



Proposed Amendments in ITPA 1956 with Rationale

Section	Existing Provision	Proposed Amendment	Rationale	Comments by the Lawyers Collective
Scope of the Act	An Act to provide in pursuance of the International Convention signed at New York on the 9 th day of May 1950, for the prevention of immoral traffic.	The scope can be " <i>An Act to provide for the prohibition and prevention of trafficking in persons and commercial Sexual exploitation of persons and further provide for the rehabilitation of the persons who are victims of trafficking</i> "	This is to widen the scope in line with the UNCTOC protocol ratified by India as well as to minimise ambiguity of the provisions of the Act.	<p>The proposed amendment to the scope of the Act is long and unwieldy.</p> <p>Since the Act is in pursuance of the 1949 UN Convention, reference to the same must be retained in the title.</p> <p>The following is suggested:</p> <p><i>"An Act, in pursuance of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others, 1949, to provide for the prevention of trafficking in persons and further provide for the rehabilitation of victims of trafficking"</i></p>
Title of the Act (Section 1)	Immoral Traffic (Prevention) Act, 1956	Trafficking In Persons and Commercial Sexual Exploitation Prevention Act	<p>Change in title of the Act</p> <p>The title of the Act as "Immoral" Trafficking Prevention Act 1956 seems to indicate that trafficking that is "not for immoral purposes" may be acceptable. Human Trafficking is a Criminal Act. Therefore, there is a need to change the title of the Act, as it tries to interpret a criminal act from the prism of morality.</p>	<p>It is noted that the phrase 'commercial sexual exploitation' is not used anywhere in the Act so there is no point in adding it in the title of the Act, which would create confusion.</p> <p>The title, instead, could be amended as:</p> <p><i>Trafficking in Persons (Prevention) Act, 2014</i></p>
New	Definition of	a) "Trafficking in	The present Act does	It is submitted that the

<p>sub-section 2 (j)</p>	<p>"trafficking in persons"</p>	<p>persons" means the recruitment, transportation, transfer, harbouring or receipt of any person, <i>by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits or of inducing or dedicating a person under guise of religious, social, cultural, customary practices or sanctions to achieve the consent of a person having control over another person</i>, for the purpose of commercial sexual exploitation or abuse or pornography of such person.</p> <p>b) <i>The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used;</i></p> <p>c) <i>The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of commercial sexual exploitation or abuse shall be considered "trafficking in persons" even if this</i></p>	<p>not provide the definition of human trafficking for commercial sexual exploitation. In fact there is no legislation in India other than the Goa Children's Act, 2003 which defines 'Child Trafficking'.</p> <p>The definition used here is in line with the ratified UNCTOC Protocol and also uses the local context of religious and traditional forms of exploitation such as Devdasis or community based prostitution.</p>	<p>rationale provided for the proposed amendment is factually and legally incorrect, since trafficking in persons is a criminal offence in India.</p> <p>In 2013, the <i>Criminal Law (Amendment) Act</i> incorporated a new offence of 'trafficking in persons' in Section 370 of the Indian Penal Code, 1860 (hereinafter 'IPC'), which provides a definition of trafficking in persons, lays down the elements of the offence of trafficking and provides for punishment for the same, which is graded according to seriousness of the crime.</p> <p>Section 370A, IPC further criminalises the act of engaging a trafficked person for sexual exploitation.</p> <p>It is noted that the proposed offence is identical to Section 370, IPC and there is no reason to create a new offence for a conduct, which is already penalized under the law. This would not only serve to confuse the investigation, prosecution and conviction of the offenders, but would also constitute violation of the constitutional guarantee against double jeopardy under Article 20 (2) of the Constitution.</p> <p>Further, Section 370 prohibits trafficking in persons not just for sexual exploitation but for other purposes too, including physical exploitation, slavery, servitude, amongst others. This constitutes a</p>
--	--	---	--	--

		<p><i>does not involve any of the means set forth in subparagraph (a)</i></p>	<p>comprehensive definition of trafficking and is in line with India's obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol), supplementing the <i>United Nations Convention against Transactional Organized Crime</i> (UNTOC), 2000.</p> <p>Without prejudice to the above and in the alternative, it is submitted that pornography has not been defined under the Act. ITPA is concerned with trafficking and exploitation within prostitution. ITPA is guided by the 1949 Convention and cannot be broadened to include pornography.</p> <p>The proposed clause (b) is also redundant. The means mentioned in the proposed Section 2(j)(a), i.e., coercion, fraud, deception, etc would anyway vitiate the consent of the person and there can be no valid consent to trafficking. So this clause is tautological and must be removed.</p> <p>Moreover, sub-clause (c) is irrelevant, since any sexual exploitation or abuse of a child is an offence <i>per se</i> under the Indian law, including the <i>Protection of Children from Sexual Offences Act, 2012</i>.</p> <p>Accordingly, the proposed amendment is completely futile, and in fact contrary to the spirit of the UN Trafficking Protocol.</p>
--	--	---	---

				Please also refer to the comment mentioned in the proposed Section 5.
New sub-section 2 (k)	Definition of "commercial sexual exploitation or abuse"	of or	"Commercial Sexual exploitation or abuse" means causing or compelling a person to provide his or her body for sexual acts, by means as mentioned in section 2(k)(a).	<p>To bring in clarity of the term for better interpretation by the enforcement agencies and the judiciary.</p> <p>Notably, though the proposed definition of 'commercial sexual exploitation or abuse' in Section 2 (k) refers to the "means as mentioned in Section 2(k)(a)", there is no proposed Section 2 (k)(a) in the Bill. So this proposed definition is faulty.</p> <p>Without prejudice to the above and in the alternative, it is submitted that the proposed definition of 'commercial sexual exploitation' is inconsistent and is not used anywhere in the Act. The current definition of 'prostitution' in Section 2 (f) refers to 'sexual exploitation or abuse for commercial purposes', while other provisions use the phrase 'sexual exploitation or abuse'.</p> <p>It is a cardinal rule that criminal law must be clear and not vague. The proposed definition will further complicate the interpretation of ITPA by having confusing and overlapping definitions, which will only benefit the accused.</p>
New sub-section 2 (l)	Definition of "a position of vulnerability"	of	"Position of vulnerability" shall refer to any situation where a person is materially or otherwise dependent on another person. This includes, but is not limited to, taking advantage of the position	<p>Same as above</p> <p>The proposed definition of '<i>position of vulnerability</i>' is vague and overbroad. The definition rests on the belief that being dependant on another person, whether materially or otherwise, is sufficient to prove position of</p>

a person is placed in as a result of:

- (i) Misrepresentation or Undue influence
- (ii) having entered the country illegally or without proper documentation; or
- (iii) pregnancy or mental disease or disability of the person, including addiction to the use of any substance; including but not limited to alcohol, drugs or substances as prescribed in the Narcotic and Psychotropic Drugs Act 1985 or
- (iv) reduced capacity to form judgments by virtue of being a child, illness, infirmity or a physical or mental disability; or
- (v) being in a precarious situation from the standpoint of social survival.

vulnerability. Any kind of dependence makes a person vulnerable but that cannot be brought within the ambit of criminal law.

It is noted that the element of misrepresentation or undue influence can be an independent means or element in the proposed definition of 'trafficking in persons' in Section 2 (j)(a). It need not be subsumed under 'position of vulnerability'.

Further, with respect to the means laid down in the proposed section, there is no data or evidence on the number of pregnant women or persons with mental illness or drug dependant persons who have been trafficked in India. In the absence of such data, there is little justification to bring it within the ambit of 'position of vulnerability' in law.

Furthermore, reduced capacity of a child is irrelevant, since a child does not have the capacity to consent, under existing law. Physical infirmity/disability/illness does not reduce the capacity to form judgment. Even persons with mental illness do not lack the capacity to make judgment in all situations. In fact, the Hon'ble Supreme Court in *Suchita Srivastava v. Chandigarh Administration* had reiterated the personal autonomy of persons with mental illness.¹

Besides, this is not a precise

				<p>legal definition but a descriptive, sociological formulation, as is evident in the usage of words 'precarious situation', and 'social survival'. An offence must be defined with precision and certainty; otherwise it will fall foul of Articles 14 and 21 of the Constitution.</p> <p>Furthermore, the phrase 'position of vulnerability' is absent from the definition of 'trafficking in persons' in Section 370, IPC precisely because of its non-application in a legal proceeding.</p> <p>As noted before, there is no need for another definition of 'trafficking in persons' in light of Sections 370 and 370A. Accordingly, the proposed definition of 'position of vulnerability' should be dropped.</p>
New sub-section 2 (m)	Definition of Special Court	"Special Court" means a special court or an additional special court established under sub-section (1) of section 22A and Section 22 AA.	Special courts and Prosecutors are essential for expeditious trials and more victim sensitive procedures and therefore, clear definition of roles, duties and powers needs to be provided in the Act itself.	<p>The proposed definition is completely unnecessary, since Section 22A (1) clearly provides for the power of the State Government to establish special courts in the form of Court of Judicial Magistrate of first class or metropolitan magistrate in either districts or metropolitan areas.</p> <p>The existing law is clear and precise and the proposed amendment is not adding any value or clarity to the current provision.</p>
New sub-section 2 (n)	Definition of Commercial establishment	"Commercial Establishment" means any place which is issued a license for carrying on the business under any law for the time being in force, including, but not limited to hotel, lodge, guest house, bar, cinema	Commercial establishment is proposed to be defined in order to hurt financially when such parties connive at prostitution being carried out in their premises.	It is noted that the term 'commercial establishment' is already defined in the many State Acts like <i>Delhi Shops and Establishment Act, 1954</i> , <i>Rajasthan Shops and Establishments Act, 1958</i> , <i>Karnataka Shops and Commercial Establishments</i>

		<p>theatre, video parlour, club, massage parlour or beauty salon.</p>		<p><i>Act, 1961, amongst others.</i></p> <p>The proposed definition is much broader than the existing definitions and does not provide for any exemptions. This may be result in difficulties in implementation, since in case of a commercial establishment already registered under the State Act, the question will be which law may apply.</p> <p>Instead of providing a new definition, it is suggested that ITPA may refer to the definition of 'commercial establishment' in <i>Delhi Shops and Establishment Act</i>, like it has done for 'Hotels' in Section 7(2) of the ITPA.</p> <p>Further, there is an anomaly in the proposed amendment in Section 7(2) that has brought 'commercial establishment' within the ambit of 'public premises' and the explanation that still uses the word 'hotel' from the existing provision.</p>
<p>Sub-section 2A</p>	<p>"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"</p>	<p>"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 or <u>contributes to the sexual exploitation or abuse;</u></p> <p>New Proviso: Provided that where it is proved that a brothel is used for the mutual gain</p>	<p>It is experienced in a large number of cases that the traffickers hire a room/flat/house and lodge the victims. This place is mainly used for the residential purposes and no commercial sexual activities are conducted in such places. The places are usually guarded by the pimps and the victims do not have the freedom to move out of the place.</p> <p>Though these places are not directly used for</p>	<p>It is submitted that the words "<i>used for sexual exploitation or abuse</i>" in the existing definition are wide enough to cover the situations contemplated in the proposed amendment, since the present law does not require sexual activity to have occurred in the said premises for it to be deemed a brothel.</p> <p>Further, the rationale provided for the proposed amendment is to cover cases of detention in premises, which need not involve sexual activity. It is submitted that these situations</p>

of two or more prostitutes, and no other offence under the Act, then notwithstanding anything contained in this Act or any other law for the time being in force, the court, instead of sentencing such prostitutes to imprisonment, may direct that the prostitute be released for undergoing rehabilitation in a protective and rehabilitation home set up under and in accordance with this Act.

Provided further that the foregoing proviso shall not apply to any prostitute found to be guilty under Section 5 A of the Act.

prostitution, they contribute to the exploitation, and the police find it difficult to take action against such places as they do not come under the present definition of "Brothel". Accordingly the scope of the definition is being widened.

At the same time, the new proviso will safeguard the victims of trafficking who are prostitutes from penal provisions, as it is felt that they are in need for protection and rehabilitation.

are already covered under the offence of 'detaining a person in premises where prostitution is carried on' in Section 6 of the Act. There is no further need to include it in the definition of a brothel.

Moreover, the proposed definition is unwieldy and overbroad. The words 'contributes to' are vague and ought not to be incorporated in a law that has penal consequences.

Without prejudice to the above and in the alternative, it is pointed out that the proposed proviso to the definition to exempt sex workers from imprisonment and divert them to rehabilitation cannot be made in the definition provision but has to be part of the substantive offence of 'brothel keeping' under Section 3.

It is also contended that the proposed new proviso in the definition will not benefit the intended beneficiaries, that is, sex workers working in premises for mutual gain, because they will still be arrested, prosecuted, tried and convicted in a criminal Court for brothel keeping offences. Besides, the proviso will not be applicable to sex workers, who may be in contravention of Section 7(1), [carrying on prostitution within 200 metres of a school, hospital, religious place etc], thus restricting its purported benefit to a very small section of the community.

				The proposed changes to Section 2(a) should be rejected and instead it is suggested that the words " <i>or for the mutual gain of two or more prostitutes</i> " should be deleted, in order to really benefit sex workers.
Sub-section 2(aa)	"Child" means 'a person who has not completed the age of sixteen years'	"Child" means 'a person who has not completed the age of eighteen years'	Child is defined as per JJ Act, and as per Article 3 (Section d) of UNCTOC protocol.	The proposed change is welcome.
Sub-section 2(b)	"corrective institution" means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which persons, who are in need of correction, may be detained under this Act, and includes a shelter where undertrials may be kept in pursuance of this Act;]	To be deleted. This term should be deleted wherever it finds mention in the Act.	"Corrective institution", gives an impression that the persons rescued from prostitution have committed a wrong and their deviant behaviour needs to be corrected. The reality is that, the persons in prostitution are "victims" and are in need of care and protection. The aspect of care and protection of these victims are covered in section 2 (g)	The proposed change is welcome, since the concept of 'correction' of prostitutes is archaic. It is also inconsistent with the rest of the Act, which intends to offer support to sex workers through rehabilitation. Please further refer to the comment mentioned in the proposed deletion of Section 10A.
Sub-section 2(ca)	"major" means 'a person who has completed the age of eighteen years'	To be deleted. This term should be deleted wherever it finds mention in the Act.	As the definition of children is extended to 18 years this section is irrelevant	The proposed change is welcome.
Sub-section 2(cb)	"minor" means 'a person who has completed the age of sixteen years but who has not completed the age of eighteen years'	To be deleted. This term should be deleted wherever it finds mention in the Act.	As the definition of children is extended to 18 years this section is irrelevant	The proposed change is welcome.
Sub-section 2(f)	"prostitution" means the sexual exploitation or abuse of persons for	Prostitution means the sexual exploitation or abuse of persons for commercial purposes	A new phrase " including for consideration in money or in any	The proposed change is problematic, as it seeks to bring adult consensual sex work within the ambit of the

	<p>commercial purposes, and the expression "prostitute" shall be construed accordingly;</p>	<p>including for consideration in money or in any other kind, and the expression "prostitute" shall be construed accordingly</p>	<p>other kind" has been added as per the changing nature of sex trade. The present context demands that sexual exploitation or abuse of persons for gaining favours in business dealings etc. Also need to be brought into the ambit of the Act, so as to remove the ambiguity in the definition.</p>	<p>law, despite the clear legislative intent of not criminalizing sex work <i>per se</i>. The words "<i>including for consideration in money or in any other kind</i>" can be traced back to the earlier definition of 'prostitution' in the <i>Suppression of Immoral Traffic Act, 1956</i>, which was reformed in 1986 to target exploitation, abuse and commercial gain by a third party (and not by the sex worker or the client).</p> <p>It is noted that the rationale provided for the proposed change seeks to cover cases of sexual favours in workplace/business work environments. These, however, do not partake the nature of prostitution. At the most, they could be termed as cases of sexual harassment, which are already covered under the <i>Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</i>.</p> <p>The proposed change also deviates from the Trafficking Protocol, which the WCD is otherwise purporting to follow, as the said instrument requires criminalization of exploitation of the prostitution of others and not prostitution <i>per se</i>. There is no justification for expanding the definition of prostitution to cover situations where exploitation and abuse are non-existent.</p> <p>Thus, the proposed changes in the definition of prostitution may be deleted.</p>
Sub-	"Protective home"	"Protective and	The victims rescued	It is noted that changing the

<p>section 2(g)</p>	<p>means an institution by whatever name called (being an institution established or licensed as such under section 21), in which persons in need of care and protection may be kept under this Act, (and where appropriate technically qualified persons, equipment and other facilities have been provided).</p>	<p>rehabilitation home means an institution or shelter by whatever name called (being an institution established or licensed as such under section 21), in which persons in need of care, protection and rehabilitation may be kept under this Act, (and where appropriate technically qualified persons, equipment and other facilities have been provided.)</p> <p>The term "Protective home" used in any portion of the Act should be replaced with "Protective and rehabilitation home"</p>	<p>from the exploitative situation or who voluntarily wants to come out from the trade not only requires protection but also is in need of rehabilitation. Further, such homes in Ujjawala Scheme are already recognized as "Protective and Rehabilitation home". Therefore the term is proposed to be changed to Protection and Rehabilitation Home.</p>	<p>name of the 'protective home' does not change the nature of these institutions, which is to detain adult women of sound mind against their will, apart from detaining women who are in need of care and protection and want to stay in these homes.</p> <p>Further, the notion of rehabilitation is rooted in people moving on with their lives and going back to their families/communities.</p> <p>Institutionalization of women in custodial settings cannot be considered rehabilitation in any sense of the word. Any successful rehabilitation effort ought to be based on the principles of voluntariness and with full respect for the dignity and autonomy of the individual.</p> <p>Moreover, detention in protective custody in the name of rehabilitation for sex workers has been denounced by the United Nations and other international human rights bodies as violative of international law.ⁱⁱ</p>
<p>Sub-section 2 (j)</p>	<p>"Trafficking Police Officer" means a police officer appointed by Central Government under subsection (4) of Section 13</p>	<p>"Anti Trafficking police officer" means a police officer appointed by Central Government under subsection (4) of Section 13</p> <p>The term "Trafficking Police Officer" used anywhere in the current Act should be replaced with "Anti Trafficking police officer"</p>	<p>The amendment will bring clarity on the role of the police officer.</p>	<p>No Comments</p>
<p>Section</p>	<p>Punishment for</p>	<p>Punishment for</p>	<p>The enhanced penalty</p>	<p>Stringent penalties for the</p>

<p>3(1)</p>	<p>keeping a brothel or allowing premises to be used as a brothel.</p> <p>(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.</p>	<p>keeping a brothel or allowing premises to be used as a brothel</p> <p>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 three years and not more than five years and also with fine which may extend to fifty thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than five years and not more than ten years and also with fine which may extend to two lakh rupees.</p>	<p>is in conformity with Article 5 of the UNCTOC Protocol.</p>	<p>offence of brothel-keeping are justified only if the definition of brothel in Section 2(a) is amended to exclude the words "<i>or for the mutual gain of two or more prostitutes</i>", and the proposed amendments to the definition of brothel are dropped.</p>
	<p>2). Any person who -</p> <ul style="list-style-type: none"> - Being the tenant/ lessee/ occupier or person in charge of premises knowingly allows any person to use premises or its part as a brothel, or - Being the owner/ lessor/ landlord of any 	<p>2). Any person who -</p> <ul style="list-style-type: none"> - Being the tenant/ lessee/ occupier or person in charge of premises knowingly allows any person to use premises or its part as a brothel, or - Being the owner/ lessor/ landlord of any premises or agent knowingly lets the same or any part to be used as a brothel 	<p>Trafficking in persons is an organized crime and to put effective deterrence to such organized nature of the crime punishment and penalty is proposed to be increased.</p> <p>A new subsection is added due to the organized nature of the crime and to break the economy of the crime by bringing commercial establishments within the ambit of 'premise'.</p>	<p>With respect to enhanced penalties proposed for allowing premises to be used as a 'brothel', the above-stated position is reiterated.</p> <p>It is noted that the ITPA already provides for closure of premises being run or kept as a brothel in Section 18, which includes the establishments sought to be included through the proposed definition of 'commercial establishment'. There is no need to provide for suspension of licenses of</p>

	<p>premises or agent knowingly lets the same or any part to be used as a brothel</p> <p>shall be punishable on first conviction with rigorous imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.</p>	<p>shall be punishable on conviction with rigorous imprisonment for a term of not less than five years and not more than seven years and also with fine which may extend to fifty thousand rupees, for the first conviction and for a second or subsequent conviction shall be punishable with rigorous imprisonment for a term of not less than five years and not more than a term of ten years and also with fine which may extend to two lakh rupees and If the premises happen to be a commercial establishment, its license to carry on business will also be liable to be suspended for a period of not less than three months but which may extend to one year:</p> <p>New sub section (3)</p> <p>- Notwithstanding anything contained in this Act or any other law for the time being in force, if the premise is used for trafficking of children or the premise is used for sexual exploitation of children is a commercial establishment, then such license will be cancelled.</p> <p>-</p>		<p>such establishments.</p>
<p>Section 4</p>	<p>Punishment for living on the earnings of</p>	<p>Punishment for living on the earnings of prostitution. –</p>	<p>The present provision as well as the proposed amendment is in</p>	<p>The proposed change is welcome.</p>

	<p>prostitution. –</p> <p>(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.</p> <p>(2) Where any person over the age of eighteen years is proved -</p> <p>a. to be living with, or to be habitually in the company of, a prostitute; or</p> <p>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</p>	<p>(1) “Any person who, not being a dependent within the meaning of section 125 of the Code of Criminal Procedure, 1973” 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 three years, or with fine which may extend to five thousand rupees, or with both and where such earnings relate to the prostitution of a child, shall be punishable with rigorous imprisonment for a term of not less than seven years and which may extend to life imprisonment also with fine which may extend to two lakh rupees.</p> <p>(2) Where any person over the age of eighteen years is proved to be living with, or to be habitually in the company of, a prostitute and-</p> <p>a. 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</p> <p>b. to be acting as a tout or pimp</p>	<p>conformity with Article 5 of the UNCTOC Protocol.</p> <p>In proposing this amendment, the intention is to reduce the double victimization of any dependents of the prostitute from the penalties under ITPA, as they might not be able to earn their livelihood despite not wanting to be with the prostitute.</p> <p>Also punishment is proposed to be enhanced for the persons who are not dependent but living on the earning of the prostitute.</p> <p>Further , in order to prevent the assumed misuse of section 125 of CrPC by pimps/babu and other such exploiters, sub section 2 (a) is brought under Sub section (2) and thus excluded from the benefits of section 125 of CrPC.</p>	
--	---	---	---	--

	<p>compelling her prostitution; or</p> <p>c. to be acting as a tout or pimp on behalf of a prostitute,</p> <p>it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meanings of Sub-section (1).</p>	<p>on behalf of a prostitute,</p> <p>it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of Sub-section (1) and is not covered under section 125 of the Code of Criminal Procedure, 1973.</p>		
<p>Section 5</p>	<p>5. Procuring, inducing or taking person for the sake of prostitution .—(1) Any person who—</p> <p>(a) procures or attempts to procure a person whether with or without his consent, for the purpose of prostitution; or</p> <p>(b) induces a person to go from any place, with the intent that he may for the purpose of prostitution, become the inmate of, or frequent, a brothel; or</p> <p>(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 or being brought up to carry on prostitution ; or</p> <p>(d) causes or</p>	<p>To be deleted</p>	<p>The existing provision is being deleted and a new provision in section 5 is being proposed which specifies punishments subsequent to defining trafficking in persons, commercial sexual exploitation, and position of vulnerability.</p>	<p>The proposed change is welcome.</p>

	<p>induces a person to carry on prostitution;</p> <p>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:</p> <p>Provided that if the person in respect of whom an offence committed under this sub-section,—</p> <p>(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</p> <p>(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.</p> <p>[2] (2) [**** **]</p>			
--	--	--	--	--

	<p>(3) An offence under this section shall be triable,—</p> <p>(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</p> <p>(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.</p>			
<p>New provision 5</p>		<p>5.Any person who commits the offence of trafficking in persons as defined in section 2 (k)</p> <p>shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to fifty thousand rupees, for the first conviction and for a second or subsequent conviction shall be punishable with rigorous imprisonment for a term of not less than seven years and not more than fourteen years also with fine which may extend to two lakh rupees, and</p> <p>if any offence under this sub-section is committed against the will of the person,</p>	<p>Deletion of existing principal section 5 and New provision in section 5 inserted with enhanced and incremental punishment, is in conformity with Article 3 and Article 5 of the UNCTOC Protocol.</p> <p>It is known that trafficking in persons is an organized crime and therefore stricter actions need to be taken to curb the organized nature of the crime.</p>	<p>As noted before, Parliament has recently enacted <i>The Criminal Law (Amendment) Act, 2013</i> which introduced the offences of trafficking of persons (Section 370) and exploitation of a trafficked person (Section 370A) in the IPC. These provisions make the acts, of trafficking of a person for the purposes of physical exploitation or any form of sexual exploitation or engaging a trafficked person for sexual exploitation, punishable with rigorous imprisonment and fine.</p> <p>In light of this, the proposed amendment is redundant.</p> <p>Further, it is noted that the offence under Section 370, IPC and the proposed offence of trafficking in persons in Section 5A have identical ingredients, in terms of their scope, elements and punishment. It is a well-established principle of</p>

		<p>either as an offence of first instance or as a repeat offence, by any person, the offence shall be punishable with rigorous imprisonment for a minimum term of seven years which may extend to life imprisonment, and also with a fine which may extend to two lakh rupees.</p> <p>Provided that if the person in respect of whom an offence committed under this sub-section,—</p> <p>(i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than ten years but may extend to life and also with fine which may extend to five lakh Rupees.</p> <p>The sub-clause under the proviso on Minor is deleted</p>		<p>constitutional jurisprudence that one cannot be punished for the 'same offence' twice, or for the same act constituting an offence under more than one Act, otherwise it would constitute double jeopardy that is prohibited under Article 20(2).ⁱⁱⁱ If the present amendment is allowed, then the 'same act' of trafficking will constitute an offence punishable under Section 370 and also punishable under this Act, which is unconstitutional.</p>
<p>New Sub Section 5 (A)</p>	<p>Punishment to clients/customers</p>	<p>(1) Any person who visits or is found in a brothel for the purpose of commercial sexual exploitation of any victim of trafficking in persons, shall on first conviction be punishable with imprisonment for a term not less than 3 months and not more than 1 year or with fine which may not be</p>	<p>Conforms to Article 5 of the UNCTOC Protocol.</p> <p>As long as demand is not consciously attempted to be reduced, supply for prostitution will continue through various means of trafficking. For breaking the economy of this organized crime syndicate, a new sub section is proposed for penalizing customers or</p>	<p>The proposed amendment to criminalise clients of sex workers is a rehash of the Section 5C in the <i>ITPA Amendment Bil</i>, 2006, which ran into stiff opposition from the sex workers' community, health groups, Ministry of Health and Family Welfare, civil society organizations.</p> <p>The idea of 'client criminalisation' stems from the 'end demand' framework that</p>

		<p>less than Rs. 10, 000/- but may extend to twenty thousand rupees or both and in the event of a second or subsequent conviction with imprisonment for a term not less than one year and not more than five years and shall also be liable to fine which shall not be less than twenty thousand rupees but may extend to fifty thousand rupees.</p> <p>(2) And where this offence is committed with respect to a child, punishment shall be, for the first conviction, rigorous imprisonment which shall not be less than five years and may extend to life and shall also be liable to fine which shall not be less than fifty thousand rupees but may extend to one lakh rupees and in the event of a second and subsequent conviction with rigorous imprisonment for not less than ten years and which may extend to life term and shall also be liable to fine which shall not be less than one lakh rupees but may extend to two lakh rupees.</p>	<p>clients.</p> <p>The Nordic countries, particularly Sweden and Norway, have already taken strong stances on punishing those who purchase sexual services. The penal codes of the two countries criminalize the purchase of sex, but not the sale of sex recognizing that prostitution is a form of violence against women, sexual exploitation, and gender inequality.</p> <p>Under present ITPA, while the pimps and traffickers are punishable, and the woman selling her body for commercial sexual abuse and exploitation is subject to harassment and punishment under several sections, the client and customer are not liable for punishment except nominal punishment under Section 7 (prostitution in vicinity of public place). It is necessary to impose heavy penalty on customers/clients so that it economically and socially hurt to buy sex.</p>	<p>views buying of sex in any circumstance as 'exploitation', irrespective of consent of the sex worker. In contrast, selling of sex by a sex worker is seen as an act of compulsion by the 'victims'.</p> <p>This model is influenced by the law in Sweden, where buying of sex is criminalized but not selling of sex. However, reports from these countries show that while sex work has become less visible, it has not reduced but has become underground. Sex workers have been pushed into dangerous and isolated sites, outside the reach of medical, social and legal help. It has made sex workers more dependent on pimps and third parties, while increasing their vulnerability to violence and abuse. This cannot be the objective of ITPA.</p> <p>Besides, the law criminalizing clients is very difficult to enforce, since there are no victims or complainants. Further, it results in diversion of scarce police resources to target ordinary harmless clients, as opposed to focusing on pernicious acts of trafficking.</p> <p>The proposed amendment that seeks to punish 'persons who visit or are found in a brothel' is too wide and unwieldy, incapable of application. It is vague and open to misuse, especially by the police and would fall foul of Article 14 of the Constitution.</p>
--	--	---	--	---

				<p>Client criminalisation will hamper India's large and successful HIV prevention and control programme. Over the last few years, new HIV infections have been reduced by almost 50%, which is largely credited to the community empowerment of female sex workers and the concomitant rise in condom use with their clients.^{iv} These interventions were possible because ITPA does not criminalise prostitution per se. Any proposal to criminalise clients will hinder provision of services and cut off access to prevention programmes for vulnerable groups.</p> <p>Further, the <i>Protection of Children from Sexual Offences Act, 2012</i> proscribes any sexual act with a minor under 18 years of age, thereby completely prohibiting having sex with a minor.</p> <p>Lastly, the UN Trafficking Protocol does not mandate criminalisation of clients, as is being claimed. The penal obligations under the Protocol contained in Article 5 only require the State Parties to criminalise the conduct set forth in Article 3 (trafficking in persons), when committed intentionally. This has already been done under Section 370, IPC. Visiting a brothel or buying sex is not covered within the meaning or the scope of 'trafficking in persons' under Article 3 and thus cannot be deemed to be a conduct proscribed under the Trafficking Protocol.</p>
--	--	--	--	---

				Thus, instead of protecting sex workers, any such provision of targeting clients would be used by the police to harass and extort money from clients and make a large section of society vulnerable to criminal prosecution.
Section 6	<p>Detaining a person in premises where prostitution is carried on. -</p> <p>(1) Any person who detains [any other person, whether with or without his consent], -</p> <p>(a) in any brothel, or</p> <p>(b) in or upon any premises with intent [that such person may have sexual intercourse with a person who is not the spouse of such person] 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,</p>	<p>Detaining a person in premises where prostitution is carried on. -</p> <p>(1) Any person who detains [any other person, whether with or without his consent], -</p> <p>(a) in any brothel, or</p> <p>(b) in or upon any premises with intent [that such person may have sexual intercourse with a person who is not the spouse of such person] shall be punishable on conviction, with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine which shall not be less than fifty thousand rupees and which may extend to one lakh rupees.</p> <p>Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than ten</p>	<p>The proposed amendment conforms to Article 5 and Article 9 (Para 5) of the UNCTOC Protocol.</p> <p>It is known that trafficking in persons is an organized crime and therefore stricter actions need to be taken to curb the organized nature of the crime.</p> <p>Except punishment quantum, no other change is proposed in any other sub section.</p>	No Comments

	<p>for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years].</p> <p>[(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).</p> <p>(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].</p>	<p>years].</p> <p>[(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub-section (1).</p> <p>(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].</p> <p>(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, -</p> <p>(c) withholds from her any jewellery, wearing apparel, money or other property belonging to her,</p> <p>(d) or threatens her with legal proceedings if she takes away with her any jewellery,</p>		
--	---	--	--	--

	<p>(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, -</p> <p>(c) withholds from her any jewellery, wearing apparel, money or other property belonging to her,</p> <p>(d) or threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.</p> <p>(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at</p>	<p>wearing apparel, money or other property lent or supplied to her by or by the direction of such person.</p> <p>(4) Notwithstanding any law to the contrary, no suit, prosecution or other legal proceeding shall lie against such woman or girl at the instance of the person by whom she has been detained, for the recovery of any jewellery, wearing apparel or other property alleged to have been lent or supplied to or for such woman or girl or to have been pledged by such woman or girl or the recovery of any money alleged to be payable by such woman or girl.</p> <p>The term "minor" needs to be deleted in congruence with the section 2 (aa)</p>		
--	--	--	--	--

	<p>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 the recovery of any money alleged to be payable by such woman or girl.</p>			
<p>Section 7</p>	<p>Prostitution in or in the vicinity of public places.</p> <p>¹[(1) Any ²[person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises,-</p> <p>. which are within the area or areas, notified under sub-section (3), or</p> <p>a. which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind</p>	<p>Prostitution in or in the vicinity of public place .—</p> <p>(1) Any person who carries on prostitution and the person with whom such prostitution is carried on, in any premises:</p> <p>(a) which are within the area or areas, notified under sub-section (3), or</p> <p>(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,</p> <p>shall be punishable with a fine of Rs 5000 each or in case of failure of payment of fine, with imprisonment for a term which may extend to three</p>	<p>It is proposed to change the nature and extent of punishment, so that only in case of failure in payment of fine, imprisonment is proposed to be applicable. This is expected to economically hurt the business of prostitution in public places.</p>	<p>The proposed amendment to provide for fine, in lieu of imprisonment is welcome. However, the proposed amount of Rs 5000/- may be too steep for sex workers, majority of whom are from poor socio-economic background.</p> <p>It is suggested that, if at all, the fine be enhanced only marginally.</p>

	<p>as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed,</p> <p>shall be punishable with imprisonment for a term which may extend to three months].</p> <p>¹[(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 be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than seven years].</p> <p>(2) Any person who-</p> <p>a. being the keeper of any</p>	<p>months.</p> <p>¹[(1A) Where an offence committed under sub-section (1) is in respect of a child, the person committing the offence shall be punishable with rigorous imprisonment for a term of not less than ten years but may extend to life and also with fine which may extend to 2 lakh rupees.</p> <p>Provided that the court may, for adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than ten years].</p> <p>(2) Any person who-</p> <p>a) being the keeper of any public place knowingly permits prostitution for purposes of their trade to resort to or remain in such place; or</p> <p>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</p> <p>c) being the owner, lessor or landlord, of any premises referred to in</p>		
--	--	--	--	--

	<p>public place knowingly permits prostitution for purposes of their trade to resort to or remain in such place; or</p> <p>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</p> <p>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,</p> <p>shall be punishable on first conviction with imprisonment for a term which may extend to three months or with fine which may</p>	<p>sub-section (1) or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof, may be used for prostitution, or is wilfully a party to such use,</p> <p>shall be punishable on first conviction with imprisonment for a term which may extend to three months or with fine which may extend to Five thousand 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 one lakh rupees. If the public place or premises happens to be managed by a commercial establishment, its license to carry on business will also be liable to be suspended for a period of not less than three months but which may extend to one year.</p> <p>Provided that if an offence committed under this sub-section is in respect of a child, such license shall be cancelled.</p> <p>Explanation.- For the purposes of this sub-section, "Hotel" shall have</p>		
--	--	---	--	--

	<p>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 license for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:</p> <p>Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such license shall also be liable to be cancelled.</p> <p>Explanation.- For the purposes of this sub-section, "Hotel" shall have the meaning as in clause (6) of Section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980)].</p> <p>[(3) The State Government may,</p>	<p>the meaning as in clause (6) of Section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980)].</p> <p>[(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.</p> <p>(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.</p> <p>(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.</p>		
--	---	---	--	--

	<p>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.</p> <p>(4) Where a notification is issued under subsection (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.</p> <p>(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.</p>			
<p>Section 8</p>	<p>Seducing or soliciting for purpose of prostitution. - Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building</p>	<p>Seducing or soliciting for purpose of prostitution. - Whoever, in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not –</p> <p>Section 8 (a) is deleted</p>	<p>Section 8(a) of the existing Act is proposed to be deleted as it is felt that this is a much abused section, under which women allegedly soliciting customers are arbitrarily picked up and harassed. Since the penal provisions of fine under Section 7 are proposed to be strengthened, section 8</p>	<p>It is noted that the whole of Section 8 should be deleted and not just Section 8 (a). If Section 8 (b) is retained, it will continue to target sex workers under the guise of prohibiting public nuisance or obscenity. The purported public nuisance that it seeks to contain, can be addressed through Section 268 (public nuisance) and 294 (obscene acts) of the IPC. Also, the intent to cover</p>

	<p>or house or not –</p> <p>(a) by words, gestures, wilful exposure of her person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution; or</p> <p>(b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,</p> <p>shall be punishable on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five hundred rupees, and also with fine which may extend to five</p>	<p>solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution,</p> <p>shall be punishable on first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to 2000 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 5000 rupees .</p> <p>[Provided that where an offence under this section is committed by a man he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months</p>	<p>(a) serves no additional purpose of protecting offence against public decency. Also, the aspects of pimping, procuring, agents etc. have been addressed in sections 3, 4, 5A and 6. Also deletion would conform to Article 9 (Para 1, section 'b') of the UNCTOC Protocol. However section 8(b) of the existing Act is retained as this provision may cover the pimps, criminals and traffickers.</p>	<p>traffickers and pimps has already been covered by Sections 4, 5 and 6 of the Act.</p> <p>It is widely known that Section 8 is the most used provision under ITPA. It prejudices sex workers and has nothing to do with trafficking or sexual exploitation or abuse.</p> <p>Affirming the demand to repeal the offence of soliciting, the WCD had recommended the deletion of Section 8 in the ITPA (Amendment) Bill, 2006. Even the Ministry of Home Affairs, as well as the DIGs in several States, have issued advisories to the Police to not invoke Section 8 of ITPA^v.</p> <p>Accordingly, Section 8 should be deleted in its entirety.</p>
--	---	---	--	--

	<p>hundred rupees :</p> <p>[Provided that where an offence under this section is committed by a man he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months</p>			
<p>Sub-section 10A</p>	<p>10A. Detention in a corrective institution. (1) Where-</p> <p>a. a female offender is found guilty of an offence under Section 7 or section 8, and</p> <p>b. the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subjected to detention for such term and such instruction and discipline as are conducive to her correction, it shall be lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit :</p> <p>Provided that before passing such</p>	<p>To be deleted</p>	<p>Deletion would be in conformity with Article 6 (Para 3) of the UNCTOC Protocol. "Corrective institution", gives an impression that the persons 'rescued' from prostitution have committed a wrong and they need to be corrected.</p> <p>The aspect of care and protection of these victims are covered in section 2 (g)</p>	<p>The proposed change is welcome.</p> <p>Correction of female offenders is an antiquated concept. It is prejudicial and discriminatory, as it applies only to female offenders who are guilty of the offence of carrying on prostitution in public (Section 7) or soliciting (Section 8).</p> <p>The period of detention in a corrective institution is between two to five years whereas the punishment for offence under Section 7 is three months and Section 8 is six months. It is noted that this detention in corrective homes is in lieu of imprisonment and thus cannot mandate a term of detention that far exceeds the term of imprisonment if one were to serve the imprisonment. This would violate Articles 14 and 15 of the Constitution of India as it imposes an unduly harsh punitive burden on women. It further violates Articles 19 and 21 of the Constitution by subjecting them to indignity of being detained in a 'corrective' home.</p>

	<p>an order -</p> <p>. the court shall give an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the court as to the suitability of the case for treatment in such an institution, as also the report of the probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958); and</p> <p>i. the court shall record that it is satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to benefit by such instruction and discipline as aforesaid.</p> <p>(2) Subject to the provisions of subsection (3), the provisions of the Code of Criminal Procedure, 1973 (2</p>			
--	---	--	--	--

	<p>of 1974), relating to appeal, reference and revision and of the Limitation Act 1963 (36 of 1963), as to the period within which an appeal shall be filed, shall apply in relation to an order of detention under sub-section (1) as if the order had been a sentence of imprisonment for the same period as the period for which the detention was ordered.</p> <p>(3) Subject to such rules as may be made in this behalf, the State Government or authority authorised in this behalf may, at any time after the expiration of six months from the date of an order for detention in a corrective institution if it is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life, discharge her from such an institution, without condition or with such conditions as may be considered fit, and grant her a written license in such form as may be prescribed.</p> <p>(4) The conditions on which an offender is discharged under sub-section (3) may</p>			
--	---	--	--	--

	include requirements relating to residence of the offender and supervision over the offender's activities and movements.			
Sub-section 13(3)(b)	The State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him on questions of general importance regarding the working of this Act.	The State Government shall associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers, wherever practicable) to advise him on questions of general importance regarding the working of this Act	This amendment would conform to Article 9 (Para 3) of the UNCTOC Protocol. In order to make the act enforceable the term "shall" is used in place of "may".	The proposed change needs to be reviewed, since any mandatory procedure has to be strictly followed. Accordingly, if the association of a non-official advisory body with a special police officer is made mandatory, then any deviation from the provision would vitiate raid and rescue, which would eventually benefit the accused, as ordinarily, non-compliance with mandatory procedure prescribed under a penal law is a ground for acquittal.
Section 15 (5)	The special police officer or the trafficking police officer, as the case may be, after removing person under sub-section (4) shall forthwith produce her before the appropriate Magistrate.	Insert Explanation to Sec 15 (5) - Explanation: In cases where the person is a child victim, the appropriate magistrate shall be deemed to be the Child Welfare Committee of local jurisdiction constituted under section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000.	New Explanation This section aims to facilitate the achievement of the objects and reasons behind The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000), in particular "to make the juvenile system meant for the juvenile or the child more appreciative of the developmental needs, in comparison to the criminal justice system as applicable to adults"	The proposed amendment should be dropped. It is noted that in most cases, the age of persons removed from brothels is indeterminate at the time of their removal. Whether a person is a child or an adult is ascertained only after the age-verification test is ordered and performed under the Magistrate's orders. Therefore, it is impractical to suggest that where the person is a child, the Magistrate should be deemed to be a Child Welfare Committee (CWC). Besides, a Magistrate cannot be deemed to be a CWC as the two are entirely different

				<p>in composition, statutory powers, role, functions and jurisdiction. Under existing provisions of the ITPA and Juvenile Justice (Care and Protection of Children) Act, 2000, once a person is determined to be below the age of 18 years, they have to be produced before the CWC and the Magistrate ceases to exercise jurisdiction over them.</p> <p>Various courts have also held that if a person rescued under ITPA and produced before the Magistrate appears to be under 18 years of age, such person must forthwith be transferred to the Child Welfare Committee, which shall proceed in the matter in accordance with the provisions of the J.J. Act.^{vi}</p> <p>It is thus clear that the proposed amendment goes against legislative and judicial decisions to create a separate machinery to deal with "<i>juveniles in need of care and protection</i>" in the form of CWC that is separate from magistracy.</p>
<p>New Sub Section 15 (5B)</p>	<p>Related to Victim's comfort during medical examination</p>	<p>Section 15 (5B) For the purposes of all medical examinations under sub-section (5A), the registered medical practitioner shall, as far as practicable, be a member of the same sex as that of the victim. In case where the medical practitioner of the same sex as of the victim is not available, a social worker of the same sex as that of the victim or a police officer of the</p>	<p>These additions seek to limit the discomfort of the victim, post-rescue. As medical examinations are invasive procedures, it is believed that such amendments shall encourage the victims to feel more comfortable when undergoing such examinations.</p>	<p>The proposed amendment needs to be reviewed.</p> <p>Imposition of mandatory examination of sex workers, victims and other persons removed from brothels is a violation of their fundamental rights. Such testing must be voluntary and conducted, only if the concerned person so desires. It may be remembered that the Cr PC allows medical examination of persons arrested (Section 54)</p>

same sex as that of the victim shall be present additionally during the examination.

and or of persons accused of committing sexual offences (Section 53A), while medical examination of victims of rape is covered under Section 164A. Section 164A(7) explicitly states that no medical examination of the victim would be conducted without the consent of victim. The existing provision thus needs to be reviewed in light of clear legislative and judicial pronouncements, which have denounced mandatory testing of victims in criminal proceedings.

Further, the proposed amendment is also contrary to the "*Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence*", Ministry of Health and Family Welfare (March, 2014) that clearly state that it is mandatory to seek an informed consent/refusal for medical examination and evidence collection. This has been reiterated by the Hon'ble Supreme Court^{vii} that observed that "*survivors of sexual violence are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence.*"

Further, though the intention of the proposed change may be laudatory, it is noted that the presence of a police officer during the medical examination of the victim

				<p>breaches his/her right to privacy. Further, the presence of a police officer during the examination has been prohibited, as per the above-mentioned guidelines of the Ministry of Health.^{viii} So the State Government should ensure that the medical examination is done by a medical practitioner of the same sex, and if that is not possible, the other person (social worker of the same sex or a chosen relative) should be present, only if the victim consents to the same.</p>
<p>Section 15 (6A)</p>	<p>The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated it shall be done by woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organization.</p>	<p>15 (6A) The special police officer or the Anti 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 person removed under sub-section (4) is required to be interrogated, it shall be done by a police officer of the same sex as the person so removed and if no police officer from same sex as the person so removed is available, interrogation shall be done only in the presence of a social worker of a public or non-governmental recognised welfare institution or organisation, who is of</p>	<p>Added the word Anti before trafficking police officer</p> <p>Replacing the term(s)</p> <ul style="list-style-type: none"> • Women with Person • Women Police officer with a police officer of the same sex as the person so removed • Lady member with a social worker who is of the same sex as the person so removed additionally <p>Both changes are made to make the provisions gender neutral and are in accordance with the UN guidelines.</p>	<p>No Comments</p>

		the same sex as the person so removed additionally.		
New Section 15 B	Confiscation of proceeds of offences under the Act	<p>(1) Whenever any offence punishable under the Act has been committed, all property of every kind used or intended for use in the course of, derived from, or realized through an offence under the Act except offences under sub section (1) of section 7 of the Act is subject to confiscation by the State.</p> <p><i>Explanation:</i> In this section, "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets.</p> <p>(2) The procedure in making confiscation shall follow the procedure stated under section 63, and sections 68A – 68Z of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).</p> <p>(3) When the court orders the confiscation of property, the Administrator appointed under section 68G of the</p>	<p>Article 12 of the UNCTOC requires State Parties to enable the identification, tracing, freezing or seizure of any proceeds (in any form) of crimes for the purpose of confiscation. In addition, State Parties are also required to empower courts to order that bank, financial or commercial records be made available.</p> <p>The provisions on confiscation and forfeiture detailed in the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the NDPS") satisfies Article 12 of the UNCTOC; the above proposed sections extend the power of confiscation to cases of human trafficking under the ITPA.</p> <p>This section allows for the fund to be at least partly offender-funded, limiting the strain on State resources. Article 14 of the UNCTOC requires States Parties to give priority consideration to returning confiscated proceeds of crime or property to a requesting State Party so that it can give compensation to victims.</p>	<p>The proposed change should be reviewed.</p> <p>It is noted that as long as ITPA criminalizes adult consensual sex work, this section will be used to confiscate sex worker's earnings and harass them.</p> <p>Since the proposed provision applies even to the offence of soliciting under Section 8, it will directly sex workers and their hard-earned savings throughout their lives would be liable to be confiscated, thereby pushing them into penury and destitution.</p> <p>It is further noted that offences of procuring (Section 5), detention in prostitution premises (Section 6), soliciting (Section 8) and seduction of a person in custody (Section 9) under ITPA are already included in the Schedule of the <i>Prevention of Money Laundering Act</i> (PMLA) 2002 and are deemed as proceeds of crime, which fall under the offence of money laundering.^{ix} The PMLA also provides for attachment and confiscation of the property involved in money laundering, including the above-mentioned offences under ITPA^x. Thus, the existing laws already provide for attachment of property derived through certain ITPA offences, thereby making the present amendments unnecessary.</p>

		<p>Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), shall direct at least 50 per cent of the proceeds of the property to be deposited in a fund known as the Trafficking Victims Rehabilitation and Welfare Fund, to be set up in accordance with the rules framed by respective State Governments.</p>		<p>Furthermore, the proposal to deposit at least 50% of the proceeds of the property in a fund called Trafficking Victims and Rehabilitation Fund, set up ostensible for the purpose of welfare of sex workers, is highly problematic and ironical. A fund cannot be set up for sex workers' rehabilitation after confiscating their own earnings.</p>
<p>New Section 15 C</p>	<p>The Trafficking Victims Rehabilitation and Welfare Fund</p>	<p>(1) The State Governments shall create a dedicated Trafficking Victims Rehabilitation and Welfare Fund, for the welfare and rehabilitation of the victims of trafficking in Persons under this Act.</p> <p>(2) The governance and procedural details of managing such funds and specific heads under which it is going to be utilized shall be laid down in accordance with the rules framed by respective State Governments as per provisions of Section 23 (2) (gg).</p> <p>(3) Central Government may also frame model rules for guidance of the State Governments for setting up such fund.</p>	<p>Rehabilitation of rescued traffic victims in alternative economically self-sustaining occupations is a challenge. There are no such rehabilitation measures specifically for victims of trafficking, apart from Ujjawala scheme supported by the Central Government started on a modest scale four years ago. Lack of rehabilitation measures results into re-trafficking of victims. It is proposed to enable creation of a Fund in every State, part funded by the proceeds of confiscated proceeds of trafficking for supporting rehabilitation and welfare of traffic victims.</p>	<p>The proposed change should be reviewed.</p> <p>The creation of these funds is not effective, since problems of implementation and corruption are endemic. Further, Section 357A, CrPC provides for victim compensation schemes to be formulated by the State Governments for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of crime and who require rehabilitation. Under the provision, many State Governments have made compensation schemes, including victims of trafficking also^{xi}. Instead of creating new funds, the existing schemes should be judiciously utilized.</p> <p>Pertinently, the rehabilitation fund should not be created from confiscating sex workers' own earnings.</p>
<p>Section 20</p>	<p>Removal of prostitutes from any place</p>	<p>To be deleted</p>	<p>Deletion of this Section will be in conformity with Article 6 (Para 1) and Article 9 (Para 1)</p>	<p>The proposed change is welcome.</p>

	<p>(1) A Magistrate on receiving information that any person residing in or frequenting any place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring her to appear before the Magistrate and show cause why she should not be required to remove herself from the place and be prohibited from re entering it.</p> <p>(2) Every notice issued under subsection (1) shall be accompanied by a copy of the record aforesaid and the copy shall be served along with the notice on the person against whom the notice is issued.</p> <p>(3) The Magistrate shall, after the service of the notice referred to in subsection (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</p>		<p>section 'b') of the UNCTOC Protocol. The Section causes arbitrary harassment of a person alleged to be prostitute by a complainant before the magistrate.</p>	
--	--	--	--	--

such person is a prostitute and that it is necessary in the interest of the general public that such person should be required to remove herself therefrom and be prohibited from re-entering the same, the Magistrate shall, by order in writing communicate to the person in the manner specified therein, require her after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove herself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit her from reentering the place without the permission in writing of the Magistrate having jurisdiction over such place.

(4) Whoever, -

(a) Fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting her from re-entering a place without permission is in force, re-enters

	<p>the place without such permission, or</p> <p>(b) Knowing that any person has, under this section, been required to remove herself from the place and has not obtained the requires site 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 she or he has persisted in the offence</p>			
Section 21	Protective Homes	<p>All references to Corrective institutions to be deleted.</p> <p>All reference of "protective home" to be replaced with "protective and rehabilitation home"</p>	<p>These are consequential changes in line with other amendments proposed.</p>	<p>Please refer to the comment on the proposed definition of 'protective home' in Section 2(g).</p>
Section 22.	Trials	<p>Notwithstanding anything contained in the Code of Criminal Procedure, 1973,</p> <p>(1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under Section 3, section 4, section 5, section 6 , section 7 or section 8.</p> <p>(2) The trial of the proceedings under this Act shall be conducted in-camera at the discretion of the victim.</p>	<p>It conforms to Article 6 of the UNCTOC Protocol.</p> <p>The reference to Sections has been made according to present proposals for amendment in the Act.</p> <p>Detailed procedures are proposed to be provided in the rules to protect victims and witnesses during trial (in terms of case laws governing cases under ITPA, JJ Act etc.).</p>	<p>Proposed Section 22(2) is welcome.</p> <p>In terms of the proposed Section 22(3), it is suggested that the procedure governing criminal trials in CrPC is detailed enough and there is no need to create a separate procedure under this Act, by way of rules made by the Central Government.</p>

		<p>(3) The Central Government may prescribe the detailed procedure to be followed for trials in rules framed under the Act.</p>		
<p>InSection 22 A</p>	<p>Power to Establish Special Courts</p> <p>(1) If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it may, by notification in the official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or, as the case may be, Metropolitan Magistrate, in such district or metropolitan area.</p> <p>(2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.</p> <p>(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court</p>	<p>Power to Establish Special Courts</p> <p>If the State Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act in any district or metropolitan area, it shall, by notification in the official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or, as the case may be, Metropolitan Magistrate, in such district or metropolitan area.</p> <p>(2) Unless otherwise directed by the High Court, a court established under sub-section (1) shall exercise jurisdiction only in respect of cases under this Act.</p> <p>(3) Subject to the provisions of sub-section (2), the jurisdiction and powers of the presiding officer of a court established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.</p> <p>(4) Subject to the</p>	<p>The term "may" is replaced with "shall" to make enforcement of the provision binding on the State Governments.</p>	<p>The proposed change from 'may' to 'shall' is redundant, since the discretion still lies with the State Government to be 'satisfied' about the establishment of Special Courts. It is not mandatory on the State Governments to establish special courts in all situations.</p> <p>Further, the assumption that Special Courts lead to higher rates of conviction is not borne out by existing data. Despite having a Special Court for ITPA in Mumbai from 2008 onwards, the conviction rate of ITPA offences in Maharashtra is 28%. In contrast, other States like Nagaland (100%), Mizoram (80%), Uttar Pradesh (71.4%), Kerala (67.7%) and Delhi (61.5%), amongst others, record a much higher rate, as per the NCRB data in 2013.^{xii} Thus, the NCRB data clearly shows that high conviction rates are not related to existence of Special Courts.</p>

	<p>established under sub-section (1) in any district or metropolitan area shall extend throughout the district or the metropolitan area, as the case may be.</p> <p>(4) Subject to the foregoing provisions of this section a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure 1973 (2 of 1974), and the provisions of the Code shall apply accordingly in relation to such courts.</p> <p><i>Explanation-</i> In this section, "High Court" has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure 1973 (2 of 1974)].</p>	<p>foregoing provisions of this section a court established under sub-section (1) in any district or metropolitan area shall be deemed to be a court established under sub-section (1) of section 11, or as the case may be, sub-section (1) of section 16, of the Code of Criminal Procedure 1973 (2 of 1974), and the provisions of the Code shall apply accordingly in relation to such courts.</p> <p><i>Explanation-</i> In this section, "High Court" has the same meaning as in clause (e) of section 2 of the Code of Criminal Procedure 1973 (2 of 1974)].</p>		
<p>Section 23</p>	<p>Power to make rules</p> <p>(1) The State government may, by notification in the Official Gazette, make rules for</p>	<p>(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for-</p>	<p>Consequential changes in rule making power in terms of the proposed amendments in the Act need to be indicated.</p>	<p>No Comments</p>

	<p>carrying out the purposes of this Act</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for-</p> <p>.....</p> <p>(bb) the discharge of an offender under sub-section (3) of section 10A from a corrective institution and the form of licence to be granted to such offender;</p> <p>(c) the detention and keeping in protective homes or, as the case may be, in corrective institutions of persons under this Act and their maintenance;</p> <p>(g) the establishment, maintenance, management and superintendence of protective homes and corrective institutions under section 21 and the appointment, powers, and duties of persons employed in such homes or institutions;</p> <p>(ii)-(h)....</p> <p>(4) All rules made under this Act shall, as soon as may be, after they are made, be laid before the State Legislature.</p>	<p>.....</p> <p>To be deleted as section 10A is proposed to be deleted.</p> <p>Reference to 'corrective institutions' to be deleted.</p> <p>All references to 'corrective Institutions' to be deleted.</p> <p>(gg) The governance and procedural details of managing the Trafficking Victims Rehabilitation and Welfare Fund.</p> <p>(4) Substitute "this Act" by "Section 23(1)".</p>		
New		(5) The Central	At present there is no	The proposed amendment

<p>Section 23(5) and 23(6)</p>		<p>Government may, by notification in the Official Gazette, also make rules for prescribing guidelines for carrying out the purposes of this Act.</p> <p>(6) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for</p> <p>(i) the procedure to be followed for trials under Section 22;</p> <p>(ii) the procedure to be followed for rehabilitation, reintegration and repatriation of residents of protective and rehabilitation homes;</p> <p>(ii) any other matter which has to be , or may be, prescribed.</p> <p>(7) Every rule made under section 23 (5) shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; however any such modification or annulment shall be without prejudice to the validity of anything</p>	<p>rule making power for the Central Government under the Act. It is however felt that with increased inter-state trafficking and cross border trafficking, rules regarding trials, rehabilitation, reintegration and repatriation need to be standardised by the Central Government. This will be particularly relevant in the context of the UNCTOC Protocol.</p>	<p>needs review.</p> <p>There cannot be rules for prescribing guidelines, this is not valid in law. Rules are binding in nature and guidelines are suggestive.</p> <p>Further, the proposed amendment in Section 23 (6) (ii), i.e., the procedure to be followed for rehabilitation, reintegration and repatriation of residents of protective and rehabilitation homes is overlapping with the State Government's power to make rules under Section 23 (1) ©, (gi), and (gxii). It is possible that the State Government has already made rules, which may pertain to the proposed rule making power of the Central Government under Section 23(6) (ii).</p>
---	--	---	---	---

		previously done under that rule.		
--	--	----------------------------------	--	--

In addition to the above clause-by-clause commentary, the Lawyers Collective also wishes to highlight the following concerns vis-à-vis the proposed amendments and the rationale behind the same:-

I. No need for the proposed amendments in light of Section 370 and Section 370A, IPC

Parliament has already enacted Section 370, IPC, as part of the Criminal Law (Amendment) Act, 2013, which provides for stringent punishment (ranging from seven years to ten years/life imprisonment) for the offence of trafficking in persons for the purpose of exploitation, including sexual exploitation.

It is submitted that the proposed amendment to introduce another offence of 'trafficking in persons' in ITPA with identical ingredients with Section 370, IPC is legally unsound, since having two offences with identical elements and similar punishment would fall foul of the constitutional prohibition on double jeopardy under Article 20(2) of the Constitution. Further, by enacting an overlapping provision but with limited scope, the present amendment will defeat the purpose and intent of Section 370 and Section 370A of the IPC.

II. Proposed amendments are not required as part of India's obligations under the UN Trafficking Protocol

WCD has claimed that the proposed amendments to ITPA are needed, in order to comply with the UN Trafficking Protocol. This is incorrect. It is contended that Article 4 of the Protocol expressly limits its scope of application to offences that are transnational in nature^{xiii} and involve an organized criminal group. Thus, the legal standards set out in the *United Nations Convention on Transnational Organized Crime and the Trafficking Protocol, 2000* do not pertain to domestic trafficking or where trafficking in persons is carried out by individuals unassociated with an organized criminal group.

Further, the penal obligations under the Protocol contained in Article 5 only require the State Parties to criminalise the conduct set forth in Article 3 (trafficking in persons), when committed intentionally. This has already been done under Section 370, IPC, thereby fulfilling India's obligations under the Protocol. In fact, the proposed offence of trafficking in persons in Section 2(j) is in fact contrary to the spirit of the Protocol, since it is limited to trafficking for the purpose of commercial sexual exploitation. Other amendments like client criminalisation or enhanced penalties for offences of brothel keeping or living on earnings of prostitution are not mandated by the Protocol. Thus, none of the proposed amendments to ITPA is required under the Protocol.

III. Adult consensual sex work is *not* trafficking

It is noted that consensual sex between adults for money/kind is not illegal under existing law and should not be made so. Buying and selling of sex between consenting adults must be kept out of the purview of the law. What ought to be prohibited is trafficking for sex work or forcing somebody to carry on sex work against his/her consent.

It is categorically stated that adult consensual sex work is neither trafficking nor sexual exploitation.

IV. Detention of adult women in protection homes is unconstitutional

It is well-settled that no adult person can be detained in protective custody, without his/her will or informed consent. Detention of adult sex workers in protective homes in the name of rehabilitation violates their right to liberty, autonomy and dignity under Article 21 of the Constitution of India. Courts have held that liberty is the "very quintessence of a civilized existence" and life bereft of liberty is of no meaning.^{xiv} Further, detention of even victims of trafficking is in clear violation of domestic and international law.^{xv} Condemning strongly such practice, the UN Special Rapporteur on Trafficking in Persons had observed in 2012 that "*the routine detention of victims of trafficking violates, in some circumstances, the right to freedom of movement and, in most, if not all, circumstances, the prohibitions on unlawful deprivation of liberty and arbitrary detention. International law absolutely prohibits any discriminatory detention of victims...The routine detention of women and of children in shelter facilities, for example, is clearly discriminatory and therefore unlawful.*"^{xvi}

Recently, the UN Special Rapporteur on Violence against Women took note of the issue of detention of sex workers in India, wherein she observed that "*many sex workers are forcibly detained and rehabilitated and they do face a consistent lack of legal protection.*"^{xvii}

Thus, detention of sex workers and victims of trafficking in protective/shelter homes is against the constitutional guarantees as well as violative of international human rights law.

V. Health concerns

It is submitted that the Government should not amend the law without taking into account the impact it would have on one of the largest and most successful health intervention programme in India. Under the National AIDS Control Program, implemented by the Ministry of Health and Family Welfare, sex workers get HIV prevention, testing, care, support and treatment services including outreach, education and the safe space of a drop-in centre, clinical care through regular medical check-ups, screening and treatment for sexually transmitted infections, referral to HIV counseling and testing and anti retroviral treatment, supply of condoms for safer sex and support for an enabling environment with mobilization and capacity building of sex workers. Currently, NACO is implementing 547 Targeted Interventions and reaching out to 7.18 lakh female sex workers, out of an estimate of 8.68 lakh sex workers in India.^{xviii} At 2.67%, sex workers have the lowest HIV prevalence amongst all high risk groups in India.^{xix} It is well-documented that the success of reducing new HIV infections in India by almost 50% is largely credited to the community empowerment of female sex workers and the fact that adult consensual sex work is not illegal.

The proposed amendments, if enacted, would severely affect the national AIDS control program that has been held as a 'global best practice' in the last decade.

VI. Lack of community consultation

The present amendments to ITPA are proposed without consulting the sex workers' groups, though they are directly affected by such measures as well as best placed to give insight on the

actual implementation of the concerned law. According to international human rights law, to which India is a party, all affected groups and communities are entitled to participate in decisions that impact their lives. The WCD has failed to explain why it dispensed with consultation with sex workers. It is also contrary to the 'pre-legislative consultation policy' adopted by the Government of India (vide O.M. No. 8/01/2-14-Restg., dated 20th February, 2014), which requires every Ministry/Department to publish and make available legislative bills, draft Rules and other related documents like explanatory notes in the public domain for at least 30 days. In particular, the pre-legislative consultation policy requires Ministries to seek out the views of marginalised groups and those most affected by the proposed legislation including through holding consultations.

It is sincerely hoped that WCD would place these amendments in the public domain and consult the sex workers' groups and collectives at the earliest on the same.

VII. Recommendations of the Panel appointed by the Hon'ble Supreme Court must be taken into account

It is submitted that the issue of rehabilitation of sex workers and other related issues is *sub-judice* in the matter of *Budhadev Karmaskar v. State of West Bengal* (Criminal Appeal No. 135 of 2010), and where the Hon'ble Supreme Court has appointed a Panel to deliberate on a range of issues, including prevention of trafficking, rehabilitation of sex workers who wish to quit sex work and conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution.^{xx} The Panel has prepared a number of interim reports, based on discussions with stakeholders, including government officials from various departments, which were submitted to the Hon'ble Supreme Court and some orders were passed accordingly. The Panel is going to submit its final report on the above-mentioned terms of reference to the Hon'ble Supreme Court in next 6 months.^{xxi}

Since the Panel is deliberating on the same subject matter, it is advisable that the WCD wait for the submission of the Panel's final report to the Apex Court and the orders passed by the Hon'ble Supreme Court, if any. The deliberations of the WCD would be enriched, with the incorporation of the recommendations of the Panel on prevention of trafficking and protecting the rights of sex workers.

ⁱ (2009) 9 SCC 1

ⁱⁱ United Nations Joint Statement on Compulsory Drug Detention and Rehabilitation Centres (March, 2012) http://www.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement%206March12FINAL_en.pdf

ⁱⁱⁱ *State of Bihar v. Murad Ali Khan And Others* (1988) 4 SCC 655

^{iv} Kumar et al.: Impact of targeted interventions on heterosexual transmission of HIV in India. *BMC Public Health* 2011 11:549

^v Ministry of Home Affairs, Government of India, Office Memorandum-*Advisory on preventing and combating human trafficking in India*, F.NO.15011/6/2009-ATC, dated 9th September, 2009 at para 2.5

^{vi} *Delhi High Court Legal Services Committee v. Union of India* (Crl. Rev. No. 443/2009, date of decision 12th August, High Court of Delhi)

^{vii} *Lillu @Rajesh and anr. V. State of Haryana* AIR 2013 SC 1784

^{viii} “Guidelines and Protocols: Medico-legal care for survivor/victims of sexual violence”, Ministry of Health and Family Welfare (March, 2014) at p.20

^{ix} Section 3, *Prevention of Money Laundering Act, 2002*

^x Section 5, PMLA, 2002

^{xi} Delhi Victims Compensation Scheme, 2011

[http://delhi.gov.in/wps/wcm/connect/3ba2ab004a168918a0c4b7054aa9b1b1/New+Microsoft+Office+Word+Document+\(4\).pdf?MOD=AJPERES&lmod=-287399459](http://delhi.gov.in/wps/wcm/connect/3ba2ab004a168918a0c4b7054aa9b1b1/New+Microsoft+Office+Word+Document+(4).pdf?MOD=AJPERES&lmod=-287399459)

^{xii} Crime in India, 2013, National Crime Records Bureau

^{xiii} Article 3, para 2 of the UNCTOC

^{xiv} (2011) 1 SCC 694

^{xv} Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 2000/45, 6 February 2001, E/CN.4/2001/73/Add.2

^{xvi} Report of the Special Rapporteur on Trafficking in Persons, especially women and children (June, 2012), A/HRC/20/18

^{xvii} Report of the Special Rapporteur on Violence against Women, its Causes and Consequences (April, 2014), A/HRC/26/38/Add.1

^{xviii} Annual Report (2013-2014) National AIDS Control Organisation at p. 15

^{xix} Ibid

^{xx} Order dated 19.07.2011 in Criminal Appeal No. 135 of 2010, Supreme Court of India

^{xxi} Order dated 05.09.2011 in Criminal Appeal No. 135 of 2010, Supreme Court of India