Karnataka Rules, the woman may be sent to shelter homes/ protective homes.

MAHARASHTRA

In Maharashtra, data was collected by scrutinising Court registers of 10 JMFC (Judicial Magistrate First Class) Courts in Pune and one JMFC Court at Sangli.

A total number of 29 cases involving 98 accused were analysed for the period 1996 to 2001.

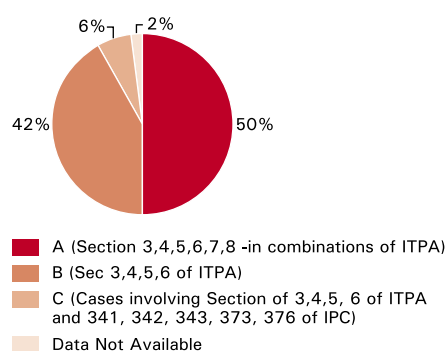
A summary of the findings is presented below:

1. Distribution of ITPA Cases

Cluster	No of Accused	Per cent (rounded off)
A (Section 3,4,5,6,7,8 -in combinations of ITPA)	49	50
B (Sec 3,4,5,6 of ITPA)	41	42
C (Cases involving Section of 3,4,5, 6 of ITPA and 341, 342, 343, 373, 376 of IPC)	6	6
Data Not Available	2	2
Total	98	100

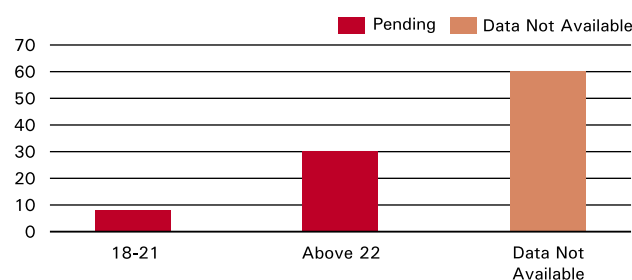
The methodology followed was:

- (1) Page by page scrutiny of criminal case registers
- (2) Study of FIRs, charge-sheets, depositions, statements and judgements of selected cases.



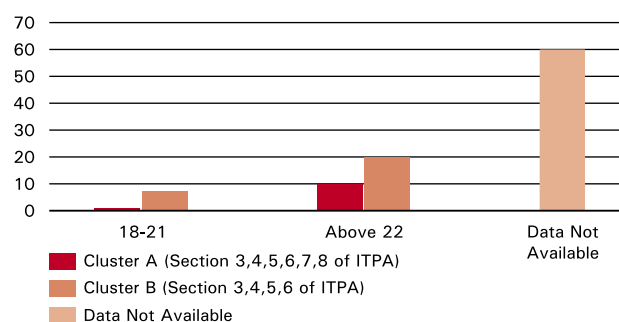
2. Age of the Accused in relation to Outcome of Cases

Outcome	No. of Accused		Total No. of Accused
	18-21 years	Above 22 years	
Pending	8	30	38
Data Not Available			60
Total			98



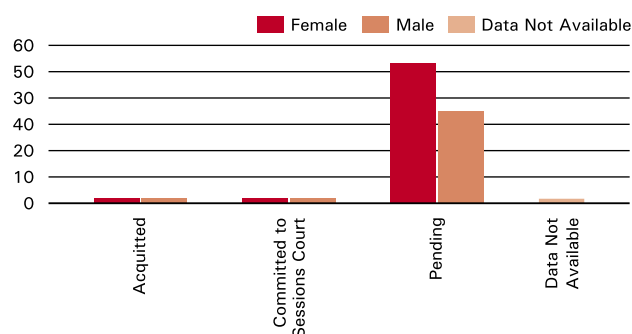
3. Age of the Accused in relation to Cluster of Cases

Cluster	No. of Accused		Total No. of Accused
	18-21 years	Above 22 years	
Cluster A (Section 3,4,5,6,7,8 of ITPA)	1	10	11
Cluster B (Section 3,4,5,6 of ITPA)	7	20	27
Data Not Available			60
Total			98



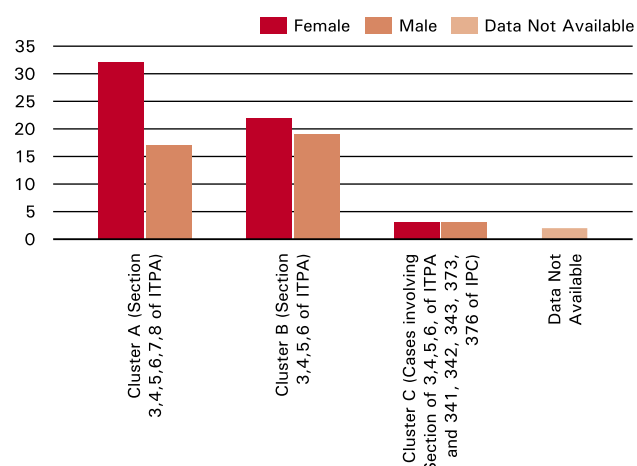
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Acquitted	2	2	4
Committed to Sessions Court	2	2	4
Pending	53	35	88
Data Not Available			2
Total			98



5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Cluster A (Section 3,4,5,6,7,8 of ITPA)	32	17	49
Cluster B (Section 3,4,5,6 of ITPA)	22	19	41
Cluster C (Cases involving Section of 3,4,5,6, of ITPA and 341, 342, 343, 373, 376 of IPC)	3	3	6
Data Not Available			2
Total			98



6. Outcome under various sections of ITPA/IPC

Sections of Law	Acquitted	Committed to Sessions Court	Pending	Total No. of Accused
4, 5, of ITPA and 373, 342, 343 of IPC	-	1	-	1
5,6 of ITPA and 376,341,342 of IPC	-	3	-	3
3,4,5 of ITPA and 373 of IPC	-	-	2	2
3,4,5 of ITPA	2	-	20	22
6,7 of ITPA	-	-	23	23
6,7,8 of ITPA	-	-	5	5
3,4 of ITPA	-	-	18	18
3,4,5 of ITPA	-	-	2	2
3,4,5,6 of ITPA	-	-	1	1
3,4,5,6,7 of ITPA	2	-	7	9
3,4,5,7 of ITPA	-	-	12	12
Data Not Available	-	-	-	0
Total	-	-	-	98

Observations from Research Findings:

In Pune

- There are cases where women were involved as traffickers.
- A minor was mentioned as accused under Section 3, 4, 5 along with a 29-year-old female accused.
- Only two cases were disposed off, both resulting in acquittal of the trafficker/ brothel owner.
- In 60 cases, 'age' was not mentioned in the record.

In Sangli

- In all Court documents, the occupation of women was written as 'prostitute'.
- List of witnesses contained trafficked victims of the age group 16-18 years and they were not produced before the Courts.
- Reasons for acquittal: -
 - Panch witnesses turn hostile.
 - Decoy witnesses also turn hostile.
 - The SPO was not appointed by Government to conduct search under Section 15 of the ITPA.

- Prosecution fail to produce any of the trafficked women as witnesses but the police produce the statements produced by them.
- Absence of independent witnesses.
- Panch is out of locality so his evidence becomes irrelevant under Section 5 of the ITPA.

Suggestion and Opinions of NGOs/ Advocates/Police Officers/Superintendents of State Home/Juvenile Justice Board Members/Magistrates/ Public Prosecutors

- In one instance, a trafficker posing as a parent tried getting custody of a child victim. Timely action by the Department of Women and Child Development helped in getting a stay order and stopped the State Home from releasing the child.
- Each Court has around 17,000 to 20,000 pending cases and it is not always possible to talk to the victim and understand her mental condition.

- Often, NGOs refuse to keep the victim in their protective homes saying that they will pollute the atmosphere and are also difficult to handle.
- Victims are always surrounded by traffickers and their presence around the Court itself is threatening to the victims who know the dire consequences of going against her trafficker.
- The advocate representing the pimp or brothel owner should not be allowed to represent the victim.
- The victim should be released only upon enquiry of probation officer and checking the authenticity of the claimant.

MADHYA PRADESH

In Madhya Pradesh, data was collected by scrutinising Court registers of four Courts viz. CJM, 4CJII, 9CJI and ACJM at Jabalpur.

A total number of 23 cases involving

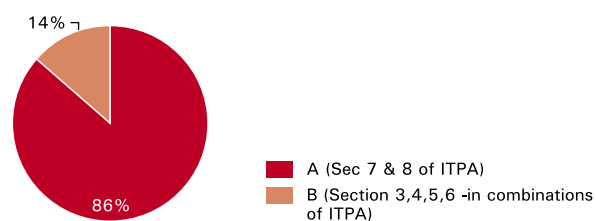
81 accused were analysed for the period 1994 to 2003.

The methodology followed was:
Page by page scrutiny of criminal case registers.

A summary of the findings is presented below:

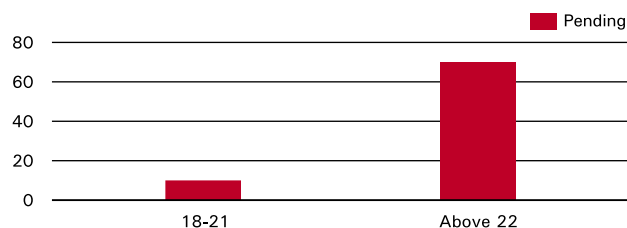
1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Sec 7 & 8 of ITPA)	70	86
B (Section 3,4,5,6 -in combinations of ITPA)	11	14
Total	81	100



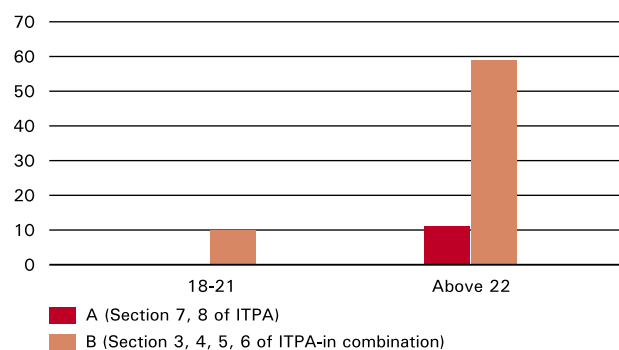
2. Age of the Accused in relation to Outcome of Cases

Outcome	No. of Accused		Total No. of Accused
	18-21 years	Above 22 years	
Pending	10	70	80
Data Not Available	-	-	1
Total			81



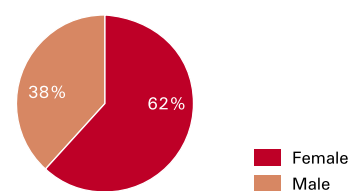
3. Age of the Accused in relation to Cluster of Cases

Cluster	No. of Accused		Total No. of Accused
	18-21 years	Above 22 years	
A (Section 7, 8 of ITPA)	-	11	11
B (Section 3, 4, 5, 6 of ITPA—in combination)	10	59	69
Data Not Available			1
Total			81



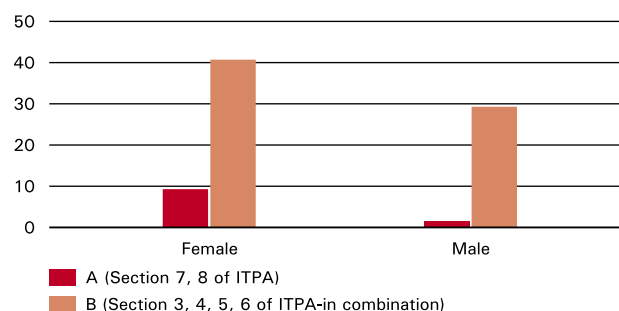
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Pending	50	31	81
Total			81



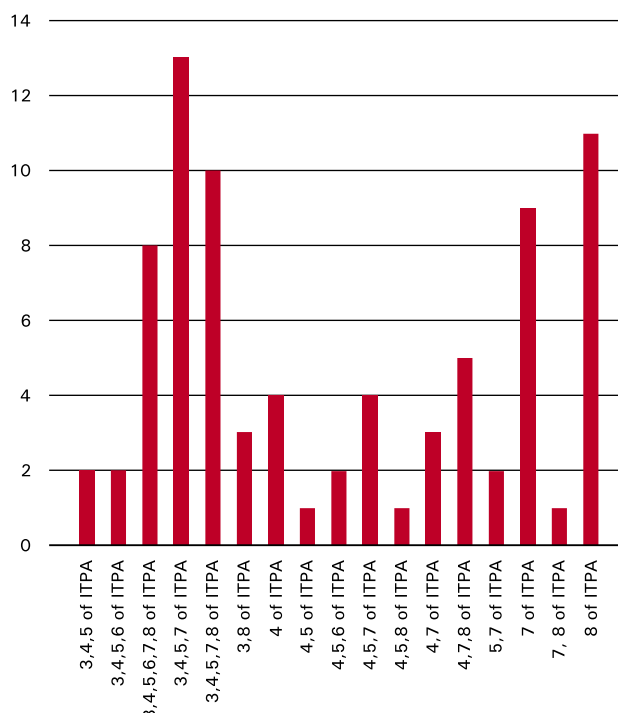
5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
A (Section 7, 8 of ITPA)	9	2	11
B (Section 3, 4, 5, 6 of ITPA—in combination)	41	29	70
Total			81



6. Outcome under various sections of ITPA/IPC

Sections of Law	Pending	Total No. of Accused
3,4,5 of ITPA	2	2
3,4,5,6 of ITPA	2	2
3,4,5,6,7,8 of ITPA	8	8
3,4,5,7 of ITPA	13	13
3,4,5,7,8 of ITPA	10	10
3,8 of ITPA	3	3
4 of ITPA	4	4
4,5 of ITPA	1	1
4,5,6 of ITPA	2	2
4,5,7 of ITPA	4	4
4,5,8 of ITPA	1	1
4,7 of ITPA	3	3
4,7,8 of ITPA	5	5
5,7 of ITPA	2	2
7 of ITPA	9	9
7,8 of ITPA	1	1
8 of ITPA	11	11
Total	-	81



Observations from Madhya Pradesh State consultations:

- No ITPA case had been disposed off.
- Many women (including an 18-year-old girl) were charged under Section 4 exclusively.
- First Information Records (FIRs) reflect similar format being used in all the cases.
- Most witnesses had turned hostile.
- Women charged under Section 8 of the ITPA opted to contest the case.
- Indian Penal Code (IPC) Sections were not invoked.

Suggestions and Opinions of NGOs/ Advocates/ Police Officers/ Superintendents of

State Home/Juvenile Justice Board Members/ Magistrates/Public Prosecutors

- The State Government of Madhya Pradesh is implementing the "Jabala Mahila Yojana" to combat trafficking of women and children for commercial sexual exploitation. But the programme is not doing well.
- Even though male prostitution in Madhya Pradesh is unheard of, cases are booked against men under Section 8 of the ITPA. If this Section is being used against the trafficker, then it is the wrong usage of the section.
- It was felt that special Courts to deal with trafficking cases should be set up.
- IPC sections are invoked with ITPA sections.

ORISSA

In Orissa, permission to access and collect Court data was not granted by the High Court of Bhubaneswar. Hence, no Court data is presented. However, consultations were held with NGOs and police officers. The suggestions and opinions of NGOs/ Advocates/ Police Officers are summarised below:

- Women are released on bail. Traffickers pay a lot of money to bail out the women.
- In Bhubaneswar, except for the first hearing, others are held in-camera. In other places, this is not followed and victims are often not even brought inside the Court.
- Several violations of Juvenile Justice Act—charge-sheet was filed against a 13year-old.
- It is difficult to identify the trafficker.
- Victims are scared to volunteer information.
- Police often refuse to register FIR of victim.
- Marriage is often a veil for trafficking.
- Giving bail to the accused must be strict.

RAJASTHAN

In Rajasthan, data was collected by scrutinising Court registers of Court No 1 in Jodhpur.

were analysed for the period 1996 to 2002. The methodology followed was:

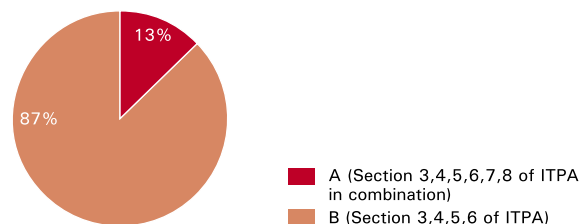
A total number of 31 cases involving 110 accused

Page by page scrutiny of criminal case registers.

A summary of the findings is presented below:

1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Section 3,4,5,6,7,8 of ITPA in combination)	14	13
B (Section 3,4,5,6 of ITPA)	96	87
Total	110	100

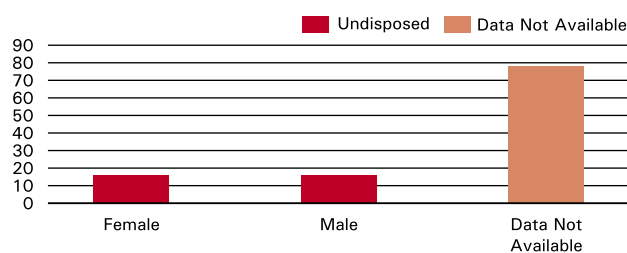


2. Age of the Accused

The Court registers did not provide information on the age of the accused.

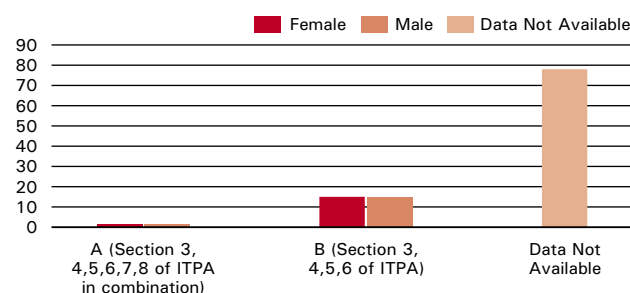
3. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Undisposed	16	16	32
Data Not Available			78
Total			110



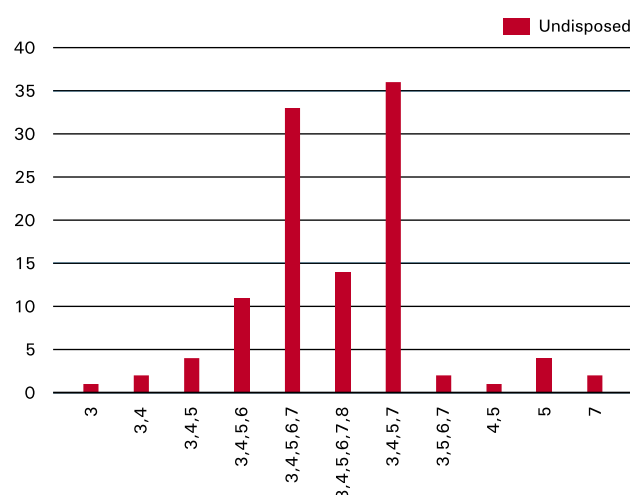
4. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total
	No. of Females	No. of Males	
A (Section 3,4,5,6,7,8 of ITPA in combination)	1	1	2
B (Section 3,4,5,6 of ITPA)	15	15	30
Data Not Available			78
Total			110



5. Outcome under various sections of ITPA/IPC

Sections of ITPA	Undisposed	Total No. of Accused
3	1	1
3,4	2	2
3,4,5	4	4
3,4,5,6	11	11
3,4,5,6,7	33	33
3,4,5,6,7,8	14	14
3,4,5,7	36	36
3,5,6,7	2	2
4,5	1	1
5	4	4
7	2	2
Total	-	110



Observations from Rajasthan State consultations:

The data does not reveal any disposal of ITPA cases. The discussion highlighted the following:

- Delay in registering complaints by the police.
- Lack of sensitivity resulting in the trafficker and the victim being treated alike.
- Complex social factors where child trafficking has social and family sanction.
- Extremely inadequate rehabilitation infrastructure.
- Low involvement of State and NGOs in the area of trafficking and lack of public debate regarding the same.
- General apathy of State, society, police and the judiciary to the issue that reinforces the

need for intense advocacy to sensitise these key agencies.

- Total absence of recording of age and gender of accused/victim shows the low significance given to these cases.

Suggestion and Opinions of NGOs/Advocates/Police Officers/Superintendents of State Home/Juvenile Justice Board Members/Magistrates/Public Prosecutors

- Trafficking cases are treated as petty cases.
- Women police play a very small role. They are involved only during the time of a raid. All other interactions are done by male police officers.

TAMILNADU

In Tamil Nadu, data was collected by scrutinising the Court registers of two Courts, viz. Saidapet (Metropolitan Magistrate IV) and Egmore (Metropolitan Magistrate IV).

A total number of 4,658 cases involving 5,213 accused were analysed for the period 1996 to 2002.

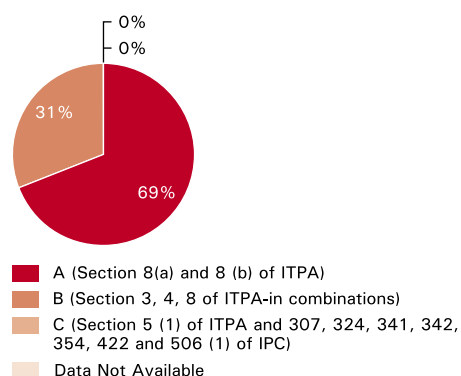
The methodology followed was:

- (1) Page by page scrutiny of fine registers of Egmore Court and Saidapet- Metropolitan Magistrate IV Register.
- (2) Study of FIRs, charge-sheets, depositions, statements and judgements of selected cases.

A summary of the findings is presented below:

1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Section 8(a) and 8 (b) of ITPA)	3598	69
B (Section 3, 4, 8 of ITPA-in combinations)	1613	31
C (Section 5 (1) of ITPA and 307, 324, 341, 342, 354, 422 and 506 (1) of IPC)	1	0.02
Data Not Available	1	0.02
Total	5213	100

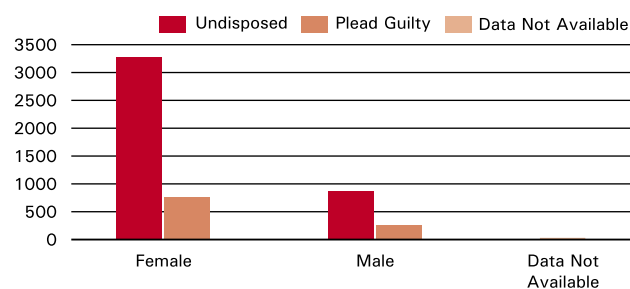


2. Age of the Accused

The Court registers did not provide information on the age of the accused.

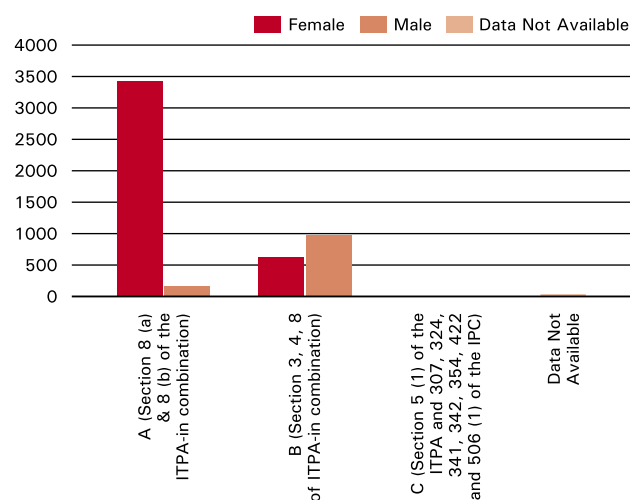
3. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Undisposed	3286	880	4166
Plead Guilty	766	262	1028
Data Not Available			19
Total			5213



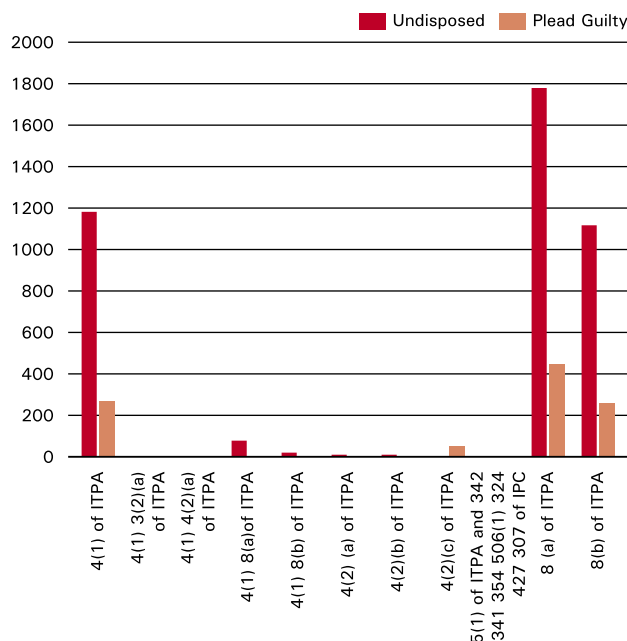
4. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
A (Section 8 (a) & 8 (b) of the ITPA – in combination)	3423	168	3591
B (Section 3, 4, 8 of ITPA – in combination)	628	974	1602
C (Section 5 (1) of the ITPA and 307, 324, 341, 342, 354, 422 and 506 (1) of the IPC)	1	0	1
Data Not Available			19
Total			5213



5. Outcome under various sections of itpa/ipc

Sections of Law	Undisposed	Plead Guilty	Total No. of Accused
4(1) of ITPA	1184	263	1447
4(1) 3(2)(a) of ITPA	-	1	1
4(1) 4(2)(a) of ITPA	1	-	1
4(1) 8(a) of ITPA	81	-	81
4(1) 8(b) of ITPA	10	-	10
4(2) (a) of ITPA	8	2	10
4(2)(b) of ITPA	5	-	5
4(2)(c) of ITPA	3	55	58
5(1) of ITPA and 342 341 354 506(1) 324 427 307 of IPC	1	-	1
8 (a) of ITPA	1777	446	2223
8(b) of ITPA	1114	260	1374
Data Not Available			2
Total			5213



Observations in Tamil Nadu State consultations:

- The total amount of fine collected in Egmore Court was Rs 5,39,400.
- In the Egmore Court, almost in all cases, the accused pleaded guilty.
- Women who were removed following raids were treated as criminals.
- The amount of fine imposed for offences under Sections 3 and 4, which are trafficking offences, was less.

Suggestions and Opinions of NGOs/ Advocates/Police Officers/Superintendents of State Home/Juvenile Justice Board Members/Magistrates/Public Prosecutors

- Even a steady partner of the victim can be booked under Section 4 of the ITPA.
- The magistrates are overburdened with cases and hardly find time to talk to the victim. Also, public prosecutors are not present in the Court to represent the victim.
- It was felt that prostitution is also a base for many other criminal activities. Further the traffickers are not afraid of police and are ready to spend money to defend themselves. Also, many times the judge refuse to accept police witness and it is difficult to produce public witness.
- At present, there are no sections in ITPA to book customers.
- There is a need to sensitise media. They often portray the victim as the accused.
- Women who are charged under ITPA are not heard and many have stated that they do not hear the magistrate's voice till they are produced before him.
- Consent is not taken from victims for HIV/AIDS testing.
- Burden of proof should be shifted to traffickers.
- Magistrate orders for age verification test only if there is a doubt regarding the age.

WEST BENGAL

In West Bengal, Court registers of four Courts—IX, III, VI and V were studied. A total number of 20 cases involving 222 accused were analysed for the period 1996 to 2001.

The methodology followed was:

(1) Page by page scrutiny of Annual Crime Index of

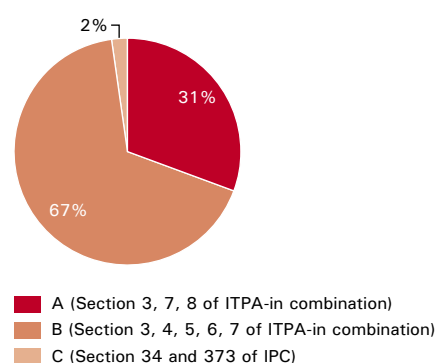
the Immoral Trafficking Section, Kolkata Police Headquarters, Lalbazar 1996-97

(2) Cases were selected by random sampling in Court IX only.

A summary of the findings is presented below:

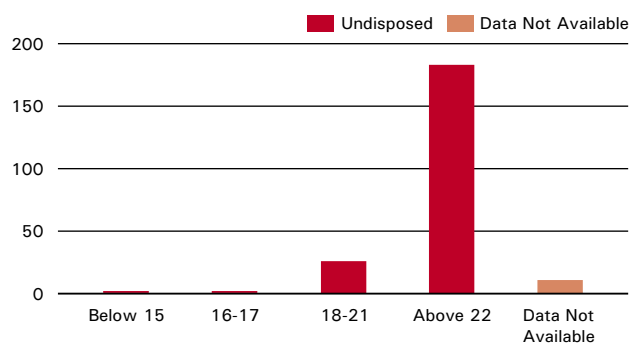
1. Distribution of ITPA Cases

Cluster	No. of Accused	Per cent (rounded off)
A (Section 3, 7, 8 of ITPA-in combination)	68	31
B (Section 3, 4, 5, 6, 7 of ITPA-in combination)	149	67
C (Section 34 and 373 of IPC)	5	2
Total	222	100



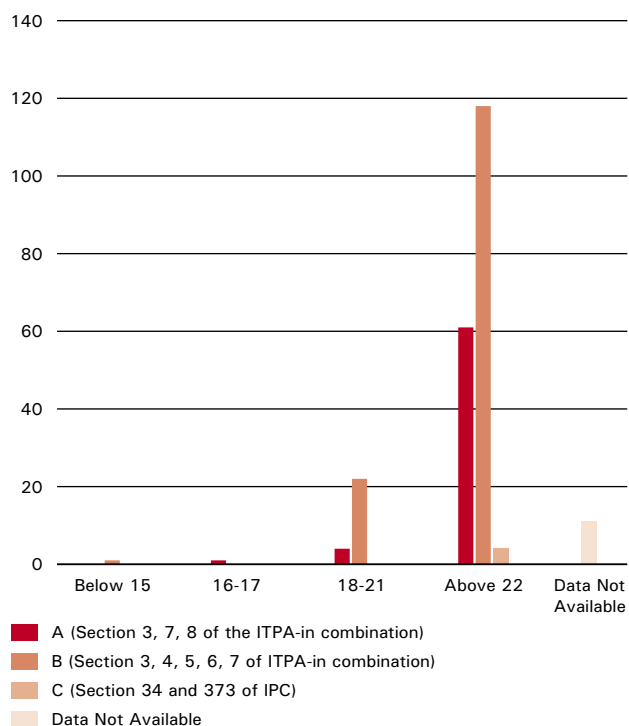
2. Age of the Accused in relation to Outcome of Cases

Outcome	No. of Accused				Total No. of Accused
	Below 15 years	16-17 years	18-21 years	Above 22 years	
Undisposed	1	1	26	183	211
Data Not Available	-	-	-	-	11
Total	-	-	-	-	222



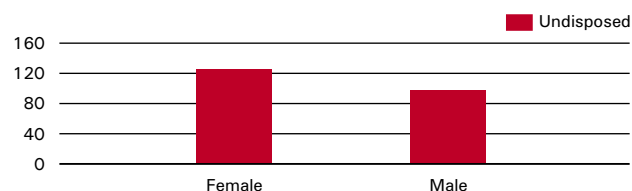
3. Age of the Accused in relation to Cluster of Cases

Cluster	Age of Accused				Total No. of Accused
	Below 15 years	16-17 years	18-21 years	Above 22 years	
A (Section 3, 7, 8 of the ITPA—in combination)	-	1	4	61	66
B (Section 3, 4, 5, 6, 7 of ITPA—in combination)	1	-	22	118	141
C (Section 34 and 373 of IPC)	-	-	-	4	4
Data Not Available	-	-	-	-	11
Total	-	-	-	-	222



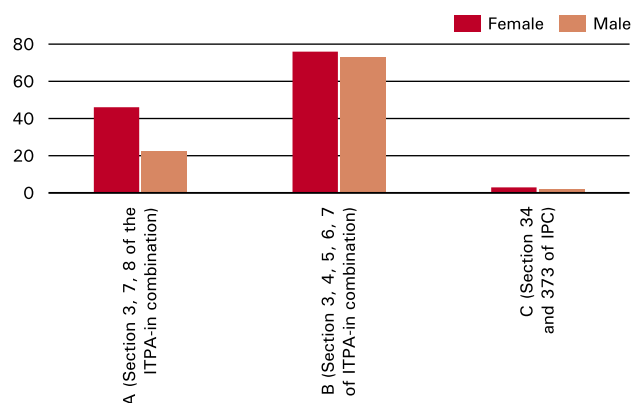
4. Sex of the Accused in relation to Outcome of Cases

Outcome	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
Undisposed	125	97	222
Total	125	97	222



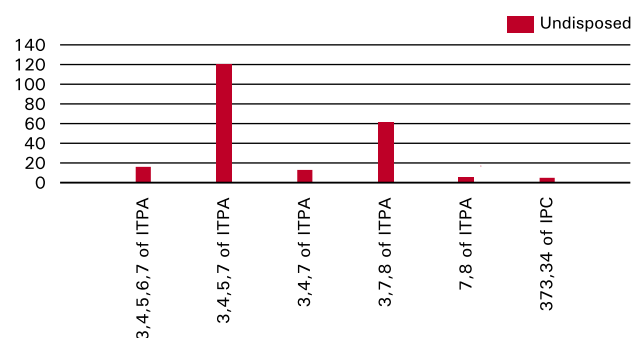
5. Sex of the Accused in relation to Cluster of Cases

Cluster	Sex of Accused		Total No. of Accused
	No. of Females	No. of Males	
A (Section 3, 7, 8 of the ITPA—in combination)	46	22	68
B (Section 3, 4, 5, 6, 7 of ITPA—in combination)	76	73	149
C (Section 34 and 373 of IPC)	3	2	5
Total			222



6. Outcome under various sections of ITPA/IPC

Sections of Law	Undisposed	Total No. of Accused
3,4,5,6,7 of ITPA	16	16
3,4,5,7 of ITPA	120	120
3,4,7 of ITPA	13	13
3,7,8 of ITPA	62	62
7,8 of ITPA	6	6
373,34 of IPC	5	5
Total	222	222



Observations in West Bengal State consultations:

- A study of the data illustrated indicates that:
- Majority of the accused was below 22 years, with a higher percentage of female (56.3 per cent) accused as compared to male accused (43.7 per cent).
- None of the cases had been disposed off, with 98 per cent of accused on bail and 2 per cent absconding.
- A study of the records indicated that:
 - a. There was delay by the police in filing the charge-sheets, and cases were kept pending as witnesses could not be traced, and several witnesses who appeared in the Court turned hostile.
 - b. The exact duration for which the accused was required to be detained in a protective home under Section 17(4) of the ITPA was not indicated in the Court order.
 - c. The age test, which is mandatory under Section 16(2) of the ITPA, is not being conducted which results in minor girls being treated as adults. This gives an opportunity to the trafficker to produce false age certificates.
 - d. Trafficked children are produced before the Magistrates Court instead of the Juveniles

Court, as required under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Suggestion and Opinions of NGOs/Advocates/Police Officers/Superintendents of State Home/Juvenile Justice Board Members/Magistrates/Public Prosecutors

- Cross-border trafficking is dealt with by the District Intelligence Bureau, Border Security Force and Bangladesh Rifles. There are representatives of each organisation in both sides of the country. The date of deportation for the victim is usually given at short notice and this gives hardly any time for the NGO in Bangladesh to react. Also, there is no provision to allow NGO personnel to accompany children.
- One of the reasons for long pendency of cases was the unavailability of the victim as witness.
- The age determination test of young victims is not conducted. They are sent back from police station itself, without producing them to the Child Welfare Committee. In Court, the traffickers would produce false age certificates.
- Cross-border trafficking is rampant and victims are treated as illegal migrants.

ANNEXURE 4

LIST OF STATE HOMES

CHHATISGARH

1. Nari Niketan
Near the office of Chief Medical Officer,
Durg, Chhatisgarh
2. Nari Niketan
Khambardih, Raipur, Chhatisgarh
3. Nari Niketan
South Bastar,
Dantewara, Chhatisgarh

DELHI

4. Nirmal Chhaya
(Protective and Corrective Institution)
Nirmal Chhaya Complex, Jail Road
New Delhi-54
5. Short Stay Home for Women
Nirmal Chhaya Complex, Jail Road
New Delhi-54
6. Observation Home for Boys I
1, Firozshah Kotla,
Delhi gate, New Delhi-2
7. Observation Home for Boys II
1, Magazine Road, Delhi-54

8. Observation home for Girls,
Nirmal Chhaya Complex'
Jail Road, New Delhi.
9. Juvenile home for Boys I
Opposite police station,
GT Road, Alipur, Delhi-36

HIMACHAL PRADESH

10. Nari Niketan
Mahasobra
Himachal Pradesh
11. Nari Niketan
Mandi
Himachal Pradesh
12. Nari Niketan
Chamba
Himachal Pradesh
13. Nari Niketan
Nahan
Himachal Pradesh
14. State Home,
Mashobra
Shimla
Himachal Pradesh

15. State Home,
Chamba
Chamba
Himachal Pradesh
16. State cum Protective Home
Mandi
Himachal Pradesh

JAMMU AND KASHMIR

17. Bal Ashram
R.S. Pora
Jammu
Jammu and Kashmir
18. Nari Niketan
R.S. Pora
Jammu
Jammu and Kashmir
19. Bal Ashram
Kathua
Jammu
Jammu and Kashmir
20. Nari Niketan
Kathua
Jammu
Jammu and Kashmir
21. Bal Ashram
Udhampur
Jammu
Jammu and Kashmir
22. Bal Ashram
Mohore
Jammu
Jammu and Kashmir
23. Nari Niketan
Udhampur
Jammu
Jammu and Kashmir

24. Bal Ashram
Nowshere
Rajouri
Jammu and Kashmir
25. Bal Ashram
Manjakote
Rajouri
Jammu and Kashmir
26. Bal Ashram
Sunderbani
Rajouri
Jammu and Kashmir
27. Bal Ashram
Koteranaka (Buddhal)
Rajouri
Jammu and Kashmir
28. Nari Niketan
Rajouri
Jammu
Jammu and Kashmir
29. Bal Ashram
Kiathwar, Doda
Jammu and Kashmir
30. Nari Niketan
Doda, Jammu
Jammu and Kashmir
31. Nari Niketan
Poonch
Jammu
Jammu and Kashmir
32. Nari Niketan
Mendher
Jammu
Jammu and Kashmir
33. Bal Ashram
Markazi Falai Masturat
Shalimar, Srinagar
Jammu and Kashmir

- | | |
|--|---|
| 34. Bal Ashram
Kangan
Srinagar
Jammu and Kashmir | 44. Bal Ashram
Kulgam
Anantnag
Jammu and Kashmir |
| 35. Nari Niketan
Shalimar
Srinagar
Jammu and Kashmir | 45. Nari Niketan
Sarnal
Anantnag
Jammu and Kashmir |
| 36. Bal Ashram
Krimshore Khanshab
Budgam
Jammu and Kashmir | 46. Bal Ashram
Tral
Pulwama
Jammu and Kashmir |
| 37. Nari Niketan
Chadoora
Budgam
Jammu and Kashmir | 47. Bal Ashram
Shopian
Pulwama
Jammu and Kashmir |
| 38. Bal Ashram
Brairipora Hanwara
Kupwara
Jammu and Kashmir | |
| 39. Nari Niketan
Tikker, Kupwara
Jammu and Kashmir | |
| 40. Bal Ashram
Bandipora
Baramulla
Jammu and Kashmir | |
| 41. Bal Ashram
Uri, Baramulla
Jammu and Kashmir | |
| 42. Nari Niketan
Khajabagh
Baramulla
Jammu and Kashmir | |
| 43. Bal Ashram
Manzgam
Anantnag
Jammu and Kashmir | |
| | JHARKHAND |
| | 48. Remand home
Jamshedpur
Jharkhand |
| | 49. Remand home
Chaibasha
Jharkhand |
| | 50. Remand home
Ranchi
Jharkhand |
| | 51. Remand home
Hazaribagh
Jharkhand |
| | 52. Remand home
Dhanbad
Jharkhand |
| | 53. Remand home
Deoghar
Jharkhand |

54. Remand home
Dumka
Jharkhand

KARNATAKA

55. Superintendent
Govt. Juvenile Homes for Girls
C/O Reception Centre
Near Darbar School
Behind Harijan Kalyanamandir
Bijapur-566101
Bijapur District
56. Superintendent
Government Juvenile Home For Girls,
Hosur Road,
Bangalore-560029
Karnataka
57. Superintendent
Stree Sewa Niketan
Siraguppa Road
Bellary- 583103
Karnataka
58. Superintendent
Government Juvenile Home for Girls,
Chikka Armane,
Lalitha Mahal Road,
Mysore-570011
Karnataka
59. Superintendent
State Home For Women
Old Remand Home Building.
Unakal Cross., Hubli.
District –Dharwad-31
Karnataka
60. Superintendent
Government Juvenile Home for Girls,
Gantikere, Christian Colony
Hubli-580020
District: -Dharwad
Karnataka
61. Superintendent
Stree Sewa Niketan
Nittur Post,
Udupi-576103 (S.K.)
Karnataka
62. Superintendent
Government Juvenile Home for Girls,
Saundatti
District: -Belgaum
Pin-581126
Karnataka
63. Superintendent
Stree Sewa Niketan
House No.-976,
Geetha Road
Chamrajapuram
Mysore-570011
Karnataka
64. Superintendent
Government Juvenile Home For Girls,
Kittur Road,
District: -Udupi
Pin-576103
Karnataka
65. Superintendent
Govt. Juvenile Homes for Girls
C/O State Home for Women
Old Jail,
Aland Road
Gulbarga-585101
Gulbarga District
66. Superintendent
State Home for Women
Athani-591304
Belgaum District
67. Superintendent
State Home for Women
Near Juvenile Homes for Boys
Hosur Road
Bangalore-5600029

68. Superintendent
State Home for Women
Stree Seva Niketan
Siriguppa Road
Bellary-583103
Bellary District

69. Superintendent
State Home for Women
No. 2651, II Main Road
MCC B Block, Behing Gundi
Mahadevappa Choulary
Davangere-577003
Davangere District

MADHYA PRADESH

70. Observation Home
E-7/82, Arera Colony
Bhopal
Madhya Pradesh

71. Observation Home
Tilak Chowk, Vidisha
Madhya Pradesh

72. Observation Home
Deshbandhu Tikari
Baitul
Madhya Pradesh

73. Observation Home
Saket Nagar
Indore
Madhya Pradesh

74. Observation Home
Sneha Marg
Jhabua
Madhya Pradesh

75. Observation Home
Punjabi colony
Jaswani Road
Khandwa
Madhya Pradesh

76. Observation Home
Dusherra Maidan
Ujjain
Madhya Pradesh

77. Observation Home
Ajmana Bhavan
New Road, Ratlam
Madhya Pradesh

78. Observation Home
Devtal Medical College Road
Jabalpur
Madhya Pradesh

79. Observation Home
Tilak Ward
Narsinghpur
Madhya Pradesh

80. Observation Home
Sampreshan Grih
Shivni
Madhya Pradesh

81. Observation Home
Jiwaji Ganj, Gwalior
Madhya Pradesh

82. Observation Home
Pipalwali Mata, Morena
Madhya Pradesh

83. Observation Home
Nankhedi Bahvan
Guna
Madhya Pradesh

84. Observation Home
Mana Camp, Raipur
Madhya Pradesh

85. Observation Home
Jailwari
Municipality complex
Jagdalpur
Madhya Pradesh

86. Observation Home
Sampreshan Grih
Durg
Madhya Pradesh

87. Observation Home
Vidya upnagar
Bilaspur
Madhya Pradesh

88. Observation Home
Purvawarti Janpad Sabha
Sarguja
Madhya Pradesh

89. Observation Home
Opposite Goswami X-ray
Arera building
Amhiya Road
Rewa
Madhya Pradesh

90. Observation home
Zail building
Shahdol
Madhya Pradesh

91. Observation Home
ELC compound, Sagar
Madhya Pradesh

92. Observation Home
Nazarbagh , Chattarpur
Madhya Pradesh

MAHARASHTRA

93. Special Home for Girls
Navjivan" Mahila Vasatigriha
Deonar, Mumbai-88
Maharashtra

94. State Home for Girls
Majegar Mahila Vasatigriha
Mundwa, Pune
Maharashtra

95. State Observation Homes for Girls
Micro Circle, Trimbak Road
Nasik
Maharashtra

MEGHALAYA

96. Observation cum Special Home (boys)
Shillong
Meghalaya

97. Observation cum Special Home (girls)
Shillong
Meghalaya

98. Observation Home (Boys)
Tura
Meghalaya

TAMIL NADU

99. Government Observation Home
Chennai
Tamil Nadu

100. Government Observation Home
Chengalpattu
Tamil Nadu

101. Government Observation Home
Thajavur
Tamil Nadu

102. Government Observation Home
Vellore
Tamil Nadu

103. Government Observation Home
Villupuram
Tamil Nadu

104. Government Observation Home
Salem
Tamil Nadu

- | | |
|---|--|
| 105. Government Observation Home
Erode
Tamil Nadu | 117. Government Juvenile Home
Panchapalli
Tamil Nadu |
| 106. Government Observation Home
Dharmapuri
Tamil Nadu | 118. Government Juvenile Home
Royapuram
Tamil Nadu |
| 107. Government Observation Home
Trichy
Tamil Nadu | 119. Government Juvenile Home
Thajavur
Tamil Nadu |
| 108. Government Observation Home
Tirunelveli
Tamil Nadu | 120. Government After Care Organisation
Athur
Tamil Nadu |
| 109. Government Observation Home
Karaikudi
Tamil Nadu | 121. Government After Care Organisation
Madurai
Tamil Nadu |
| 110. Government Special/Juvenile Home
Chengalpattu
Tamil Nadu | 122. Government After Care Organisation
Vellore
Tamil Nadu |
| 111. Government Special Home for Girls
Chennai
Tamil Nadu | 123. Government Vigilance Home and Sri Sadana
Chennai
Tamil Nadu |
| 112. Government Juvenile Home for Girls
Chennai
Tamil Nadu | 124. Government Vigilance Home
Madurai
Tamil Nadu |
| 113. Government Juvenile Home
Tattaparai
Tamil Nadu | 125. Government Protective Home
Salem
Tamil Nadu |
| 114. Government Juvenile Home
Ranipet
Tamil Nadu | 126. Government Protective Home
Trichy
Tamil Nadu |
| 115. Government Juvenile Home
Cuddalore
Tamil Nadu | 127. Government Protective Home
Coimbatore
Tamil Nadu |
| 116. Government Juvenile Home
Mallipudur
Tamil Nadu | |

UTTAR PRADESH

128. State Rehabilitation Centre
Chutmulpur
Saharanpur
Uttar Pradesh
129. Protective Home
Prayas Narayan Road
Near Kalyani Bhawan
Lucknow
Uttar Pradesh
130. Protective Home
Kalindi Bihar
Agra
Uttar Pradesh
131. Protective Home for Girls
Near Kacheri, Ardali Bazar
Varanasi
Uttar Pradesh
132. Protective Home for Girls
Gorakhpur
Uttar Pradesh
133. Protective Home
Meerut
Uttar Pradesh
134. Shelter Home
Kuldabad
Allahabad
Uttar Pradesh
135. Shelter Home
Mathura
Uttar Pradesh
136. Shelter Home
Bareilly
Uttar Pradesh
137. Shelter Home
Ittawah
Uttar Pradesh

138. Shelter Home
Faizabad
Uttar Pradesh

139. Shelter Home
Muradabad
Uttar Pradesh

WEST BENGAL

140. Liluah Home
Sunderbari Mulchand Mohata Home
8 Stark Road, Howrah
West Bengal
141. Siliyam Home
Beharampurl, District Murshidabad
West Bengal
142. Sukanya
Sector V, Block AQ 15
Salt Lake City, Kolkata – 700 091
West Bengal
143. District Shelter Home
Burdwan
West Bengal
144. District Shelter Home
Nadia
West Bengal
145. District Shelter Home
Malda
West Bengal
146. Anand Ashram
Kadai, Beharampur
District: Murshidabad
West Bengal
147. After Care Home for Boys
Banjetia
Beharampur
District: Murshidabad.
West Bengal

148. Destitute Home for Boys
Kadai, Beharampur
District: Murshidabad.
West Bengal

ANDHRA PRADESH

149. Superintendent
Rescue Home
Salim Nagar Colony
Hyderabad
Andhra Pradesh

150. State Home
8-3-222
Vengala Rao Nagar P.O.
Yusuf Guda Road
(Near Sri Saradi Cine Studio)
Hyderabad
Andhra Pradesh

ASSAM

151. State Home for Women
Jalukbari
Guwahati
Assam

152. Home for Destitute Women
Jalukbari
Guwahati
Assam

153. Home for Destitute Women and Helpless
Persons
Bamunigaon
Assam

154. Vagrant Home Fatasil
Guwahati
Assam

155. State Home for Women
Nagaon
Assam

156. Home for Destitute and Orphan Children
Nagaon
Assam

157. C.D.Home
Silchar
Assam

158. Home for Destitute Women
Dighaltari
Assam

159. Home for Destitute Children
N. Lakhimpur
Assam

160. Home for Destitute and Orphan Children
Varlsi Anglon
Assam

161. Home for Destitute and Orphan Children
N.C.Hills
Halflong
Assam

162. Vagrant Home
Fatasil
Guwahati.
Assam

163. P.L. Home
Bamunigaon
Boko.
Assam

164. Home for Destitute women and Helpless
Widows
Dhubri.
Assam

165. Home for Destitute and Vagrant Children
Lakhimpur.
Assam

166. Home for Destitute and Orphan Children
Varsi Angloan
Assam

GUJARAT

167. Observation Home
Jai Bharat Society National Highway
Mehsana
Gujarat
168. Observation Home
4-Sardarnagar Society
Chhotadeopur
District: Vadadora
Gujarat
169. Observation Home
Rustamwadi
Ward No.9
Navsari
Gujarat
170. Observation Home
Nr. District Panchayat
Surendranagar
Gujarat
171. Observation Home
Nr. Pavdi Vasahat
Ahwa
District: Dang
Gujarat
172. Observation Home
Hathikhana
M.G.Road
Junagadh
Gujarat
173. Observation Home
Ranjit Sagar Road
Jamnagar
Gujarat
174. Observation Home
Lala Banglow
Nr. Nagarik Society
Bhuj
Kutch
Gujarat
175. Observation Home
Sardar Gadh Bunglow
Gondal Road, Rajkot
Gujarat
176. Observation Home
Pratap Pura
Nana Ankadia Road
Amreli
Gujarat
177. Observation Home
Subhasnagar
New Airdrome Road
Bhavnagar
Gujarat
178. Observation Home
C/O Nari Kendra
Dairy Road, Palanpur
District: Banaskanth
Gujarat
179. Observation Home
Mehtapura
Himmalanagar
District: Sabarkantha
Gujarat
180. Observation Home
Godhra Pathhar Talavadi
Near Law College
Godhrar
Gujarat
181. Observation Home
Khanpur
Nr. Cama Hotel
Ahmedabad
Gujarat
182. Observation Home
Gandhinagar
Plot No.272/1 Chh
Sector-13
Gandhinagar
Gujarat

- | | |
|---|---|
| 183. Observation Home for Boys
Aditya Wadi, Vuara
District: Surat
Gujarat | 192. Sultan Ahemad Yatimkhana
Ahmedabad
Gujarat |
| 184. Observation Home for Boys
Manjipura, Opp. District Court
Nadiad, District-Kheda
Gujarat | 193. Hindu Ananth Ashram
Nadiad
District – Kheda
Gujarat |
| 185. Observation Home for Boys
Kalitalavdi
Civil Lines
Nr. RTO
Bharuch
Gujarat | 194. Shreyas Bal Vikas Ghatak
Ahmedabad
Gujarat |
| 186. Observation Home for Boys
Jambusar
Kalimata Mandir Road
District – Bharuch
Gujarat | 195. Mahajan Ashram
Surat
Gujarat |
| 187. Observation Home for Boys
Nr. ST Depot
Rajpipla
Gujarat | 196. Parvatibai Leprosy Hospital
Surat
Gujarat |
| 188. Observation Home for Boys
Bhutadi Janpa
Vadadora
Gujarat | 197. Kutch Mahila Kalyan Kendra
Bhuj (Kutch)
Gujarat |
| 189. Observation Home for Boys
Ghod-dod Road, Athwalines
Surat
Gujarat | 198. Vikas Vidyalaya
Vadhvan
District – Surendranagar
Gujarat |
| 190. Mahapitram Rupram Ashram
Raipur
Ahmedabad
Gujarat | 199. Shree Revabai Pancholi Pragati Gruh
Halvad
District – Surendranagar
Gujarat |
| 191. Vikas Gruh
Paldi
Ahmedabad
Gujarat | 200. Shree Kanta Stri Vikas Gruh
Rajkot
Gujarat |
| | 201. Shree Kasturba Stri Vikas Gruh
Jamnagar
Gujarat |
| | 202. Shishu Mangal
Junagadh
Gujarat |

203. Vikas Gruh
Bhavnagar
Gujarat
204. Vikas Gruh
Amreli
Gujarat
205. State Home for Women
Behind GIDC Police Choki
Nr. Vallabhnagar
Odhav
Ahmedabad – 382 410
Gujarat
206. State Home for Women
Nizampura
Vadadora – 390 002.
Gujarat
207. State Home for Women
Athwalines
God-dod Road
Surat
Gujarat
208. State Home for Women
Nr. ST Colony
New Hostel
80 Foot Road
Surendranagar
Gujarat

KERALA

209. Superintendent
Govt. Special Home for Girls
Vellimadukunnu
Kozhikode
Kerala
210. Superintendent
Govt. Observation Home
Beach Road
Killam Dist.
Kerala
211. Superintendent
Govt. Observation Home
Mayithara, Cherthala
Alappuzha Dist.
Kerala
212. Superintendent
Govt. Observation Home
Thiruvanchiyoor-PO
Kottayam Dist.
Kerala
213. Superintendent
Govt. Observation Home
Kakkanad, Ernakulam Dist.
Kerala
214. Superintendent
Govt. Observation Home
Ramavarmapuram
Thrissur Dist.
Kerala
215. Superintendent
Govt. Observation Home
Muttikulangara
Puthupariyaram Palakkad Dist.
Kerala
216. Superintendent
Govt. Observation Home
Muttipalam-PO
Manjeri
Malappuram Dist.
Kerala
217. Superintendent
Govt. Observation Home for Girls
Vellimadukunnu
Kozhikode Dist.
Kerala
218. Superintendent
Govt. Observation Home
Near Court Complex
Thalassery, Kannur Dist.
Kerala

PUNJAB

219. State Protective Home
Basti Gujja
Jalandhar
Punjab

RAJASTHAN

220. Rajkiya Mahila Sadan
Samaj Kalyan Vibhag
Ghat ki Guni
Agra Road
Jaipur
Rajasthan

SIKKIM

221. Kaluk Destitute Home
Kaluk
Sikkim

222. Atish Dipankar Destitute Home
Chakung
Sikkim

223. Balika Niketan
Gangtok
Sikkim

224. Wangdi Faith Mission Home
Mangan
Sikkim

225. Denzong Lhadhey Yanki
Chokchen, Pelling
Sikkim

226. Kingstone Destitute Home
Rhenock
Sikkim

227. Juvenile Home
Lower Sichey, Gangtok
Sikkim

ANNEXURE 5

GUIDELINES ON HIV TESTING¹

HIV testing carried out on a voluntary basis with appropriate pre-test and post-test counselling is considered to be a better strategy and is in line with the WHO guidelines on HIV testing. The basis and objectives of testing are to :

- monitor the trend of HIV infection in a population or subgroup for facilitation of intervention using unlinked anonymous testing.
- test blood or organs or tissue for ensuring safety of the recipients.
- identify an individual with HIV infection for diagnosing or voluntary testing purposes.

There is an active debate in the country on the issue as to whether there should be mandatory testing of people suspected of carrying HIV infection. Considerable thought has been given to this issue. Testing for HIV is more than a mere biological test for it involves ethical, human and legal dimensions. The government feels that there is no public health rationale for mandatory testing of a person for HIV/AIDS. On the other hand, such an approach could be counter productive as it may scare a large number of suspected cases from getting detected and counselled to take appropriate measure to improve his quality of life and prevent spread of infection to other persons in the community.

HIV testing carried out on a voluntary basis with appropriate pre-test and post-test counselling is considered to be a better strategy and is in line with the national policy on HIV testing and also the WHO guidelines.

General Principles of HIV Testing

It should be a part of the overall comprehensive preventive and promotive programme.

Testing by itself does not result in behavioural changes that restrict transmission of HIV to others and therefore, testing should be a part of the total control programme which is conducive for behavioural change of the individual by providing social support, means and skills to reduce or eliminate risk behaviour.

Testing without 'explicit' consent of the patients (mandatory testing) has proved to be counter productive in the long run in the control of HIV epidemic. Social support and intervention must be directed to anybody vulnerable to risk behaviour irrespective of whether an individual or group participate in testing procedure or not. Otherwise such testing can drive the target people underground and make it more difficult for launching intervention.

¹ www.nacoonline.org, National Aids Control Organization, Ministry of Health and Family Welfare, Government of India.

Any health programme which does not maintain the dignity of a patient or deprives him of his basic right to employment or access to medical care or social support is a harmful on a long term basis.

The question which must be asked before a testing procedure is undertaken is how this result will be used for the benefit of individual or of the community; if there is a policy and means to support the group under testing following the test result; and does the same principle of intervention apply even if people refuse testing?

Positive Answer To All The Above Questions Are Prerequisite For Testing To Be An Effective Tool

The Testing Should Be Technically Sound And Appropriate

No test in biological system is foolproof even under the best laboratory conditions. For example if we wish to detect an asymptomatic HIV positive person by using ELISA (2nd ELISA done on sera reactive to first ELISA) in a population where the prevalence of infection is 1%, the chance that a person detected positive is actually positive (positive predictive value) is only 50% after one ELISA test and 99% truly after two tests. This means one result will be falsely positive in every 100 tests, even by two tests if we use a western blot as supplemental test instead of 2nd ELISA, the chance of detecting truly positive increased to 99.998% which means there will be one false positive out of 10,000 declared positive.

If we appreciate the limitation of any test which could measure the HIV status the cheaper test could be considered (e.g. three ERS instead of ELISA and Western Blot) to achieve yield. Presently three types of tests are available on similar principle to ELISA which have been broadly categorized, as one which can be completed within half an hour.

- Dip stick rapid test-similar to that done for examination of sugar in urine for diabetic.
- A simple test is one, which does not involve any sophisticated instrument and even could be carried out in conditions without electricity.

The Test Procedure Must Be Appropriate To The Field Situation

Places where electricity is not available for major part of the working hours, use of techniques dependent on a sophisticated procedures will be inappropriate. Rapid or simple tests are recommended where infrastructure is minimal or where quick screening of sample is needed.

The Testing Procedure Must Be Cost Effective

It is generally seen that costly mass screening programme often spread a false sense of security without any public health impact and often delays the proper intervention measures. For example, mass screening for HIV patient seeking hospital admission can only delay implementation of measures for hospital infection control procedures that could have prevented more infective disease like hepatitis 'B' & 'C'.

Laboratory Procedure Must Be Monitored For Ensuring Quality

NACO Policy on HIV Testing

Transfusion Safety

A single ERS test is sufficient to ensure transfusion safety with the provision of simple tests in places without electricity. The objective of the transfusion safety does not require identification of donor of the infected unit of blood and in low prevalence settings of HIV single ERS would detect at least 50% SAMPLES FALSELY POSITIVE. However the same test gives more than 99.9% surety that blood found negative is actually free of infection. Therefore, while we can label blood as safe it is risky to label any donor HIV positive on such test result and employees of blood bank must be well aware of interpretation of the test. Often employees of blood bank are confronted with situation where a donor might ask why his blood has been rejected. In such situation the donor could be referred to the voluntary HIV testing centre with pre and post test counselling and supplemental test facilities for HIV (3ERS).

Surveillance

The objective of surveillance is best achieved by annual cross sectional survey of same risk group

in the same place over few years by unlinked anonymous testing, following test procedures by 2 ERS. The main purpose of the survey is to monitor the trend of infection of HIV. Unlinked anonymous tests are only possible if blood is drawn for some other purpose and a portion of that is tested for HIV without identification data.

Identification of HIV Positive Individuals

This testing procedure must offer pre and post test counselling of the client and involve explicit consent. Voluntary HIV testing and counselling when offered to any asymptomatic person must have any of the following purposes:

- To permit early institution of an specific drug therapy if found to be effective (however at present no such therapy has proved to be beneficial including antiretroviral drugs or chemo-prophylaxis).
- To help infected or non-infected persons be more aware of their health status and prognosis to take decisions of child bearing, breast-feeding and reduce or eliminate risk behaviour.

Increasing number of AIDS cases in the country calls for availability of diagnostic facilities for clinically suspected cases of AIDS. However, such testing procedure must be of highest specificity, accuracy and coupled with trained man power for counselling. The result of the test must be kept confidential and even health care workers who are not directly involved in care of the patient should

not be told about the result. Surveillance of AIDS cases in the country does not require reporting of the identification data of the patient.

In the case of diagnosis of clinically suspected cases and for voluntary testing, the testing is done with 3 ERS using HIV kits with different antigens.

Research

Testing procedure for research are designed according to specific objectives and could be decided by the researcher. However, all the studies undertaken must follow ethical standards which primarily involves full explicit consent of the patient and pre decided mutually agreed terms for any eventuality of the patient due to research activities.

Govt. of India has earlier issued a comprehensive HIV testing policy and the following issues are reiterated here:-

- No individual should be made to undergo a mandatory testing for HIV.
- No mandatory HIV testing should be imposed as a precondition for employment or for providing health care facilities during employment.
- Adequate voluntary testing facilities with pre tests and post test counselling should be made available throughout the country in a phased manner. There should be at least one HIV testing centre in each district in the country for voluntary testing in the Governmental sector.

ANNEXURE 6

LIST OF NGOS WORKING IN THE FIELD OF TRAFFICKING OF WOMEN AND CHILDREN

ANDHRA PRADESH

1. Navavikas Kavali
102, Evaratna Apartments
Mehdipatnama, Hyderabad-500 002
Andhra Pradesh
2. Samskar Varni
Nizamabad District
Andhra Pradesh
3. Urban and Rural Development Society-India
(URDES-INDIA)
1-9-1113/30/1/C, St.No.6,
Dayanandnagar
Hyderabad
Andhra Pradesh
4. Vasavya Mahila Mandali
Benz Circle
Vijayawada-520 010
Andhra Pradesh
5. SIDUR
144/2RT, Vijayanagar Colony,
Hyderabad-500 057
Andhra Pradesh
6. Prajwala
Sri Sai Steel, 23-2-553,
Hari Bowli X Road,

Shah Ali Banda,
Hyderabad-550 065
Andhra Pradesh

ARUNACHAL PRADESH

7. Arunachal Pradesh Women's Welfare Society
EPH Building,
Bank Tinali,
Itanagar-791 111
Arunachal Pradesh
8. Gurapto Association Commissioner Building,
Pare-Ame District,
Lower Subansiri
Arunachal Pradesh
9. OJU Welfare Association
Near Police Station,
Naharlagun-791 110
Arunachal Pradesh

ASSAM

10. Global Organization for Life Development
Pub Sarania,
1st Bye lane (west),
Guwahati-781 003
Assam

11. Guwahati Childline Hem Barua Sishu Sadan,
Opp. Nehru stadium, B. Barua Road,
Ulubari,
Guwahati-7
Assam
12. Snehalaya
Don Bosco,
Guwahati-781 001
Assam
13. North East Network J.N. Borooah Lane,
Jorpukhuri,
Guwahati-781 001
Assam
14. Kasturba Gandhi National Memorial Trust
Sarania Ashram,
Guwahati – 7
Assam
15. Assam Sishu Kalyan Sadan
Jalukabari,
Guwahati – 781 014
Assam
16. The Indian Council for Child Welfare (Assam
State Branch)
G.N.B. Road,
Ambari,
Guwahati – 1
Assam

BIHAR

17. Adithi
2/30, State Bank Colony II,
Bailey Road,
Patna-800 014
Bihar
18. Bal Sakha
Janta Rest House,
Jamal Road,
Patna-800 001
Bihar

19. Bhoomika Vihar
Barmasia Mirchaibari,
Katihar-854 105
Bihar
 20. Gramin Evam Nagar Vikas Parishad
15, IAS Colony,
Kidwaipuri,
Patna-800 001
Bihar
 21. Jan Jagran Sansthan
Mohalla: Kagzi,
Biharsharif, Nalanda,
Bihar
 22. Prayas Bharti Trust
D-34, S.K.Puri,
Sahdeo Mahto Marg,
Patna-24
Bihar
 23. Mahila Development Center
Rambagh Chowk,
Muzaffarpur-842 001
Bihar
- ## CHHATISGARH
24. Berojgar Mahila Seva Samiti
Quarter No. 9/11, St. No.1,
Zone 3, Khursipur Bhilai,
District Durg
Chhatisgarh
 25. Center for Labor Education and Social
Research
C-14, Indira Vihar
Seepat Road
Bilaspur-495 006
Chhatisgarh
 26. Chhatisgarh Adivasi Mahila Uthan Samiti
Behind City Kotwali
Telipara Road
Chhatisgarh

27. Maharashtra Mandal Maharashtra Bhawan,
Opp. Raj Kumar College
Chaube Colony, Raipur
Chhatisgarh

28. Mahila Manch Raipur
B2/6, Lokmanya Samiti
Rohinipuram, Raipur
Chhatisgarh

35. Positive people
Maithili Apts., St. Inez,
Panaji
Goa

36. Sangath Center
841/1, Behind Electricity Department,
Alto-Porvariun, Bardez-403 521
Goa

DELHI

29. Joint Women's Programme
CISRS House, Jangpura B,
Mathura Road,
New Delhi-110 014

30. Prayas Institute of Juvenile Justice
59, Tughlakabad Institutional Area,
New Delhi-110 062

GUJARAT

37. Ahmedabad Women's Action Group
506, Bhudarpura, Ambawadi,
Ahmedabad
Gujarat

38. Akhand Jyot Foundation
Fatehpura Gam, B/h post office,
Paldi, Ahmedabad-7
Gujarat

GOA

31. Bailancho Manch
Post Box 78, Mapusa,
Goa-403 507

32. Bailancho Saad
SF-4, Goa Housing Board Residential &
Commercial Complex, Journalist Colony,
Poruorim,
Bardez
Goa

33. Childline Goa
C/o Don Bosco High School,
Panjim-403 001
Goa

34. Children's Right in Goa
F-5, Meera Building,
Near Gomantau Bhavan,
St. Inez,
Panjim-403 001
Goa

39. Jyoti Sangh
Tilak Marg,
Pattharkuwa,
Ahmedabad-380 001
Gujarat

40. Parivartan
Plot-127, Sector 8,
Gandhinagar-382 008
Gujarat

HARYANA

41. Association for Social Health in India
"Ashiana" Bal Grih, Sector 16,
Near Sanatan Dharm Temple,
Panchkula
Haryana

42. Acil-Navasarjan Rural Development Foundation
Plot No.303, Ground Floor,
Sector 15, Part I, Gurgaon
Haryana

43. Bal Sadan Association
Bal Sadan, I-9,
Sector 12A,
Near Venkateshwar Temple,
Panchkula
Haryana

44. PRIA
Plot No. 31,
Flat No.47,
Sector 20,
Panchkula
Haryana

HIMACHAL PRADESH

45. Himachal Pradesh Council for Child Welfare
Mini Secretariat,
Shimla
Himachal Pradesh

46. Himachal Pradesh Voluntary Health Association
B-37, Phase I,
Sector II,
New Shimla-171 009
Himachal Pradesh

47. H.P.Mahila Kalyan Mandal
Mahila Bhawan,
Sarvari Bazar,
Kullu-175101
Himachal Pradesh

48. Social Action for Rural Development of Hilly
Area
(SARDHA)
SARDHA NGO-Vill-Koffota
PO-Ugana District,
Sirmour-173029
Himachal Pradesh

49. Society for Advancement of Village Economy
Vill-Dhaman Post,
Larji District,
Kullu-175 122
Himachal Pradesh

50. Society for Social Uplift Through Rural Action
(SUTRA)
Village and Post Jagjit Nagar,
Solan District-173 225
Himachal Pradesh

JAMMU AND KASHMIR

51. Apna Ghar
4-B/D, Gandhi Nagar,
Jammu
Jammu and Kashmir

52. Kasturba Gandhi National Memorial Trust
13-SMG Flat,
Palace Road,
Kachi Chowni,
Jammu-180 001
Jammu and Kashmir

53. SAWERA
208/5, Housing Colony,
Chhanni Himmat,
Jammu-180 015
Jammu and Kashmir

54. Shri Ved Mandir Balniketan Ambphala,
Jammu
Jammu and Kashmir

55. Society for the Promotion of Youth & Masses
SPYM Health Clinic,
Plot No. 30/5,
Yard No. 6,
Transport Nagar, Narwal,
Jammu
Jammu and Kashmir

JHARKHAND

56. Nav Bharat Jagriti Kendra
At-Amrit Nagar PO,
Korrah District,
Hazaribagh
Jharkhand

57. Nav Bharat Jagriti Kendra
At P.O., Murhu District,
Ranchi
Jharkhand

58. Bhartiya Adimjati Sevak Sangh
Short Stay Home,
Durga Ashram,
VIP Chowk-B,
Deoghar
Jharkhand

59. Bhartiya Kisan Sangh
Shri Ram Nagar,
P.O.Hekal,
Itki Road,
Ranchi-834 005
Jharkhand

60. Chetna Vikas Mahadeo Bhawan,
Prakashanand Jha Path,
Chhatishi, T. Bilasi,
Deoghar-814 117
Jharkhand

61. Community Development Center
Salona Tand,
Circular Road,
B. Deoghar-814 112
Jharkhand

62. Jan Jagran Kendra
Near PTC Chowk,
Kanhari Hill Road,
Hazaribagh-825 301
Jharkhand

63. Lok Jagriti Kendra
At PO, Madhupur District,
Deoghar-815 353
Jharkhand

64. Lok Prerna
Arti Bhawan, Court Road,
B. Deoghar-814 112
Jharkhand

KARNATAKA

65. EQUATIONS (Equitable Tourism Options)
23/ 25, 8th Cross,
Vignan Nagar,
New Thippasandra Post,
Bangalore – 560 075
Karantaka

66. International Foundation for Development
II Main,
I Cross,
Narayanapur,
Dharwad-580 008
Karantaka

67. Jagruthi
C – 3, Jyothi Complex,
2nd Floor,
134/1 Infantry Road,
Bangalore – 560001
Karantaka

68. KIDS (Karnataka Integrated Development
Services)
Kalmath Building,
Tikare Road,
Dharwad – 580 001
Karantaka

69. ODANADI
SRS Colony,
Hootagalli,
Belawadi Post,
Mysore
Karantaka

70. SLIGS
Sarawatapur,
Dharwad – 580 002
Karantaka

71. Swabhava
54, Nagappa Road,
Shantinagar,
Bangalore – 560 027.
Karantaka

72. Vimochana Devadasi Punarvasti Sangha
Devadasi Punarvasati Sangha,
Athani,
Belgaum District
Karnataka

KERALA

73. Don Bosco Veedu Society
Don Bosco Nivas,
Thampanoor, Thycaud P.O.,
Trivandrum-695 014
Kerala
74. Foundation for Integrated Research
in Mental Health (FIRM) PTPN (E)
30, PTP Nagar
P.O., Trivandrum-695038
Kerala
75. Sakhi Resource Centre for Women
TC 27/1872, Convent Road,
Vanchiyoar,
Trivandrum-695 035
Kerala
76. Stree Vedi (Network of Women in Kerala)
TC-27/1872, Convent Road,
Trivandrum-695 035
Kerala
77. Loyola Extension Services
Loyola College of Social Sciences,
Sreekariyam,
Trivandrum-695 017
Kerala

MADHYA PRADESH

78. Dr.B.R.Ambedkar Social Welfare Education
and Research Society
158, Zone-II,
M.P.Nagar,
Bhopal-462 011
Madhya Pradesh

79. Abhudaya Ashram
Water Works Colony,
Morena,
Madhya Pradesh
80. Digdarshika
Red Cross Bhawan,
Opp. J.P.Hospital,
Bhopal
Madhya Pradesh
81. Sahyog
179/4, Professors Colony,
Bhopal
Madhya Pradesh
82. Satya Sodhan Ashram
Vill. Pathariya,
P.O. Gambhiriya,
Sagar District,
Madhya Pradesh
83. Shuruaat
B-155, Shahpura,
Bhopal
Madhya Pradesh

MAHARASHTRA

84. Akhil Budhwar Peth
1027, Budhwar Peth,
Yadav Wada, Pune-2
Maharashtra
85. Lokvikas Samajik Sanstha
56, 67, Old Min. School,
Phule Nagar,
Panchavati, Nasik-3
Maharashtra
86. Mahila Hakka Saurakshan Samiti
Old Municipal Corporation Building,
New Pandit Colony of
Gangapur Road,
Nasik-422 002
Maharashtra

87. Mahila Seva Mandal
25/20, Karve Road,
Near Garware College,
Pune-411 004
Maharashtra

88. PRERANA
Municipal School, Ground Floor,
7th Lane, Shuklaji Street,
Kamathipura,
Mumbai-400 008
Maharashtra

89. Vanchit Vikas
405/9, Narayan Peth,
Pune-411 030
Maharashtra

MANIPUR

90. Indian Council for Child Welfare
Moirangkhom,
Imphal-795001
Manipur

91. Integrated Women &
Children Development Centre
Thangmeiband Yumnam Leikai,
Imphal-795004
Manipur

92. Meetei Leimarol Sinnai Sang
Women's Health Clinic Building,
Khoyathony,
Imphal-795001
Manipur

MEGHALAYA

93. Childline, Bosco Reach-out
On Bosco Tech School,
Laitumkhrach,
Shillong-3
Meghalaya

94. Childline, St. Mary's College, Shillong
St. Mary's College,
Laitumkhrach,
Shillong-793 003
Meghalaya

95. Impulse NGO Network
Lower Lachumiere,
Near Horse shoe Building,
Shillong-793 001
Meghalaya

96. North East Network Beam's End Cottage,
Springside,
Jingkieng,
Nongthymmai,
Shillong-793014
Meghalaya

MIZORAM

97. Community Health Action Network (CHAN)
The Salvation Army,
P.O.Box-5,
Kawlkhum Building,
Tuikual "A",
Aizawl-796 001
Mizoram

CASE CAPSULES

Cases under Section 3 of the ITPA or SITA *In re Ratnamala AIR 1962 Mad 31*

Purpose of the ITPA/SITA is to inhibit or abolish commercialised vice, namely, traffic in women and girls for purposes of prostitution as an organised means of living. The idea is not to render prostitution per se a criminal offence, or to punish a woman merely because she prostitutes herself.

Where neither Section 7 or 8 of the Act had been invoked and the record of the case merely established that a young girl of 15 years was either a victim of circumstances or of her own predisposition, to the extent of wilfully prostituting herself upon the occasion for hire with decoy witness, it was held that there was nothing here to justify her conviction under Sec 3(1) of the Act.

Kamalabai Jethamal v The State of Maharashtra (1963) SCJ 32 or [1962] supp (2) SCR 632

The Court said that though the search and investigation was not conducted according to the provisions of Cr P.C and not in good spirit but still the fact that money was found with the appellant and it was used for prostitution, therefore the accused should be convicted under Section 3(2) and 4(1) of SITA.

Cases under Section 7 of the ITPA or SITA *In re Ratnamala AIR 1962 Mad 31*

Sections 7 and 8 are the exception to the general object of SITA which is to prevent trafficking for prostitution, but Section 7 undoubtedly inhibits the woman (prostitute) herself from the practice of her

profession in contravention of its terms, and to that extent renders prostitution a penal offence.

Bai Shanta v State of Gujrat AIR 1967 Guj 211

It is not necessary that the customer must have been found having sexual intercourse with the woman and it is enough if the circumstances suggest an inference about her having offered her body for immoral purposes on receipt of any money so as to be liable under Section 7(1) of the Act. In order, however to establish liability under Section 7(1), offence must be shown to have been committed in premises within the prohibited area.

Though for holding that a woman carries on prostitution, plural and indiscriminate sexuality on her part has got to be established, that doesn't necessary require that the evidence of more than one customer of the prostitute must be adduced and it is enough if the facts proved entitle the court to raise an inference to hold that she carries on prostitution as contemplated under Section 7(1) of the Act.

T. Jacob v State of Kerala AIR 1971 Ker 166

Prostitution in itself is no offence except in a manner under Sections 7 and 8 of SITA. The offence, which requires to be punished under Section 7(1), is indiscriminate sexuality and has to be proved by the prosecution. However, this plural and indiscriminate sexuality will be a matter of inference from the facts, and it is not necessary that the evidence of more than one customer of the prostitute should be adduced.

State of Kerala v Pathumma 1969 Cr LJ 697

To convict the accused under Sections 7 and 8 of the Act, just finding the accused committing

sexual intercourse in public place is not sufficient to convict her. It is also necessary to establish that there has been indiscriminate sexual intercourse by the accused and that also on hire.

Cases under Section 8 of the ITPA or SITA ***In re Ratnamala AIR 1962 Mad 31***

Section 8 deals with seduction or solicitation for prostitution by words, gestures or wilful exposure of a person in a public place. The intention is clear that it is the practice of prostitution in a particular manner, which offends social decencies that is right to be penalised.

State v Premchand Kubchand AIR 1964 Bom 155

Though clause (a) of Section 8 is applicable only to a prostitute, clause (b) provides for a penalty for one who solicits a person for prostitution and is therefore held to cover not only a prostitute but also a person who solicits others for prostitution.

In re Kamala AIR 1966 Mad 312

In order to show solicitation for the purpose of prostitution where it takes the form of an oral pleading or request addressed to a person, either that person must give testimony on that point, or there should be the specific and unambiguous evidence of a person who overheard the words used. Also merely to indulge in some flirtation with a stranger, or to behave in such a way as to attract the attention of persons of the opposite sex, may, be regrettable or immodest, but per se, it doesn't amount to any offence under Section 8(b) of the Act.

State of Kerala v Pathumma 1969 Cr LJ 697

To convict the accused under Sections 7 and 8 of the Act, just finding the accused committing sexual intercourse in public place is not sufficient to convict her. It is also necessary to establish that there has been indiscriminate sexual intercourse by the accused and that also on hire.

In re Manicka Achari and Another AIR 1970 Mad 491

Section 8 starts with the heading 'seducing' or 'soliciting' for the purposes of prostitution. In Sections 8(a) and (b) the significant words for the

purpose of prostitution would predicate the state of affairs or a state of things anterior in point of time to the state of things embodied in Section 4. Under Section 8, to prove seducing for purpose of prostitution corroborated evidence is required. In absence of corroboration regarding solicitation, it is not safe to convict merely on testimony of person alleged to have been seduced.

T. Jacob v State of Kerala AIR 1971 Ker 166

Prostitution in itself is no offence except in a manner under Sections 7 and 8 of SITA. The offence, which requires to be punished under Section 7(1), is indiscriminate sexuality and has to be proved by the prosecution. However, this plural and indiscriminate sexuality will be a matter of inference from the facts, and it is not necessary that the evidence of more than one customer of the prostitute should be adduced.

In re Babi 1971 Cr LJ 1488

Under Section 8, the woman who makes a wilful exposure of her person either by words or by gestures, must have been situated either in any place or within sight of and in such a manner as to be seen or heard from any public place. If these ingredients are absent in the body of the accusation for which the petitioner has pleaded guilty, in the view of such grave illegality, in the interest of justice, are entitled to the benefit of doubt and acquittal.

Laxmi Maruthi Yelkeri v State 1980 Cr LJ 28

Under Section 8, the person who has been claimed to have been solicited has to be examined and also in the present case, the words uttered by the accused didn't amount to soliciting.

Cases under Sections 15, 17, 18 of the ITPA or SITA (Investigation)

Soni Bachu Laxman v State of Gujrat AIR 1960 Guj 37

The notification issued by the government appointing special police officer for the purpose of SITA for every sub-division of a district is a perfectly valid notification and a Deputy or Assistant Superintendent of Police in charge of the

sub-division of a district would be a police officer for the purpose of Section 15 of the act in regard to the area of the sub-division of the district of which he is in charge.

It is not necessary for the Assistant Superintendent of Police to depose that he had recorded the grounds for his belief when acting under Section 15 of the Act. When an official act is done, under Section 114 of the Evidence Act, it is presumed to have been properly done. Also under Section 15 of the Act it is not necessary that the Panchas should be residents of the same street, if they belong to different parts of the same town, they can be considered as belonging to same locality.

Kamalabai Jethamal v The State of Maharashtra (1963) SCJ 32 or [1962] supp (2) SCR 632

It is wholly wrong for a Police Officer or any other person to be sent to aid an act of prostitution in order that an offence under the Act may be detected. What is more reprehensible and a matter of greater concern is the sending with him a young student for being witness in the case. To use a student in this manner should not be allowed in a country like ours.

Regarding eviction of the premises by the convict, having ordered the conviction the court had the right to evict her from the premises where she was running a brothel, according to Section 18 of SITA

Bai Radha v State of Gujrat 1970 CrLJ 1279 or [1969]1 SCC 43

There are safeguards that have to be taken care of when the investigation team conducts searches as it deals with delicate issues of invasion of privacy of the citizens as well as respect for women. But the entire proceedings can't be held to be illegal owing to non-observance of, or non-compliance with the directions contained under Section 15 of SITA. The court, however, has to be very careful and circumspect in weighing the evidence where there has been such a failure, on the part of the investigating agency but unless and until some

prejudice is shown to have been caused to the accused persons, the conviction and sentence cannot be set aside.

Laxmi Maruthi Yelkeri v State 1980 Cr LJ 28

Under Section 15 of SITA, it is given that when a special officer conducts a search he should be accompanied by at least a respectable woman from the locality in which the place to be searched is situated to attend and witness the search and a failure to comply with this essential requirement vitiates the entire proceedings.

Jagbir Walia v Delhi Administration (1998) 1 SCJ 62 or [1998] 8 SCC 537

Just the fact that an investigation was done by a Sub-Inspector of Police and not by Assistant Commissioner of Police does not make an investigation illegal. Apart from this, in the present case, the Sub-Inspector of Police after having recorded the statement of complainant called Assistant Commissioner of Police at the place of the incident, who recorded the statement of other witnesses and also verified the statement of the complainant. Moreover, it was on the basis of the material collected by him that an FIR was recorded.

Section 17- Procedural Aspects, Admission in State Homes

Smt. Rama Devi v State 1963 All L.J. 894

Action under Section 17 is meant to be preventive and not punitive with the result that even if it be found that though the woman is carrying on promiscuous intercourse and she had given it up at the time the case was before the magistrate he would have no jurisdiction to try the case and pass an order detaining the petitioner in a preventive home.

In this case, the accused was married and was carrying on prostitution not in a brothel and not for the benefit of another man or in collusion with another prostitute; no action against her can be taken. Nothing in SITA punishes or makes liable a woman who carries on prostitution for her own gain, unaided by others.

Dr. Upendra Baxi and others v State of UP and others [1986] 4 SCC 106

A public interest litigation to enforce the human rights of protective home inmates. The Court gave direction as to better facilities in protective homes. Also, the Court directed that whenever the period for which a girl is sent to a Protective Home expires, the Superintendent of the Home will immediately report the matter to the District Judge who will decide whether such girl should be released or not. If the District Judge finds that such girl can't or should not be detained any longer, he will make an order for her release from the Home, after making suitable provision for her being taken to the home of her parents or any other near relations with a view that she is not taken to prostitution.

Gaurav Jain v UOI [1997] 8 SCC 114 or (1997) 2 SCJ 334-

A writ petition was filed pleading for separate schools and hostels for children of prostitutes. The Court ordered that a Committee consisting of the Secretary-in-charge of Department of Women and Child Development as chairperson would make an in-depth study into these problems and evolve such suitable schemes as are appropriate and consistent with the directions given by the Court.

Purna v State of Maharashtra 2003 (2) Mh.L.J. 105

Directions issued by the High Court to protect children and minor girls rescues them from the flesh trade:

- 1) No Magistrate can exercise jurisdiction over any person under 18 years of age whether that person is a juvenile in conflict with law or a child in need of care and protection, as defined by Section 2(l) and (d) of the Juvenile Justice (Care and Protection of Children) Act, 2000. At the first possible instance, the Magistrate must take steps to ascertain the age of a person who seems to be under 18 years of age. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such person is a juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.
- 2) A Magistrate before whom persons rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place are produced, should under Section 17(2) of the said Act, have their ages ascertained the very first time they are produced before him. When such a person is found to be under 18 years of age, the Magistrate must transfer the case to the Juvenile Justice Board if such a person is juvenile in conflict with law, or to the Child Welfare Committee if such a person is a child in need of care and protection.
- 3) Any juvenile rescued from a brothel under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place should only be released after an inquiry has been completed by the Probation Officer.
- 4) The said juvenile should be released only to the care and custody of a parent/guardian after such parent/guardian has been found fit by the Child Welfare Committee to have the care and custody of the rescued juvenile.
- 5) If the parent/guardian is found unfit to have the care and custody of the rescued juvenile, the procedure laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be followed for the rehabilitation of the rescued child.
- 6) No advocate can appear before the Child Welfare Committee on behalf of a juvenile produced before the Child Welfare Committee after being rescued under the Immoral Traffic (Prevention) Act, 1956 or found soliciting in a public place. Only the parents/guardian of such juvenile should be permitted to make representations before the Child Welfare Committee through themselves or through an advocate appointed for such purpose.
- 7) An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under the Immoral Traffic (Prevention) Act, 1956.

Public Interest Litigation

Bholanath Tripathi v State of UP [1990] (Supp) SCC 151

Public Interest Litigation filed for the release of a woman kept in captivity in a brothel and used for

prostitution. Court gave the order so as to nominate a learned counsel as a commissioner who will check the authenticity of the complaint and will be provided assistance from all relevant authorities. If the commissioner is prima facie satisfied with the complaint, he will have the woman removed to a safe place and then produce her in the court on a prescribed date.

Vishal Jeet v Union of India [1990] 3 SCC 318

Public Interest Litigation is filed against forced prostitution of girl Devadasis and Jogins and a request for their rehabilitation. The Supreme Court gave certain direction for the rehabilitation and welfare of Devadasis, etc. They are:

- 1) All State governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable difference.
- 2) The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the secretary of the Social Welfare Department or Board, the secretary of the Law Department, sociologists, criminologists, members of women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well as the members of various voluntary social organisations and associations, etc., the main objects of the Advisory Committee being to make suggestions of:
 - a) The measures to be taken in eradicating the child prostitution, and
 - b) The social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.
- 3) All the State Governments and the Governments of the Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.
- 4) The Union Government should set up a committee of its own in the line, we have suggested under direction no. 2, the main object of which is to evolve welfare programmes to be implemented on the national level for the cure, protection, rehabilitation, etc., of the young fallen victims namely the children and girls to make suggestions of amendments to the existing laws or for enactment of any law, if so warranted for the prevention of sexual exploitation of children.
- 5) The Central Government and the Governments of States and Union Territories should devise the proper implementation of the suggestions that would be made by the respective committees.
- 6) The Advisory Committee can also go deep into the Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard.
- 7) The copies of the affidavits and the list containing the names of nine girls are directed to be forwarded to the Commissioner of Police, Delhi for necessary action.

ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
Cr.P.C	Criminal Procedure Code
CRC	Convention on the Rights of the Child
CWC	Child Welfare Committee
DWCD	Department of Women and Child Development
FIR	First Information Report
HIV	Human Immunodeficiency Syndrome
IPC	Indian Penal Code
ITPA	Immoral Traffic (Prevention) Act, 1956
JJA	Juvenile Justice (Care and Protection of Children) Act, 2000
NACO	National AIDS Control Organization
NGO	Non Government Organisations
NHRC	National Human Rights Commission
PIL	Public Interest Litigation
SAARC	South Asian Association for Regional Cooperation
SITA	Suppression of Immoral Traffic in Women and Girls Act, 1956
STD	Sexually Transmitted Diseases
UN	United Nations
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women



सत्यमेव जयते

Government of India
Ministry of Women and Child Development
A Wing, Shastri Bhawan, New Delhi 110 001, India

Year 2006