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Ready Reckoner on Provisions of Laws for Tackling Human Trafficking

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READY RECKONER ON PROVISIONS OF LAWS FOR TACKLING HUMAN TRAFFICKING

1.0 INTRODUCTION

This is a ready reckoner for law enforcement officers in India on the existing laws on human trafficking. The purpose is to bring clarity on the utilisation of the various sections of law while dealing with the different types of human trafficking crimes. The law on trafficking is contained in several statutes and the applicable provisions depend on the nature of trafficking and the context in which the trafficking occurs. It is important to note that in addition to trafficking several other criminal offences may also be applicable under various provisions. It is expected that if IOs are aware of the relevant provisions of various laws, the FIR and other case documents pertaining to human trafficking cases can be strengthened.

Article 23 of the Indian Constitution prohibits human trafficking in every form. Therefore, every Indian citizen is duty bound to prevent human trafficking.

Article 23 “Prohibition of traffic in human beings and forced labour” reads:

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

2.0 LAWS IN RESPECT OF OFFENCES RELATING TO TRAFFICKING FOR SEXUAL EXPLOITATION

2.1 Bhartiya Nyaya Sanhita (BNS), 2023

The following are the relevant sections.



S. No.	Section of BNS	Corresponding IPC Section	Remarks
1	143 BNS	370 IPC	a) Main Section on Human Trafficking, which means a person has been subjected to one or more of the following acts: Recruited; Transported; Harboured; Transferred or Received. b) The methods that are used to traffic a person is by using threats/ coercing / forcing/abduction/ practising fraud or deception/abuse of power/inducement. This means by luring, deceiving or coercing a person. c) The above acts and means must be for the purpose of exploitation which can include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary or forced removal of organs. d) Please note that the consent of the victim is immaterial.
2	144 BNS	370 A IPC	Sexual exploitation of a trafficked person
3	96 BNS	366 A IPC	Procurator of a child
4	98 BNS	372 IPC	Selling a child for the purpose of prostitution
5	99 BNS	373 IPC	Buying a child for the purpose of prostitution
6	62 BNS	511 IPC	Attempt to traffic a person
7	46 BNS	108 IPC	Abetment of the offence of trafficking
8	61(2) BNS	120 B IPC	Conspiracy to traffic a person
9	141 BNS	366 B IPC	Imported from a foreign country (any person under 21 years of age) knowing that they may be forced or seduced into illicit intercourse
10	146 BNS	374 IPC	Unlawful compulsory labour
11	145 BNS	371 IPC	Habitual dealing in slaves

Where the person trafficked for sexual exploitation is a minor, Section 16 of the Protection of Children from Sexual Offences Act, 2012 will also be applicable against the trafficker.



2.2 Immoral Traffic (Prevention) Act (ITPA), 1956

2.2.1 The following are the penal sections.

S. No.	Section as per ITPA	Remarks
1	3 ITPA	Keeping a brothel or allowing premises to be used as a brothel
2	4 ITPA	Living on the earnings of prostitution
3	5 ITPA	Procuring, inducing or taking a person for the sake of prostitution
4	6 ITPA	Detaining a person in premises where prostitution is carried on
5	7 ITPA	Prostitution in or in the vicinity of public places
6	8 ITPA	Seducing or soliciting for purpose of prostitution
7	9 ITPA	Seduction of a person in custody

2.2.2 Though not penal section, the following sections of ITPA 1956 are also significant: -

S. No.	Section as per ITPA	Remarks
1	18 ITPA	Authorises SDM and the trial court to evict a person from the place of exploitation. For example, if a trafficked child is exploited in a hotel and adequate evidence has come up in investigation, along with the charge sheet to be filed before the judicial court, the investigation officer should file a report to the SDM concerned for eviction of the place of exploitation.
2	7 (2)(c) ITPA	Provides for suspension of licence of hotel and cancellation of licence of the hotel in case of sexual exploitation of a trafficked child in a hotel.
3	15 ITPA	Authorises search without warrant by a special police officer (notified under Section 13).
4	15(6) ITPA	Gives to the police officers and others (like NGOs accompany the police) protection from criminal and other procedures against them.
5	15 (6A) ITPA	Requires that searches made under Section 15 shall be in the presence of at least two women officers and any interrogation of a woman is by a female police officer, and if she is not available, by a male police officer along with a female NGO



		person. Therefore, this section requires police to tie up with appropriate NGOs.
6	17 ITPA	Calls for Home Verification before the rescued person is sent away. It provides safe custody of adults also.
7	20 ITPA	Authorises the magistrate to extend and or restrict entry of any person who is a prostitute. Here one must refer to Section 2 (f) which makes it explicit that “prostitution” means the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly. Therefore, ITPA punished soliciting too. However, a trafficked victim who is lured or coerced or deceived to do so, is not an offender.
8	5 and 7 ITPA 143 and 144 BNS, as the case may be	Prosecuting “Customer / Clientele”: The person who sexually exploited the trafficked person (male or female of any age) is usually called a ‘customer’. But that person is also liable as an offender under Section 5 and 7 of ITPA, besides 143 and 144 BNS, as the case may be.

2.3 Information Technology Act, 2000

Whenever a trafficking for sexual exploitation has link to the internet, like soliciting through social media or sharing pictures in WhatsApp for enticing “customers”, etc., Section 66, 67, 67 (A), Section 67 (B) of IT Act and Section 95 BNS may also apply depending upon the context.

3.0 LAWS IN RESPECT OF TRAFFICKING FOR LABOUR/ SLAVERY

With the addition of Section 373 IPC during 2013, and its transformation to 143 BNS, trafficking for slavery, servitude and physical exploitation have also come under the ambit of human trafficking.

3.1 Bhartiya Nyaya Sanhita, 2023

The relevant sections in this context are as follows:



S. No.	Section of BNS	Corresponding IPC Section	Notes
1	143 BNS	370 IPC	a) Main Section on Human Trafficking, which means a person has been subjected to one or more of the following acts: Recruited; Transported; Harboured; Transferred or Received. b) The methods that are used to traffic a person is by luring / deceiving / cheating / coercing / forcing. c) Please note that the consent of the victim is immaterial.
2	96 BNS	366 A IPC	Illegal procurement
3	98 BNS	372 IPC	Selling somebody
4	99 BNS	373 IPC	Buying somebody
5	62 BNS	511 IPC	Attempt to traffic a person
6	46 BNS	108 IPC	Abetment to traffic a person
7	61(2) BNS	120 B IPC	Conspiracy to traffic a person
8	146 BNS	374 IPC	Subjecting a person to unlawful compulsory labour

3.2 Child and Adolescent Labour (Prohibition and Regulation) Act, 1986:

This Act prohibits the engaging of a child (defined as a person below the age of 14 years) from being engaged in occupation or processes. An adolescent (defined as a person above 14 years and below 18 years) cannot be engaged to work in **Bonded Labour System (Abolition) Act, 1976:** This gives scope for compensation to the victim. Hence, this is very useful.

3.3 Information Technology Act, 2000: If the offenders involve electronic media for transmitting **photographs** or pictures or details of the victims including nude pictures, the relevant sections of IT Act especially (67A) will also be applicable. Where the victim is a child, Section 67B of the IT Act, 2000 and Sections 14 and 15 of the Protection of Children from Sexual Offences Act, 2012 will be applicable.



4.0 LAWS IN RESPECT OF HUMAN TRAFFICKING FOR ORGAN TRADE

4.1 Section 143 BNS (370 IPC) will apply.

4.2 Transplantation of Human Organs and Tissues Act, 1994 will also be applicable

4.3 If the communications and related activities are done through internet, the relevant sections of IT Act will also operate.

4.4 **Transportation of Human Organs and Tissues Act, 1994**

The relevant sections in this context are as follows:

S. No.	Section	Description of the Offence
1	18 THOTA	Punishment for removal of human organ without authority.
2	19 THOTA	Punishment for commercial dealings in human organs.
	19A THOTA	Punishment for illegal dealings in human tissues
3	20 THOTA	Punishment for contravention of any other provision of the Act
4	21 THOTA	Offences by companies

5.0 COMMON APPLICATIONS TO ALL OFFENCES OF TRAFFICKING

- As stated above, Section 143 BNS / 370 IPC applies to all types of trafficking.
- Confiscation of illegal assets:** The illicit money, materials and assets acquired through trafficking can be confiscated under **BNSS / CrPC** and **Criminal Law (Amendment) Ordinance, 1944**. The **Prevention of Money-Laundering Act, 2002** should also be utilised.



APPENDIX- I

DETAILS OF RELEVANT SECTIONS OF BHARTIYA NYAYA SANHITA (BNS), 2023

The following are the relevant sections.

S. No.	Section of BNS
1.	46 BNS (earlier section 108, IPC) Abettor: A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. Explanation 1: <i>The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.</i> Explanation 2: <i>To constitute the offence of abetment it is not necessary that the act should be committed, or that the effect requisite to constitute the offence should be caused.</i> Explanation 3. <i>It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.</i> Explanation 4. <i>The abetment of an offence being an offence, the abetment of such an abetment is also an offence.</i> Explanation 5. <i>It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.</i>
2.	61(2) BNS (earlier section 120B, IPC) Criminal Conspiracy Whosoever is a party to a criminal conspiracy- a) To commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Sahnita for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence;



	b) Other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.
3.	62 BNS (earlier section 511, IPC) Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment: Whoever attempts to commit an offence punishable by this Sanhita with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Sanhita for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.
4.	95 BNS Hiring, employing or engaging a child to commit an offence Whoever hires, employs or engages any child to commit an offence be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself. <i>Explanation- Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.</i>
5.	96 BNS (earlier section 366A, IPC) Procuration of child Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.
6.	98 BNS (earlier section 372, IPC) Selling child for purposes of prostitution, etc. Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any



	unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation 1: <i>When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.</i> Explanation 2: <i>For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.</i>
7.	99 BNS (earlier section 373, IPC) Buying child for purposes of prostitution, etc. Whoever buys, hires or otherwise obtains possession of any child with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine. Explanation 1: <i>Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.</i> Explanation 2: <i>“Illicit intercourse” has the same meaning as in section 98.</i>
8.	141 BNS (earlier section 366B, IPC) Importation of girl or boy from foreign country: Whoever imports into India from any country outside India any girl under the age of twenty-one years or any boy under the age of eighteen years with intent that girl or boy may be, or knowing it to be likely that girl or boy will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.



9.	143 BNS (earlier section 370, IPC) Trafficking of person: (1) Whoever, for the purpose of exploitation recruits, transports, harbours, transfers, or receives a person or persons, by- - using threats; or - using force, or any other form of coercion; or - by abduction; or - by practicing fraud, or deception; or - by abuse of power; or - by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. Explanation 1: <i>The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary or forced removal of organs.</i> Explanation 2: <i>The consent of the victim is immaterial in determination of the offence of trafficking.</i> (2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine. (3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine. (4) Where the offence involves the trafficking of a child below the age of eighteen years, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. (5) Where the offence involves the trafficking of more than one child, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine. (6) If a person is convicted of the offence of trafficking of child on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine. (7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.
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10.	144 BNS (earlier section 370 A, IPC) Exploitation of a trafficked person: (1) Whoever, knowingly or having reason to believe that a child has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine. (2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.
11.	146 BNS (earlier section 374, IPC) Unlawful compulsory labour Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



APPENDIX-II

Details of relevant sections of Immoral Traffic (Prevention) Act (ITPA), 1956

The following are the penal sections.

S. No.	Section as per ITPA
1	Section 3, ITPA Punishment for keeping a brothel or allowing premises to be used as a brothel. (1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees. (2) Any person who- (a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or (b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine. (2A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if,- (a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or (b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.



	(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.
2	Section 4, ITPA Punishment for living on the earnings of prostitution. (1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term not less than seven years and not more than ten years. (2) Where any person over the age of eighteen year is proved- (a) to be living with, or to be habitually in the company of, a prostitute; or (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or (c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-section (1).
3	Section 5, ITPA Procuring, inducing or taking person for the sake of prostitution. (1) Any person who- a) Procures or attempts to procure person, whether with or without his consent, for the purpose of prostitution; or b) Induces a person to go from any place, with the intent that he may go for the purpose of prostitution become the inmate of, or frequent, a brothel; or c) Takes or attempts to take a person, or causes a person to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or d) Causes or induces a person to carry on prostitution; Shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees and if any offence under this sub-section is committed against the will of any



	person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this sub-section,- (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years; (2) An offence under this section shall be triable- a) In the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or b) In the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.
4	Section 6, ITPA Detaining a person in premises where prostitution is carried on. (1) Any person who detains any other person, whether with or without his consent, in any brothel, or in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punishable on conviction with rigorous imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1). (2A) Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes. (3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her lawful husband, if such person, with intent to compel or induce her to remain there, a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or



	b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person. (4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or for the recovery of any money alleged to be payable by such woman or girl.
5	Section 7, ITPA Prostitution in or in the vicinity of public places. (1) Any person who carries on prostitution, and the person with whom such prostitution is carried on, in any premises- a) which are within the area or areas of, notified under sub section (3), or b) which are within a distance of two hundred meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months. (1A) Where an offence committed under sub section(1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. (2) Any person who- a) being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or b) being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or c) being the owner, lessor or landlord of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine which may extend to two



	hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year: Provided that if an offence committed under this sub section is in respect of a child or minor in a hotel, such license shall also be liable to be cancelled. Explanation 1: <i>For the purposes of this sub-section, "hotel" shall have the meaning as in clause (6) of section 2 of the Hotel Receipts Tax Act, 1980 (54 of 1980).</i> (3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification. (4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty. (5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.
6	Section 8, ITPA Seducing or soliciting for purpose of prostitution. (1) Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not- a) by words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way) or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or c) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees: Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.



7	Section 9, ITPA Seduction of a person in custody. (1) Any person who having the custody, charge or care of, or a position of authority over, any person, causes or aids or abets the seduction for prostitution of that person shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.
8.	Section 15, ITPA Search without warrant. (1) Notwithstanding anything contained in any other law for the time being in force, whenever the special police officer or the trafficking police officer, as the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant. (2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do: Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search. (3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860). (4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove therefrom all the persons found therein (5) The special police officer or the trafficking police officer, as the case may be, after removing the person, under sub-section (4) shall forthwith produce him before the appropriate magistrate. (5A) Any person who is produced before a magistrate under sub section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the



	detection or any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases. Explanation: <i>In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956)</i> (6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything lawfully done in connection with, or for the purpose of, the search. (6A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation. Explanation- <i>For the purpose of this sub-section and section 17A, “recognised welfare institution or organisation” means such institution or organisation as may be recognised in this behalf by the State Government</i> (7) The provisions of the Code of Criminal Procedure, 1973, (2 of 1974) shall, so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under section 94 of the said Code
9	Section 17, ITPA Intermediate custody of persons removed under section 15 or rescued under section 16. (1) When the special police officer removing a person under sub-section (4) of section 15 or a police officer rescuing a person under sub-section (1) of section 16, is for any reason unable to produce him before the appropriate magistrate as required by sub-section (5) of section 15, or before the magistrate issuing the order under sub-section (2) of section 16, he shall forthwith produce him before the nearest magistrate of any class, who shall pass such orders as he deems proper for his safe custody until he is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order: Provided that no person shall be- - detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or - restored to or placed in the custody of a person who may exercise a harmful influence over him. (2) When the person is produced before the appropriate magistrate under sub-section (5) of section 15 or the magistrate under sub-section



(2) of section 16, he shall, after giving him an opportunity of being heard, cause an enquiry to be made as to the correctness of the information received under sub-section (1) of section 16, the age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him and the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958, (20 of 1958), to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.

(3) The magistrate may, while an inquiry is made into a case under sub-section (2), pass such orders as he deems proper for the safe custody of the person:

Provided that where a person rescued under section 16 is a child or a minor, it shall be open to the magistrate to place such child or minor in any institution established or recognised under any Children Act for the time being in force in any State for the safe custody of children:

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

(4) Where the magistrate is satisfied, after making an inquiry as required under sub-section (2)-

a) that the information received is correct; and

b) that he is in need of care and protection,

he may, subject to the provisions of sub-section (5), make an order that such person be detained for such period, being not less than one year and not more than three years, as may be specified in the order, in a protective home, or in such other custody as he shall, for reasons to be recorded in writing, consider suitable:

Provided that such custody shall not be that of a person or body of persons of a religious persuasion different from that of the person and that those entrusted with the custody of the person including the person in charge of a protective home, may be required to enter into a bond which may, where necessary and feasible, contain undertakings based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person as well as supervision by a person appointed by the court, which will be in force for a period not exceeding three years.

(5) In discharging his functions under sub-section (2), a magistrate may summon a panel of five respectable persons, three of whom shall, wherever practicable, be women, to assist him; and may, for this purpose, keep a list of experienced social welfare workers, particularly women social welfare workers, in the field of suppression of immoral traffic in persons.



	(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.
10	Section 18, ITPA Closure of brothel and eviction of offender from the premises. (1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof with a distance of two hundred meters of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person incharge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders- (a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place, or portion; (b) directing that before letting it out during the period of one year, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate: Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein. (2) A court convicting a person of any offence under section 3 or section 7 may pass orders under sub-section (1) without further notice to such person to show cause as required in that sub-section. (3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year or three years, as the case may be. Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any



	portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside. (4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative. (5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.
11	Section 20, ITPA Removal of prostitute from any place. (1) A magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring him to appear before the magistrate and show cause why he should not be required to remove himself from the place and be prohibited from re-entering it. (2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the person against whom the notice is issued. (3) The magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the person an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such person is a prostitute and that it is necessary in the interests of the general public that such person should be required to remove himself therefrom and be prohibited from re-entering the same, the magistrate shall, by order in writing communicated to the person in the manner specified therein, required him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place. (4) Whoever-



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| <p>a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or</p> <p>b) knowing that any person has, under this section, been required to remove himself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the place, shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.</p> |
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APPENDIX-III

Details of relevant sections of Information Technology Act, 2000

The following are the penal sections.

1.	Section 67 A Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.
2.	Section 67 B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form. Whoever,— (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or (d) facilitates abusing children online, or (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees: Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form—



	(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or (ii) which is kept or used for bona fide heritage or religious purposes. Explanation—<i>For the purposes of this section, —children</i> means a person who has not completed the age of 18 years.
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APPENDIX-IV

Details of relevant sections of Transportation of Human Organs and Tissues Act, 1994

The following are the penal sections.

S. No.	Section as per THOTA
1	Section 18, THOTA Punishment for removal of human organ without authority (1) Any person who renders his services to or at any hospital and who, for purposes of transplantation, conducts, associates with, or helps in any manner in, the removal of any human organ without authority, shall be punishable with imprisonment for a term which may extend to [ten years and with fine which may extend to twenty lakh rupees.] <i>[Substituted for the words "five years and with fine which may extend to ten thousand rupees" by Act 16 of 2011, Section 16.]</i> (2) Where any person convicted under sub-section (1) is a registered medical practitioner, his name shall be reported by the Appropriate Authority to the respective State Medical Council for taking necessary action including the removal of his name from the register of the Council for a period of [three years] <i>[Substituted for the words "two years" by Act 16 of 2011, Section 6.]</i> for the first offence and permanently for the subsequent offence. (3) Any person who renders his services to or at any hospital and who conducts, or associates with or helps in any manner in the removal of human tissues without authority, shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees. <i>[Inserted by Act 18 of 2011, Section 16.]</i>
2.	Section 19, THOTA Punishment for commercial dealings in human organs Whoever (a) makes or receives any payment for the supply of, or for an offer to supply, any human organ; (b) seeks to find a person willing to supply for payment any human organ; (c) offers to supply any human organ for payment; (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ; (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or



	include the initiation or negotiation of any arrangement referred to in clause (d); or (f) publishes or distributes or causes to be published or distributed any advertisement, (a) inviting persons to supply for payment of any human organ; (b) offering to supply any human organ for payment; or (c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d), (g) [abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the donation of the human organs, as a near relative or by reason of affection or attachment towards the recipient.] <i>[Inserted by Act 18 of 2011, Section 17.]</i> shall be punishable with imprisonment for a term which shall not be less than [five years but which may extend to ten years and shall be liable to fine which shall not be less than twenty lakh rupees but may extend to one crore rupees] <i>[Substituted for the words "two years but which may extend to seven years and shall be liable to fine which shall not be less than ten thousand rupees but may extend to twenty thousand rupees" by Act 16 of 2011, Section 17.]:[* * *] [Proviso "Provided that the Court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees." omitted by Act 16 of 2011, Section 17.]</i>
3.	Section 19A, THOTA Punishment for illegal dealings in human tissues Whoever- (a) makes or receives any payment for the supply of, or for an offer to supply, any human tissue; or (b) seeks to find person willing to supply for payment and human tissue; or (c) offers to supply any human tissue for payment; or (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human tissue; or (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or (f) publishes or distributes or causes to be published or distributed any advertisement- (i) inviting persons to supply for payment of any human tissue; or (ii) offering to supply any human tissue for payment; or (iii) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d); or (g) abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the



	donation of the human tissues as a near relative or by reason of affection or attachment towards the recipient, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall be liable to fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.]
4.	Section 20, THOTA Punishment for contravention of any other provision of this Act Whoever contravenes any provision of this Act or any rule made, or any condition of the registration granted, thereunder for which no punishment is separately provided in this Act, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees.
5.	Section 21, THOTA Offences by companies (1) Where any offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any offence punishable under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation- For the purposes of this section, (a) “company” means any body corporate and includes a firm or other association of individuals; and (b) “director” in relation to a firm, means a partner in the firm.