

INTRODUCTION

The handbook on combating Human Trafficking recommends specific measures to be taken by all law enforcement officers and wherever applicable in collaboration with non-governmental organizations. Some of the measures suggested are required to be followed under the law and some of the measures are practical suggestions based on actual success stories that will help the investigating officer to bring a successful closure to a case of trafficking of persons. Trafficking is, in a nutshell; the buying and selling of persons based upon a strategy of force or deceit for any commercial purpose.

Trafficking of persons occurs generally for the following reasons¹

- Commercial sexual exploitation or abuse of persons
- Forced marriages
- Camel jockeys
- Domestic servitude
- Paedophilia
- Call girl racket
- Child or forced/bonded labour²
- Organ transplantation³

DEFINITION OF TRAFFICKING

1. **Trafficking in persons:** 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 includes, 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.⁴
2. **“Juvenile” or “Child”** under the Juvenile Justice (care and protection) Act, 2006 means a person who has not completed eighteen years of age.⁵
3. **“Child”** under the Immoral Traffic (Prevention) Act (ITPA), 1956 means a person who has not completed sixteen years of age.

1 This is not an inclusive definition and may include other forms hitherto not known.

2 Section 2(g) of the Bonded Labour Abolition Act of 1976 defines “bonded labour system”

3 Note: Though the major thrust of this handbook is on combating trafficking in women and children for commercial Sexual Exploitation, it also endeavors to address the other forms of trafficking.

4 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

5 Juvenile Justice (Care and Protection of Children) Act, 2006

4. **“Minor”** under the ITPA, 1956 means a person who has completed the age of sixteen years but has not completed the age of eighteen years.
5. **“Major”** under the ITPA, 1956 means a person who has completed the age of eighteen years.
6. **A Child in Need of care and protection⁶ means** a child:
 - who is found without any home or settled place or abode and without any ostensible means of subsistence;
 - who is found begging or who is either a street child or a working child;
 - who resides with a person (whether the child’s guardian or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
 - who is mentally or physically challenged or ill children or children suffering; from terminal disease or incurable diseases having no one to support or look after;
 - who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child;
 - who does not have a parent and no one willing to take care of him/her or whose parents have abandoned or surrendered him/her;
 - who is a missing and/or run-away child and whose parents cannot be found after reasonable inquiry;
 - who is being or is likely to be grossly abused, tortured, or exploited for the purpose of sexual abuse or illegal acts;
 - who is found vulnerable and likely to be inducted into drug abuse or trafficking,
 - who is being or is likely to be abused for unconscionable gains or;
 - who is the victim of any armed conflict, civil commotion or natural calamity.
7. **Brothel:** The term “Brothel includes any house, room, conveyance, or place or any portion of any house, room, conveyance, or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes”.⁷
8. **Prostitution** means “the sexual exploitation or abuse of persons for commercial purposes and the expression, ‘prostitute’ shall be construed accordingly”.⁸ Prostitution generally means the indiscriminate bartering of sexual favors without any emotional attachment and for monetary considerations.⁹

6 Sec 2(d) of the Juvenile Justice (Care and Protection) of Children Act, 2006.

7 ITPA, Section 2(a). The section explicitly includes within the definition of Brothel, “a house, room, conveyance, place or a portion thereof”.

8 ITPA, Section 2(f).

9 *In re Ratanmala*, AIR 1962 Mad 31, 1962 CrLJ 162 (Madras High Court 1962).

9. **“Special Police Officer”** means a police officer appointed¹⁰ by or on behalf of the state government to be in charge of police duties within a specified area for the purposes of the ITPA Act”.¹¹
10. **“Trafficking Police Officer”** means a police officer appointed by the Central Government under sub-section 4 of Section 13 of the ITPA”.¹²
11. **“Bonded labour system”** means the system of forced, or partly forced, labour under which a debtor¹³ enters, or has, or is presumed to have, entered into an agreement with the creditor¹⁴ to the effect that-
- in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by the document) and in consideration of the interest, if any due on such advance or;
 - in pursuance of any custom or social obligation or;
 - in pursuance of any obligation devolving on him by succession or;
 - for any economic consideration received by him or by any of lineal ascendants or descendants or;
 - by reason of his birth in any particular caste or community,
 - he would render by himself or through any member of the family or any person dependent on him, labour or service, to the creditor, or for the benefit of the creditor for a specified period or for an unspecified period, either without wages or for nominal wages or;
 - forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period or;
 - forfeit the right to move freely throughout the territory of India or;
 - forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or person dependent on him.

and includes the system of forced, or partly forced labour under which a surety for a debtor enters, or has, or is presumed to have, entered into an agreement with the creditor to the effect that in the event of the failure of the debtor to pay his debt, he would render the bonded labour on behalf of the debtor¹⁵

10 The Special Police Officer need not be appointed by name, but may be appointed by reference to a particular position. *Sindhi Lobana Choitram v. State of Gujarat*, AIR 1967 SC 1532, 1967 CrLJ 1396.

11 ITPA, Section 2(i).

12 ITPA, Section 2(j). ITPA, Section 13(4) states, “The Central Government may, for the purpose of investigating any offense under this Act or under any other law for the time being in force dealing with sexual exploitation of persons and committed in more than one state, appoint such number of police officers as Trafficking Police Officers and they shall exercise all the powers and discharge all the functions as are exercisable by Special Police Officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India”.

13 Debtor is a defined term for a person pursuant to sec 2(a) of the Bonded Labour system (Abolition) Act, 1976

14 Creditor is a defined term for a person pursuant to sec 2(a) of the Bonded Labour system (Abolition) Act, 1976

15 Sec 2(g) of the Bonded Labour System (Abolition) Act, 1976.

Chapter 1

A: Guidelines on preventive measures to combat trafficking: A successful prevention program should target the following links.

- The trafficking of persons from the source areas to the demand areas. This can be achieved through advocacy and education programs and the long term setting up of missing person's bureau in each state with quick tracing units and networking for tracing missing persons.
- The nodal centres such as railways stations, bus stands, taxi stands and truck stands in urban cities should come under a closer surveillance of the police force. An effort to trace out potential trafficking cases or rescue vulnerable persons at such transit points should be undertaken.
- The vulnerable groups in urban cities must be educated on the modus operandi of traffickers and through vigilance and quick action, guarded against the danger of being trafficked.

A1: Police officer to generate awareness on trafficking of persons within the jurisdiction of the police station.

Suggestive measures:

1. Every police officer posted in the rural police stations is expected to create awareness on the ill effects of human trafficking in his jurisdiction by regular interaction with the local population through Panchayats, Local Heads, religious institutions, Mahila Samities, Anganwadi workers and Youth Clubs etc.
2. Every police officer posted in urban police station is expected to create awareness about human trafficking in his jurisdiction by regular interaction with the local population through business community, hotel owners, transport owners, youth and local clubs and drivers associations etc.
3. Every police officer is expected to identify vulnerable persons who are likely to be victims of human trafficking and maintain a record and vigilance on habitual offenders accused of human trafficking and other related offences.

A2: Guidelines and suggestions on using the Missing Persons Cell as a tool to combat trafficking of persons. In western countries where the law enforcement agencies partner closely with the NGO network, media and communication medium the success rates of tracing missing children has risen from 62% to 94% in 2006¹⁶.

Obligatory measures:

1. The police station to which a person brings a report of a missing person should register the report in the form of a first information report (F.I.R).

¹⁶ The statistics stated by the National centre for missing and exploited children.

2. The police should intimate, the details of the missing person on a priority basis to all police stations, beats and credible NGO's in the surrounding areas.
3. On receipt of such communications the police officer should take all possible measures to ensure successful tracing/rescuing and investigation of the missing person.

Suggestive measures:

1. Generate awareness among the people on the importance of reporting cases of missing persons which could help in tracing such missing persons and do not restrict the information within the community itself.
2. The Superintendent of police can set up a missing person's unit in partnership with NGO's in every district attached to the office under his direct supervision.
3. The details of all the missing persons cases reported at the local police station could be immediately communicated to the District Superintendent of police through the missing persons unit.
4. A missing persons report may be filed at any police station irrespective of the location of last known stay of the missing person.
5. The police officer should immediately register a case under IPC or other relevant laws if the investigation of missing persons leads to the tracing of offence committed against the missing person.
6. The police officer at the station should form a network of NGO's and social workers through regular interaction or monthly meetings.
7. The information received on the registration of a missing child or women should pass on to local organisations for distribution to a larger network of NGO's to trace the missing person.
8. Any missing person report can be intimated through the use of the hotlines such as 100 of the police control room and 1098 of the child line network.
9. There should be no delay in pursuing leads on the missing person by any officer at the local police station.
10. There should be a Missing Persons' Bureau established at the state level under direct supervision of the Police Officer appointed for the purpose.
11. The missing persons' cells at district level should ensure that the details of all reported missing persons cases are communicated to the State level Missing Persons' Bureau at the earliest.
12. The State level Missing Persons' Bureau will take all necessary measures to disseminate the matter to other states as well as to print and electronic media.
13. The police officer should follow up with the police station where the original missing report was filed and based on the progress must explore new measures to trace out the missing person.
14. A comparison of the data on missing persons at all the police stations and the missing person's cell must be periodically carried out to ensure uniformity of data.

A3: Database or registry of Offenders: The experience of law enforcement agencies in India and in other parts of the world show that many of the perpetrators in cases involving the crime of trafficking in persons could be seasoned criminals having previous criminal records. Traffickers and perpetrators often take advantage of the lack of communication between law enforcement agencies among the various states in India. There does not exist any widely utilised central depository of habitual criminals. The perpetrators take advantage of this lack of awareness and frequently jump bail or abscond only to commit a fresh trafficking offence in another state or in the neighbouring countries. Development of such a database or registry will ensure that justice will be served for the victims in cases where the perpetrators are hardened and habitual offenders.

Obligatory measures:

1. Section 11 of the Immoral Traffic prevention Act, 1956 provides that when a person once convicted in India of an offence punishable under Immoral Traffic prevention Act, 1956 or punishable under section 363, 365, 366, 366-A, 366-B, 367, 368, 370, 371, 372 or 373 of the Indian Penal Code with imprisonment for a term of two years or upwards or once convicted in any country of a like offence is, within a period of five years of release is again convicted of the aforesaid offences, the court may at the time of passing the sentence of imprisonment on such a person also order him to notify his residence or change of residence for a period not exceeding five years in accordance with prescribed rules of the concerned state.
2. A person ordered under section 11 of ITPA to notify his/her address shall immediately after his release from prison, report himself at the police station having jurisdiction over the place of his residence and leave his/her correct address there.
3. When the offender intends to change his/her place of residence, he/she must notify their intention to the police officer and also furnish the correct address of their intended place of residence.
4. The police officer shall communicate the intended change of residence together with full particulars of the offender to the police station having jurisdiction over the intended place of residence.
5. The offender must report to the police station once a month till the expiry of the period during which he is required to notify his/her address.
6. Temporary absence must also be reported at the police station as soon as the offender returns to the usual place of residence.¹⁷

¹⁷ Point 1 to 6 as mentioned on Page 79 para 2 of the fifth edition of B.R Beotra's Immoral traffic Prevention Act with state rules.

Suggestive measures:

1. Every police station should ensure that comprehensive data base of human trafficking offenders are built up covering aspects such as photographs, finger prints, DNA profiles, physical details, addresses, sections of law under which they were convicted etc.
2. Such data should be communicated to the missing person's cells and all concerned police stations on a regular basis.

A4: Transit or Nodal Points: When one speaks to victims across a wide spectrum of trafficking offences the common point that emerges before the victim is bought or sold for an illegal purpose, is the entry points through which they were brought in to the demand area. In some cases this would take the shape of a government/private bus stands, main railway stations or truck stands. A successful identification of victim at this stage before they are finally sold would be a key preventive strategy in rescuing the victim and apprehending the perpetrators when they are most vulnerable and visible.

Suggestive Measures:

1. Officer in charge of police stations and the railway police are to identify likely transit points under their jurisdiction.
2. Vigilant groups and spotters should be trained and placed at such locations for the purpose of identifying and reporting to the nearest police station in association with credible NGO's working on the issue.
3. These groups also should be properly trained so that they not only do spotting but also act upon/respond to the situation in exigency.
4. This means that if a recognisable offence is being committed and the accused is likely to escape before the police can arrive at the location, the spotters should exercise whatever actions possible to the extent of arresting such suspects and handing over the apprehended person to the nearest police station without undue delay.
5. The main transit points such as railway stations, bus stands, taxi stands and truck stands in an urban area should come under closer surveillance of the police personnel of the local police station and the railway police and an effort to trace out potential trafficking situations should be undertaken in and around key demand areas. Any such effort should be closely coordinated with the police networks dedicated to tracing missing persons.
6. The identified vulnerable persons and communities in the source as well as demand areas must be informed and guarded against the potential of being trafficked.
7. The police stations in border areas should maintain a close vigilance at people crossing the border in family units or group movements. These family units or group movements normally provide cover for human traffickers.

A5: Local Advisory Unit: Trafficking of persons has socio-criminal dimensions. The success to combating trafficking depends upon the close partnerships that can be fostered among various stakeholders. The provision of local advisory unit in ITPA, 1956 is the recognition by the state and the central legislature of the need for the police officers to work closely with leading civil society social workers.

Obligatory Measures:

1. As per the provisions of Section 13 of the ITPA of 1956, the state government is to appoint a Special Police Officer to deal with offences relating to this Act.
2. The Special Police Officer so appointed/designated should take initiative and form a non official, local advisory board consisting of not more than five Social Workers as prescribed in Sec 13 (3) (b) of the ITPA, 1956 for the purpose of advising on matters related to Human Trafficking.

A6: State Advisory board

1. A state advisory board could be formed at the state level chaired by Chief Secretary/ Home secretary comprising of secretaries of various state departments, Director General of police of the state, non governmental organisations, the Director of Prosecutions, Chief Public Prosecutor and editors of the leading media agencies in the state to have a general watch through out the state in matters of human trafficking and suggest measures for prevention, detection and prosecution.
2. A State, City or District level advisory board may be formed by the state government under section 35 of the Juvenile Justice (Care and Protection of Children Act) to advise the Government on the matter relating to the establishment and maintenance of the homes, mobilization of resources, provision of facilities for education, training and rehabilitation of a child in need of care and protection and coordinate the various official and non- official agencies concerned.¹⁸

A7: Community surveillance committees:

Suggestive measures

1. The police officer in partnership with the non-governmental organisation may undertake a specific awareness program in urban low income housing communities.

¹⁸ Section 62 of the Juvenile Justice (Care and Protection of children) Act, 2006.

2. Through the awareness program the police officer may, with the community leaders, self help groups and NGO workers nominate, form, and train a volunteer group of informers that will undertake to keep a protective vigilant eye on any vulnerable women or children within the community.
3. If a circumstances appears within the community that a women or child victim may be abused or vulnerable to be trafficked and needs urgent care and protection then the volunteer group will inform a local committee consisting of the local police beat officer, community leaders and NGO workers.
4. The local committee will act as an intervention group and intervene to protect the women and child who needs care and protection.
5. This intervention should happen before anything harmful befalls the women or child who is vulnerable and needs care and protection.
6. The persons responsible for placing the child or women in a vulnerable situation or who were attempting to traffic the women or child should be apprehended and dealt with according to the provisions of law.

A8: Networking with Civil Societies:

1. The police have a role in creating awareness and influencing civil society with the help of NGOs, government agencies, involving students, etc to ensure that the victim is not stigmatized but treated with care and adequate protection.
2. Special Police Officer should have networks with the bonafide NGO's running shelter homes.
3. The police should support anti-trafficking campaigns undertaken by a genuine NGO.

Chapter 2

B: Investigations

There are two primary tasks involved in investigations: verification and specification. Verification involves confirming that the abuse does indeed exist and must be done before mobilizing the staff to conduct a raid. Specification involves gathering detailed, specific information about the abuse that is occurring. If a police officer first learns of the abuse while on the field, the requirement of verification is fulfilled with the original receipt of information.

The task of specification is more involved. There are three primary topics requiring specific attention: abuse(s), victim(s), and perpetrator(s). Two other essential bits of information at the investigation stage are the time and place of the actions taken. In general, it is important to gain specific information for the purpose of being able to conduct a successful rescue, and fully prosecute the offenders. After establishing that some form of abuse is taking place, it is important to specify what kind or kinds of abuse exist. For example, the abuse may include deception, molestation, rape, theft, wrongful confinement, or any of the criminal offences listed in the annexure materials section. It is not necessary to have a fully detailed understanding of the abuse to perform a raid, but it is necessary to know that an abuse exists and the more that is known about the abuse, and the sooner the information is known, the better the victim can be cared for and the fuller the perpetrator can be prosecuted. The most relevant information regarding abuses includes: what kinds of abuse have occurred, how severe the abuse is, and how long the abuse has gone on.

It is also important to gather as much information about the victim as possible. Initially, what is most needed is an identification of the victim to perform a raid so that the girl may be located again on the night of the raid. In this case, it is helpful both to have verbal and photographic information (i.e.: a picture of the girl). Examples of descriptive, identifying information include: name, aliases (if any), ethnicity, height, weight, hair style and colour, clothing, built, apparent age, and any other distinguishing information. Other relevant information, which may prove more pertinent during the post-rescue processing, includes: date of birth and actual age, home address / where from, and how she/he came to be in the current situation.

Thirdly, it is important to get identifying information about as many of the perpetrators involved in the abuse as possible. Again, such identifying information can include: name, aliases, gender, ethnicity, height, weight, hair style & colour, clothing, built, apparent age, facial hair (if any), glasses (if any), and any other distinguishing information. In addition, it is also worthwhile to note the nature of the perpetrator's involvement, any contact information available for perpetrators (such as a phone number), and the size of the threat the perpetrators pose to interferences. It is important to be able to identify all parties

who are involved in the commission of an offence so that they may be apprehended during a raid on the establishment. Examples of people involved may include building owners, brothel owners, brothel managers, pimps, security guards, and customers. In addition, an establishment may have a relationship with another business—like a dancing bar and a lodge—where girls are taken from one spot to another for the purpose of prostitution, widening the ring of offenders beyond the immediate premises.

Other essential information that should be gathered includes a description of the time and place of the actions taken. It is important to note both the time and date in the report for predicting when the establishment conducts such business in the future, so as to coordinate a raid. Likewise, in order to be able to return to an establishment during a raid, one must know its location and directions of how to reach it. Information such as the establishment's name (if any), address, and telephone number are all valuable. Also, in addition to the location of the establishment, it is also very helpful to survey the layout of the establishment. In particular, it is good practice to note all the potential exits (to be blocked during a raid) or hiding places (to be searched for victims during a raid). It can also be helpful to try to formulate a mental map of the area.

B1: Gathering Intelligence

Obligatory measures:

1. Section 13(1) of ITPA directs the state governments to appoint Special Police Officers “for dealing with offences under this Act”. The Supreme Court has construed this language to require that only the Special Police Officer may investigate offences under ITPA.¹⁹ This requirement is mandatory. If police officers, who are not either Special Police Officers, or their subordinates, investigate ITPA, 1956 cases, the charge sheets will be struck down.²⁰

19 *Delhi Administration v. Ram Singh*, AIR 1962 SC 63; 1962 CrLJ 106 (Supreme Court 1962)(holding that, “The expression „dealing with offenses” is of wide import and will include any act which the police has to do in connection with the offenses under the Act”); see also *Bai Radha v. State of Gujarat*, AIR 1970 (SC) 1396; 1969 (1) SCC 43; 1970 (76) CrLJ 1279 (Supreme Court 1968); and *State of Uttar Pradesh v. Kausbaliya*, AIR 1964 SC 416; 1964 (70) CrLJ 304 (Supreme Court 1963)(holding that only offenses under ITPA are limited to investigation by Special Police Officers and that ITPA, Section 20 does not involve an offense, such that the Magistrate can act upon information received from any person including regular police officers).

20 *Delhi Administration v. Ram Singh*, AIR 1962 SC 63; 1962 CrLJ 106 (Supreme Court 1962)(holding that where a police officer who is not a Special Police Officer investigated the case and filed the charge sheet under Section 8 of ITPA, the charge sheet shall be struck down. Only the Special Police Officer and the subordinates are competent to investigate cases under ITPA, even though the offenses are cognizable offenses. The Court reasoned that if regular police officers could also perform police duties under ITPA, there would be no purpose in appointing Special Police Officers).

2. The Central Government is authorized to appoint Trafficking Police Officers for the purpose of investigating any offense committed under ITPA which is committed in more than one state.²¹
3. "For the efficient discharge of his functions in relation to offences under this Act (a) the Special Police Officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the state government may think fit"²² The designated subordinates to a Special Police Officer are competent to investigate offences under PITA.²³

Suggestive measures:

1. The police officer could initiate an intelligence gathering network by implementing a three tier model structure
2. The four tier model consists of supervisor----investigating officers-----local operatives-----informers.
3. The informers will be of two categories. Tried and trusted and untried and untrustworthy.
4. The local operative will develop the informer for the investigating officers and report to him/her on a daily basis on the receipt of any information pertaining to trafficking of persons.
5. The investigating officer will report directly to the supervisor.
6. There should be no delay in reporting from the informer to the supervisor.
7. The supervisor should consult with a lawyer of his/her choice to guide him/her on the legal implications or strategies to be undertaken on the information received through such intelligence gathering network.
8. This three tier approach is a model that is adaptable whereby officers can modify the structure on a case to case basis.
9. This system works best when then there is a high degree of accountability within the structure.
10. Supervisory police officers at every stage should ensure that authenticity and integrity of this structure is maintained at all levels.

B2: Electronic surveillance and the use of electronic equipment: The information gathered through the use of technical surveillance equipment is direct or sometime corroborative evidence of the complicity of the perpetrator in the crime and the level of abuse suffered by the victim.

21 ITPA, Section 13(4).

22 ITPA, Section 13(3).

23 *Delhi Administration v. Ram Singh*, AIR 1962 SC 63; 1962 CrLJ 106 (Supreme Court 1962).

Suggestive Measures:

1. The use of technical surveillance equipment such as hidden cameras should be used to the fullest extent possible to record the different aspects of investigation.
2. Such electronic evidence will be of immense use as a piece of corroborative or circumstantial evidence during trial.
3. This technique can also be used to ensure that all the procedures prescribed in law are followed in letter and spirit.
4. The police officer can ask a non governmental organization (NGO) to provide such equipment if the investigating agency does not have them in their inventory.
5. If NGO fails to provide the gadget, electronic equipment the I.O should take efforts to procure the same from an independent credible source.
6. However the person recording the procedures or footage should be credible and independent of any material interest in the case.
7. The local Superintendent of police should create a list of such credible persons and have it vetted or cleared by the advisory body created under section 13(3) (b) of the ITPA, 1956.

B3: Procedure of recording such evidence: In cases of trafficking in persons, video or audio evidence can play a crucial role in securing a conviction provided the evidence is properly secured, safely stored, not tampered with, and attested in the presence of independent witnesses.

Suggestive measures:

1. The search or panch witness must certify that the audio or video cassette is empty and not tampered with prior to the recording of evidence during a raid.
2. The recording of any electronic evidence should be in the presence of two independent panch witnesses one of which must be a woman.
3. After recording the electronic evidence should be sealed by the Investigating Officer (I.O.) and signed by the same witness, who was present during the raid/search and rescue operation.
4. The witnesses as well as the I.O should attest their own signature on the evidence by use of a permanent marker.
5. The I.O on seizure of electronic evidence of pornographic nature or sexually explicit images during the course of investigation shall produce the same before the appropriate magistrate for recording the observation.
6. The police shall make a petition to the court for sending the seized electronic evidence to a forensic expert for ascertaining that the electronic evidence is genuine.
7. Even audio evidence seized shall follow the same procedure as mentioned in paragraphs four and five.

8. The chain of custody should be maintained by the I.O in a recorded log book that can be submitted in a court of law to authenticate the evidence.
9. The I.O. may use eavesdropping, surveillance equipment or any electronic equipment to help in investigations.
10. However the I.O. shall obtain a clear written transcript of the conversation recorded by any electronic equipment from an independent expert authorized by the court or from the local government forensic department.
11. The I.O. should not contaminate the evidence by using it to generate unnecessary media publicity. Any probable use should only be in the case of recovering or generating further evidence as authorized by the supervising officer.
12. All exhibits, electronic or otherwise should be preserved in a safe environment. If necessary, special storage facility can be developed to preserve the evidence.
13. All exhibits should be examined on a regular basis to ensure that the evidence is not contaminated, decayed or destroyed.
14. The supervisory police officer or the officer in charge of the police station shall ensure that the exhibits are in a good condition for production as evidence in the court.
15. The Officer in charge of the evidence shall be held responsible for the willful or negligent handling of the exhibit in the custody of the police station.

B4: Proving the elements of a crime: Understanding the elements of a crime will help an investigating officer to gather relevant evidence and direct the investigations in a manner that will ensure a successful prosecution of the accused persons.

Suggestive measures:

The I.O. will be responsible for proving the elements of the offence of trafficking while undertaking investigation into such offences.

The I.O. can follow the example given below

Section 5(c) of ITPA – Trafficking (taking a person)

Elements:

- A person who
 - a) Takes a person OR
 - b) Attempts to takes a person OR
 - c) Causes a person to be taken
- From one place to another
- With a view of that person to carry on prostitution OR be brought up to carry on prostitution.

- The Word "Take" means to cause, to go, to escort or to get into possession. When the accused takes the minor, whether she is willing or not the act of taking is complete and the condition is satisfied. Khalandersaheb, In re, 1955 CrLJ 581.

Appreciation of evidence:

- It is important that the state proves that the accused did or said something that brought about the going for such purposes.
- The accused intimacy and relation with and power to control the women.
- Any representations made from the accused to her are admissible.

- **Ask questions i.e.**

- Where did the person come from?
 - Which destination did she go too?
 - Who accompanied the victim?
 - How was it determined that the victim would come or how was the consent secured?
 - What form of transport was used?
 - Was the victim abused along the way?
 - Where was victim taken too?
 - What does the victim recollect from her memory about the final moments before she was sold or disposed off?
 - Did the victim see or hear of the transaction to sell her by the trafficker?
 - Did someone trick or coerce the person?
 - Did someone kidnap the child?
 - Does the victim recollect any degree of haziness or drowsiness that incapacitated her consent?
 - If so, when did the victim first feel drowsy?
 - What was the last meal that was given to the victim?
 - Who gave the victim her last meal before the victim become drowsy?
- This offence applies also for the person who receives/buys a person, as long as that person causes or induces her into prostitution.

B5: Does an irregularity or defect in investigation under the ITPA, 1956 vitiate the proceeding or competency relating to cognizance or trial of an offence?

- The stated position of the Supreme Court in H.N Rishbud and Inder Singh v State of Delhi AIR 1955 SC 196: **is that a defect or an illegality in the investigation, however serious, has no direct bearing on competency or procedure relating to cognizance or trial of an offence** and whenever such a situation arises section 465 of the Criminal Procedure Code 1973 is attracted and **unless the irregularity or illegality in investigation or trial can be shown to have brought about a miscarriage of Justice the result is not affected.**
- The Supreme court in Bai Radha Vs State of Gujarat AIR 1970 SC 1396 have settled the law and **have reaffirmed the above position and have overruled the following positions that a non inclusion of a respectable women from a locality, associating a lady with the search and have clearly stated that failure to comply with the essential requirements of sec 15 of the ITPA, 1956 does not vitiate the entire proceeding.**

B6: Regular direct field investigations and rescue operations

Suggestive measure

1. Investigation of cases of trafficking involves intra/inters state ramifications that require the I.O. to visit different locations or states. In such cases, the I.O must take the initiative to investigate the entire nexus and apprehend the traffickers, the financiers, the purchasers, and any person who caused the victim to be vulnerable or abused the victim after or before the sale of the victim took place.
2. The I.O must accurately record the course and progress of the investigation in the station diary and the same must be immediately reported to the judicial magistrate before whom the matter is pending. This will help in ensuring the safety and protection of the victim and the ability for the rescued person to be rehabilitated pending the completion of the trial.

Obligatory measures:

1. An arrest without a warrant may only be made by the Special Police Officer, or by his direction or guidance, or subject to his prior approval.²⁴ If a police officer subordinate to the Special Police Officer arrests a person without a warrant, such officer may only do so upon receiving an order in writing specifying the person to be arrested and the offence for which such person is being arrested.²⁵ The officer must inform the person being arrested of the substance of the order before arresting the person, and must provide the order to such person upon demand.²⁶
2. Any officer who is not below the rank of sub-inspector and who has been specifically authorized by the Special Police Officer, may arrest any person for an offence under ITPA, without a warrant and without an order from the Special Police Officer, if one of the following conditions apply:
 - a. On account of delay in getting the order, valuable evidence is likely to be destroyed or concealed
 - b. The person to be arrested is likely to escape arrest
 - c. The name and address of the person to be arrested is unknown and there is reason to believe that a false name and address were given
3. In such cases, the arresting officer must immediately report to the Special Police Officer regarding the arrest and the circumstances in which the arrest was made.²⁷
4. If a police officer makes an arrest when not authorized to do so, such arrest is illegal.²⁸
5. A Special Police Officer may only conduct a search of a premises without a warrant if he/she has “reasonable grounds for believing”:
 - “that an offense punishable under [ITPA] has been or is being committed”;
 - “in respect of a person living in any premises”;
 - “that a search of the premises with warrant cannot be made without undue delay”; and
 - After such Special Police Officer has recorded the grounds of his belief.²⁹
6. While compliance with these provisions is expressly required by Section 15(1) of the ITPA, non-compliance is not devastating to the prosecution’s case. In *Bai Radha v. State of Gujarat*, the Supreme Court determined that the failure of the Special Police Officer to record the grounds of his belief was not sufficient to overturn the conviction and sentence of the accused in that case.

24 ITPA, Section 14(i).

25 ITPA, Section 14(ii).

26 ITPA, Section 14(ii).

27 PITA, Section 14(iii).

28 *B.R. Beotra*, IMMORAL TRAFFIC (PREVENTION) ACT, 1956 (WITH STATE RULES), Fifth Edition, p. 89, citing *Chandri Bawoo v. Emperor*, 26 CrLJ 441 (Bombay High Court 1925)

29 PITA, Section 15(1).

The court held that the requirements of Section 15(1) of the ITPA were not mandatory and that convictions would not be overturned due to non-compliance unless the accused could demonstrate “some prejudice”.³⁰

Suggestive measures

1. In all circumstances, the I.O. should make efforts to comply with all required provisions of law to secure effective prosecution.
2. The I.O.s should carefully record the details of each witness.
3. The I.O. should also update his records in the event of the witness undertaking a change in address.
4. The I.O. should seek further corroboration from the place of last known residence of the trafficked victims or the place where their parents or relatives were last known to reside.
5. The I.O. must seek to investigate whether any missing report has been filed by their family and to check their background and criminal antecedents.
6. In all trafficking cases it is important to establish the clear identity of persons who indulged in the organized crime of trafficking of women and children.
7. One of the ways of identifying the accused persons is by instituting a test identification parade.
8. Intelligence collection should be undertaken by the Officer in charge of the police station with regard to trafficking and upgrade inputs on modus operandi of the perpetrators.
9. Financial records of the trafficking rackets or from brothels, hotels should be made part of the investigation.
10. The financiers who fund the buying and selling of victims should be investigated; evidence gathered and charged if prima facie evidence is found against them.
11. The I.O. should consult with the prosecutor the feasibility of using the provisions of the criminal procedure code pertaining to an approver in order to generate evidence against the key perpetrators of such trafficking rackets.

Obligatory measure:

1. The I.O. should not provide any monetary amount to the search witness for the purposes of acting as a search witness.

Suggestive measures:

During a rescue operation if there is more than one location to be raided at the same time the following are the possibilities that the I.O can explore:

1. Undertake the investigation under the provisions of the Indian Penal code read with the Criminal Procedure code.

30 AIR 1970 SC 1396, 1969 SCC 43, 1970 (76) CrLJ 1279 (Supreme Court 1968).

2. Set up simultaneous teams to undertake the rescue operations under the overall supervision of the Special Police Officer (S.P.O) and the S.P.O should begin by executing the initial search without warrant under section 15 of the ITPA, 1956 at the first place followed by the other places recorded in a continual panchanama/ seizure memo in the presence of two witnesses.
3. The I.O. must show diligence in tracing out the missing persons forthwith.
4. The officer in charge of a police station should ensure that all details of search, seizure and raid should be recorded properly in the station/general diary of the police station.
5. The I.O during investigation should bring evidence on record that the accused had knowledge that the person was trafficked or involved in the act of trafficking.
6. The first information report by any person of an offence relating to Human trafficking covered under various different statutes should immediately be registered by the I.O as per the provisions of Sec. 154 of the Criminal Procedure Code 1974 hereinafter called as the code.
7. An ideal F.I.R must include information on the place of offence, date, time and description of offence, description of victim and the role of the accused in the commission of crime.
8. A transcript of the surveillance video content recording the crime should be part of the investigation and if such video evidence exists prior to an F.I.R being registered, then based on the report given by the informant the same should be recorded in the FIR.
9. Use of a decoy customer is helpful to rescue the victim and prevent them from being hidden during rescue operations.
10. Victims of trafficking can identify hiding places in a brothel and help the police in detecting crime and rescuing more girls.
11. Victims should have their faces concealed during operations in the interest of their personal safety and investigation.
12. The identity and the location of the decoy customer should not be disclosed by the I.O. under any circumstances.
13. In identifying the accused persons the victim/decoy customer/complainant should hide or conceal their identity.
14. Care should be taken to ensure absolute anonymity of the victims while conducting test identification parade of the accused.
15. The Police officer should register cases under appropriate law and sections of law. (See appendix/add labour law provisions)
16. The I.O must ensure that the procedure prescribed under the Immoral traffic Prevention are strictly followed.
17. The I.O should note that any lapse in following the proper procedure under the law compromises the investigation.

Obligatory measures:

1. As per the requirement of Section 15(2) of ITPA, 1956 a trained lady social worker could serve as a panch witness or an independent witness that accompanies the police for the raid and she need not be from the same police jurisdiction.
2. The presence of a social worker with counselling would help the police to deal sensitively with the traumatised victim.
3. The police must have two independent witnesses under section 15(2) of the ITPA, 1956 during the entire length of the search and rescue operation.
4. Every police station and outpost must have a readily available list of such credible independent witness i.e. social workers or non-governmental organisations along with their contact details for assisting them in anti- trafficking duties and investigations.

Suggestive measures:

1. Care should be taken to ensure that a recently rescued person who volunteers to be a complainant in the case of trafficking doesn't turn hostile.
2. A victim should be interrogated by a woman police officer or by a male police officer in the presence of a lady social worker of a recognised social welfare institution.
3. A statement of the victim under section 154 or under Section 161 of the CrPc should be reduced in writing by a police officer in simple language, accurately and must be read over to the victim in the language that the victim fully understands and this should be noted in the case diary.
4. In the event of availing of the services of a translator or interpreter, care should be taken that he/she is authentic or reliable.
5. The police officer should also record the statement of the translator or interpreter as part of the investigation of under section 161, CrPc.
6. It is important that as far as practicable, a trained medico-legal consultant or counsellor be present along with rescuing police party in initial trauma management of the victim.
7. The statement of the victim should, where possible, be recorded by the police after the victim has received assistance from a medico-legal consultant, certified counsellor or a lawyer with more than three years experience in combating human trafficking.
8. Care should be taken that the statement of the victim/survivor be taken in a friendly atmosphere.
9. It is important that all trafficking cases should be supervised by senior police officers.
10. Supervisory senior police officer should issue proper supervision notes and provide support to the I.O. in rightful investigation of the case.

11. In suo moto cases the complainant police officer should not be the I.O. as the case may fail for want of the recording the statement of the complainant.

B7: Post-rescue guidelines:

Obligatory measures:

1. Under section 19 of the ITPA 1956, a person who is a victim of human trafficking for commercial sexual exploitation or abuse of persons can make an application on their own to the magistrate of the local jurisdiction asking for order to be kept at a protective home or be provided care and protection.
2. The police officer can in such situations where the person voluntarily seeks the support of the state for their care and protection, help the victim by drafting an application for them, taking them to court and placing the victim application for the consideration of the magistrate.
3. The magistrate will ask the probation officer to undertake a home and background study and make an order placing the girl for long term rehabilitation in a protective home or under the supervision of a person appointed by the magistrate.

Suggestive measures:

1. Separate the victims after the raid at all times by sight and sound from the accused from the point of rescue to the end of the period of appeal for the accused. (Quite often the brothel keepers will send their managers as rescued victims. These people threaten the minor girls or other genuine victims to turn hostile under the influence of the brothel keepers.)
2. The victims of trafficking should not kept overnight in the police station.
3. The police should take the victim of trafficking to the nearest magistrate at the earliest after a rescue.
4. The competent authority includes the child welfare committee for any child victim.
5. The competent authority for a major victim shall be the judicial magistrate first class, sub-divisional magistrate or a district magistrate.
6. The child welfare committee shall have precedence over the magistrates for production of a victim suspect to be a minor.
7. The victim should not be taken/ transported in the same vehicle as the accused from the scene of crime to any location.
8. That in the police station the victim should be treated with respect and dignity.
9. Insensitive, harsh words or physical or verbal gestures should not be spoken to the victim.

10. The victim should not be made to huddle in a corner of the police station and treated as a criminal.
11. Necessary refreshments and counselling should be immediately provided.
12. No pressure should be put on the victims if they are not in a mental position to give any statement.
13. One must make sure that the next few days after rescue when a victim is produced before the court a bonafide social worker accompanies her at all times.
14. The police should protect the victim from being represented by lawyers who also represent the accused persons in the same case.

B8: Process of age-verification: Since most of the trafficked victims do not have any substantial proof of their age, age verification becomes crucial in determining the age of the victim. This takes on a serious dimension as the Law prescribes a more serious punishment for the trafficking of children who have not completed their eighteenth year of age. The forensic examination of signs of physical injury, sexual abuse and age also plays a critical role in the operation of presumptions under the ITPA, 1956 and the Indian Penal Code.

Obligatory measure:

- 1 The I.O. shall submit a application/petition before the appropriate magistrate (CWC for minors and Metropolitan magistrate/Judicial magistrate first class) that the a registered lady medical officer either a gynaecologist/paediatrician/forensic expert shall examine the person for:
 - Determination of age.
 - Detection of any injuries as a result of sexual abuse.
 - Sexually transmitted diseases.

Suggestive measures:

1. This examination of the victim should be undertaken immediately
2. Social workers/Probation Officers/women police constables should be present when the girls are medically examined.
3. The I.O. should seek a second opinion for benefiting the victim when any foul play is suspected.
4. The I.O. should record the statement of the parents or relatives where possible to corroborate the evidence given by the victim on their age.
5. The I.O. should make efforts to get for the purposes of evidence the entry on the Register of Deaths and Births as it is the best evidence followed by a high school or a primary school leaving certificate.
6. As per the Supreme Court citation of **Jaya Mala vs. the Home secretary, Government of Jammu and Kashmir, A.I.R 1982 SC 1297** the opinion of the medico-legal expert has an error margin of two years on either side. This margin may be interpreted on the lower side to benefit the child and secure their future

rehabilitation under the Juvenile Justice (care and protection) Act 2006.

7. The Police must prevent any drugs, addictives, gifts or money being given by the offender/accused to the victims at any location, particularly outside the court, during the period of trial or remand.

B9: Recording of victim statements and opposing bail of the perpetrators: Most of the victims of trafficking have undergone immense trauma and are therefore unwilling to cooperate with an I.O.. Often the use of a psychologist and a counsellor will help the I.O. to gain the trust of the victim. This will result in the recording of evidence in a clear and cogent manner.

Suggestive measures:

- 1 The detailed statement of the victim in the aftercare home can be recorded by the I.O. in the presence of the Superintendent of the home/probation officer/social worker.
- 2 The traffickers can then be tracked and arrested with the help and assistance of the victim girls.
- 3 Every care must be taken that all the accused should be arrested within as short a time as possible after the crime has taken place and the charge sheet filed within 60 days.
- 4 The police officer should oppose bail of the accused persons if clear evidence emerges during investigation or after filing a charge sheet or during trial that the accused persons could be:
 - Tampering with evidence
 - Planning to abscond and avoid being present during the trial.
 - Influencing the prosecution witness.
 - The crime is heinous and the person is a threat to society at large.
- 5 In the event of the accused being released on bail any threat of tampering or indication that he/she will abscond should be brought immediately to the attention of the Court through a review petition to cancel bail.
- 6 The case diaries should be updated accordingly.
- 7 Protection to the victim by the police along with concerned social organizations is a must during the period of trial as often the victims are threatened and intimidated by the accused and turns hostile due to fear or danger to their lives.

Chapter 3

C: Law Enforcement strategies: The following enumerated law enforcement strategies are necessary as part of prosecution efforts to ensure the safety of the victim and the ability to break an organised criminal racket. These measures have been successfully implemented in urban cities like Mumbai where they have helped the law enforcement agencies in curbing the crime of trafficking of persons.

C1: Use of multiple statutes

Obligatory measure

Stated below is the reasoning of the Session Court of Mumbai in a case where the accused persons were charged under the IPC and ITPA for offences relating to human trafficking. The Honourable Judges used the following reasoning the extract which is being reproduced in this handbook for the benefit of the police officers. The accused persons were convicted under the relevant sections of the Indian Penal Code.

Can the Indian Penal code be applied along with ITPA and how does it help?

- It is necessary to consider Sec 4 and Sec 156 of Code of Criminal Procedure (hereinafter referred to as CRPC).
- Sec 4 – *Trial of offences under the Indian Penal Code and other laws*
 1. All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
- Sec 156 – *Police Officer's power to investigate cognizable case*
 1. Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable 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 proceedings 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.
- Thus, according to this Sub Sec (1) of Sec 4 of CRPC, all offences under I.P.C. shall be investigated according to the provisions of CRPC and according to Sec 156 C.R.P.C; Station House Officer is empowered to investigate the case.

- As per the provisions of Sec 4 and Sec 156 (1) CRPC, Officer in charge of a police station is empowered to investigate the offences punishable u/s 366 (A), 368, 372, 368 r/w 34, 373 r/w 34 and u/s 366 (A) r/w 34 IPC, as they are cognizable offences.
- Considering these provisions, investigation carried out by a Senior Inspector or an officer in charge of a police station under Indian Penal Code is legal and it cannot be called in question on the ground that he was not empowered to investigate as provided under Sub Sec (2) of Section 156 CRPC.
- The arguments of a defense counsel in such cases that the investigations were initiated under ITPA are not acceptable because the main offences u/s 366 (A), 372, 373 IPC are Sessions triable and such a case is in normal course committed to the Court of Session. If accused were prosecuted only for the offences under ITPA, this case would not have been committed to the Court of Sessions, because offences under ITPA are triable by the Magistrate's Court.
- Because u/s 165 CRPC, officer in charge of the Police Station or a Police Officer making the investigation is empowered to take search if he has reasonable grounds to believe that anything necessary for the purpose of investigation into any offence which he is authorized to investigate, may be found in any place within the limits of his Police Station, and that such thing cannot in his opinion be otherwise obtained without undue delay.
- Hence, it can be said that search carried out by the I.O. is u/s 165 CRPC and the I.O. is empowered to take search.
- It is also argued by defense counsels during such trials that a lady panch as required under the ITPA had not accompanied the police at the time of search and hence search is illegal. However, as per the provisions of Sec 165 CRPC, there is no legal requirement for the lady police constable or lady police officer to be present along with the I.O. It was not mandatory for the I.O. to obtain search warrant from the Court, in view of urgency of situation. Therefore, investigation concerning I.P.C. offences is valid and it is not vitiated.
- In the case of Ramu V. State 1995 (101) CrLJ 2525(Madras High Court 1995) Accused were convicted under the IPC Section 366. On appeal the defense argued that the two offences were the same and that the prosecution should have charged the accused under Section 5(c) of the ITPA, 1956 where the jurisdiction lies in the Magistrate's court instead of under the IPC, where section 366 where jurisdiction lies in the Session's court. The court disagreed and held that the General Clauses act, section 26 gives the prosecution the discretion to choose

which offence to charge an accused. The court seemed to indicate that the offences under section 5(c) of the ITPA, 1956 and section 366 were different and that an accused could be charged with both.

C2: Closure of brothel and eviction of offenders from the premises under section 18 of the ITPA, 1956.

Obligatory provisions:

1. A magistrate (District Magistrate or sub-divisional Magistrate) on receipt from the police or otherwise that any house, place, room or portion thereof within a distance of 200 meters of any public place is being used for prostitution may issue show cause notice to owner/lessor/landlord or tenant, lessee, occupier within seven days as to why the property should not be attached for improper purpose.
2. Eviction order to be passed on satisfaction of the magistrate that the said premise was used as a brothel to carry out prostitution and the occupier must vacate the premises within seven days.
3. Prior permission of the magistrate to be taken before letting out the premises again for a period of at least one year wherein major girls have been recovered and three years wherein minor girls have been recovered under a search carried out under section 15.
4. If the Magistrate finds that the owner, lessor or landlord as well as the agent of the owner, landlord, or lessor was innocent of improper use of the house, room, place or portion, he/she may restore the premises back to them with a direction that the premises should not be leased again to the person who was using it for commercial sexual exploitation and abuse.
5. A magistrate convicting a person under section 3, and section 7 of the ITPA may pass the above orders without the need of a show cause notice.
6. Orders passed are conclusive and not subject to appeal or being stayed or set aside by any court civil or criminal.
7. Public place in Section 2(h) of the ITPA is defined as any place intended for use by or accessible to, the public and includes any public conveyance. In section 7 (b) of the ITPA it also includes within 200 meters of any public religious place, educational institution, hotel, hospital, nursing home, or any other notified place by the commissioner or by the magistrate.
8. Under section 18(1) of the ITPA being a summary procedure for closing down obnoxious places of prostitution without going through a detailed process of a criminal prosecution. It is a quick acting defensive mechanism, calculated to extinguish the brothel having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. It deals with the premises and it is not required for the prosecution to establish intention or knowledge. As laid down by the Supreme Court in A.C Aggrawal, Sub divisional Magistrate, Delhi V Ram Kali, AIR 1968, SC 1

- at P 5. and Chitan Vaswani vs State of West Bengal, AIR 1975 SC 2473.
9. Also under sec 18(2) of the ITPA operates not only merely on places within the offending distance of 200metre but in all places the activity has been conducted. Chitan Vaswani vs. State of West Bengal, AIR 1975 SC 2473.
 10. However where offences under section 3 and section 7 of the PITA is disclosed in a police report under section 18(1) to the magistrate then the benefit of a right to a trial as well as appeal must be given before the application under section 18 is dealt with. As in A.C Aggrawal, Sub divisional Magistrate, Delhi V Ram Kali, AIR 1968, SC 1 at P 5.
 11. The Supreme Court recently in the case A.N Roy, Commissioner of Police and other v/s Suresh Sham Singh, criminal appeal 703 of 2006 dated 4th of July, 2006 has held the precedent on closure of brothels by overruling the Bombay High Court Judgement that had quashed the closure of brothels in Mumbai by the Commissioner of Police
 - “Through the reading sub-sections (1), (2) and (5) of Section 20 of the Criminal Procedure code, 1973 in conjunction, the Supreme Court is of the view, that the State has power to appoint the Commissioner of Police of Brihan Bombay as an Executive Magistrate and further appoint him as an Additional District Magistrate, who shall have the powers of District Magistrate for the purposes of Sections 18 and 20 of the ITPA, 1956.”

Suggestive measures:

- 1 The implementation of section 18(Closure of brothels) of ITPA in its entirety is pivotal in ensuring the effect of child trafficking combative measures.
- 2 The District magistrates and the sub-divisional magistrates in each area are responsible under section 18 ITPA for the purpose of closure of premises wherein commercial sexual exploitation or abuse is going on.
- 3 A police officer must maintain surveillance over premises from where minors have been rescued and where the accused persons are habitual criminals.

C3: Attachment and Forfeiture

Obligatory provisions:

- 1 An I.O. must seek the immediate application of section 105C to 105J of the Criminal Procedure Code read with criminal amendment Act of 1944 regarding attachment and forfeiture of property obtained directly or indirectly by such person from the commission of an offence.
- 2 As for attachment and forfeiture, s.105-C(1) of CRPC says that where a Court in India has reasonable grounds to believe that any property obtained by any person

is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property. The procedure for the order is described in sections 105-D through 105-J, which are summarized below.

- 3 Section 105-D describes the process for identifying unlawfully acquired property. It empowers the Court with reasonable grounds in s.105-C(1) to direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property (s.105-D(1)). Such steps may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters (s.105-D(2)).
- 4 Section 105-E describes what any officer may do when it appears that any property in relation to which an inquiry or investigation is being conducted is likely to be concealed, transferred, or dealt with in any manner which will result in disposal of such property. Under such circumstances, any officer may make an order for seizing such property, and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order.
- 5 Section 105-F describes how the property may be managed after it has been seized or forfeited. Subsection (1) says that the Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property.
- 6 Section 105-G regards the notice of forfeiture of property that may be served upon suspected individuals. It states that, if as a result of the inquiry, investigation or survey under section 105-D, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person ("the person affected") calling upon him within a period of thirty days specified in the notice to indicate the source of income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government (s.105-G(1)).
- 7 Section 105-H empowers a Court to declare property forfeited in certain cases. If the Court has considered the explanation (if any) given by a person to the show-cause notice described in s.105-G and has given the person affected a reasonable opportunity of being heard, then the Court may record a finding whether all or any of

the properties in question are the proceeds of crime. If the person affected does not appear before the Court or represent his case within a period of thirty days specified in the notice, the Court may record a finding *ex parte* on the basis of the evidence available before it (s.105-H(1)). If a Court believes some of the properties referred to are proceeds of crime but it isn't possible to identify such properties specifically, the Court may specify the properties which, to the best of its judgment, are proceeds of crime and make records accordingly (s.105-H(2)). If a Court records a finding under s.105-H that any property is proceeds of crime, then such property stands forfeited to the Central Government, free from all encumbrances (s.105-H(3)).

- 8 Section 105-I provides for the possibility of a fine in lieu of forfeiture. It states that where the Court makes a declaration that any property stands forfeited to the Central Government under s.105-H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part (s.105-I(1)). Before making such an order imposing a fine, the person affected is to be given a reasonable opportunity of being heard (s.105-I (2)). If the person affected pays the fine that is due within the time allowed, the Court may, by order, revoke the declaration of forfeiture under s.105-H, and thereupon such property stands released (s.105-I(3)).
- 9 Section 105-J declares that certain transfers that occur after notice under s.105-G is issued on a piece of property may be null and void. Specifically, if such notice is made, and any property referred to in the said order or notice is transferred by any mode whatsoever, such transfers shall, for the purposes of the proceedings under Chapter 7-A of the CRPC, be ignored. Also, if such property is subsequently forfeited to the Central Government under section 105-H, then the transfer of such property is deemed to be null and void.

C4: Other successful law enforcement strategies

Obligatory measures:

- 10 Chapter VIII (bond proceedings) such as Section 109/116 and 110/116 of Criminal Procedure Code should be initiated for ensuring that the accused person does not continue to commit fresh offences after the first crime against a child/woman.
- 11 The I.O. can suggest to the appropriate magistrate a second bond of a sum of not less than Rs 25,000 should be undertaken from habitual offenders in the category

mentioned above in the event of violating their first bond terms.

- 12 The I.O. can suggest to the appropriate magistrate or the court that surety of the following kind should only be accepted (Qualified and experienced social workers, teachers, doctors, psychologists, academicians) for the bond of the above accused persons.
- 13 Section 7(1) of ITPA punishes the person who carries out prostitution and the person with whom such prostitution is carried out. Where such persons as specified under section 7(1) commits the offence with respect to a child or a minor, it is punishable for a minimum of seven years extending to life in prison or ten years and fine. The person with whom prostitution is carried out is normally a customer. Therefore section 7(1) of the ITPA, 1956 could be used to book the customers.
- 14 If a hotel operator or owner is convicted under Section 7(2) of PITA, such hotel is liable to have its license revoked for up to a year or forever (where Children or Minors are involved).³¹

31 ITPA, Section 7(2).

Chapter 4

D: Victim Protection:

A successful rehabilitation plan will result in the victim recovering from the trauma suffered. Victim protection should be the central concern of the I.O. as the bulk of evidence of the crime committed can be elicited through the eye witness account by a victim. If I.O.s follow the right procedures laid down under law the victim will reap the benefit of this diligence and the case will be upheld in the court of law for following the right procedures. Often following victim friendly procedure enable the victim to testify confidently resulting in a higher conviction rate.

Obligatory measures:

1. After rescue the minor victim should be produced before Child Welfare Committee under section 32 of the Juvenile Justice (Care & Protection) Act 2000.
2. The procedure under section 15 and section 17 of ITPA, 1956 should be followed for major girls.
3. The victims should be placed in the Protective Home through appropriate procedures under the Juvenile Justice (Care and Protection Act) of 2000 and the ITPA, 1956.
4. The Police officer may with the orders of the competent authority place the victim girls in the protective custody of a residential home run by a recognised NGO in the absence of a government run home.
5. The police may with the orders of the competent authority place the custody of the child/woman with a recognised organisation.
6. The identity of victims should be protected keeping in view the provisions of section 21 of the Juvenile Justice Care and Protection Act, 2000 and section 357 of the Criminal Procedure Code and section 228A of The Indian Penal code.

D1: Good Practices in registering anti-trafficking cases:

Suggestive measures:

- 1 All cases of ITPA and all sections pertaining to human trafficking under the Indian Penal code are cognizable offences.

- 2 When any offence relating to trafficking of persons comes to the attention of the officer in charge of a police station he/she should initiate action for rescue of the victim either under section 15 of the ITPA or under section 47 of Cr. P. C on his/her own accord or take the assistance of recognized NGOs.

Suggestive joint venture with civil society

- 3 The police officer should take the assistance of NGO's for rescue operations.

Obligatory measure

- 4 Jurisdiction should not be the criteria for refusing the registration of the FIR.

D2: Good practices during trial:

Obligatory measure:

- 1 Separate the victims from the accused at all the times during the trial.
- 2 All cases related with women and children should be conducted in camera trail.
- 3 During court proceedings the victim girl who is also a witness must be protected from unscrupulous lawyers appointed by the brothel keepers.
- 4 The remand proceeding should be if possible undertaken by video conferencing.
- 5 Other than the I.O. only the next friend or amicus curiae of the victim should be allowed to represent the victim.
- 6 The examination in chief and the cross examination of the victim should be done on the same day in the interest of the victim so that she should not be ridiculed over and over again to avoid secondary victimization.³²
- 7 The following guidelines from the Supreme Court will be applicable for victims of human trafficking that have been raped or sexually assaulted due or in the process of being trafficked. In the case of Delhi Domestic Working Women's Forum versus the Union of India, the Supreme Court laid down the following broad parameters in assisting victim of rape. (Para 15)

32 Shaski v/s Union of India

- The complainants of sexual assault cases should be provided with legal representation. It should be someone who is well acquainted with the criminal justice system. The role of a victim advocate would not only be to explain to the victim the nature of the proceedings, to assist her in the police station and in the court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interest in the police represents her till the end of the case.
- Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she is being questioned would be of great assistance to her.
- The police should be under duty to inform the victim of her right to representation before any question were asked from her and that the police report should state that the victim was so informed.
- A list of advocates willing to act in these cases should be kept at the police station for victims who do not have a particular lawyer in mind or whose own lawyer is unavailable.
- The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that the victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.
- In all rape trials anonymity of the victim must be maintained, as far as necessary.
- The Supreme Court directed the setting up of Criminal Injuries compensation board.
- Compensation for the victims shall be awarded by the court on the conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. The board is to take account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth as a result of the rape.

Suggestive measures:

- 1 The I.O./case officer should during the time of trial through the public prosecutor protect the victim from being intimidated or threatened by the accused persons.
- 2 An I.O./case officer should intimate all witnesses including the victim of their court dates.
- 3 The witnesses should be in a safe and sound position to testify before the court. The I.O./case officer/prosecutor is responsible for their protection.
- 4 Under section 17 clause 4 of the ITPA the police officer should help the probation officer in collecting information necessary for submitting a report on the victim to the magistrate.

Obligatory measure:

- 1 The probation officers report consists of the age, character, antecedents, background of the person, safety and security at the home of the victim and if there is danger to the victim from any person.

D3: Dealing with absconding accused:

Many of the perpetrators manage to secure bail and utilise their freedom to threaten the victim and tamper with evidence. Often when the accused realises that the prosecution is likely to succeed he/she will abscond without a trace thus defeating the purpose of justice. Often a quick response and vigilance displayed by an I.O. can resolve this difficulty with a degree of success.

Suggestive measures:

1. In the above case the I.O. is duty bound to make an application before the concerned court for the issuance of arrest warrant immediately.
2. The police officer should make sure that the absconding accused is tracked and brought to face trial.
3. If the warrant of arrest against accused could not be executed (absconding accused is not traced or found) the police officer should work closely with the

prosecution to move the court in order to get the order of proclamation and also for the attachment of the properties/assets of the accused (u/s 82 and 83 of the Cr. P. C).

4. The assistance of the portrait builders as experts could be taken to identify the absconding accused and it could be published and disseminated with the help of the media.
5. The Police Officer could, in partnership with the Border Security Force or through the assistance of the NGO's, share information across the International border with neighbouring countries on the absconding and habitual human trafficking offenders.

D4: Victims tampering:

Suggestive measures:

1. The Case officer should protect the victim from access to the accused or any persons connected with the human trafficking.
2. The Police must prevent any drugs, addictives, gifts or money being given by the offender/accused to the victims at any location, particularly outside the court, during the period of trial or remand.
3. Specific courts could set up screens to shield the victims from the hostility or glare of the accused.
4. Questions relating directly to the evidence of the crime should be given to the presiding officer of the court and not be directly posed to the victim.
5. Specific courts could have arrangements for video conferencing in a trial involving human trafficking.

D5: Appeals:

1. The moment the accused gets an acquittal, the prosecution should make an application for certified copy immediately, so that the appeal within the stipulated time under the limitation act, can be made to the High Court.

Chapter 5

E: Transit and repatriation (Based on the orders and direction of a competent authority):

Suggestive measures:

1. The police along with the NGO's shall make efforts that repatriation is carried out depending on how safe and nurturing the family environment is for the victim.
2. If and when the victim chooses to return to an abusive family situation the police under directions of the Child Welfare Committee would need to intervene and repatriate the victim to an institution which can protect and care for the individual.
3. Repatriation will be done after their stay and assessment in a protective home.
4. While making decision about repatriation of the rescued victim, a trafficked victim should be heard by competent authority.
5. The police officer should arrange for the repatriation of the victim.
6. The victim should be escorted by women police constables.

E1: Reintegration and Follow-up:

Joint suggestive measures:

1. The NGO's along with the police will take preventive measure to prevent the victim from being re-trafficked.
2. As per J.J Act 2000 adequate follow up of the victim supervised by the Child Welfare Committee along with the close cooperation of other recognized organizations and the police should be undertaken till the child attains the age of eighteen.

E2: Media relations

Joint suggestive measure:

1. The police should always keep the interest of the victims while they interact with member of the press. The identity of the victim should be fully protected while interacting with the media.

E 3: Preventing Re-trafficking:

Joint suggestive measures:

1. The police officer should assist the probation officer or the non- governmental organisations in undertaking a detailed home study for each victim that contains the following parameters as defined by section 17(2) or section 17(A) of the ITPA. The age, character, antecedents, suitability, capacity or genuineness of parents, guardian or husband and the nature of the influence which the conditions in her home are likely to have on the victim and the prospects of the victim's future rehabilitation.
2. The police officer must also help undertake an assessment of the level of risk or danger to the victim/prosecutor from the accused persons.
3. The police station investigating the case must verify if the guardians or the parents had filed a missing person's report with the local police station when the victim went missing.
4. If the guardian or the parents has not filed a missing persons report then the police officer should verify the genuineness of the reason for not registering such a vital report.
5. If the home enquiry report by the probation officer/NGO/Police comes completely clear or when a detailed report of the future rehabilitation of the victim is made then further orders for repatriation/ rehabilitation will be passed by the Child Welfare Committee.
6. The police officer in partnership with the probation officer/NGO's should arrange security or help in escorting the victims for their repatriation or rehabilitation proceedings.
7. The local police and NGO's should be alerted to keep a protective vigil over the repatriated victim and regularly visit them to ensure their continual care and protection for a reasonable period of time. The confidentiality of the victim's incident should be maintained by the I.O. during this entire process.
8. The local police must make all efforts to rescue a rehabilitated victim if they receive concrete information of the victim being re-trafficked.
9. The I.O. along with the local police in partnership with the local NGO's must facilitate a periodic follow up of the victims that would like to testify against their perpetrators. They should ensure safe transport, residence and legal support during the period of the trial.
10. The I.O. must be involved in giving technical advice/ inputs to NGO's or shelter homes regarding the victim's safety after the trial is concluded.
11. These measures if followed would result in a reduction of the incidence of re-trafficking.

Annexure

1. Summary Table of Punishment Options under the ITPA, 1956

Section	Offence	Max Fine	Imprisonment	Eviction
3(1)	Managing or keeping a brothel or assisting in either	Rs. 2,000	1 year min 5 years max	Yes
3(2)	Allowing premises to be used as a brothel	Rs. 2,000	1 day min 5 years max	Yes
4	Living off the earnings of a prostitute	Rs. 1,000	0 min 2 years max	No
4	Living off the earnings of a prostitute (minor/child)	Rs. 1,000	7 years min 10 years max	No
5	Procuring, inducing or taking a Person for prostitution (trafficking)	Rs. 2,000	3 years min Life max	No
6	Detaining a person in a brothel	No max	7 years min Life max	No
7(1)	Prostituting near public places, whether prostitute or customer	No fine	1 day min 3 months max	Yes
7(1)(A)	Prostituting near public places, whether prostitute or customer	No max	7 years min Life max	Yes
7(2)	Being a keeper, tenant or Landlord of premises & knowingly permitting prostitution on the premises	Rs. 200	0 min 6 months max	Yes
8	Seducing or soliciting a Customer for purposes of prostitution	Rs. 500	0 min 1 year max	No
9	Causing or aiding seduction of person in care or custody for purposes of prostitution	No max	7 years min 10 years max	No

2 Courts & Magistrates Competent to enforce ITPA

The appropriate court for filing police initiated cases or private complaint cases under PITA differ depending on which sections have been violated. However, the major offences may all be tried before the Metropolitan or Judicial Magistrate of the First Class, or a higher court.

Sections 3 - 8: Metropolitan or Judicial Magistrate or Higher

No court inferior to a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try a case under the following sections:

Section 3 (managing or keeping a brothel)

Section 4 (living off the earnings of a prostitute)

Section 5 (trafficking)

Section 6 (detaining female for purpose of prostitution)

Section 7 (prostituting near public places)

Section 8 (seducing or soliciting a customer for prostitution)³³

Magistrates Competent to Exercise Powers under Other Sections

PITA, Section 2(c) defines the magistrates competent to exercise powers under PITA.

The following table is reproduced from the Schedule to Section 2(c):

Section	Power	Magistrate Competent to Exercise Powers
7(1)	Try offense of prostitution in public	District Magistrate
11(4)	Try offense of failure to comply with notification of change in residence	Metropolitan Magistrate Judicial Magistrate First Class
15(5)	Examine persons (victims) removed from Brothels during a warrantless search	Metropolitan Magistrate Judicial Magistrate First Class District Magistrate Sub divisional Magistrate
16	Order the removal of a person from a Brothel	Metropolitan Magistrate Judicial Magistrate First Class District Magistrate Sub divisional Magistrate
18	Close a Brothel and evict offenders from the premises	District Magistrate Sub divisional Magistrate
19	Order person who is carrying on or being made to carry on prostitution, to enter a protective home	Metropolitan Magistrate Judicial Magistrate First Class District Magistrate Sub divisional Magistrate
20	Remove a person who is carrying on prostitution from any place	District Magistrate Sub divisional Magistrate Any Executive Magistrate specially empowered by State Government
22-B	Try certain cases by summary trial	Metropolitan Magistrate Judicial Magistrate First Class

³³ ITPA, Section 22.

3 Summary of trafficking of persons offences under various laws

Section	Description	Imprisonment	Fine INR	Bailable	Cognisable	Compoundable	Court
BLA9	Accepting payments	1 day min 3 years max	Refund	Yes	Yes	No	1 st class JM or SDM
BLA16	Compelling labour	1 day min 3 years max	2000	Yes	Yes	No	1 st class JM or SDM
BLA17	Advancing money	1 day min 3 years max	2000	Yes	Yes	No	1 st class JM or SDM
BLA18	Enforcing the system	1 day min 3 year max	2000	Yes	Yes	No	1 st class JM or SDM
BLA19	Failing to restore property	1 day min 1 year max	1000	Yes	Yes	No	1 st class JM or SDM
BLA20	Abetting other offences	Punishment Same as offence abetted	As per offence abetted	Yes	Yes	No	1 st class JM or SDM
CLA14	Penalties For violating section 3,9,11,12 or other provisions	3 months to one year for first offence. Six months to two year for subsequent offence	10000 to 20000	Yes	----	----	Metropolitan Magistrate of JMFC
IPC341	Wrongful restraint	Up to 1 Month	500	Yes	Yes	Yes	Any Magistrate
IPC342	Wrongful confinement	Up to 1 year	1500	Yes	Yes	Yes	Judicial Magistrate
IPC343	Wrongful confinement for three days or more	Up to 2 years	Amount not specified	Yes	Yes	Yes	Any Magistrate
IPC344	Wrongful Confinement for ten days or more	Up to 3 years	Amount not specified	Yes	Yes	Yes	Any Magistrate

IPC345	Wrongful confinement knowing that writ has been issued for his liberation	Up to 2 years	Amount not specified	Yes	Yes	No	Judicial Magistrate First Class
IPC346	Wrongful confinement in secret	Up to 2 years	Amount not specified	Yes	Yes	Yes	JFMC
IPC347	Wrongful Confinement for extortion or constraining to do an illegal act	Up to 3 years	Amount not specified	Yes	Yes	No	JFMC
IPC348	Wrongful Confinement for extorting information or compelling restoration of property	Up to 3 years	Amount not specified	Yes	No	No	Any Judicial Magistrate
IPC365	Kidnapping or abduction with intent secretly and wrongfully to confine a person	Up to 7 years	Amount not specified	No	Yes	No	JFMC
IPC366	Kidnapping A woman to compel intercourse	Up to 10 years	Amount not specified	No	Yes	No	Court of session
IPC366 A	Procuration of a minor girl	Up to 10 years	Amount not specified	No	Yes	No	Court of session
IPC368	Concealing or keeping in confinement a kidnapped person	Up to 10 years	Amount not specified	No	Yes	No	Court of session
IPC370	Buying or Disposal of a person as a slave.	Up to seven years	Amount not specified	Yes	No	No	JFMC
IPC371	Habitual Dealing in slaves	Up to life imprisonment	Amount not specified	No	Yes	No	Court of sessions
IPC372	Selling or Let to hire a minor for prostitution	Up to ten years	Amount not specified	No	Yes	No	Court of sessions
IPC373	Buying or obtaining possession of a minor for prostitution	Up to 10 years	Amount not specified	No	Yes	No	Court of sessions

IPC374	Unlawful Compulsory labour	Up to 1 year	Amount not specified	Yes	Yes	No	Any Magistrate
IPC	Rape	Up to Life imprisonment	Amount not specified	No	Yes	No	Court of session
IPC384	Extortion	Up to 3 years	Amount not specified	Yes	No	No	Any Magistrate
IPC385	Put or Attempt to put in fear of injury in order to commit extortion	Up to 2 years	Amount not specified	Yes	Yes	No	Any Magistrate
IPC386	Extortion by putting a person in fear of death or grievous hurt	Up to 10 years	Amount not specified	Yes	No	No	Magistrate of first class
IPC387	Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion.	Up to 7 years	Amount not specified	Yes	No	No	Magistrate of first class
SC& ST 3(1)(vi)	Forced Labour or bonded labour	6 months min to 5 years max	Amount not specified	No	Yes	No	Sessions Court

BLA = Bonded labour system (Abolition) Act, 1976

IPC = Indian Penal code

SC & ST = Scheduled Caste and Scheduled Tribe atrocities Act

ITPA = Immoral traffic Prevention Act, 1956

CLA = Child Labour (Prohibition and Regulation) Act, 1986

JFMC = Judicial Magistrate First Class

4 Use of the provisions in the Indian Penal code pertaining to “Hurt”

- Sections 319 through 338 of the Indian Penal code in Chapter Sixteen (“Of Offences Affecting the Human Body”) penalize various instances of inflicting hurt upon another. Section 319 defines hurt generally, saying that whoever causes bodily pain, disease or infirmity to another person is said to cause hurt.
- Similar to the provisions on kidnapping and abduction, there are many variations on the basic offence of hurt.⁴ Hurt can be classified as -grievous (s.320), or “voluntary” (s.321), or both (s.322). Depending on how serious the hurt is, and whether the hurt is combined with other offenses, punishment can reach maximum prison terms of one year, three years, seven years, ten years, and even life. Fines are also available.

- Most offenses involving hurt are cognizable, and the more serious offenses are non-bailable. The First Schedule should be consulted, however, with each specific case that arises. These types of charges may be appropriate in most, if not all cases of commercial sexual exploitation, but may be difficult to prove.

5 Use of the section relating to Abetment in the Indian Penal code

- 1 Section 107 defines abetment of a thing by saying that a person abets the doing of a thing who:
 - (1) Instigates any person to do that thing;
 - (2) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
 - (3) Intentionally aids, by any act or illegal omission, the doing of that thing.
- 2 Section 108 defines an abettor as a person who abets either the commission of an offense or the commission of an act which would be an offense, if committed by a person capable of committing an offense and with the same intention or knowledge as the abettor.
- 3 The First Schedule says that the punishment for s.109, abetment of any offense, is the same as for the offense abetted, and the abetment is cognizable, bailable, and triable according to how the offense abetted is characterized. Through the use of this provision one may be able to apprehend brothel keepers, traffickers, pimps who may be guilty of abetting rape. In this manner, prosecuting abetment may even target those most responsible for the commercial sexual exploitation.

6 Use of the section relating to Criminal Conspiracy in Indian penal code.

- Criminal conspiracy is defined in s.120A, which says that when two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) a legal act by illegal means, such an agreement is designated a criminal conspiracy. As with abetment, criminal conspiracy is cognizable, bailable, and triable according to how the object of the conspiracy is characterized.

7 Provisions under the Juvenile Justice (Care and Protection of Children) Act, 2006.

- 1 The Juvenile Justice (Care and Protection of Children) Act (“JJA”) is primarily a source of procedural law, but it does articulate some criminal provisions as well. While not directed at human trafficking or sexual exploitation specifically, a few of the sections may be applicable in some situations. All three of the offences listed below are declared cognizable by s.27 of the JJA.

- 2 Section 23 mandates punishment for cruelty to juvenile or child. It reads: 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.
- 3 Section 25 assigns a penalty for giving intoxicating liquor or narcotic drugs or psychotropic substances to a juvenile or child. It says that whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine.
- 4 Section 26 deals with the exploitation of juvenile or child employee. It states that whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such learning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine.

Other applicable laws

Child Marriage Restraint Act, 1929

Section 4: Punishment for male adult above twenty one years of age marrying a child.

Section 5: Punishment for solemnizing a child marriage

Section 6: Punishment for Parent or guardian in a child marriage.

#Guardian and Wards Act, 1890

Section 26 (1) : A guardian of the person appointed or declared by the court, unless he is the collector or is a guardian appointed by will or other instrument, shall not, without the leave of the court by which he was appointed or declared, remove from its jurisdiction except for such purpose as may be prescribe

Section 44: Penalty for removal of ward from Jurisdiction

#The Mines Act, 1952

Section 68: Penalty for employment of a person below eighteen years of age.

Section 45: Prohibition of the presence of persons below 18 years of age in a mine.

#Factories Act, 1948

Section 67: Prohibition of employment of young children

Section 99: Penalty for permitting double employment of children

Supreme Court of India case law

1. **A.N Roy vs. Suresh Sham Singh** (Cri) appeal 702 of 2006. The Supreme Court reversed the decision of Bombay High Court to strike down the powers of appointment of the commissioner of Police of Mumbai as a District Magistrate by the state government. –It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made there under should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved....” “Reading sub-sections (1), (2) and (5) of Section 20 in conjunction, we are of the view, that the State has power to appoint the Commissioner of Police of Brihan Bombay as an Executive Magistrate and further appoint him as an Additional District Magistrate, who shall have the powers of District Magistrate for the purposes of Sections 18 and 20 of the Act. –The State Government shall now appoint the Commissioner of Police as an Executive Magistrate in Brihan Bombay and shall further appoint him as an Additional District Magistrate, who shall have the powers of District Magistrate for the purposes of Sections 18 and 20 of the Act. In the peculiar facts and circumstances of this case, the status quo ante as on 28.6.2004 shall be maintained till the Commissioner of Police is appointed by the State Government in the above terms. This would mean the Commissioner of Police after necessary appointment shall revive the case from the stage of order of eviction i.e.28.6.2004.
2. **Fatima Rizwana v/s State** 116 (2005) Delhi Law Times 382 (Supreme court 2005) a case cannot be transferred from one fast track court to another on the ground that certain visual evidence (compact discs displaying pornography) would cause embarrassment to the female judge presiding over the court.
3. **Gaurav Jain v. Union of India**, 1997 AIR (SC) 3021, 1997 (8) SCC 114 (Supreme Court 1997). The Supreme Court attempted to determine the rights of the children of prostitutes. The Supreme Court held that the children of prostitutes hold extensive rights, just like all other children. The Supreme, in Obiter dicta, reaffirms a series of past holdings regarding the ITPA definitions of “brothel” and “prostitute”.
4. **Vishal Jeet v. Union of India**, 1990 (96) CrLJ 1469 (Supreme Court 1990) (public interest law case, stating that child prostitution can only be suppressed and eliminated if law enforcing authorities take “severe and speedy” legal action again perpetrators. Court directs state governments to take “appropriate speedy action” to interdict child prostitution. Case also sets forth a good history of PITA).

5. **Vijay Narain Singh v. State of Bihar and Others**, 1984 AIR(SC) 1334, 1984 CrLJ 909 (Supreme Court 1984). (A non-ITPA case where the Court examines the meaning of the term “habitually”. The Court holds that the term “habitually” denotes an activity that is repeated or persistent and that it implies a thread of continuity through the stringing together of similar repetitive acts. Habitually is not defined in ITPA.
6. **Upendra Baxi v. State of Uttar Pradesh**, 1983 (2) SCC 308 (Supreme Court 1981) (public interest law case regarding inmates in a protective home established under PITA).
7. **Chitan J. Vaswani v. State of West Bengal**, 1975 AIR (SC) 2473, 1976 (82) CrLJ 1, 1975 (2) SCC 829 (Supreme Court 1975)(interprets section 18 of PITA. Section 18(1) allows a magistrate to summarily evict a person from premises, but is subject to the distance from a public place limitation. Section 18(2) allows a court to evict upon the conviction of a person under Sections 3 or 7 of PITA. The reference in Section 18(2) to Section 18(1) is for procedural purposes. Section 18(2) is unaffected by the distance limitation in Section 18(1)).
8. **Bhanuprasad Hariprasad Dave v. State of Gujarat**, 1968 AIR (SC) 1323, 1968 CrLJ 1505 (Supreme Court 1968) (this is not a PITA case. Holding that where witnesses are accomplices of the accused, corroboration evidence is required for a court to consider the testimony of the accomplice. Where there is a partisan or interested witness (such as a paid police informant), a court is not bound to require corroboration, but it can require corroboration “in a general way”).
9. **Bai Radha v. State of Gujarat**, 1970 AIR (SC) 1396, 1969 (1) SCC 43, 1970 (76) CrLJ 1279 (Supreme Court 1968)(stating that PITA is a “special act” and that its procedural provisions control over the Code of Criminal Procedure. Holding that where the police violate Sections 15(1) and (2) of PITA, a conviction should not be set aside unless such violation results in prejudice of the accused.).
10. **A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Ram Kali**, 1968 AIR (SC) 1, 1968 (74) CrLJ 82 (Supreme Court 1967)(holding that a magistrate may not proceed to evict a person under PITA, Section 18 where the magistrate has information that the accused violated PITA, Sections 3 and 7. When the magistrate has information before him that an accused has violated the law, he must take cognizance of the offense. In this case, the magistrate must first try the accused under Sections 3 and 7, before he can proceed to evict under Section 18. Court began the judgement by asserting that the sole question on appeal was whether Section 18 was constitutional; the court never answered this question but by applying Section 18, it presumably found that the section is constitutional).
11. **Krishnamurthy, alias Tailor Krishnan v. Public Prosecutor**, Madras, 1967 AIR (SC) 567, 1967 CrLJ 544 (Supreme Court 1966)(holding that a single instance

of prostitution, when coupled with evidence of surrounding circumstances that indicate that a premises is a brothel, is sufficient for a court to determine that such premises is a brothel for the purposes of PITA).

12. **State of Maharashtra v. Jugamander Lal**, 1966 AIR (SC) 940, 1966 CrLJ 707 (Supreme Court 1965). The court held that the use of the phrase "shall be punishable" in ITPA removed any discretion from the court regarding whether or not imprisonment should be given.
13. **State of Uttar Pradesh v. Kaushaliya**, 1964 AIR (SC) 416, 1964 (70) CrLJ 304 (Supreme Court 1963) (holding that under Section 20 of PITA, a magistrate can act upon receiving information from any person. Special police officers are the only persons authorized to deal with offenses under PITA, but Section 20 is not an offense. A magistrate under Section 20 is acting as a court and there are many procedural safeguards to protect against arbitrariness. The decisions of a magistrate under Section 20 are subject to revision and appeal to the Court of Sessions and the High Court. Articles 14 and 19 are not violated by Section 20 of PITA.).
14. **Kamalabai Jethamal v. State of Maharashtra**, 1962 AIR (SC) 1189, 1962 (68) CrLJ 273 (Supreme Court 1962)(holding that the conviction of the accused stands even though the Court was gravely concerned that the witnesses were police agents who actually participated in the crime and even though a witness who found critical evidence was not produced at trial. The Court determined that it was bound to accept the evidentiary findings of the High Court. The Court also determined that the lower court's eviction of the accused under Section 18 was legal.).
15. **Delhi Administration v. Ram Singh**, 1962 AIR (SC) 63, 1962 (68) CrLJ 106 (Supreme Court 1961) (holding that only special police officers and their subordinates are empowered to investigate offense under PITA. The Court also stated that PITA is its own code and that the CrPC applies only on questions unanswered by PITA.).

ITPA, Section 18: Court Rulings

16. **Scope of Section.** -The Supreme Court has held that no criminal prosecution or conviction is necessary under Section 18(1) **as the provision is not punitive but only preventive.** *Chitan J. Vaswani v. State of West Bengal*, AIR 1975 SC 2473 : (1975) 2 SCC 829 : 1975 Cr App R 427 : 1975 Cr LR 666 : (1976) 1 SCJ 525 : 1975 SCC (Cr) 765 : (1976) 1 Andh Pra LJ 1 : 1976 Cr LJ 1 : 1975 Mad LW (Cr) 257 : 1976 Chand LR (Cr) 34.

17. **Issue and service of notice.** “The principle that there should be no condemnation without a hearing does not apply to the case and even if it is applied there is no condemnation intended by the order under sub-sections (2) and (3) of section 18 of the ITPA.” *Nemai Chand Sen v. Kumari Behari Basu*, ILR 1951 Cal 404 : 87 CLJ 1 : 55 CWN 104.
18. **Attachment under sub-section (1) (b) of section 18 ITPA, 1956.** “It is necessary to remember that Sections 3 and 7 of ITPA deals with persons guilty of offence; whereas Section 18 of ITPA deals with premises mentioned therein. It is not correct to say that the set of facts to be proved by the prosecution under Section 3 or Section 7 and the proceedings under Section 18 are identical. In the case of persons guilty of section 3 and 7 of the ITPA the prosecution to succeed has to establish either the intention or the knowledge referred to therein, but in the case of closure of brothel under section 18 of the ITPA intention or knowledge are not necessary ingredients as it deals with the premises being used for commercial sexual exploitation and abuse.” *A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Ram Kali*, AIR 1968 SC 1 at p.5 : (1968) 1 SCR 205 : (1967) 1 SCA 621 : 1968 Cr LJ 82...
19. **Field of operations (Sub-sections (1) and (2)).** Section 18(a) is a summary procedure for closing down obnoxious places of prostitution, without going through the detailed process of a criminal prosecution. It is a quick-acting defensive mechanism, calculated to extinguish the brothel and promote immediate moral sanitation, having regard to the social susceptibility of places like shrines, schools, hostels, hospitals and the like. Section 18(2), on the other hand, operates only where persons have been convicted of offences under Section 3 or Section 7. Section 18(2) operates not merely on places within the offending distance of 200 yards (now 200 metres after amendment of 1978) but in all places the activity of prostitution has been conducted. *Chitan J. Vaswani v. State of West Bengal*, AIR 1975 SC 2473 : (1975) 2 SCC 829 : 1975 Cr App R 427 : 1975 Cr LR 666 : (1976) 1 SCJ 525 : 1975 SCC (Cr) 765 : (1976) 1 Andh Pra LJ 1 : 1976 Cr LJ 1 : 1975 Mad LW (Cr) 257 : 1976 Chand LR (Cr) 34.
20. **Field of operations (contd.).** “Section 18(2) operates not merely on places within the offending distance of 200 yards (now 200 metres after amendment of 1978) but in all places the activity of prostitution has been conducted. A close reading of Section 18(2) indicates that the orders under sub-section (1) referred to therein, do not, wholly, import the substantive paragraph of Section 18(1) but only the evicting orders contained in Section 18(1), Cls. (a) and (b). What is, by a process of abbreviation, imported into Section 18(2) is the decretal part of Section 18(1) to the extent it is written into Section 18(1) (a) and (b). *Chitan J. Vaswani v. State of West Bengal*, AIR 1975 SC 2473 : (1975) 2 SCC

829 : 1975 Cr App R 427 : 1975 Cr LR 666 : (1976) 1 SCJ 525 : 1975 SCC (Cr) 765 : (1976) 1 Andh Pra LJ 1 : 1976 Cr LJ 1 : 1975 Mad LW (Cr) 257 : 1976 Chand LR (Cr) 34.

21. **Conviction under Section 3 or Section 7—Court can pass orders under Section 18 also.** “A person convicted either under subsection (1) or under subsection (2)(a) or (b) of Section 7 will be covered by Section 18(2) because the later provision empowers the Court to pass orders under Section 18(1) if there is a conviction under Section 7, regardless of whether it falls under sub-section (2)(a) or (b) of Section 7.” *Chitan J. Vaswani v. State of West Bengal*, AIR 1975 SC 2473 : (1975) 2 SCC 829 : 1975 Cr App R 427 : 1975 Cr LR 666 : (1976) 1 SCJ 525 : 1975 SCC (Cr) 765 : (1976) 1 Andh Pra LJ 1 : 1976 Cr LJ 1 : 1975 Mad LW (Cr) 257 : 1976 Chand LR (Cr) 34.

22. **Conviction under Section 3 or Section 7 (contd.).** “Where the complaint petition and the report of the police officer disclosed offences punishable under Sections 3 and 7 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, the only appropriate course was to take cognizance of the said offences and proceed with the trial of the said offences and keeping the proceeding under Section 18 of the said Act in abeyance till the disposal of the proceeding in respect of the said offences. As there was no proceeding or trial under Sections 3 or 7 of the Act, the proceeding for action under Section 18 was dropped as non-maintainable by the Magistrate.” Holding: -The High Court held that the Magistrate was competent to initiate fresh proceedings under Sections 3 and 7 of the Act. *Mantoo Rani Dutta v. Sovanath Singh*, (1990) 1 Crimes 142 (144) (Cal).

23. **Conviction under Section 3 or Section 7 (contd.).** “On perusal of a police report under Section 18 also disclosing offences under Sections 3 and 7, the Magistrate cannot choose to ignore the cognizable offence complained of and merely have recourse to Section 18.... [He] must at the first instance proceed against the persons complained against under the penal provisions in Section 3 or Section 7, as the case may, and only after the disposal of those cases take action under Section 18 if there is occasion for it... The words ‘may take cognizance’ in the context mean ‘must take cognizance.’” *A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Ram Kali*, AIR 1968 SC 1 at p.5 : (1968) 1 SCR 205 : (1967) 1 SCA 621 : 1968 Cr LJ 82...

24. **Procedure—Summary enquiry justified.** “The enquiry contemplated by Section 18 is summary in character.” *A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v.*

Ram Kali, AIR 1968 SC 1 at p.5 : (1968) 1 SCR 205 : (1967) 1 SCA 621 : 1968 Cr LJ 82.

25. **Proceedings against legal heirs on death of person proceeded against.** “Where the respondent to a proceeding under Section 18 dies, there will be no legal bar to proceed against his legal heirs if there be any and if they are still occupying the premises.” *Mantoo Rani Dutta v. Sovanath Singh*, (1990) 1 Crimes 142 (144) (Cal).

26. **Power of the High Court.** Argument: “The high Court in appeal could not order the appellant’s eviction because that power only a Magistrate has under Section 18 of the Immoral Traffic (Prevention) Act. The powers of the appellate Court under Section 423 of the Code of Criminal Procedure, 1973, are to reverse the order of acquittal or to order a fresh inquiry or a re-trial, etc. but not to order eviction.” Holding: “The Supreme Court held this argument to be untenable in view of the fact that there is a specific provision in Section 18 of the Immoral Traffic (Prevention) Act authorizing the making of such an order by a Court convicting a person under Section 3 or Section 7 of the Act.” *Kamalabai Jethamal v. State of Maharashtra*, AIR 1962 SC 1189 at page 1191 : (1962) 2 Cr LJ 273 : (1962) 1 Ker LR 370 : 1962 All Cr R 281 : 1962 AWR (HC) 97 : (1962) 2 Andh LT 241 : 64 Bom LR 517..

27. The Bombay High Court in **Prerana v/s the State of Maharashtra** 2002 ALL MR(CRI) 2400 has given directions for future events in rescue of Juvenile girls from commercial sexual exploitation or abuse of persons.

- An advocate appearing for a pimp or brothel keeper is barred from appearing in the same case for the victims rescued under ITPA 1956.
- A Juvenile rescued from a brothel under ITPA should only be released after the Probation officer has completed an inquiry.
- Age verification should be ordered as a first step.
- No magistrate apart from the competent authority under the Juvenile Justice (Care and Protection) Act 2006 can exercise jurisdiction over a juvenile below 18 years of age.

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District Collectorate
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Principal Magistrate

Sikkim

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Judicial Magistrate
Principal Magistrate
South Sikkim

Sikkim

NORTH DISTRICT
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