CHAPTER - IV

LAW RELATING TO PREVENTION OF IMMORAL TRAFFIC IN INDIA

India has drafted many Laws and Procedures to deal with the issue of trafficking in human beings. The basis of these Laws finds expression in the Indian Constitution, and in enactments such as the Immoral Traffic Prevention Act, 1956. The Juvenile Justice [Care and Protection Act] 2000, Indian Penal Code and other Laws.

4.1 Indian Constitution

Article 21 of the Indian Constitution provides that no person shall be deprived of his life, of personal liberty except according to procedure established by Law. In the case of Francis Coralie Muffin V/S the Union Territory of Delhi\textsuperscript{273}, the Supreme Court held that this right includes the right to live with human dignity. Whereas, in the case of L'pendra Bales hi V/S State of Uttar Pradesh, the Supreme Court held that Article 21 includes providing human conditions in Protective Homes. In another landmark judgement in Chandrabhan V/S State of Maharashtra\textsuperscript{274}, the Supreme Court observed that the right to life enshrined in Article 21 implies something more than survival or \textit{animal} existence. It emphasized the right of women and girls in prostitution to rescue and rehabilitation. In the case of Nirja Choudhary V/S State of Madhya Pradesh\textsuperscript{275}, the Supreme Court upheld the right of bonded labourers to rehabilitation.

Article 23 of the Constitution prohibits traffic in human being and \textit{begar} and other similar forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with Law

'Traffic in human beings' means selling and buying men and women like goods and includes immoral traffic in women and children for immoral” or other purposes. Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'. Under Article 35 of the Constitution Parliament is authorised to make Laws for punishing acts prohibited by this Article. In pursuance of this Article

\textsuperscript{273} AIR 1978 SC597
\textsuperscript{274} 3 SCC 1983 387
\textsuperscript{275} AIR 1984 SC 1099
Parliament has passed the Suppression of Immoral Traffic in Women and Girls Act. 1956, for punishing acts which result in traffic in human beings.

Article 23 protects the individual not only against the State but also private citizens. It imposes a positive obligation on the State to take steps to abolish evils of "traffic in human beings" and begar and other similar forms of forced labour wherever they are found.

This Article therefore, declares traffic in human beings to be an offence punishable in accordance with Law. Traffic in women for immoral purposes has been held to be covered by the expression “traffic in human beings” in Article 23 (1) of the Constitution of India.

Article 23 (1) provides that trafficking in human beings is prohibited and any contravention of these provisions shall be an offence. Article 23 is enforceable not only against the States but also against private persons indulging in trafficking, as held by the Supreme Court in Sanjit Roy V/S the State of Rajasthan. In the landmark judgements of Vishaljeet\textsuperscript{276}, Upendra Baxi and Gourav Jain\textsuperscript{277}, the Supreme Court has repeatedly passed orders and directions to the State Governments to ensure the proper rehabilitation of victims of prostitution.

**Besides the Fundamental Rights, the following Directive Principles also have relevance:**

Article 39 (a) provides that the States shall in particular direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood

Article 39 (e) states that the health and strength of workers, men and women and children of tender age are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength.

Article 39 (f) provides that children be given opportunities and facilities to develop in a healthy manner and in conditions of freedom-and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

\textsuperscript{276} AIR 1990 SC 1412
\textsuperscript{277} AIR 1997 SC 3021
In the case of Bandua Mukti Morcha V/S the Union of India\textsuperscript{278}, the Supreme Court confirmed that right to live with human dignity, free from exploitation in the light of the directive principles contained Article 39 (e) & (f).

Article 42 provides that the States shall make provisions for securing just and human conditions of work.

Article 46 provides that the States shall promote the special care, education and economic interests of weaker sections of the people and in particular of the SCs and STs and shall protect them from social injustice and all forms of exploitation.

Article 47 provides that the States shall work towards raising the level of nutrition and the standard of living of its people and the improvement of public health, as among its primary duties.

4.2 Provisions of Indian Penal Code 1860 and Immoral Trafficking:

There are many sections in the IPC, which could be used against traffickers, pimps, brothel keepers, and those involved in commercializing prostitution and living off the earnings of victims of prostitution:

Framers of the Indian Penal Code have not treated prostitution and immoral trafficking as offences probably because those acts can be tackled as socio-economic problems. However, there are abundant numbers of provisions in Sections 359 to 376 of the code that have a direct or indirect bearing on immoral trafficking. In this age of criminalisation of every field in human sphere, no person indulges in acts like prostitution unless there is a criminal act on part of others either in the form of abatement, kidnapping, abduction, buying and selling of persons including minors for purposes including prostitution and last but not the least rape. Therefore, it becomes necessary to discuss these aspects to render substantial justice to any commentary on the immoral trafficking in India.

Section 294 IPC:

Whoever to the annoyance of others,

a) does any obscene act in any public place, or

\textsuperscript{278} AIR 1984 SC 802
b) Sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment up to 3 months or with fine or with both.

This is also a section being used randomly against victims of prostitution and the logic of using this as against the ITP ACT is questionable.

Section 359 of the Indian Penal Code recognises two kinds of kidnapping from India and kidnapping from Lawful guardianship. Kidnapping literally means child stealing but the Code considers the act of taking away a person of any age unless specifically mentioned, as the offence of kidnapping. Section 360 details the offence of kidnapping from India of any person irrespective of age. Section 361 in its first part lays down what kidnapping from Lawful guardianship stands for. The object of this section is to protect children of tender age from being abducted for improper purposes, and also to protect the defined as compelling a person by force or inducing such person by deceitful means to go from any place. Kidnapping or maiming a minor for purposes of begging has been made an offence under section 363-A which was inserted in 1959. Section 365 embodies an aggravated form of offence of kidnapping as defined in Section 360 and 361, of abduction as defined in Section 362. This Section 365 is attracted when the kidnapping or abduction is committed with intent to secretly and wrongfully confine the victim.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it, to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, will be guilty of an offence under Section 366, were charged to have abducted the poor women for forcing them to prostitution whereas they were carried away by making false promise of providing them jobs. There was sufficient evidence to prove that the accused had taken away the women for the purpose of prostitution and minor discrepancy in evidence of particular witness was considered to carry no weight. It was held that the conviction of the accused was proper.

Sections 366-A and 366-B intend to punish the export and import of girls for prostitution.
Section 366-A deals with transportation of minor girls from one part of India to another for prostitution or illicit intercourse.

Section 366-B makes it an offence to import into India from any country outside India, girls below the age of 21 years for the purpose of prostitution.

Kidnapping or abducting in order to subject person to grievous hurt, slavery or to the unnatural just of any person, has been made an offence under section 367. Section 368 imposes a proactive duty on any person who has knowledge of any kidnap or abduction but who wrongfully conceals or confines such person to reveal such offence. Any person assisting the principal offender of such kidnapping or abduction will be liable to be punished in the like manner the principal offender is punished.

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains any person against his/her will as a slave is punishable under Sections 370 and 371.

Section 372 of Indian Penal Code, deals with, the offence of selling, letting, hiring or otherwise disposing, of a minor for the purpose of prostitution or illicit intercourse, with any person, or for any unlawful and immoral purposes.

This section applies to both, males or females under the age of 18 years, irrespective of their marital status or background. It is worthwhile to note that under Section 2 (i) of the Immoral Traffic (Prevention) Act, 1986, prostitution means the sexual exploitation or abuse of persons for commercial purpose and the same shall be considered accordingly. However, it appears that the above definition does not control the meaning of the term in Indian Penal Code. It is because, when the Acts are not in pari material and the words in earlier Act have been used for totally different purposes, Reference to earlier Act would be totally irrelevant. It is also important to note in this context that Section 5 of the Act of 1956 also makes the procuring, including or taking person for the sake for prostitution an offence. A closer look at Section 372, Indian Penal Code and Section 5 of the Act of 1956 makes it clear that they create distinct offences therefore, they do not overlap and conviction under both the sections would be legal. Section 373 of the Code makes buying, hiring or otherwise obtaining possession of any person under the age of 18 years for the
purpose of employing or using them for the purpose of prostitution or illicit intercourse an offence.

Indian Penal Code, 1860, makes kidnapping, abduction, slavery and forced labour offences in Sections 359 to 374. Among these kidnapping from Lawful guardianship under Section 361, abduction under Section 362, procreation of minor girl under Section 366-A, importation of girl from foreign country under Section 366-B, kidnapping or abducting in order to subject person to grievous hurt, slavery etc., under Section 367, selling minor for purposes of prostitution etc. under Section 372 and buying minor for purposes of prostitution etc. are directly relevant for the purpose of Immoral Traffic (Prevention) Act, 1956 also

Section 359 IPC: Kidnapping:

Kidnapping is of two kinds; kidnapping from India and kidnapping from Lawful guardianship.

Section 360 IPC: Kidnapping from India:

Whoever conveys and person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.

Section 361 IPC: Kidnapping from Lawful guardianship:

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the Lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from Lawful guardianship.

Explanation.- The words “Lawful guardian” in this section include any person Lawfully entrusted with the care or custody of such minor or other person.

Exception.- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith
believes himself to be entitled to the Lawful custody of such child, unless such act is committed for an immoral or Unlawful purpose.

Section 362 IPC: Abduction:

Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

Section 363 IPC: Punishment for kidnapping:

Whoever kidnaps any person from India or from Lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 363-A IPC: Kidnapping or maiming a minor for purposes of begging:

(1) Whoever kidnaps any minor or, not being the Lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3) Where any person, not being the Lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.

(4) In this section,-

(a) “begging” means

(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(i) Exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(ii) Using a minor as an exhibit for the purposes of soliciting or receiving alms;

(b) “minor” means-

(i) in the case of a male, a person under sixteen years of age; and

(ii) in the case of a female, a person under eighteen years of age.

Section 365 IPC: Kidnapping or abducting with intent secretly and wrongfully to confine person:

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 366 IPC: Kidnapping abducting or inducing woman to compel her marriage, etc:

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be like that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall also be punishable as aforesaid.
Section 366-A IPC: Procreation of minor girl:

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girls may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section 366-B IPC: Importation of girl from foreign country:

Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section 367 IPC: Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc:

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 368 IPC: Wrongfully concealing or keeping in confinement, kidnapped or abducted person:

Whoever knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.
Section 370 IPC: Buying or disposing of any person as a slave:

Whoever habitually imports, exports, removes, buys sells or disposes of any person as a slave, or accepts receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 371 IPC: Habitual dealing in slaves:

Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with imprisonment for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Section 372 IPC: Selling minor for purposes of prostitution, etc:

Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any Unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I. When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female, shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II. For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognised by the personal Law or customs of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.
Section 373 IPC: Buying minor for purposes of prostitution, etc:

Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any Unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I. Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be resumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II “Illicit intercourse” has the same meaning as in Section 372.

Section 374 IPC: Unlawful compulsory labour:

Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Section 375 IPC: Offence of Rape:

The offence of rape under Section 375, Indian Penal Code is another relevant provision having a bearing on the immoral trafficking. Rape is sexual intercourse with a woman:

(i) Against her will;

(ii) Without her consent;

(iii) With her consent if it is obtained by putting her or her dear ones in fear of death or hurt;

(iv) With her consent, if the same is caused by deception of marriage;
(v) With her consent if the same is given due to intoxication or, unsoundness of mind or some drug; and

(vi) With or without consent, when she is under 16 years of age.

Section 376 IPC - Punishment for rape:

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,

(a) being a police officer commits rape

(i) within the limits of the police station to which he is appointed ;or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed ; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him ; or

b. being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him ; or

c. being on the management or on the staff of a jail, remand home or other place of custody established by or under any Law for the time being in force or of a women's or children's institution takes advantage of his official
position and commits rape on any inmate of such jail, remand home, place
or institution; or

d. being on the management or on the staff of a hospital, takes advantage of
his official position and commits rape on a woman in that hospital; or

e. commits rape on a woman knowing her to be pregnant; or

f. commits rape on a woman when she is under twelve years of age; or

g. commits gang rape

shall be punished with rigorous imprisonment for a term which shall not be less
than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in
the judgment, impose a sentence of imprisonment of either description for a term of
less than ten years.

Explanation 1. where a woman is raped by one or more in a group of persons
acting in furtherance of their common intention, each of the persons
shall be deemed to have committed gang rape within the meaning of
this sub-section.

Explanation 2. "Women's or children's institution" means an institution, whether
called an orphanage or a home for neglected women or children or a
widows' home or by any other name, which is established and
maintained for the reception and care of women or children.

Explanation 3. "Hospital" means the precincts of the hospital and includes the
precincts of any institution for the reception and treatment of
persons during convalescence or of persons requiring medical
attention or rehabilitation.

Section 377-Unnatural offences:

Whoever voluntarily has carnal intercourse against the order of nature with
any man, woman or animal shall be punished with imprisonment for life, or with
imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This section is intended to punish certain unnatural offences like sodomy, buggery and bestiality. The offence consists in having carnal knowledge against the order of nature by a person with a man, or in the same unnatural manner with a woman or by a man or woman in any manner with an animal.

In *Fazal Rab Chodhary v. State of Bihar*, the accused was charged for committing an unnatural offence upon a young boy. In view of the fact that no force was used, the sentence of three years imprisonment was reduced to six months. It was held that in judging the depravity of the action for determining quantum of sentence, all aspects of the matter having a bearing on the question of nature of offence must be considered.

In *Brother John Antony v. State*, the petitioner a sub-warden of a Boarding Home was alleged to have committed unnatural offence with the inmates. The acts committed by the petitioner fell in two categories, namely (1) insertion of the penis into the mouth of the victim boy and doing the act of in carnal intercourse up to the point of ejaculation of semen into the mouth; and (2) manipulation and movement of the penis of the petitioner whilst being held by the victim boys in such a way as to create an orifice like thing for making the manipulated movements of insertion and withdrawal up to the point of ejaculation of semen.

It was held that both the above categories of acts fall within the sweep of unnatural carnal offences under section 377. As far as the second category is concerned in the process of such manipulation, the visiting male organ is enveloped at least partially by organism visited, namely, the hands which held tight the penis. The sexual appetite was thus quenched by the ejaculation of semen into the hands of the victims.

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4.3 The Criminal Law (Amendment) Act 2013 (Nirbhaya Act) No.13 of 2013:

Chapter I: Short title and commencement:

This Act may be called the Criminal Law (Amendment) Act, 2013. It shall be deemed to have come into force on the 3rd day of February, 2013.

Chapter II: Amendments to the Indian Penal Code:

Amendment of Section 100:

In the Indian Penal Code (45 of 1860) (hereafter in this Chapter referred to as the Penal Code), in section 100, after clause sixthly, the following clause shall be inserted, namely:

"Seventhly. An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.".

Insertion of new section 166A and 166B:

After section 166 of the Penal Code, the following sections shall be inserted, namely:

Section 166A Public servant disobeying direction under Law:

Whoever, being a public servant,

a) knowingly disobeys any direction of the Law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

b) knowingly disobeys, to the prejudice of any person, any other direction of the Law regulating the manner in which he shall conduct such investigation, or

c) fails to record any information given to him under sub-section (i) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section
Section 166B Punishment for non-treatment of victim:

Whoever, being in charge of a hospital, public or private, whether run by the Central Government, the State Government, local bodies or any other person, contravenes the provisions of section 357C of the Code of Criminal Procedure, 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

Amendment of section 228A:

In section 228A of the Penal Code, in sub-section (l), for the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C or section 376D", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E" shall be substituted.

Insertion of new sections 326A and 326B:

After section 326 of the Penal Code, the following sections shall be inserted, namely:

Section 326A: Voluntarily causing grievous hurt by use of acid, etc.

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim provided further that any fine imposed under this section shall be paid to the victim.
Section 326B - Voluntarily throwing or attempting to throw acid:

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1. For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2. For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible.

Amendment of Section 354:

In section 354 of the Penal Code, for the words "shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both", the words "shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine" shall be substituted.

Insertion of new sections 354A, 354B, 354C and 354D:

After section 354 of the Penal Code, the following sections shall be inserted, namely:

Section 354A - Sexual harassment and punishment for sexual harassment:

(1) A man committing any of the following acts

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or
(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 354B - Assault or use of criminal force to women with intent to disrobe:

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

Section 354C - Voyeurism:

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1 For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in
underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.

where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

Section 354D - Stalking:

(i) Any man who

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any Law or to comply with any condition or requirement imposed by any person under any Law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.'.
Substitution of new sections 370 and 370A for section 370:

For section 370 of the Penal Code, the following sections shall be substituted, namely:

Section 370 - Trafficking of person:

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by

First. using threats, or
Secondly. using force, or any other form of coercion, or
Thirdly. by abduction, or
Fourthly. by practicing fraud, or deception, or
Fifthly. by abuse of power, or
Sixthly. by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1. The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. the consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than
ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Section 370A - Exploitation of trafficked persons:

(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.

(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.'.
Substitution of new sections for sections 375, 376, 376A, 376B, 376C and 376D:

For sections 375, 376, 376A, 376B, 376C and 376D of the Penal Code, the following sections shall be substituted, namely:

Section 375 - Rape:

A man is said to commit "rape" if he

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First. against her will.
Secondly. without her consent.
Thirdly. with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
Fourthly. with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the
administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. with or without her consent when she is below eighteen years of age.

Seventhly. when she is unable to communicate consent.

Explanation 1. for the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.'.

Section 376 - Punishment for Rape:

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,

(a) being a police officer, commits rape
(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any Law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape on a woman when she is under sixteen years of age; or

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or
(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation. For the purposes of this sub-section,

(a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Section 376A - Punishment for causing death or resulting in persistent vegetative state of victim:

Whoever, commits an offence punishable under sub-section (1) or subsection (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.
Section 376B - Sexual intercourse by husband upon his wife during separation:-

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation. In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Section 376C - Sexual intercourse by a person in authority:- Whoever, being

(a) in a position of authority or in a fiduciary relationship; or

(b) a public servant; or

(c) superintendent or manager of a jail, remand home or other place of custody established by or under any Law for the time being in force, or a women's or children's institution; or

(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1. In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

Explanation 2. For the purposes of this section, Explanation 1 to section 375 shall also be applicable.

Explanation 3. "Superintendent", in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place
or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 4. The expressions "hospital" and "women's or children's institution" shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

Section 376D - Gang Rape:

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim provided further that any fine imposed under this section shall be paid to the victim.

Section 376E - Punishment for repeat offenders:

Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.'.

Amendment of section 509:

In section 509 of the Penal Code, for the words "shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both", the words "shall be punished with simple imprisonment for a term which may extend to three years, and also with fine" shall be substituted.
Chapter-III: Amendments to the code of Criminal Procedure, 1973:

Amendment of Section 26:

In the Code of Criminal Procedure, 1973 (hereafter in this Chapter referred to as 2 the Code of Criminal Procedure), in section 26, in the proviso to clause (a), for the words, figures and letters "offence under section 376 and sections 376A to 376D of the Indian Penal Code", the words, figures and letters "offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code" shall be substituted.

Amendment of Section 54 A:

In section 54A of the Code of Criminal Procedure, the following provisions shall be inserted, namely:

"Provided that, if the person identifying the person arrested is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the person arrested using methods that person is comfortable with: Provided further that if the person identifying die person arrested is mentally or physically disabled, the identification process shall be video graphed.".

Amendment of Section 154:

In section 154 of the Code of Criminal Procedure, in sub-section (7), the following provisos shall be inserted, namely:

"Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:
Provided further that

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.".

Amendment of Section 160:

In section 160 of the Code of Criminal Procedure, in sub-section (7), in the proviso, for the words "under the age of fifteen years or woman", the words "under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person" shall be substituted.

Amendment of Section 161:

In section 161 of the Code of Criminal Procedure, in sub-section (3), after the proviso, the following proviso shall be inserted, namely:

"Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.".
Amendment of Section 164:

In section 164 of the Code of Criminal Procedure, after sub-section (J), the following sub-section shall be inserted, namely:

"(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (7) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial."

Amendment of Section 173:

In section 173 of the Code of Criminal Procedure, in sub-section (2), in sub-clause (h) of clause (0, for the words, figures and letter "or 376D of the Indian Penal Code", the words, figures and letters "376D or section 376E of the Indian Penal Code" shall be substituted.
Amendment of Section 197:

In section 197 of the Code of Criminal Procedure, after sub-section (1), the following Explanation shall be inserted, namely:

"Explanation. For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376C, section 376D or section 509 of the Indian Penal Code.".

Amendment of Section 198B:-

After section 198A of the Code of Criminal Procedure, the following section shall be inserted, namely:

"198 B. No Court shall take cognizance of an offence punishable under section 376 B of the Indian Penal Code where the persons are in a marital relationship, except upon prima facie satisfaction of the facts which constitute the offence upon a complaint having been filed or made by the wife against the husband.".

Amendment of Section 273:

In section 273 of the Code of Criminal Procedure, before the Explanation, the following proviso shall be inserted, namely:

"Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.".

Amendment of Section 309:

In section 309 of the Code of Criminal Procedure, for sub-section (7), the following sub-section shall be substituted, namely:
"(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same "beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet."

Amendment of Section 327:

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letter "or section 376D of the Indian Penal Code", the words, figures and letters "section 376D or section 376E of the Indian Penal Code" shall be substituted.

Insertion of new sections 357B and 357C:

After section 357A of the Code of Criminal Procedure, the following sections shall be inserted, namely:

Section 357B

The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.

Section 357C

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.".
Chapter-IV: Amendments to the Indian Evidence Act, 1872:

Insertion of new section 53A:

After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:

Section 53A

In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."

Substitution of new section for section 114A:

For section 114A of the Evidence Act, the following section shall be substituted, namely:

Section 114A

In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code.'.
Substitution of new section for section 119:

For section 119 of the Evidence Act, the following section shall be substituted, namely:

Section 119

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.”.

Amendment of Section 146:

In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:

"Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”.

Amendment to the Protection of Children from Sexual offences Act, 2012:

Substitution of new sections for section 42:

For section 42 of the Protection of Children from Sexual Offences Act, 2012, the following sections shall be substituted, namely:
Section 42 - Alternative punishment:

Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370,370A, 375,376,376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any Law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

Section 42A - Act not in derogation of any other Law:

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other Law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such Law to the extent of the inconsistency.”.

4.4 The Immoral Traffic (Prevention) Act, 1956:

This Act is enacted to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic.

Section 1: Short title, extent and commencement of ITP ACT:

(1) This Act may be called The Immoral Traffic (Prevention) Act, 1956.281

(2) It extends to the whole of India.

(3) This section shall come into force at once; and the remaining provisions of this Act shall this come into force on such date282 as the Central Government may, by notification in the official Gazette, appoint. Section 1 of the Act came into force at once viz., 31st December 1956, while the remaining sections of the Act came into force on the first day of May, 1958, vide Central Government notification No. G.S.R. 269, dated the 16th April, 1958.

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281 Subs. By Act 44 of 1986, Section 3 for the words “the Suppression of Immoral Traffic in Women and Girls” (w.e.f. 26th January, 1987).

282 Came into force on 1st May, 1958, vide G.S.R 269, dated 16th April, 1958, published in the Gazette of India, Pt. II, Section 3 (i), P.203.
Statement of objects and reasons behind the Act:


The following Statement of the Objects and Reasons of the Suppression of Immoral Traffic in Women and Girls Bill No. 58 of 1954 published in the Gazette of India, Extraordinary, Part II Section 2, dated the 20th December, 1954 is reproduced below:

(1) In 1950, the Government of India ratified the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others. Under Article 23 of the Convention, traffic in human beings is prohibited and any contravention of the prohibition is an offence punishable by Law. Under Article 35 such a Law has to be passed by Parliament as soon as may be after the commencement of the Constitution.

(2) Legislation on the subject of suppression of immoral traffic does exist in a few States but the Laws are neither uniform nor do they go far enough. In the remaining States there is no bar on the subject at all.

(3) In the circumstances it is necessary and desirable that a Central Law should be passed which will not only secure uniformity but also would be sufficiently deterrent for the purpose. But a special feature of the Bill as that it provides that no person or authority other than the State Government shall establish or maintain any protective home except under a licence issued by the State Government. This will check the establishment of homes which are really dens for prostitution.
Legislative background of the Act:

The need for gratification of sexual urge has impelled men and women, of all ages and in all countries of the world to exploit either sex. With the growing danger in society to healthy and decent living with morality, the world public opinion congregated at New York in an International Convention opened for signatures at Lake Success, New York on the 21st March, 1950. It was signed by Shri Gopala Menon on behalf of India on the 9th May, 1950. A Bill No. 58 of 1954, containing the ‘Objects and Reasons’ was published in the Gazette of India, Part II, Section 2, dated the 20th December, 1954. The Bill received the assent of the President on the 30th December, 1956 and became an Act, Section 1 whereof came into force from the 31st December, 1956, while the remaining sections came into force from the 1st May, 1958. This in brief is the legislative background of the Act.

Act was called Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA for short), aimed at suppressing the evils of prostitution in women and girls, and to provide opportunity to fallen women and girls to rehabilitate themselves as decent members of the society.

The SITA did not succeed in ample measure to eradicate or suppress the evils of prostitution, and so it was drastically amended in 1978. Besides other stringent measures taken, one progressive measure was the opening of probation under the Probation of Offenders Act. However, it was soon realised that the measures needed to be made more stringent and the provision for release on probation was being abused. So the Parliament again intervened and by Amendment Act 44 of 1986, completely repealed the provisions relating to probation and provided stricter and higher penalty for offences under the Act. It also realised that time had come when male prostitution should also be covered by the Act, and so it changed the name of the Act SITA to Immoral Traffic (Prevention) Act, 1956 (ITP ACT for short). In place of women and girls to whom SITA was confined, the ITP ACT uses the expression “person” thus covering both male and female. The definition of prostitution has also been changed and mere gratification of sex without anything more has been taken out of the purview of prostitution. Only where the exploitation or abuse of persons is for commercial purposes, it is prostitution, and any place used for such abuse or exploitation is a brothel.
ITP ACT has been passed, to implement the international Convention for the Suppression of the Traffic in Persons, etc, signed on 9th May, 1950 at New York:

It cannot be denied that “prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community. It must also be noticed that with respect to the suppression of the traffic in women and children several international instruments are in force. They are enumerated below.

1. International Agreement of 18th May, 1904 for the suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations of 3rd December, 1948;

2. International Convention of 4th May 1910 for the suppression of the White Slaves Traffic, as amended by the above mentioned Protocol;


In the 1937 the League of Nations prepared a draft Convention extending the scope of the above mentioned instruments. In 1950 a Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of others was signed at New York by several nations including ours. In this convention the above mentioned instruments as also the draft Convention prepared by the League of Nations in 1937 were consolidated and embodied.

The present Act has been passed with the view to implement the International Convention signed at New York on 9th of May, 1950. Therefore, while considering the reasonableness or other wise of the restrictions imposed on the trade or profession of a prostitute by this Act we have to keep in mind that prostitution is slur on human
dignity and a shame to human civilisation. Its eradication by gradual and evolutionary process is ultimate aim of all civilised nations.

So long as it is not possible to completely abolish it has got to be tolerated as an evil necessity, but it is only reasonable that restrictions should be imposed to mitigate so far as possible the evil effects of the trade or profession and to protect the interest of the general public.\textsuperscript{283}

**Object of the ITP ACT:**

The object of ITP ACT is the suppression of commercialised vice which is aimed at, not the abolition of prostitutes and prostitution. For instance, Section 4 lays down the punishment for persons living on the earning of prostitution, other than the prostitute herself, and Section 4 (2) raises certain presumptions, which are expressly made inapplicable to the case of the son or a daughter of a prostitute below the age of 18 years. Section 5 deals with the procuring or inducement or the taking of women or girls for prostitution, and section 6 similarly deals with the detention of a woman or girl to the brothel. Sections 7 and 8 are of particular significance. Section 7 makes punishable the practice of prostitution to or in the vicinity of certain public places, such as places of public religious worship, educational institutions, hospitals and nursing homes etc. this is an illuminating provision, throwing light upon the intentions of the legislature. This provision, undoubtedly, inhibits the woman herself from the practice of her profession in contravention of its terms, and, to that extent, renders prostitution a penal offence. Similarly, Section 8 deals with seduction or solicitation for prostitution by words, gestures or wilful exposure of person in a public place. Again the intention is clear that it is the practice of prostitution in a particular manner, which offends social decencies, which is sought to be penalised. Section 14 renders offences under the Act cognizable, and Section 15, which is particularly important in the present case, deals with the powers of the Special Police Officer to enter certain premises and make a search without a warrant. Under Section 15 (1), the special police officer must record his reasons for such urgent search, and, under Section 15 (2) of the Act, he must be accompanied by two respectful inhabitants of the locality, one of whom at least must be a woman.\textsuperscript{284}

\textsuperscript{283} Shama Bai v. State of U.P. AIR 1959 All. 57 at 61 : 1959 All. Cr. R. 427
\textsuperscript{284} In re : Ratnamala. AIR 1962 Mad. 31 at 33
The entire scheme behind the Act is not the proof of a single incident of prostitution, or of the activities of a prostitute. The Act closely follows the English Laws.

This Act was passed in the year 1956, long after the advent of the Constitution of India, with the avowed object of suppressing immoral traffic in women and girls. This legislation had become necessary also because Article 23 of the Constitution of India in terms prohibits traffic in human beings and regards it as an offence punishable in Law and Article 35 of the Constitution clearly lays down that notwithstanding anything in the Constitution, Parliament shall have, and the Legislature of a State shall not have, power to make Laws for prescribing punishment for those acts which are declared to be offence under Part III, and that the Parliament as soon as may be after the commencement of the Constitution shall make Laws for prescribing punishment for those acts. The Statement of Objects and Reasons published in the Gazette of India, dated 20-12-1954. Part II, Section 2, Extraordinary, page 759 and also the report of the Select Committee published in the Gazette of India, dated 21-11-1958, Part II, Section 2, Extraordinary page 885/3, also give an idea of the reasons which led to the passing of this enactment.

A perusal of the various sections of the Act would show that apart from suppression of immoral traffic in women and girls, they have for their object reducing the opportunities for such women of contacting the members of the public and also helping the women who have already taken to that life to rehabilitate themselves by dissociating them from the previous environments. Whereas Sections 3,4 and 5 to 7 of the Act prescribe punishment for keeping a brothel or allowing premises to be used as brothel or living on the earnings of prostitution, etc. sections 6 and 11 are designed to reduce the opportunities to contact the members of the public and Sections 7 and 8 besides minimising such opportunities aim of preventing prostitution from becoming source of danger to social decencies. Sections 17 and 18 provide for the closure of brothels and eviction of offenders from the premises, if they happen to be within 200 yards of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be noted by the Commissioner of Police or District Magistrate in the manner prescribed. Sections 10, 19 and 21 are calculated to help the women in
reforming themselves by removing them from the old environments. Sections 13, 14, 15, 16 and 17 provide for investigation and Section for trial. Of course prostitution by itself has not been made an offence punishable in Law. As already noticed, there are however, provisions providing punishment for keeping a brothel or allowing a premises to be used as a brothel or for living on the earnings of prostitution and also for contravening certain provisions including an order under Section 20. Thus it would be seen from the scheme of the Act that though the main purpose for enacting this Law by the Parliament was to suppress traffic in women and girls to carry out the purposes of Articles 23 read with 35 of the Constitution and to prohibit exploitation of prostitute. Parliament made provisions for meeting all the evil consequences flowing from the.\textsuperscript{285}

The Act is not aimed at abolition of prostitutes and prostitution as such and makes it per se a criminal offence or punishes a woman because she prostitutes herself; and that the purpose of the enactment is to inhibit or abolish commercialised vice namely the traffic in women and girls for purpose of prostitution as an organised means of living. Various provisions of the Act tend to strengthen such a view.\textsuperscript{286}

The evil of prostitution must be curbed. It is the mandate of the Constitution which prohibits traffic in human beings. Keeping that object in view and in pursuance to International Conventions for the Suppression of Traffic in persons and of the Exploitation of the Prostitution of others signed at New York on May 9, 1950, the Parliament enacted the Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended in 1978 to make good some inadequacies in the implementation of the Act and in the light of the experience gained during the period the Act was being implemented. Despite the amendments of the Act it was felt that enforcement of the Act had not been effective enough to deal with the problems of immoral traffic in all its dimensions. Suggestions had been made to Government by all voluntary organisations working for women, advocacy groups and various individuals urging the enlargement of the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims. The Act was, therefore, further amended in 1986 making it more wide base. The Act is now called as Immoral Traffic

\textsuperscript{285} Seetharamma v. Sambasiva Rao AIR 1964 AP 400 at 402-403
\textsuperscript{286} Bai Shanta v. State of Gujarat, AIR 1967 GUJ. 211 at 213.
(Prevention) Act, 1956 – Gaurav Jain v, Union of India. What is intended by this legislation is not only to suppress traffic in women and girls but also to curtail the activities of prostitutes if their activities have got a tendency to tempt young persons or cause annoyance to even grown up persons who visit place of worship, hospitals Nursing Homes and educational institutions and affect their susceptibilities.

**ITP ACT was conceived to serve a public purpose:**

The preamble of the Act shows that the Act was made to provide in pursuance of the International Convention signed at New York on May 9, 1950, for the suppression of immoral traffic in women and girls. The short title of the Act says that the Act may be called “The Suppression of Immoral Traffic in Women and Girls Act, 1950”, now “the Immoral Traffic (Prevention) Act, 1956”.

Though the preamble as well as the title shows that the Act was intended to prevent immoral traffic in women and girls, the other sections of the Act indicate that it was not the only purpose of the Act. Section 2 (b) defines “girl” to mean a female who has not completed the age of twenty-one, Section 2 (j), “woman” to mean a female who has completed the age of 21 years, Section 2 (e) “prostitute” to mean a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind. There are provisions in the Act for punishing men who run brothels and who procure girls and women for prostitution, for punishing women and girls who seduce or solicit for the purpose of prostitution in public places, for placing the rescued women and girls in detention in protective homes, for closure of brothels and eviction of offenders from premises, for restricting the movements of prostitutes and even for deporting them to places outside the jurisdiction of the Magistrate. Section 7 (1) provides for the punishment of a prostitute, if she carries on prostitution in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostels, hospitals, nursing home or such other public place of any kind notified in that behalf by the Commissioner of Police or the District Magistrate, as the case may be, Section 8 prohibits seducing or soliciting for purpose of prostitution 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

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288 Begum d/o Hudsain Saheb Kalawat v. State, AIR 1963 Bom. 17
house or not, and makes such soliciting or seducing an offence under the Act. Section 18 provides for the closure of brothels and eviction of offenders from the premises, if such premises are within a distance of two hundred yards from a public place mentioned in section 7 (1) and are used or run as a brothel by any person or used by prostitutes for carrying on their trade. The Act was conceived to serve a public social purpose, viz, to suppress immoral traffic in women and girls, to rescue fallen women and girls and to prevent deterioration in public morals. The Act clearly defines a “prostitutes”, and definite indications from which places prostitutes should be removed or in respect whereof their movements should be restricted.289

**Whether ITP ACT is a penal statute:**

Penal statutes must be strictly construed. They cannot be enlarged or extended by intendment, implication or by any equitable considerations beyond the fair meaning of the language used. In other words, only those persons, offences or penalties which are clearly included will be considered within the operation of the statute and all questions in doubt will be resolved in favour of the person who has contravened the provisions of Law. At the same time it must be remembered that no rule of construction requires that a penal statute should be, unreasonably construed so as to defeat the obvious intention of the Legislature or construed in a manner as would lead to absurd results. On the other hand, it is of utmost importance that the Court should endeavour to ascertain the intention of the Legislature and to give effect thereto.290

The Immoral Traffic (Prevention) Act is a penal statute. Penal statutes affect the liberty of the subject, if two possible and reasonable constructions can be put upon a penal provision; the Court must lean towards that provision which exempts the subject from penalty rather than that which imposes a penalty.291

**ITP ACT deals with a matter which has to be tackled with consideration, intelligence and understanding of the problem:**

Act is a complete Code with respect to what is to be done under it. It deals with the suppression of immoral traffic in women and girls, a matter which has to be

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290 Teja Singh v. The State, AIR 1952 Punj 45 at 46: Cr. L.J. 131 (Punj.)
tackled with considered intelligence and understanding of the problem. This is evident from the provisions of clause (b) of sub-section (3) of Section 13 which provides for the association of 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) with the special police officer in order to advise him on questions of general importance regarding the working of the Act. The Act creates new offences provides for the forum before which they would be tried and the orders be passed on conviction of the offenders. Necessary provisions of the Code of criminal Procedure have been adopted fully or with modifications. The Act provides machinery to deal with the offences created and its necessary implication must be that new machinery is to deal with those offences in accordance with the provisions of the special Act and, when there is no specific provision in such Act, in accordance with the general procedure and that no other machinery is to deal with those offences. It does not appear reasonable that the investigation of offences would have been left un provided and was to be done by the regular police, in accordance with the regular procedure laid down under the Code.292

Provisions of the Criminal Procedure Code would be applicable in regard to the matters for which there is no specific provision in the ITP ACT:

The scheme and purpose of the Act clearly disclose that the special police officer, who has been invested with police powers, may arrest an offender, carry out searches of premises used, for the purpose of prostitution and file a charge-sheet in Court against a person suspected of having committed and offence under the Act. At the same time, the other modes of initiating prosecution as for example upon a complaint by a private or upon his own knowledge or suspicion by a Magistrate are not outside the Act.

The Act is silent upon these matters, and it must, therefore, be held that the provisions of the Cr. P.C. would be applicable in regard to matters for which there is no specific provision in the Act. The above conclusion finds support by Reference to sub-section (2) of Section 5 (new Section 4) of the Code which states that all offences under any other Law shall be investigated, inquired into, tried and otherwise dealt

with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring, tying or otherwise dealing with such offences.

Therefore, in so far as the Act makes provision for the offences being dealt with in a particular manner and by a particular officer or class of officers, the provisions of the Act shall override the provisions of the general Law. But in matters with respect to which the Act is silent the provisions of the general Law will come into operation.

None of the sections of the Act have the effect of stopping the profession or trade of a prostitute altogether:

Under the provisions of the Penal Code Prostitution is not an offence. Section 372 of the Penal Code only prohibits sale, letting to hire, or otherwise disposing of any person under the age of 18 years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for an Unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose. After having read the Act carefully it is not quite correct to say that the Act prohibits the carrying on of the profession or trade of a prostitute though it cannot also be denied that it has imposed restrictions on the same. This Act has got twenty-five sections in all. Of these some are penal. None of the sections, have the effect of stopping the profession or trade of a prostitute altogether. The only question, therefore, is whether the restrictions which are imposed upon the trade or profession of a prostitute by means of the provisions of the Act are reasonable restrictions. “In order to determine the reasonableness of the restrictions regard must be had to the nature of the business and the conditions prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down.”

Section 2 of ITP ACT: Definitions:

In this Act, unless the context otherwise requires-

(a) "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;

(aa) "Child" means a person who has not completed the age of sixteen years;

(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 under trials may be kept in pursuance of this Act;

(c) "Magistrate" means a Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule;

(ca) "Major" means a person who has completed the age of eighteen years;

(cb) "Minor" means a person who has completed the age of sixteen years but has not completed the age of eighteen years;

(d) "Prescribed" means prescribed by rules made under this Act;

(e) "Prostitution" means the sexual exploitation or abuse of persons for commercial purposes, and the expression "prostitute" shall be construed accordingly;

(f) "Protective home" 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 care and protection, may be kept under this Act and where appropriate technically qualified persons, equipment’s and other facilities have been provided but does not include, -
(i) A shelter where under trials may be kept in pursuance of this Act, or

(ii) A corrective institution;

(g) "Public place" means any place intended for use by, or accessible to, the public and includes any public conveyance;

(h) "Special Police Officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act;

(i) "Trafficking Police Officer" means a police officer appointed by the Central Government under sub-section (4) of Section 13.

Section 2a - Meaning of Brothel - Essentialities:

Section 2a of the Act (ITP ACT) defines Brothel is a place which should be used for purposes of prostitution for the gain of another person or for mutual gain of two or more prostitutes. “For purposes of prostitution” would undoubtedly mean more than one instance of prostitution and solitary instance of prostitution in a place does not make the place a ‘brothel’.

To constitute a brothel the place must have been used for purposes of prostitution. A solitary instance of prostitution committed within any house or room or place would not satisfy the ingredients of a brothel.

This means that both women and men have to go to the place to constitute it a brothel.

A house can be called a brothel if women were kept in that house by another woman or by a man for the purposes of prostitution. Where a woman who along with her husband, is living with her husband’s sister and practices prostitution, the sister of the prostitute’s husband cannot be called a brothel keeper.

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294 Susheela v. State, 1982 Cr. L.J. 702 (Mad.)
295 In re: John, AIR 1966 Mad. 167
296 Krishnamurthy v. Public Prosecutor, Madras, AIR 1967 SC 567 at 568
297 Rahto v. Emperor, AIR 1925 Lah. 146 at 148.
It may be true that a place used once for the purpose of prostitution may not be a brothel, but it is a question of fact as to what conclusion should be drawn about the use of a place about which information had been received that it was being used as a brothel to which a person goes and freely asks for girls, where purpose of prostitution. The conclusion to be derived from these circumstances about the place and the person keeping it can be nothing else than that the place was being used as a brothel and the person in charge was so keeping it. It is not necessary that there should be evidence of repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances is sufficient to establish both that the place was being used as a brothel, and that the person alleged was so keeping it.298

If the husband lives with his wife and allows his wife to be a prostitute there is no reason for not believing that the husband was doing so for the purpose of living on the earnings of prostitution of his wife. There is therefore, no reason not to apply the presumption mentioned in Section 4 (2) of the Act. When such a presumption is drawn until the contrary is proved, it can be presumed that the husband is knowingly living on the earnings of prostitution of his wife. When such a presumption is drawn, that would be sufficient to constitute the house of the husband a “brothel”299 The last part of the definition is certainly significant. It implies that where is a single woman practices prostitution for her own livelihood, without another prostitute, or some other person being involved in the maintenance of such premises, her residence will not amount to a “brothel”.300

When the prosecution proved only the presence of only one girl in the premises and a single instance of prostitution, the premises cannot be held “used for brothel” in the absence of any proof from the surrounding circumstance.301

A ‘brothel’ means a place promiscuously resorted to by persons of both sexes for the purposes of prostitution. A prostitute receiving men only into her own room cannot be convicted of keeping a brothel.302
A brothel includes a house, room, conveyance or place or a portion thereof which is used for the purposes for prostitution for the gain of another person or for the mutual gain of two or more prostitutes. To constitute a brothel there must be a person who lets on hire a person for prostitution or there must be two or more prostitutes carrying on prostitution there for their mutual gain.

To constitute brothel, the place must have been used for purposes of prostitution. A solitary instance of prostitution committed within any house or room or place would not satisfy the ingredient of brothel.\textsuperscript{303}

Brothel is defined under Section 2 (a) of the Act so as to include any house, room or place or any portion of any house, room or place which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more persons. ‘Prostitute’ is defined in Section 2 (a) of the Act and it means a woman who offers her body for promiscuous sexual intercourse for hire whether in money or in kind. Any person, who keeps or maintains or acts or assists in the keeping and management of a brothel, is liable to be punished under Section 3 of the Act.\textsuperscript{304}

A perusal of the definition of the word “brothel” would clearly indicate that the place must be used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. The phrase ‘for purposes or prostitution’ postulates plurality of instances of prostitution.

In order to establish brothel, evidence of more than one customer is not always necessary. – Brothel to mean any house, room, conveyance or place which issued for purpose of sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes the essential exploitation or abuse. The phrase ‘for the purpose of’ indicates that the place being uses for the purpose of the prostitution may be a brothel provide a person used the place and ask for girls, where the person is shown girls to select from and where one does engage or offer her body for promiscuous sexual intercourse for hire. In order to establish prostitution, evidence of more than one customer is not always necessary. All that is essential to prove is that a girl/lady should be a person offering her body for promiscuous sexual intercourse for hire. Sexual intercourse is not an essential ingredient. The inference of

\textsuperscript{303} In re: Unnikumar, (1975) 1 MLJ 22 (Mad.)
\textsuperscript{304} State of Rajasthan v. Wahida. 1981 Raj Cr. C. 42 at 43 (Raj.)
prostitution would be drawn from diverse circumstance established in a case. Sexuality has got to be established but the does not require the evidence of more than one customer and no evidence of actual intercourse should be adduced or proved. It is not necessary that here should be repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with the surrounding circumstances may be sufficient to establish that he place is being used as a brothel and the person alleged was so keeping it, the prosecution has to prove only that in a premise a female indulges in the act of offering her body for promiscuous sexual intercourse for hire. On proof thereof, it becomes a brothel.305

Section 2 (a) will also have the effect of mitigating much of evil of the prostitution. It would be noticed that what has been prohibited is not the profession or trade of a prostitute but the carrying on of that profession for the gain of another person or for mutual gain of two or more prostitutes. This section has obviously been enacted to prohibit exploitation of a prostitute by a person who is not a prostitute, or by one prostitute of another. This section will also have the effect of mitigating much of the evils of the prostitution but also leads to the commission of various other offences.306

The onus entirely remains on the prosecution and the legislature has not deemed it fit or necessary to shift any part of the onus on the accused in any circumstances. The only evidence brought in this case is from pimps and prostitutes—pimps procure the visitors for gain and prostitutes offer their body for money. Either of them is, therefore, an accomplice and judicial decisions have settled the value of accomplice evidence. Although it is not entirely illegal to convict an accused on accomplice evidence only the rule of prudence is to look for corroboration. This rule of prudence is now virtually the Law enunciated by judicial decisions. It is also well settled that evidence of accomplice is tainted evidence and tainted evidence cannot corroborate another. There was an attempt to draw the analogy of the victim girl in a rape case but this is not applicable in such cases, for the female is not a ‘victim ‘ but a willing partner in the sexual act. Learned Judges were not unmindful of the difficulty for the prosecution to adduce corroborating evidence; even the ‘test purchaser’ of a female body would be an accomplice and therefore, his evidence is tainted evidence.

The Law as it stands provides neither for presumptions nor shifting the onus on the accused and puts an uphill task on the prosecution but that is entirely a matter of policy for the legislature. Court did not think that such provision is beyond the genius of the Law makers and the draftsmen. This is undoubtedly a measure for eradicating a social evil by way of suppression of immoral traffic in women and girls in pursuance of International Convention signed at New York in May 1950, as the preamble discloses, but such legislation should be thorough going or else it loses its efficacy. 307

**Section 2aa: Meaning of Child:**

Clause (a a) of Section 3 of the Act defines “child” means a person who has not completed the age of sixteen years.

Whereas Section 2 (e) of the Children Act, 1960, defines the child as “child” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

Any person who is unable to maintain him or herself of whatever age would be a child for purposes of maintenance under the Cr. P.C. because he or she is the immediate issue of his or her father. If the word is to be restricted to a person who has not yet attained the age of majority, a crippled or imbecile off-spring of well-to-do parents and would be left to starve till he or she is able to attain relief through the trade process of a civil suit. There is, hence, no reason to limit the meaning of the word ‘child’ to a person who has not yet attained the age of majority. The key-phrase is inability to maintain itself, and not the age of the child. It is, no doubt, true that normally a claim for maintenance will arise in cases of tender years because a strong and healthy person of grown-up years is presumed to be able to maintain himself even though he may have a father who is possessed of sufficient means but that person of tender years or of a particular age. A fully grown person who is suffering from a crippling disease or some physical or mental affliction is therefore, unable to maintain himself, nor has he any dependent means of his own is as much a child entitled to speedy and immediate relief from his parent as a person of tender years or one who

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has not yet attained majority. ‘Child’, therefore, in this context means an immediate issue or off-spring of a parent and that age is not all a relevant consideration.\textsuperscript{308}

The term means a person under the age of 14 years and when used in Reference to a child sent to a certified school applies to that child during the whole period of detention, notwithstanding that the child attains the age of 14 years before the expiration of that period. With Reference to non-power, Factories Act and Shops and Commercial Establishments Act the term ‘child’ means a person who has not completed 14 years. There are three strong reasons for construing the ‘child’ in Section 4 of the Fatal Accidents Act, 1855, as inclusive of an illegitimate child, viz.:

When the expression ‘child’ as defined to include a step-son or a step-daughter, who cannot be born of the loins of the deceased, there is no reason to interpret the word ‘child’ so as to exclude an illegitimate child who is born of the loins of the deceased;

\textbf{Section 2c: Meaning of Magistrate:}

Section 2(c) (old) defines the word ‘Magistrate’ to mean a District Magistrate, a sub-Divisional Magistrate, a Presidency Magistrate, or a Magistrate of the first class specifically empowered by the State Government, to exercise jurisdiction under the Act. It would only mean that wherever the words “the Magistrate” occur such as in Sections 16, 18, 19, 20 it must have the meaning as given in Section 2 (c). It is not and could not have been intended that it should control in any manner the jurisdiction of the Court which could take cognizance of the offence. The only section on which Counsel for the respondent relies is Section 22. It provides that no Court inferior to that of a Magistrate as defined in clause (c) of Section 2 shall try any offence under Sections 3,4,5,6,7 and 8. It is clear that this is not a section which in terms excludes the jurisdiction of any Court to take cognizance of an offence under the Act, shall be a Court of either equal or superior jurisdiction to that of the Magistrate named. The other provisions of the Act show that it could not be otherwise.\textsuperscript{309}

A schedule has been added to the text of the Act, in which it has been specified as who are those Magistrates who can exercise powers under the various provisions of the Act.

\textsuperscript{309} State v. Mamabai, AIR 1962 Bom 202 at 204.
The table in the Schedule is self-contained. The Schedule when read with section 22, gives a clear picture at a glance as to which Magistrate can try which offence, e.g., offences under Sections 5 to 8 can be tried by a Metropolitan Magistrate or a Judicial Magistrate first class while under Section 18 only District Magistrate or Sub-Divisional Magistrate can exercise their powers.

### Schedule

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### Court of Magistrates under the Code of Criminal Procedure, 1973:

Sections 11 to 23 of the Code lay down the provisions as to various classes of Magistrates and their jurisdiction. Sections 11 to 23 of the Code read as under:

1. In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify:

    Provided that the State Government may, after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrates of the first class or of the second class to try any particular case or particular class of cases, and where any such Special Court is established, no other of Magistrate in the
local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.

2. The presiding officers of such Courts shall be appointed by the High Court.

3. The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Magistrate of the first class or of the second class on any member of the judicial service of the State, functioning as a Judge in a Civil Court.

**Sentence passed by a Magistrate:**

Section 3 of the Act prescribes for the first offence, rigorous imprisonment for not less than one year and not more than three years, and also a fine. In the case of second or subsequent conviction, it prescribes imprisonment for not less than two years and not more than five years in addition to fine. Similar punishments are provided by Section 3(2), Section 4 and Section 5. Under the provisions of the Criminal Procedure Code, which must be assumed to have been known to the Legislature, when it framed these provisions, a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of the First Class could not impose a sentence of more than two years and fine. Inasmuch as the provisions of the section prescribe sentences in excess of those that can be awarded by any one of the aforesaid Magistrates, it is clear that the intention was that a Court equal to or superior should try these offences.310 “The Act creates offences, provides for the forum before which they would be tried and the orders to be passed on conviction.”311

**Section 2f - Meaning of Prostitution:**

Normally, the word “prostitution” means an act of promiscuous sexual intercourse or any Unlawful sexual act for hire as was the connotation of the Act. It has been brought within its frame, by amendment, the act of a female and exploitation of her person by an act or process of exploitation for commercial purpose making use of or working up for exploitation of the person of the women taking unjust and

310 State v. Mainabai, AIR 1962 Bom 202 at 205: 1962 (2) Cr. L.J. 323 (Bom.)
Unlawful advantage of trapped women for one’s benefit of sexual intercourse.\textsuperscript{312} Prior to the 1986 Amendment (Act No. 44 of 1986, w.e.f 26-1-1987), the definition given under Section 2(f) was:-

“Prostitution” means the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind.”

It is clear from this definition, that, in order to constitute prostitution, the act of the female must be an act of offering her body for promiscuous sexual intercourse and that this must be for some consideration or hire, whether in money or in kind. In other words, it is not enough to constitute prostitution within the meaning of the Act to offer the feminine body for promiscuous sexual intercourse, but it must be further established that such offering was for hire which might be either in money or in kind. It must also be recognised that in most cases these two ingredients of prostitution can only be established by some circumstantial evidence, because direct evidence is usually impossible to obtain in offences of this nature.\textsuperscript{313}

The ordinary and commonly understood meaning of the term ‘prostitution’ is the offering of the person for promiscuous sexual intercourse with men and that must be taken to be the meaning. The word “prostitution” is no confined to acts of natural sexual intercourse but includes any act of lewdness. Prostitution is provided if it is shown that the woman offers her body for purposes amounting to common lewdness in return in for the payment of money.\textsuperscript{314}

\textbf{Connotation of term “prostitution”:}

“Prostitution” is the practice of a female offering her body to an discriminate intercourse with men, usually for hire. Prostitution involves indiscriminate employment of a woman’s body for hire. Obviously, it excludes intercourse which a person may have with a permanently kept concubine or with a woman without paying any consideration either in case or in kind. For convicting a person for carrying on prostitution, there must be indiscriminate sexuality requiring more than one customer of the prostitute but in a given case where there are circumstances

\textsuperscript{312} Gaurav Jain v. Union of India, AIR 1997 SC 3021 at 3033: (1997) 8 SCC 114.
\textsuperscript{313} State of Bihar v Jagrup Singh, AIR 1963 Patna 381 at 382.
\textsuperscript{314} Emperor v. Lalya Bapu Jadhav, AIR 1929 Bom. 266.
which would legitimately lead to the inference that the person concerned has been
indulging in sexual intercourse for money indiscriminately, a conviction can well as
be sustained on such evidence.\footnote{In re: Devkumar, 1972 Mad. L.J. (Cr.) 150.}

Clause (e) of Section 2 which defined “prostitute” has since been deleted by
Amendment Act 46 of 1978, with effect from 2-10-1979, but the definition of
“prostitution” in clause (f) of Section 2, as it now stands after 1986 amendment
specifically covers the term “prostitute” also. Acts of sexual intercourse re acts of
prostitution in one strict sense of the term. The ordinary and commonly understood
meaning of the word ‘prostitution’ is the offering of the person for promiscuous
intercourse with men, and that must be taken to be its meaning.

The fact that a woman was the kept of one person for four years and during
that time she also had paramour is not sufficient to constitute the woman prostitute.
The ideal underlying prostitution is that a woman should surrender her body for
monetary consideration to someone who is not in Law entitled to have sexual
intercourse with her. The position of a mistress is not necessarily that of a prostitute.
The relationship is of a more permanent nature than casual relationship implied in
prostitution. Having a stray paramour would not constitute a woman a prostitute.\footnote{Emperor v. Lalya Bapu Jadhav, AIR 1929 Bom. 266.}

A woman who is prostitute by profession and whose trade is to let out her
body to all or to visitors of a specified class is a public prostitute but where she is the
employee of one man or has been living with different lovers at different occasions
but with one at a time, she is not a public prostitute.\footnote{Moti Jan v. Municipal Committee, Delhi, AIR 1926 Lahore 461 at 463.}

A prostitute would answer the description of a public prostitute unless she be
kept by some persons exclusively in which case she can be said to be kept by that
person and to be not available for the purposes of prostitution. The expression
“prostitute” itself means a woman who offers her body to indiscriminate sexual
intercourse especially for hire. Such a person would answer the description of a public
prostitute.\footnote{Razia v. State, AIR 1957 All. 340 at 341.}
Where one of the accused persons was found having sexual intercourse in a room in the circuit house with a woman and Rs. 1,000/- were recovered from her house but there was absolutely no admissible evidence to show that this sum of Rs. 1,000/- was given to her for the purpose of the sexual intercourse, so as to bring it within the clause “sexual exploitation for commercial purposes” and though the witnesses had spoken in detail, the contents of the confessional statement of the woman could not be looked into excepting to the limited extent that the sum of Rs. 1,000/- was seized from the house of the woman, it was held that there was no admissible evidence to show that the sum of Rs. 1000/- was paid by any one of the accused to her for the purpose of sexual exploitation. Thus, evidence was lacking to show that there was prostitution.319

Ingredients of prostitution:

In order to constitute an act of prostitution the following ingredients have/had to be present:

Prior to Amendment Act 44 of 1986:

i. A female must offer her body to an indiscriminate intercourse with men, usually for hire. It must be promiscuous intercourse for hire.

ii. There must be ‘sexual intercourse’.

iii. It must be for hire. The consideration may be in cash or kind.

After Amendment, Act 44 of 1986.

(i) there must be sexual exploitation or abuse of any person;

(ii) It must be for commercial purposes.

Meaning of word ‘abuse’:

The word “abuse” has a very wide meaning everything which is contrary to good order established by usage amounts to abuse. Physical or mental maltreatment

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319 Kalyanasundaram v. State, 1994 Cr. L.J. 2487 at 2489 (Mad.)
also is an abuse. An injury to genital organs in an attempt of sexual intercourse also amounts to sexual abuse.\textsuperscript{320}

**Meaning of the term ‘promiscuous’:**

After the amendment to the Act in 1986, prostitution is not confined to offering of the body to a promiscuous sexual intercourse.

In shorter Oxford English dictionary the term, “promiscuous” has been explained as:

Consisting of members or elements of different kinds massed together without order, or mixed or disorderly composition or character, also of various kinds mixed together;

That is without discrimination or method; confusedly mingled, indiscriminate; of an agent or agency; Making no distinctions; indiscriminating

The word “promiscuous” means “indiscriminate”. It excludes intercourse which a person may have with a permanently kept concubine. The important of that word is that the woman or girl offering her body offers it for hire to anyone who desires it for sexual intercourse.\textsuperscript{321}

Prostitution involves a more or less plural and indiscriminate sexuality. Ramaswami, J. in K.E. Adam. V. State\textsuperscript{322} has cited with approval an observation by Beaumont C.J. in an unreported case, to the effect that:

“Prostitution involves a more or less indiscriminate employment of the woman’s body for hire. I do not say that it is a universal definition, and I do not suggest that a prostitute is bound to be entirely indiscriminate and to accept the first customer who offers her price like cabman on the rank. But I certainly think that prostitution involves more than intercourse with the man.”

The point here is that, as the definition is framed, this plural and indiscriminate sexuality will be a matter of interference from the facts; it is certainly

\textsuperscript{320} Gaurav Jain v. Union of India, 1997 SC 3021 at 3033; (1997) 8 SCC 114.
\textsuperscript{321} State of Kerala v. Pathumma, 1969 Cr. L.J. 697 at 698 (Ker).
\textsuperscript{322} C.A. No. 536 of 1959
not necessary that the evidence of more than one customer of the prostitute should be adduced.\textsuperscript{323}

It is true that the Magistrate did not make any definite finding that the woman indulged in prostitution in the flat No. 59, Rafi Ahmed Kidwai Road. Even if there is such a finding by implication, there is hardly any evidence to show that she indulged in prostitution in that flat. Prostitution is defined in the Act as an act of female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind and nothing short of that would be prostitution. The Magistrate has found on the evidence that various people used to visit the flat and were entertained with drinks. He also found that they created disturbance causing annoyance to other tenants of the house, and several witnesses spoke about great noise coming from inside the room in her occupation. This does not prove that she indulged in prostitution in the room, i.e., she offered her body for promiscuous sexual intercourse for money. The prosecution examined PW.5 an Assistant Commissioner of Police but he stated that he had no information as to the fact that the woman was using the room in the said premises as a brothel. This is a finding based upon no evidence and a wrong interpretation of the provision relating to prostitution.\textsuperscript{324}

**Connotations of “Police Duties” and “dealing with offences”:**

By the conjoint reading of Section 2 (i) and Section 13 (1), the special police officer, in charge of police duties within a specified area for the purpose of the Act, shall be dealing with offences under the Act in that area. Both these expressions “Police duties” and “dealing with offences” are of the widest amplitude and necessarily connote all that the police have to do in connection with the offences under the Act, including detection, prevention and investigation.\textsuperscript{325}

The gamut of police activities cannot be restricted to the duties assigned to a Special police Officer.\textsuperscript{.-} They key to the whole construction is provided by the definition of a special police officer in clause (i) of Section 2 of the Act. A special police officer appointed by the State Government is to be “in charge of police duties” within a specified area for the purposes of this Act. The gamut of police activities

\textsuperscript{323} In re: Ratnamala, AIR 1962 Mad. 31 at 33; 1961 MLJ (Cr) 686; 1961 All Cr. R 155; 1962 (1) Cr. L.J. 162 (Mad.)
\textsuperscript{324} Shefali Banergee v. State, AIR 1969 Cal. 544 at 545-46 ; 1969 Cr.L.J. 1367 (Cal.).
cannot be restricted to the duties assigned to a special police officer under Sections 14, 15 and 16 of the Act. The police duties number both in range and variety and the restricted meaning which Mr. Dhebar has invited Court to give to the duties and functions of a special police officer under the Act does not appear to be warranted by the words used in the statute. It would, lead to both confusion and inconvenience if the duties of investigation are assigned to one set of police agency while the special police officer is left to deal only with the special functions under the Act.

The entire hierarchy of police officers who are to assist the special police officer would be purposeless if they are to deal only with the rescue and search operations envisaged in the Act. A wider meaning of the term “dealing with” would, be in harmony with legislative intendment and purpose. The Act does not just create ‘an’ authority in the person of a special police officer as contended for but such an officer is ‘the’ authority for purposes of the Act.326

**Powers of Magistrates:**

Under the scheme of the Act, large powers are given by Sections 16, 18, 19 and 20 to the Magistrates for the purposes of the Act. Section 16 gives power to the Magistrate to direct the special police officer to enter a brothel and to remove there from the girl mentioned in that section and produce her before him. Section 19 enables a woman or a girl who is carrying on prostitution to make an application to a Magistrate for an order that she may be kept in a protective home. Section 20 gives powers to a Magistrate to direct the removal of a woman or a girl from the place where she is suspected of carrying on prostitution. Section 2 sub-section © defines the word ‘Magistrate’. It would only mean that wherever the words “the Magistrate” occur such as in Sections 16, 1819, 20 it must have the meaning as given in Section 2©. It is not and could not have been intended that it should control in any manner the jurisdiction of the Court which could take cognizance of the offence.327

Only the Special Police Officer appointed under the Act is competent to investigate the offences under the Act. – Decision of three Judges Bench of Supreme Court in the case of Delhi328 Administration v. Ram Singh, , wherein the facts were

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that the respondent who was suspected of having committed an offence under Section 6 of the Act was prosecuted vide challan filed by Sub-Inspector who had not been appointed as Special Police Officer by the State Government. The Magistrate quashed the charge-sheets holding that the SI was not competent to investigate the case. On revision by the State, High Court agreed with the view of the Magistrate and dismissed the revision. Delhi Administration preferred appeal before the Supreme Court. After a detailed analysis of various provisions of Act, Hon’ble Supreme Court observed that the Act is a complete Code with respect to what is to be done under it. The entire police duties in connection with the purposes of Act within a certain area have been put in the charge of a special police officer. The expression ‘police duties’ under Section 2 (1) includes all the functions of the police in connection with the purpose of the Act and in the special context of the Act they will include the detection, prevention and investigation of offences and the other duties which have been specially imposed on them under the Act. Hon’ble Supreme Court further observed that if power of the Special Police Officer to deal with the offences under the Act and therefore, to investigate into the offences, be not held exclusive, there can be two investigating carried on by two different agencies, one by Special Police Officer and the other by the ordinary police. It is easy to imagine the difficulties which such duplication of proceedings can lead to. There is nothing in the Act to co-ordinate the activities of the regular police with respect to the cognizable offence sunder the Act and those of the special police officer. It was further held that only the special police officer appointed under the Act is competent to investigate offence sunder the Act and the police officers not specially appointed as special police officers cannot investigate offences under the Act even though they are cognizable offences. Accordingly, the appeal filed by the Delhi Administration was dismissed.

Sec2(A): Rule of construction regarding enactments not extending to Jammu and Kashmir:

Any reference in this Act to a Law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a Reference to the corresponding Law, if any, in force in that State.
Section 3: Punishment for keeping a brothel or allowing premises to be used as a brothel:

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term of not less than two years and not more than five and also with fine which may extend to two thousand rupees.

(2) Any person who-

(a) being the tenant, lessee, occupier or person in charge of any premises, uses or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be sued as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel, shall be punishable of first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel if,

(a) A report is published in a newspaper having circulation in that area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result or a search made under this Act; or
(b) A copy of the list of all things found during the search referred to in clause (a) is given to such person.

3. Notwithstanding anything contained in any other Law for the time being in force, on conviction of any person referred to in clause (a) or clause (b) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or are held or occupied at the time of commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

**Object of Section 3:**

Section 3 of the Act deals with punishment for keeping a brothel or allowing premises to be used as a brothel.

For proving an offence under Section 3, some specific instances of prostitution must be proved. Section 3 of the Act provides the punishment for keeping/managing or assisting in keeping or managing of a brothel. Section 2 (a) of the Act defines that brothel includes any house, room or place or any portion of any house, room or place, which is used for the purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes. It is obvious that for proving an offence under Section 3 of the Act some specific instances of prostitution must be proved and then it must further be proved that the accused was managing/keeping the place with the knowledge that same is being used for the purposes of sexual exploitation or abuse for the aim of another person or for the mutual gain of two or more prostitutes.

State v. Gaya,\(^{329}\) was a trap case, with the use of a decoy witness, upon lines very similar to the present prosecution, if not almost identical. The conviction was under Section 3(1) of the Central Act 104 of 1956, and the Judge made the following observations, which are highly pertinent:

“"The Act was passed in pursuance of the international Convention signed at New York for the suppression of immoral traffic in women and girls. It was never intended that the woman or girls used for such traffic should be liable to punishment.

\(^{329}\) AIR 1960 Bom 289
To my mind, nothing can be more reprehensible than the conduct of this investigation. Under the very auspicious of the officers charged with the duty of suppressing immoral traffic in women and girls Sk. Kasom had sexual intercourse with Saru. Rather than suppress such traffic, the investigation encouraged it. If investigations under this Act are to proceed in this manner, in conceivable cases it will be difficult to determine whether a person was committing an offence under the Act or carrying on an investigation. Such investigations also will not have any salubrious effect upon the public mind and will not achieve the object for which the Act was passed”.330

**Onus to prove a particular premise is a brothel is on prosecution:**

In order to prove that a particular, premises is a brothel, prosecution has to prove that it is used for purposes of prostitution for gain of another person or for mutual gain of another person or for mutual gain of two or more prostitutes, in other words, onus entirely remains on the prosecution and the Legislature has not deemed it fit or necessary to shift any part of the onus on the accused in any circumstances. The only evidence brought in this case is from pimps and prostitutes-pimps procure the visitors for gain and prostitutes offer their body for money. Either of them is, therefore, an accomplice and judicial decisions have settled the value of accomplice evidence. Although it is not entirely illegal to convict an accused on accomplice evidence only, the rule of prudence is to look for corroboration. This rule of prudence is now virtually the Law enunciated by judicial decisions.331

**Where single woman practices prostitution for her own livelihood at her residence will not amount to a “brothel”:**

The purpose of the enactment was to inhibit or abolish commercialised vice, namely, the traffic in women and girls, for purposes for prostitution per se a criminal offence, or to punish a woman merely because she prostitutes herself. In C.A. No. 536 of 1956, K.E. Adam v. State, Ramaswami, J. has reviewed the available literature upon this subject, in an extensive manner. After making a historical survey, the learned Judge proceeded to observe that legislation, by itself, was almost powerless to eradicate this, evil, and added. “Nor have all the social and administrative resources of modern civilisation availed to exercise an effective control.”

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330 In re: Ratnamala, AIR 1962 Mad. 31 at 34 : 1962 (1) Cr. L.J. 162
A carefully scrutiny of the Central Act 104 of 1956 clearly reveals that the Act was aimed at the suppression of commercialised vice, and not at the penalisation of the individual prostitute, or of prostitution in itself. This is of some importance in considering the case against the appellant Ratnamala (accused 3).

**Section 3(1) of Central Act, 104 of 1956 runs as follows:**

“Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable.”

The public Prosecutor has rightly emphasised that this wording is different from the text of the corresponding Section 5 (1) in Madras Act V of 1930, which was to the effect that

“Any person who keeps or manages or acts or assists in the management of a brothel shall be punished”

The central Act deliberately includes the words “or acts or assists in the keeping or management of” Thus implying at least a fine shade of distinction between ‘keeping’ and management”. “Brothel” is defined under Section 2(a) as including.”“any house, room or place or any portion of any house, room or place which is used for purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes.”

The last part of the definition is certainly significant. It implies that where a single woman practices prostitution, for her own livelihood another prostitute, or some other person being involved in the maintenance of such premises, her residence will not amount to a “brothel”.

There cannot be any clearer indication of the purposes of the Act, which is to strike down commercialised vice, not to make the unfortunate prostitute, herself often a victim of economic pressures and social maladjustment, a criminal under the Law.332

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Meaning of word “keeping” in Section 3 (1):

The entire scheme of the Act is not such as to render the prostitute herself criminally liable, for the mere act of prostitution.

It is not correct to suggest that the word “keeping” occurring in Section 3 (1) of the Act implies that even the prostitute, by her prostitution may be assisting in the “keeping” of the brothel, if not in its management or maintenance. There is no doubt that this was not the intention of the Legislature. Had that been so, nothing would have been easier than to make the prostitute strictly liable for any act of prostitution carried in the premises which could be inferred to be a brothel. On the contrary it is significant that “keeping” though distinct from “management” has to be construed ejusdem generis with that latter word, and in the “Law Lexicon” (Ramanatha Iyer, 1940) the verb “to keep” is said to include the sense of “to conduct or mange, to have the control and management of”. There is absolutely nothing in the evidence which would justify the inference that accused 3, Ratnamala was liable for this offence. The entire record merely established that she, young girls of about 19, was either the victim of circumstances, or of her own predispositions, to the extent of wilfully prostituting herself upon the occasion for hire, with the decoy witness, PW 1. There is absolutely nothing else against her held that she was clearly entitled to acquittal.333

Section 3 of the Immoral Traffic (Prevention) Act penalises the keeper of manager or the person who acts as or accepts in the keeping or management of a brothel. It is clear that it is intended to hit at persons who establish and maintain house of prostitution, or assist in their keeping or managing.334

Women or girls used for immoral traffic cannot be liable for punishment:

The prosecution case was that on the outskirts of Akola town near the temple of Kala Mandir there is a house of prostitution being run by one Janabai accused No. 1, who is the mistress of one Brahmanand. On 20-8-1958 the Sub-Divisional Police Officer, City Division, Akola, decided to send a customer into this house. He was Sheikh Kasam. He was given live currency notes of Rs. 1/- each in the presence of

333 In re : Ratnamala, AIR 1962 Mad. 31 at 34: 1962 (1) Cr. L.J. 162 (Mad).
334 State v. Gaya, AIR 1960 Bom. 289 :1960 Cr. L.J. 893 (Bom.)
panchas and ordered to go to the brothel and have sexual intercourse with one of the girls in that brothel on payment. It was the prosecution case that accordingly Sheikh Kasam went to the brothel, talked to Janabai, accused No. 1 and asked for a girl or woman for sexual intercourse. Accused No 1 showed him four girls, the opponents before the court, and Sheikh Kasam selected the opponent Saru wife of Vikram. He agreed to pay Rs. 3/- which accused No. 1 accepted. She then allowed Sheikh Kasam to have sexual intercourse with Saru in one of the rooms in the brothel. The Sub-Divisional Officers and the punches were hiding themselves in the darkness round about the brothel waiting for Sheikh Kasam to come out. It was the prosecution case that Sheikh Kasam, after having sexual intercourse, came out of the brothel and lighted a cigarette which was a pre-arranged signal that he had done his bob. Thereupon the police officers and the paunches raided the brothel and the house of the first accused. Three currency notes of Rs. 1/- each were seized from the possession of the first accused and they were attached under a seizure memo.

It was upon these facts that the four opponents along with Janabai were put up for trial before the Sub-Divisional Magistrate who framed charges under Section 3 of the Act against all of them. Court was not concerned here with sub-section (2) of Section 3 of the Act but only with sub-section (1) thereof which runs as follows:

“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.”

The sub-section penalises the keepers or manager or the person who acts or assists in the keeping or managing of a brothel. It is clear that it is intended to hit at persons who establish and maintain houses of prostitution or act or assist in keeping or managing them. There is absolutely nothing in the complaint so far as the four opponents are concerned, from which it can be held that they were either keeping or managing or acting or assisting in the “keeping or management” of a brothel. On the other hand, it appears that these four girls were the unfortunate victims and were the
persons who were being used by those who kept or managed the brothel or acted or assisted in keeping or managing it.

The Act was passed in pursuance of the International Convention signed at New York for the suppression of immoral traffic in women and girls. It was never intended that the women or girls used for such traffic should be liable to punishment. 335

In the instant case, on 16-9-1995 the Inspector in charge of Bhubaneswar P.S. drew up a plain paper FIR stating that on the same day after receiving a reliable information with regard to prostitution at Sangwa (Shiva) Lodge at Dhauli Junction, he conducted a raid with the assistance of other police officers and some local persons and during search three women were located in the ground floor concealing themselves under a bed. All the three women were within the age group of 18 to 26. During raid, five customers were apprehended, including all the three petitioners. It is further stated in the FIR that during raid the petitioners and the other two accused persons were trying to escape. On the basis of such allegations, investigation was taken up and charge-sheet was submitted for offences committed under Sections 3, 4, 5, 6 and 7 of the Act.

The facts giving rise to this case, as is evident from the FIR as well as the statements rendered during investigation, is that a raid was conducted in the aforesaid hotel on 19-9-1995 and during raid, three girls were found concealing themselves under a bed in the ground floor of the hotel. The petitioners and two others were apprehended while trying to escape. The undergarments of the petitioners were seized and sent for examination. The report of the District Forensic Science Laboratory, Khurda, indicated that the said undergarments sent for examination did not contain any women stain. From these facts court came to the view that offences so far as Sections 3, 4, 5 and 6 are concerned are not at all attracted. 336

Section 4: Punishment for living on the earnings of prostitution:

(1) Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person shall be punishable with

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335 State v. Gaya, AIR 1960 Bom. 289: 1960 Cr. L.J. 893 (Bom.)
imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

(2) Where any person over the age of eighteen years is proved-

(a) to be living with, or to habitually in the company of, a prostitute; or

(b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her prostitution; or

(c) to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person within the meaning of sub-sec (1).

Object of Section 4:

Section 4 of the Act deals with punishment for living on the earnings of prostitution.

Unlike most of the other countries in our country there is a practice under which members of a family usually live together, e.g., father and mother, and their children live together. It is quite conceivable, in fact it must be so, that there would be hundreds of prostitutes whose parents or other family members live with them, though they may not be economically dependent upon them and may not in any manner be encouraging, aiding abetting or helping them in the carrying on of their profession or trade.

In the absence of there being any evidence that they are either living on the income of the prostitutes with whom they are living or are encouraging, aiding, abetting or helping them towards prostitution, it would be extremely risky and not free from danger to draw any presumption as contemplated by the above sub-section.337

A close scrutiny of the ingredients of the respective Sections 3 and 4 would clearly indicate that the ingredients of the offence under Section 3 are fundamentally different from the ingredients of the offence under Section 4. Although Section 4 (1) is a lesser offence in point of the punishment there ought to be a separate charge of which the accused must have sufficient notice to meet. In the absence of the charge under Section 4 (1) of the Act and on the strength of a mere presumption embodied in Section 4 (2) it may not be legally correct to convict the accused appellant for an offence under Section 4 (1) of the Act.  

1. **Applicability of sub-section (1):**

   In order to bring home the guilt against the accused for an offence under Section 4 (1) of the Act, it is necessary to analyse Section 4 (1) of the Act. Sub-section (1) of Section 4 of the Act may be analysed as under:

   If any person over the age of eighteen years knowingly lives, wholly or in part, on the earnings of prostitution of a woman or girl, he shall be punishable with Imprisonment for a term which may extend to two years, or Fine which may extend to one thousand rupees, or Both, and

   Where the earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

   The provisions of Section 4 are justifiable on the ground that to allow a person over the age of eighteen years to live on the earnings of a prostitute is not only to encourage parasitism but also to offer inducement to the prostitute to carry on her profession or trade which she may not be inclined to carry on otherwise. Similarly the presumption against touts and pimps or persons who exercise control, direction or influence over a prostitute or aid, abet or compel her to carry on the trade or profession of a prostitute is a reasonable presumption and is in the interests of the public at large.  

338 In re: Dhanalakshmi, 1974 Cr. L.J. 61 at 66 (Mad.)
2. **Presumption mentioned in Section 4 (2) more strongly apply to husband:**

In the instant case, on the evidence it is clear that the wife of the applicant was a prostitute, and that the applicant, her husband, was living with her. The presumption mentioned in Section 4 (2) of the Act may therefore, be drawn. But, it is contended that the presumption should be drawn only in the case of strangers living with or habitually in the company of a prostitute, and that such a presumption should not be drawn in the case of the husband of the prostitute, who is living with her. There is no reason to restrict the scope of the presumption provided in Section 4 (2) of the Act. If a stranger lives with a prostitute, a rebuttable presumption may be drawn, that such person is knowingly living on the earning of a prostitute. If the husband lives with his wife, and allows his wife to be a prostitute, the presumption would be stronger that he was doing so for the purpose of living on her earnings of prostitution is drawn, until the contrary is proved, it can be presumed that the applicant was knowingly living on the earnings of the prostitution of his wife. If the husband allows his own wife to be a prostitute, the presumption would be stronger that he was doing so for the purpose of living on her earnings of prostitution. There is, therefore, no reason not to apply the presumption mentioned in Section 4 (2) of the Act to the case of a husband living with his prostitute wife. In this case, therefore, such a presumption can be drawn, and when such a presumption is drawn, until the contrary is proved, it can be presumed that the applicant was knowingly living on the earning of the prostitution of his wife. When such a presumption is drawn, that would be sufficient to constitute the house of the applicant a brothel, because ‘brothel’ includes and house, room, or place which is used for purposes of prostitution for the gain of another person. That the house in question was a brothel is therefore, proved by the evidence on record and the presumption to be drawn from Section 4 (2) of the Act.  

In the instant case, So far as accused 1 is concerned, there is ample evidence to show that, though he is the servant of accused 2, he actively abetted the act of prostitution by accused 2. Under Section 4 (1) of the Act “Any person over the age of 18 years, who knowingly lives wholly or in part, on the earnings of the prostitution of a woman or girl shall be punishable…..” Under Section 4 (2) if a person is proved to have exercised influence over the movements of a prostitute in such a manner as to

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show that such person is aiding, abetting or compelling her prostitution, he shall be presumed to be living on the earnings of prostitution. Here, accused 1 on the arrival of PW 1 negotiated the terms of the prostitution of accused 2. He receives money from PW 1 and gave it to accused 2. Though, he has been charged only under Section (1) of the Act, he can be offence. Two unreported judgments of Madras High Court in C.A. No. 663 of 1960 (Mad) and 667 of 1962 (Mad) have laid down a similar view that even if the charge be under Section 3 (1) of the Act, a conviction can be had on the same facts for an offence under Section 4 (1) of the Act.\footnote{In re : John, AIR 1966 Mad. 164 at 169: 1965 MLJ (Cr.) 654 : 1965 All. Cr. R. 433 : 1966 Cr. L.J. 551 (Mad.).}

The sections 3, 4, 5, 6 and 9 deal with offences against the victims of prostitution. The punishment provided under these sections for the offences committed becomes serious when committed against the child or minor. For example Section 4 provides for a punishment of up to two years or fine up to rupees 1000/- in case the of adult victims but punishment of up to life imprisonment if the victim is a minor.

**Section 5: Procuring, inducing or taking person, for the sake of prostitution:**

(1) Any person who-Procures or attempts to procure a person, whether with or without his consent, for the purpose of prostitution; or 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

Takes or attempts to take a person, or causes a person, to be taken, from one place to another with a view to his carrying on, or being brought up to carry on prostitution; or Causes or induces a person to carry on prostitution;

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:
Provided that if the person in respect of whom an offence committed under this sub-section,

Is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

Is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;

(3) An offence under this section shall be trial able-

(a) in the place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such person is made; or

(b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made.

Object of Section 5:

Section 5 of the Act deals with procuring inducing or taking person for the sake of prostitution. It is the only section in the Act that punishes the traffickers, who procure, induce or bring victims into prostitution with or without their consent. In case it is without consent, the punishment is up to fourteen years. Section 13 provides for the appointment of trafficking police officers by the Central Government. This provision has not yet been implemented in its spirit. Recently, the CB1 has been entrusted with the role of investigating cases of large-scale trafficking.

Applicability of the section:

In T. Jacob vs. state of Kerala the prosecutrix lived with her parents in Mhow. The appellant lived in the neighbourhood and used to frequent the house of the prosecutrix. The appellant invited the prosecutrix to go with her to the fair held on that day. The appellant took the prosecutrix from her house to the fair. The appellant gave a tawiz to the prosecutrix on wearing which the prosecutrix deposed that she lost

342 AIR 1971 Ker. 166 of 167 : 1971 Cr. L.J. 962 (Ker)
control over herself. The appellant then took her in a truck to Bombay. She was kept at the Bombay railway station for two or three days. She was renamed Mumtaj and taken the appellant's friend Shehnaj and then to one, Maqboolbhai. The appellant took her to a taxi driver Shanker. They took her to a hotel and there the appellant told her to go and share the bed with Shanker. Shanker had sexual intercourse with her in a room in that hotel and paid Rs. 500/- to the appellant in lieu of this. The prosecutrix was compelled to have sexual intercourse with other persons also. The prosecutrix was compelled by the appellant to engage in prostitution and was also ill-treated. On her swearing not to harm or complain against the appellant, the appellant brought her back to Mhow where already a report of her missing had been lodged. The prosecutrix on her arrival also lodged a report at the police station. There was no reason to disbelieve the statement of the prosecutrix. It was held that an offence had been committed under Section 5 of the Act which makes procurement or an attempt to procedure a person with or without the consent of that person for the purpose of prostitution punishable. Taking or inducing the person from one place to another with a view to a carrying on prostitution or becoming an inmate of a brothel has also been made punishable under this section.343

Under Section 5 (1) (d) it is necessary that the accused should have caused or induced the woman to carry on prostitution. In the absence of evidence that the accused was in any way connected with the woman prior to the incident, he cannot be held guilty. To carry on prostitution, is suggestive of more than a solitary instance of prostitution, which means that there must be indiscriminate sexuality, requiring of more than one customer of the prostitute before she can be held guilty. Where in the light of the evidence in the case that the accused would not have any hand in the conduct with the woman now or at any time previous to the incident, in the absence of any such evidence, the prosecution cannot invoke the provision of Section 5 (1) to implicate the accused to a charge under that section.

Jurisdiction of the Court for offences committed outside India:

The scheme underlying Section 188 (Cr. P.C) is to dispel any objection or plea of want of jurisdiction at the behest of a fugitive who has committed an offence in any other country. If such a person is found anywhere in India, the offence can be inquired

into and tried by any Court that may be approached by the victim. The victim who has
suffered at the hands of the accused on a foreign land can complain about the offence
to a Court, otherwise competent, which he may be find convenient. The convenience
is of the victim and not that of the accused. It is not the requirement of Section 188
that the victim shall state in the complaint as to which place the accused may be
found. It is enough to allege and the accused either appears voluntarily pursuant to
issue of process or is Court within the meaning of Section 188 of the Code as that
Court would find the accused before him when he appears. The finding has to be by
the Court. It has neither to be by the complainant nor by the Police. The section deems
the offence to be committed within the jurisdiction of the Court where the accused
may be found.344

Meaning of word ‘procure’:

In the Chambers Twentieth Century Dictionary, at page 733, the following
meanings are given: “To obtain for one’s self or for another; to bring about; to attract;
to urge earnestly; to pander; pimp.”

956, the meanings given for the word ‘procure’ are: “obtain by care or effort; acquire;
bring about”.

In the Random House Dictionary of the English Language (unabridged
edition) at page 1147, the meanings given are:

1. To obtain or get by care, effort, of the use or special means: to procure
evidence.

2. To bring about, especially unscrupulous and indirect means: to procure secret
documents.

3. To obtain (women or girls) for the purpose of prostitution.

4. To act as a procurer or pimp.”

In the Oxford Dictionary, meaning of the word ‘procure’ is, “to succeed in getting (for another or with double object, or for oneself; please procure me a copy; will procure it for you; must try to procure one), to bring about or cause by other’s agency; be a procurer or procuress”. In the same Dictionary, the word “procuration” is said to mean, “acting as another’s agent, authority to do this. In the Webster’s Seventh New Collegiate Dictionary, the meanings given for the word ‘procure’ are “to take care of; to get possession of; obtain, to get and make available for promiscuous sexual intercourse; to bring about; achieve; to procure women.”

In the Readers’ Digest Great Encyclopaedic Dictionary, ‘procure’ means “obtain by care or effort; acquire; act as procurer or procuress’, and ‘procurers’ means “men or women who procure women for gratification of another’s lust”.

In the New English Dictionary, Vol. VII, Part II, page 1418, the word ‘procure’ means “to obtain (woman) for gratification of lust’.

The various meanings extracted above would indicate that the word ‘procure’ means not only procuring for others but procuring for oneself. In enacting Section 5 (1) (a), the Legislature meant only persons who procure girls or women for the purpose of others, then the Legislature would have made its intention clearer by using proper words for it, for it is well-known that the Legislature would not an do not shy at repetitions. From the meaning given above, the word ‘procure’ takes in not only persons who procure women for others but persons who procure women for themselves.

Section 6: Detaining a person in premises where prostitution is carried on:

(1) Any person who detains any other person, whether wither with or without his consent-

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person

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345 See Iyer’s Judicial Dictionary, 11th Ed. at p. 912
Shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years

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

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

(3) A person shall be presumed to detain a woman or girl in a brothel or in or upon any premises for the purpose of sexual intercourse with a man other than her Lawful husband, if such person, with intent to compel or induce her to remain there,-

(a) withholds from her any jewellery, wearing apparel, money or other property belonging to her, or

(b) threatens her with legal proceedings if she takes away with her any jewellery, wearing apparel, money or other property lent or supplied to her by or by the direction of such person.

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

Section 6 of the Act deals with detaining a person in premises where prostitution is carried on.

Section 6 (3) provides for recovery of property viz. Jewellery, wearing apparel, money or other property of the victim from the brothel keeper and provide for her immunity from any legal proceedings by the offender.

This provision gives her protection against any legal proceeding and civil suits by the pimps or 'gharwalis'.

Section 7: Prostitution in or in the vicinity of public places:

(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises:-

   (a) which are within the area or areas, notified under sub-section (3), or

   (b) 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 as may be notified in this behalf by the Commissioner of Police or Magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

   (1-A) 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 shall also be liable to fine:

   Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment for a term of less than seven years.

   (2) Any person who-

   (a) Being the keeper of any public place knowingly permits prostitutes for purposes of their trade to resort to or remain in such place; or
(b) Being the tenant, lessee, occupier or person in charge of any premises referred to in sub-section (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) Being the owner, lessor or landlord, or any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use,

Shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine\textsuperscript{347}[which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any Law for time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

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).

(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 consideration, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

\textsuperscript{347} Subs.by Act 44 of 1986, Section 10, for the words, “which may extend to two hundred rupees”, (w.e.f. 26\textsuperscript{th} January, 1987).
(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.

**Object of Section 7:**

Section 7 of the Act deals with prostitution in or in the vicinity of public place. It provides for punishment for an offence to carry on prostitution in or in the vicinity of public place and Section 8 punishes the victim for seducing or soliciting for the purpose of prostitution in a public place.

According to Section 7 any person who carries on prostitution and the persons with whom such prostitution is carried on in any public place shall be punishable up to three months imprisonment. It needs to be highlighted here that under this section, action can be taken against the customers.

**Section 7 (1) (a)** provides severe punishment of up to life, when the offence committed in respect of a child or a minor. In order to prove this offence, it has to be proved that the offence was committed in a public place. A public place has been defined as (a) within the area notified or (b) 200 meters of any place of religion worship, educational institution, hotel, hospital or such other public place of any kind notified by the Commissioner of Police,

**Section 7 (2) (a)** provides for punishment for the keepers of public places who knowingly permit prostitution in that place. If the public place is a hotel, then its license may be suspended for 3 months to a year. If the offence is committed in respect of a child or minor, such license shall also be liable to be cancelled.

**Section 7 (2) (b)** provides for punishment for the tenant, lessee or person in charge, who allows the premises to be used for prostitution.

**Section 7 (2) (c)** provides for punishment for the owner, lessor or landlord or the agent of the above parties up to 3 months or with fine of up to Rs. 200/- or with both and on second conviction imprisonment up to 6 months and also fine.

The above sections can be used positively, if simultaneously applied with Section 10(a), which is rehabilitative in nature. Section 10(a) provides detention in a Corrective Institution after conviction under Section 7 or 8. This is very important
section of the Act which has a rehabilitation purpose, whereby instead of imprisonment, the Court may send the person to the Protective Home for the period of 2 to 5 years, after considering the report of the Probation Officer about the character, state of health and mental condition of the offender and the other circumstances of the case.

But proving the offence under Section 7 is very difficult. The essential ingredient here is to prove promiscuous sexual intercourse under Section 1(b), whereby the person concerned has indulged in indiscriminate sexual intercourse with several persons.

In practice, the police also resort to using sections relating to indecent behaviour in public places, such as Section 110 of the Bombay Police Act or Section 145 (b) of the Indian Railway Act. Such sections provide for fine or imprisonment in lieu of fine, and the Court summarily tries these cases. There is no rehabilitative purpose behind these sections, beyond temporarily ‘clearing’ a public place. The police instead of using Section 110 or 145 (b) could “use Section 7 or 8 along with the corresponding Section of 10(a) of the ITP ACT, as these sections do not carry any fines or sentence in default of payment of fine, and have a scope to rehabilitate the victim by detaining her in a Protective Home.

The idea behind the enactment of Section 7 is that the atmosphere of places of public religious worship or educational institutions or hostels or hospitals or nursing homes or other such institutions should be kept pure and free from the contaminated atmosphere of a place where prostitution is being carried on. It cannot be denied that this is a reasonable restriction. The bar created against a tenant, lessee, occupier, lessor or landlord of any premises which falls within 200 yards of the places mentioned above and where prostitution is carried on is also reasonable restriction.348

Section 7 is an illuminating provision throwing light upon the intention of the legislature. This provision inhibits a woman herself from the practice of her profession in contravention of its terms and to that extent renders prostitution a penal offence.349

Section 7 (1) has for its aim the maintenance of an atmosphere of purity in the area surrounding public institutions to which it refers and the prevention of the pollution of that atmosphere by degrading activities such as prostitution in the neighbourhood. That being the aim of this section it is plain that if there be actual sexual intercourse, the female who offers her body for such sexual intercourse for gain and the man to whom it is offered commit an offence under Section 7 (1). The prohibition against such activity in the neighbourhood of a public institution which is so detrimental to a public interest is therefore, intelligible.\footnote{State of Mysore v. Susheela, AIR 1966 Mys. 194 at 197.}

The Restrictions imposed by Section 7 of the Act on a prostitute are reasonable restrictions:

The restrictions imposed by Section 7 of the Act on a prostitute not to carry on her trade or profession in any premises which are within a distance of two hundred yards 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 District Magistrate is also a bar in the interest of the general public. Nobody can seriously doubt that it is not in public interest to allow prostitution to be carried on in the places mentioned above. No one has a fundamental right to carry on business wherever he chooses and his right must be subject to any reasonable restrictions imposed by the State in the interest of the general public (See \textit{T.B. Ibrahim v. The Regional Transport Authority, Tanjore}, AIR 1953 SC 79 (C). It was contended that even though there may be nothing unreasonably in prohibiting prostitution within 200 yards of a place of public religious worship or educational institution, hostel, hospital or nursing home, there was an option with the Commissioner of Police or the District Magistrate to notify other public places within 200 yards of which prostitution cannot be carried on and those places may not be of such a nature as mentioned above held that this argument is not correct. The use of the words “or such other public place” before the words “of any kind as may be notified in this behalf by the Commissioner of Police or District Magistrate” clearly show that the places to be notified must be similar in nature to those mentioned above, \textit{i.e.} places of public religious worship, educational institutions, hostels, hospitals, nursing homes etc. The words “such other public places” are \textit{ejusdem generis} with those mentioned above.
The idea behind the enactment of Section 7 is that the atmosphere of places of public religious worship or educational institutions or hostels or hospitals or nursing homes or other such institutions should be kept pure and free from the contaminated atmosphere of a place where prostitution is being carried on. It cannot be denied that this is a reasonable restriction. The bar created against a tenant, lessee, occupier, lessor or landlord of any premises which falls within 200 yards of the places mentioned above and where prostitution is carried on is also reasonable restriction\textsuperscript{351}

**Magistrate must at the first instance proceed under Section 3 or 7 as the case may be:**

On perusal of police report under Section 18 also disclosing offences under Sections 3 and 7 the Magistrate cannot choose to ignore the cognizable offence complained of and merely having recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in the mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, in such cases the Magistrate who is also a Court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Section 3 or 7 as the case may be, and only after the disposal of those cases take action under Section 18 if there is occasion for it. Under Section 190 (I) (b) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The words “may take cognizance” in the context means “must take cognizance”.\textsuperscript{352}

**Section 8: Seducing or soliciting for purpose of prostitution:**

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

a) By words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person for the purpose of prostitution: or

\textsuperscript{351} Shama Bai v. State of U.P., AIR 1959 All. 57 at 61-62 : 1959 All. Cr. R. 427 (All.)

\textsuperscript{352} A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Ram Kali, AIR 1968 SC 1 at 5.
b) Solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution, shall be punishable on first conviction with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year, and also with fine which may extend to five hundred rupees:

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

**Object of Section 8:**

Section 8 of the Act deals with seducing or soliciting for purpose of prostitution.353

Prostitution in itself is no offence except in the manner given under Sections 7 and 8. The word “promiscuous” in Section 7(1) means indiscriminate sexuality which refers to a commercial vice such as in a brothel and more than one customer of the prostitute will be necessary to prove it.354

Under the provisions of Section 17(2) of the Act of the Magistrate can pass either of the two orders i.e. he can either direct the detention of the girl in a protective home for such period as he considers proper or he may allow her to remain in the custody of someone else who, in his opinion, is suitable for that purpose.355

The witness being a decoy witness and his evidence being in the nature of accomplice, his evidence should be corroborated in respect of material particulars.356

The failure to observe the procedure laid down in Section 15(1) (2) of the Act shows that no reliance could be placed on the evidence of the Investigating Officer.357

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353 *In re Kamal*, AIR 1966 Mad. 312
In Moainuddin v. State of A.P., the learned Judge of AP High court held that Sections 4 and 8 of the Act cannot be said to be ultra vires of Art 14 of the Constitution of India on the ground that the male partner in the evil doing or act is spared from any attack under the Act.

The word “Procure” in Sec 5(1) (a) of the Act would mean not only persons who procure women for others but also persons who procure women for themselves.

Under the Act it is not necessary that panchas should be residents of the same street. Panchas belonging to different parts of the same town, belong to the same locality.

In cases falling under the Act, it is not necessary for the Assistant Superintendent of Police to deposite that he had record the grounds for his belief when action under Section 15 of the Act. When an official act is done under Section 114 of the Evidence Act, it is presumed to have been properly done.

It is not required that the appointment of special police officer must be by name.

If the husband lives with his wife and allows his wife to be a prostitute, the husband is doing so for the purpose of living on the earnings of prostitution of his wife.

In order to establish indiscriminate prostitution on the part of any such woman or girl, it is difficult to get evidence of different persons and therefore one has to adopt trap evidence. That becomes inevitable and what is essential to be avoided is about the bogus customer not to have actual sexual intercourse with her. Though no doubt in order to hold that a women carries on prostitution, plural and indiscriminate sexuality on her part has got to be established but that does not necessarily require that the evidence of more than one customer of the prostitute should be adduced and it

357 State by Public Prosecutor v. Amaldoss, 1988 MLJ (Cri.) 233.
358 1986 Cr.LJ. 1397
363 Ibid
would be enough if the facts established entitle the court to raise an inference to hold that she carried on prostitution as contemplated under Section 7 (1) of the Act.\footnote{State of Gujarat v. Bai Radha, 1968 Gujarat Law Reporter 278.}

Sub – section (2) of Section 15 of the Act requires that the special police officer shall call upon two or more respectable inhabitants one of whom shall be a woman of the locality in which the place to be searched is situate. The inhabitants of the locality amply suggest meaning the residents of that locality. At any rate, the term inhabitant does not convey the sense of a person found all of a sudden at some place where the police officers were standing.\footnote{Ibid}

Reading Section 13(1) of the Act along with Section 15 of the General Clauses Act 1897, it cannot be said that a special officer appointed means an officer appointed by name. The notification need not refer to the name of any officer. It is enough if a police officer in charge of any division is appointed by the Government as a special police officer for purposes of the Act.\footnote{Ibid}

In cannot be said that uncontrolled power has been delegated to the executive and that unfettered and unguided power to a Subordinate Magistrate also amounts to an infringement of the right to equality before the Law guaranteed by Art 14 as there is nothing in the Act to guide the Magistrate in the exercise of his discretion when deciding the cases of individual prostitute.\footnote{Seetharamamma v. Sambasiva Rao, AIR 1964 AP 400; Sec: AIR 1963 All. 71 AIR 1963 Bom. AIR 1963 Punj. 36.}

Section 20 of the Act is constitutionally valid and does not offend Art. 14 or Art. 19(1) (d) (e) and (g) of the Constitution of India.\footnote{Vanga Seetharamamma v. Chitta Sambasiva Rao, AIR 1964 AP 400.}

**Sec. 2 (c) and Sec 8 of the Act:** - It is abundantly clear that Section 537 of the Code of Criminal Procedure would be applicable to the proceedings in the present case. Section 5 (2) of the Code provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried or otherwise dealt with according to the provisions of said Code. All offences under any other Law shall be similarly investigated etc. according to the same provisions but subject to any enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. According to Section 22 no Court inferior to that of a
Magistrate as defined in clause (c) of Section 2 shall try any offence under Sections 3 to 8 of the Act. 369

By words, gestures, wilful exposure of her person: Section 8(a) of the Act says that whoever in any public place or within sight of and in such manner as to be seen or heard from any public place whether from within any building or house or not by words, gestures, wilful exposure of her person whether by sitting by a window or on the balcony of a building or house or 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 shall be punishable on first conviction with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year and also with fine which may extend to five hundred rupees.

Solicits or molests any person: - Section 8(b) or the Act says that 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, solicits or molests any person or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency for the purpose of prostitution shall be punishable on first conviction with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both and in the event of a second or subsequent conviction, with imprisonment for a term which may extend to one year and also with fine which may extend to five hundred rupees.

Proviso:

Proviso specifies that 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.

Section 9: Seduction of a person in custody:

Any person who having the custody, charge or care of, or a position of authority over any person, causes or aids or abets the seduction for prostitution of that

person Shall be punishable on conviction with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

**Object of Section 9:**

Section 9 provides punishment for seduction of a person in custody. Any person who having the custody, charge or care of or in a position of authority over any person causes or aids or abets the seduction for prostitution shall be punishable up to life, Section 11 provides notification of address of previously convicted offenders. This is a preventive section and requires the offender to notify his address so as to prevent him from committing further offences or to arrest him if required.

In practice this provision is rarely applicable because very rarely does an offender of this type get convicted twice (either under ITP ACT or under IPC Sections such as 363, 365, 366, 366(A), 366(B), 367, 368, 370, 371, 372 and 373).

**Section 10: Release on probation of good conduct or after due admonition:**

It is repealed by Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986), Section 13 (w.e.f. 26.1.1987).

**Section 10A: Detention in a corrective institution:**

(1) Where

a. A female offender is found guilty of an offence under Section 7 or Section 8, 370; and

b. the character, state of health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction,

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370 Certain words omitted by Act 44 of 1986, S. 14, w.e.f. 26.1.1987
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:

Provided that before passing such an order-

(a) 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

(b) 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.

1. Subject to the provisions of sub-section (3), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to appeal, reference and revision 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.

2. The conditions on which an offender is discharged under sub-section (3) may include requirements relating to residence of the offender and supervision over the offender’s activities and movements.

Object of Section 10A:

Section 10A of the Act deals with detention in a corrective institution. The question whether a particular woman is a prostitute and running a brothel in her house, need not necessarily be proved by direct evidence i.e. by the testimony of persons who had direct dealings with the woman. It is however necessary that the evidence adduced should be of a clear and convincing nature.\(^\text{371}\)

\(^{371}\) Vanga Setharamamma v. Chitta Sambasiva Rao, AIR 1964 AP 400.
In *Dr. Upendra Baxi v. State of UP.*,\(^{372}\) the Apex court issued directions to authorities to improve the conditions of protective Home and to State Govt. to constitute Board of visitors and to formulate programme of rehabilitation of inmates.

An order under Section 10A of the Act be justified, if accused a paid servant had committed an offence under Section 4(1) of the Act for first time under the influence of his employer.\(^{373}\)

**An order for detention in a corrective institution for such term:-**

Where a female offender is found guilty of an offender under Section 7 or Section 8 and the character, state of the health and mental condition of the offender and the other circumstances of the case are such that it is expedient that she should be subject to detention for such term and such instruction and discipline as are conducive to her correction, it shall be Lawful for the court to pass, in lieu of a sentence of imprisonment, an order for detention in a corrective institution for such term, not being less than two years and not being more than five years, as the court thinks fit.

Sub-section (3) of Section 10A of the Act says that 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.

Sub-section (4) of Section 10A of the Act says that the conditions, on which an offender is discharged under sub-section (3), may include requirements relating to residence of the offender and supervision over the offender’s activities and movements.

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\(^{372}\) AIR 1987 SC 191

\(^{373}\) *In re John and others,* AIR 1966 Mad. 167.
Section 11: Notification of address of previously convicted offenders:

1) When any person having been convicted

   a) by a court in India of an offence punishable under this Act or punishable under Section 363, Section 365, Section 366, Section 366A, Section 366B, Section 373 of the Indian Penal Code (45 of 1860), with imprisonment for a term of two years or upwards; or

   b) by a court or tribunal in any other country of an offence which would, if committed in India, have been punishable under this Act or under any of the aforesaid sections with imprisonment for a like term, is within a period of five years after release from prison, again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court, such court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from such residence after release be notified according to rules made under Section 23 for a period not exceeding five years from the date of expiration of that sentence.

(2) If such conviction is set aside on appeal or otherwise, such order shall become void.

(3) An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers or revision.

(4) Any person charged with a breach of any rule referred to in sub – section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

Object of Section 11:

A. Section 11 of the Act deals with Notification of address of previously convicted offenders.

B. Sub-section (2):- Section 11 (2) of the Act says that if such conviction is set aside on appeal or otherwise such order shall be void.
C. Sub-section (3):- Section 11 (3) of the Act says that any order under this Section may also be made by an Appellate court or by the High Court when exercising its power of revision.

D. Sub-section (4) :- Section 11(4) of the Act says that any person charged with a breach of any rule referred to in sub – section (1) may be tried by a Magistrate of competent jurisdiction in the district in which the place last notified as his residence is situated.

Section 12: Security for good behaviour from habitual offenders: -

Section 12 was repealed by the suppression of Immoral Traffic in Women and Girls (Amendment) Act 1986 with effect from 26.1.1987.

Section 13: Special Police Officer and advisory body: -

(1) There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area.

374[(2) The special police officer shall not be below the rank of an Inspector of Police.

(2A) The District Magistrate may, if he considers necessary or expedient so to do, confer upon any retired police or military officer all or any of the powers conferred by or under this Act on a special police officer, with respect to particular cases or classes of cases or to cases generally:

Provided that no such power shall be conferred on

(a) A retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;

(b) A retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.]

374 Subs. For sub-sec (2) by Act 46 of 1978, S.9, w.e.f. 2.10.1979
3. For the efficient discharge of his functions in relation to offences under this Act

   a. The special police officer of an area shall be assisted by such number of subordinate police officers (including women police officers wherever practicable) as the State Government may think fit; and

   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.

   \(^375\) (4) The Central Government may, for the purpose of investigating any offence under this Act or under any other Law for the time being in force dealing which sexual exploitation of persons and committed in more than one State, appoint such number of police officers as trafficking police officers and they shall exercise all the powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relations to the whole of India.

Section 13 provides for the appointment of Special Police Officers and Advisory Board for each area.

Section 13 (2) now provides that the Special Police Officer shall not be below the rank of an Inspector of Police. This was done by an Amendment in 1978. However, in many states, the officers designated as Special Police Officers under the Act continue to be of the rank of Assistant Commissioner of Police in cities which have a Commissioner ate and Deputy Superintendent of Police elsewhere. This leads to practical difficulties in the field, as there are very few officers who are empowered to investigate and take action in such offences.

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\(^375\) Ins. By Act 44 of 1986, S. 15, w.e.f. 26.1.1987
Object of Section 13:

Section 13 of the Act deals with special police officer and advisory body. The Act is a social welfare Legislation to abolish the commercial sex activity carried on by the brothel keepers by using innocent and illiterate women and also to remove the social evil for the good of the society.

By the conjoint operation of Section 2(i) and Section 13(1), the special police officer, in charge of police duties within a specified area for the purposes of the Act, shall be dealing with offences under the Act in that area. Both these expressions “police duties” and “dealing with offences” are of the widest amplitude and necessarily connote all that the police have to do in connection with the offences under the Act, including detection, prevention and investigation.

On a plain reading of Sections 13 of the Act with Section 190 (1) (b) Cr.P.C. it is clear that any police officer who is entitled to investigate into offences under the Act can make a report about the investigation done by him to a Magistrate and the Magistrate can take cognizance of the offences on the basis of these reports and it cannot be said that none but special police officer appointed under Section 13(1) can file a charge sheet.

Perusal of other provisions of the Act for instance Sections 14 and 15, reveal that wherever the legislature so contemplated, the Act confined the powers of investigation to the special police officer appointed under Section 13 of the Act made special provision in respect thereof. If the Legislature intended that the filing of the charge sheet or making of the report were to be done only by the special officer, the legislature would have expressly said so.

Section 14: Offences to be cognizable:

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

380 Ibid.
Provided that, notwithstanding anything contained in that Code,

(i) Arrest without warrant may be made only by the special officer or under his direction or guidance, or subject to his prior approval;

(ii) when the special police officer requires any officer subordinate to him to arrest without warrant otherwise than in his presence any person for an offence under this Act, he shall give that subordinate officer an order in writing, specifying the person to be arrested and the offence for which the arrest is being made; and the latter officer before arresting the person shall inform him of the substance of the order and, on being required by such person, show him the order;

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

Object of the Section 14: The object of the section 14 is to declare any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of section 2c of the code of Cr.P.C. 1973. The fact that while proviso (ii) to section 14 of the Act provides for delegation by the Special Police Officer, of his power to arrest without warrant, to any officer subordinate to him.

Section 14(iii) provides that a sub-inspector in emergency situation can arrest the person without the order of the special police officer under certain conditions.

Section 15 - Search without warrant:

(1) Notwithstanding anything contained in any other Law for the time being in force, whenever the special police officer or the trafficking police officer, as
the case may be, has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

(2) Before making a search under sub-section (1), the special police officer or the trafficking police officer, as the case may be, shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order writing to them or any of them so to do:
Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.

(3) Any person who, without reasonable cause, refuses or neglects, to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under Section 187 of the Indian Penal Code (45 of 1960).

(4) The special police officer or the trafficking police officer, as the case may be, entering any premises under sub-section (1) shall be entitled to remove there from all the persons found therein.

(5) The special police officer or the trafficking police officer, as the case may be, after removing the person under sub-section (4) shall forthwith produce him before the appropriate magistrate.

(5A) Any person who is produced before a magistrate under sub-section (5), shall be examined by a registered medical practitioner for the purposes of determination of the age of such person, or for the detection of any injuries as a result of sexual abuse or for the presence of any sexually transmitted diseases.

**Explanation:** In this sub-section, “registered medical practitioner” has the same meaning as in the Indian Medical Council Act, 1956 (102 of 1956).
(6) The special police officer or the trafficking police officer, as the case may be, and other persons taking part in, or attending, and witnessing a search shall not be liable to any civil or criminal proceedings against them in respect of anything Lawfully done in connection with, or for the purpose of the search.

(6A) The special police officer or the trafficking police officer, as the case may be, making a search under this section shall be accompanied by at least two women police officers, and where any woman or girl removed under sub-section (4) is required to be interrogated, it shall be done by a woman police officer and if no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognised welfare institution or organisation.

Explanation: For the purpose of this sub-section and Section 17A, “recognized welfare institution or organisation” means such institution or organisation as may be recognised in this behalf by the State Government.

(7) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under Section 94 of the said Code.

Object of Section 15: Section 15 of the Act deals with Search without warrant.

It only confers powers of search without warrant on a Special Police Officer to be appointed by the State Government under the Act, which he otherwise has not got as required.

Section 15 (2) provides that before making a search, the Special Police Officer or the trafficking police officer shall call two or more respectable local people to witness the search. The requirement of a woman witness from the area is now not required after the amendment to the ITP ACT in 1978.

Section 15 (5) provides that after removal of the victims under Sub-section 15 (4) they shall be produced before the appropriate magistrate.
Section 15 (6) (a) provides that any woman, removed under Sub-section (4), is required to be interrogated by woman police officer. If no woman police officer is available, the interrogation shall be done only in the presence of a lady member of a recognized welfare organization.

Section 13 (3) (b) provides that the State may associate with the Special Police Officer a non-official advisory body to advise him, consisting of five leading social workers.

Section 15 is not self-contained. Sections 15 and 16 have to be read along with Section 17.

Section 15 of the Act not mandatory:

In Bai Radha v. State of Gujarat\(^{381}\), the Apex Court held that non-compliance of Section 15 of the Act is a curable irregularity.

Sub-section (7):

Section 15(7) of the Act says that the provisions of Cr.P.C. 1973 shall so far as may be, apply to any search under this section as they apply to any search made under the authority of a warrant issued under Section 94 of the said code. Section 94 Cr.P.C. 1973 deals with search of place suspected to contain stolen property, forged documents etc.\(^{382}\)

Section 25 of Cr.P.C. provides provision for search without warrant.

The Cr.P.C. has entrusted the police with wide powers through Sections 94 and 165 for search. Section 94 provides that the District Magistrate or Sub Divisional Magistrate of first class may authorize a police constable to search any place. Section 165 gives power to the police in charge of a police station to search even without the warrant of a Court in emergency situations. Along the same lines, powers have been given under Section 15 (4) to the Special Police Officer to conduct raids on brothels and remove all persons from brothel without warrant. This section gives wide power to the Special Police Officer or to the trafficking police officer when they have

\(^{381}\) AIR 1970 SC 1396
reasonable grounds for believing that an offence under this Act has been or is being committed in respect of a person living in any premises. The police usually use this section to raid brothels or premises being used for prostitution.

In practice, existing officers above a certain rank have been designated as Special Police Officers by the State Government in most States. These officers are not only dealing with the cases under ITP ACT but this work is an additional duty bestowed on them. There is no separate or specialized squad for this purpose, which may be necessary if effective action is to be taken towards rescuing persons. Secondly, the provision of associating of 5 leading social workers is not being used effectively. Section 15 (2) requires the presence of one or more respectable local persons during the raid or search. But the Supreme Court in the case of Bai Radha V/s State of Gujarat held that the non-inclusion of at least one respectable woman of the locality in the search party is not mandatory and failure to comply with Section 15 does not vitiate the entire proceedings. In the light of this, this is an area that requires further debate and discussion.

Section 16: Rescue of person:

(1) Where a magistrate has reason to believe from information received from the police or from any other person authorized by the State Government in this behalf or otherwise, that [any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel,] he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove there from such person and produce before him.

(2) The police officer, after removing the person, shall forthwith produce him before the magistrate issuing the order.

Object of Section 16:

Section 16 of the Act deals with rescue of a person. It provides for the removal of the person found in a brothel.

Section 16(1) deals with rescue of persons. This section empowers the magistrate to direct the Special Police Officer to enter a brothel if he has a reason to
believe that any person is living or is carrying on or is being made to carry on prostitution in the said premises. This provision is not mandatory but directory.

**Section 16(2)** provides that the police officer after removing the person shall forthwith produce her before the magistrate issuing the order,

Under Section 65 of Criminal Procedure Code, a magistrate can make an arrest of any person by himself. Under Section 16 of ITP ACT, the magistrate has the powers to order the rescue of any person from an area, if it comes to his knowledge about a person being made to forcefully carry on prostitution. Under this section, any citizen or NGO can give such information to the magistrate for him to take suitable action under this section. However, this section has hardly been used,

An issue that needs to be noted in the context of Sections 15 and 16 is when any person is rescued/removed from an area under the above sections, whether she should be asked by the police or magistrate is she has any complaint to make against any person in connection with her reaching the brothel or her stay in the premises.

Section 15 and 16 of the ITP ACT 1956 are enabling sections which confer certain powers upon certain officers. They do not contain the procedure by which an enquiry will be made or completed. In cases where they are appear that the time taken in obtaining warrants may be utilized by the girls kept in brothel to escape; the Police Officer has been given the power to arrest without a warrant. Similarly, avoid the consequences of the girls being removed from a brothel, before action can be taken, it was necessary to confirm on the magistrate, the power to issue an order directing the Police Officer to rescue a girl. 383

**Section 17: Intermediate custody of persons removed under Section 15 or rescued under Section 16:-**

(1) When the special police officer removing a [person] under sub-section (4) of Section 15 or a police officer rescuing a [person] under sub-section (1) of Section 16, is for any reason unable to produce [him] before the appropriate magistrate as required by sub-section (5) of Section 15, or before the magistrate issuing the order under sub-section (2) of Section 16, he shall

forthwith produce [him ] before the nearest magistrate of any class, who shall pass such orders as he deems proper for [his] safe custody until [he] is produced before the appropriate magistrate, or, as the case may be, the magistrate issuing the order:

Provided that no [person] shall be

(i) detained in custody under this sub-section for a period exceeding ten days from the date of the order under this sub-section; or

(ii) restored to or placed in the custody of a person who may exercise a harmful influence over him.

(2) When the [person] is produced before the appropriate magistrate under sub-section (5) of Section 15 or the magistrate under sub-section 12) of Section 16, he shall, after giving [him] an opportunity of being heard, cause an inquiry to be made as to the correctness of the information received under sub-section (1) of Section 16, the age, character and antecedents of the [person] and the suitability of [his] parents, guardian or husband for taking charge of [him] and the nature of the influence which the conditions in [his] home are likely to have on [him] if [he] is sent home, and, for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), to inquire into the above circumstances and into the personality of the [person] and the prospects of his rehabilitation.

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

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

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

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

(a) that the information received is correct; and

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

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

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

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

(6) An appeal against an order made under sub-section (4) shall lie to the Court of Session whose decision on such appeal shall be final.
Object of Section 17:

Section 17 of the Act deals with intermediate custody of persons removed under Section 15 or rescued under Section 16.

Under the provisions of Section 17(2) of the Act, the Magistrate can pass either of the two orders i.e. he can either direct the detention of the girl in a protective home for such period as he considers proper or he may allow her to remain in the custody of someone else who, in his opinion, is suitable for that purpose.\(^{384}\)

In P. N. Swamy Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad and others\(^ {385} \), the Division Bench of AP High Court held that Section 17(4) of the Act is not violative of Act 14 and 21 of the Constitution of India.

Section 17(2) provides that when the person is produced before the appropriate magistrate under the Section 15(5) or 16(2), he shall after giving opportunity of being heard, because an enquiry to be made as to the correctness of the information perceived under Section 16(1), the age, character and antecedents of the person and the suitability of her parents, guardians or husband for taking charge and the nature of influence which the condition of her home are likely to have on her if she is sent home. He may direct the Probation Officer's report to enquire into the above circumstances and into the personality of the person and the prospect of her rehabilitation.

Section 17(3) provides that the magistrate may while an enquiry is made into a case under the above section, pass such orders as he deems proper for the safe custody of the person. When the person rescued under Section 16 is a child or a minor, it shall be open to the magistrate to place such child or minor in any institution established or recognized under any Children's Act for the safe custody of children provided that no person shall be kept in custody for this purpose for more than 3 weeks and in a custody of a person likely to have a harmful influence over her.

Section 17(4) provides that when the magistrate is satisfied after making an enquiry required under Section 17(2), a) that the information received is correct and b) that the person is in need of care and protection, he may, subject to the provision of


\(^{385}\) 1998 (1) ALD 755
Section 17(5), make an order that such person be detained for such period not less than one year, but up to three years in a Protective Home or in such other custody, as he shall, for reasons to be recorded in writing, consider suitable, provided that such custody should not be with a religious organisation or a religious person different from the victim's.

Those interested in the custody of the person including the Superintendent of Protective Home may be required to enter into a bond which may contain an undertaking, based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person, as well as supervision by a person appointed by a court.

**Section 17(5)** provides that in discharging his function *under* Sub-section (2), the magistrate may summon a panel of five respectable persons, three of whom shall be whenever practicable, be women to assist him, The magistrate under this section passes two possible orders - either a detention in the Protective Home or in the protective *custody* of 'fit person'. The ancillary and final powers with respect to interim or final custody is not confined to her detention only in Protective Homes and it is quite open to the magistrate to consider other options of protective custody, as held by Allahabad High Court. A closer look at Section 17(2) shows, that every function of the magistrate is subject *to the provision of* Sub-section (5) of Section 17. The Allahabad High Court observed in Smt. Ramdevi V/s. State (1963) that the word "may" occurring, in Section 17(3) has been used in the sense of "shall", and while *discharging* the functions under Section 17(2). the magistrate has to summon a panel of social workers.

**Section 17A: Conditions to be observed before placing persons rescued under Section 16 to parents or guardians:**

Notwithstanding anything contained in sub-section (2) of Section 17, the magistrate making an enquiry under Section 17 may, before passing an order for handing over any person rescued under Section 16 to the parents, guardian or husband, satisfy himself about the capacity or genuineness of the parents, guardian or husband to keep such person by causing an investigation to be made by a recognized welfare institution or organization.
**Section 17A** provides for conditions to be observed before placing persons rescued under Section 16 to parents or guardians. The magistrate making an enquiry under Section 17, may before passing an order for handing over any person to the parent or guardian or husband, satisfy himself about the capacity or genuineness of them by causing an investigation to be made by recognized welfare institution or organization. In this context, if the magistrate operating at Tehsil/Taluka level does not find any NGO or organization working in his area, he may call the report of or enquiry to be done by an officer from the Women & Child Department or a Probation Officer from district.

**Section 10(A) and Section 17** are the main sections in the Act which pertain to the issue of rehabilitation. Section 17 provides intermediate custody even of a minor and may take into account, the age, and character, antecedents of a person brought before the Court either under Section 15(4) or Section 16(2). The Court can ask for the report of a Probation Officer in order to understand the problems of the rescued person and present a plan of rehabilitation of the person. The Court may detain the person in a Protective Home for a period a period of one to three years with the objective of rehabilitation.

This section is being undermined due to the shortage of Probation Officers attached to Protective Homes, the number of Protective Homes in the State (only two in Maharashtra) and the lack of a detailed rehabilitation programme in Protective Homes.

The magistrate may hand over the person in the custody of parents, guardians/husbands by seeing the suitability of their ability to support her. The operative word here is what in the opinion of the magistrate constitutes 'safe custody'. Under this concept an NGO accredited citizen, or the Protective Home can be included in this definition. The agency has to sign a bond in the Court that they will take care of her education, training, medical and psychiatric treatment.

**Section 17(5)** provides the appointment of a panel of five social workers to assist the magistrate in discharging his functions, specially the role of rehabilitation. Although the word used in the Act is 'may' appoint a panel, the Division Bench of the
Allahabad High Court, in the case of Smt. Ramadevi V/s State, 1963 held that the word 'May' should be understood as 'Shall'.

Object of Section 17A:

Section 17A of the Act deals with conditions to be observed before placing persons rescued under Section 16 to parents or guardians.

On a plain reading of Section 13 of the Act with Section 190 (l)(b) Cr.P.C. it is clear that any police officer who is entitled to investigate into offences under the Act can make a report about the investigation done by him to a Magistrate and the Magistrate can take cognizance of the offences on the basis of these reports and it cannot be said that none but special police officer appointed under Section 13(1) can file a charge sheet.\footnote{386}

Perusal of other provisions of the Act for instance Sections 14 and 15, reveal that wherever the legislature so contemplated, the Act confined the powers of investigation to the special police officer appointed under Section 15 of the Act made special provision in respect thereof. If the Legislature mended that the filing of the charge sheet or making of the report, were to be done only by the special officer, the Legislature would have expressly said so.\footnote{387}

In \textit{Rama Swamy Chettiar vs. the Deputy Superintendent of Police, Salem Town and another} \footnote{388}, it was held that there is no warrant for the submission that only after resorting to Section 7, Section 18 can be invoked. Sections 7 and 18 of the Act contemplate different offences Section 18 is purely preventive in nature.

In \textit{P.N. Swamy, Labour Liberation Front, Mahaboobnagar vs. Station House Officer, Hyderabad and others} \footnote{389}, the Division Bench of AP High Court held that Section 17(4) of the Act is not violative of Act 21 of the Constitution of India.

It is obligatory on the part of the State to provide for-protective homes for such women rescued from brothel houses.

\footnote{386 Harbhajan Kaur v. State, AIR 1969 Bom. 285.}
\footnote{387 Harbhajan Kaur v. State, AIR 1969 Bom. 285.}
\footnote{388 1976 MLJ (Cri.) 511}
\footnote{389 1998 (1) ALD 755}
The Act is a social welfare Legislation to abolish the commercial sex activity carried on by the brothel keepers by using innocent and illiterate women and also to remove the social evil for the good of the society.

Section 18: Closure of brothel and eviction of offenders from the premises:

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

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year ²[.or in a case where a child or minor has been found in such house, room, place or portion during a search under Section 15, during the period of three years,] immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.
(2) A court convicting a person of any offence under Section 3 or Section 7 may pass order under sub-section (1) without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the [expiry of one year or three years, as the case may be]:

Provided that where a conviction under Section 3 or Section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other Law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of Section 3 or clause (c) of sub-section (2) of Section 7, as the case may be, and punished accordingly.

**Section 18** provides for closure of brothel and eviction, of offenders from the premises. The magistrate may on receipt of information from the police that any house, room, place or any portion within distance of 200 meters of any public place is being run or used as a brothel by any person or is being used by a prostitute for carrying on their trade, issue notice on the owner, lessee, occupier or in charge of such premises, to show cause
within seven days, stating why the same should not be attached, as it is allegedly being put to improper use. After hearing the person concerned, and if the magistrate is satisfied that the above premises is being used as brothel, he may pass an order (a) directing eviction of the occupier within seven days and (b) directing that before letting it out during the period of one year or in a case where a child or minor has been found during a search under Section 15 a period of three years, they shall obtain the previous approval of the magistrate.

**Section 18(2)** provides that a Court convicting a person of any offence under Section 3 or 7, may pass an order under Section 18(1) without further notice.

**Section 18(5)** provides that when the above persons fail to comply with a direction under Clause (B), they shall be punished with fine up to Rs.500/- and shall be deemed to have committed an offence under Section 3 (2)(b) or Section 7(2)(c).

The Supreme Court in the case of Chitan J. Vaswani V/s. State of West Bengal (1975), has made the difference between Section 18(1) and (2) as follows:

**Section 18(1)** is a summary procedure for closing down dens of prostitution without going through the detailed process of criminal prosecution.

**Section 18(2)** is operative only when the offenders have been convicted under Section 3 or 7 and applies to any place. Section 18(1) operates only when the brothel is situated 200 metres from any public place.

As per Section 18(1)(a), which talks of evicting the offender within seven days of the passing of the order of eviction, the question here is whether it is possible for the Courts to do all this in such a short time, given their existing workload. The orders passed under Section 18(2) are final and cannot be appealed against in a higher court. The order ceases after the expiry of the specified period.

**Object of Section 18:**

Section 18 of the Act deals with closure of brothel and eviction of offenders from the premises.
Special officer need not countersign the search list prepared by police officer subordinate to special officer under Section 15 of the Act.\textsuperscript{390}

The failure on the part of the Special Police Officer to record the grounds of his belief that an offence punishable under the Act has been committed or is being committed, before entering into and search the premises or his failure to call upon at least one woman of the locality to witness the search, would not render the search illegal though such infirmities may affect the weight of evidence let in by the prosecution.

By the conjoint operation of Section 2(1) and Section 13(1), the special police officer in charge of police duties within a specified area for the purposes of the Act, shall be dealing with offences under the Act in that area. Both these expressions "police duties" and "dealing with offences" are of the widest amplitude and necessarily connote all that the police have to do in connection with the offences under the Act, including detection, prevention and investigation.

A notification by the State Govt. had appointed all Assistant Commissioners of Police under the Control of Dy. Commissioner of Police. Detective Department, as Special Officers for dealing with the offences under the Act in the town of Calcutta and by another notification authorized the special officers to take the assistance of the five classes of subordinate police officers in the investigations, investigation of an offence under the Act by one of such Assistant Commissioners of Police with the assistance of subordinate police officers, does not render the investigation bad.

The fact that while proviso (ii) to Section 14 of the Act provides for delegation by the special police officer, of his power to arrest without warrant, to any officer subordinate to him. Section 13 does not provide for such delegation. That would not render an investigation by the special officer assisted by subordinate police officers illegal since Section 13(3) of the Act specifically provides for such assistance.

To make out in offence under Section 5(1)(d) of the Act, the evidence relating to earlier connections of accused with prostitute showing that accused had caused or induced her to carry on prostitution, would be necessary.\textsuperscript{391}

\textsuperscript{391} T. Jacob v. State of Kerala, AIR 1971 Ker. 166.
In *Harnam Singh v. State in T. Jacob v. State of Kerala*, AIR 1971 Ker. 166 it was held that Section 15 (1) of the Act is mandatory.

Prostitution in itself is no offence except in the manner given under Sections 7 and 8. The word "promiscuous" in Section 7(1) means indiscriminate sexuality which refers to a commercial vice such as in a brothel and more than one customer of the prostitute will be necessary to prove it.

Under the provisions of Section 17(2) of the Act the Magistrate can pass either of the two orders ie he can either direct the detention of the girl in a protective home for such period as he considers proper or he may allow her to remain in the custody of someone else who, in his opinion, is suitable for that purpose.392

The witness being a decoy witness and his evidence being in the nature of accomplice, his evidence should be corroborated in respect of material particulars.393

The failure to observe the procedure laid down in Section 15(1)(2) of the Act shows that no reliance could be placed on the evidence of the Investigating Officer.

In *Moainuddin v. State of AP.*,394 the learned Judge, of AP High Court held that Section 4 and 8 of the Act cannot be said to be *ultra vires* of Act 14 of the Constitution of India on the ground that the male partner in the evil doing or act is spared from any attack under the Act.

The word "procure" in Sec. 5 (1) (a) of the Act would mean not only persons who procure women for others but also persons who procure women for themselves.395

Under the Act it is not necessary that panchas should be residents of the same street. Panchas belonging to different parts of the same town, belong to the same locality.396

In cases falling under the Act, it is not necessary for the Assistant Superintendent of Police to depose that he had recorded the grounds for his belief

393 *State by Public Prosecutor v. Amaladoos*, 1988 MLJ (Cri.) 233.
394 1986 Cr.LJ. 1397
when acting under Section 15 of the Act. When an official act is done under Section 114 of the evidence Act, it is presumed to have been properly done.

It is not required that the appointment of special police officer must be by name.

**Sections 3 and 7 of the Act and Section 18 of the Act:**

Sections 3 and 7 of the Act deal with persons guilty of offences whereas Section 18 of the Act deals with the premises mentioned therein. The set of facts to be proved in prosecutions under Section 3 or 7 and in proceedings under Section 18 of the Act are not identical. In the former, has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients.\(^{397}\)

**Enquiry under Section 18 of the Act summary in character:**

Sections 3 and 7 provide for the punishment of persons guilty of the offences mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable offence in view of Section 14 whereas a proceeding under Section 18 is in no sense a prosecution. It is a preventive measure. It is intended to minimize the chance of a brothel being run or prostitution being carried on in premises near about public places. The enquiry contemplated by Section 18 is summary in character.

**Section 19: Application for being kept in a protective home or provided care and protection by court:**

(1) A person who is carrying on, or is being made to carry on, prostitution, may make an application, to the magistrate within the local limits of whose jurisdiction [he] is carrying on, or is being made to carry on prostitution, for an order that he may be

(a) kept in a protective home, or

(b) provided care and protection by the court in the manner specified in subsection (3).

\(^{397}\) _A.C. Aggarwal v. Mst. Ram Kali, AIR 1968 SC 1._
(2) The magistrate may, pending inquiry under sub-section (3), direct that the person be kept in such custody as he may consider proper, having regard to the circumstances of the case.

(3) If the magistrate, after hearing the applicant and making such inquiry as he may consider necessary, including an inquiry by a probation officer appointed under the Probation of Offenders Act, 1958 (20 of 1958), into the personality, conditions of home and prospects of rehabilitation of the applicant, is satisfied that an order should be made under this section, he shall, for reasons to be recorded, make an order that the applicant be kept,

(i) in a protective home, or

(ii) in a corrective institution, or

(iii) under the supervision of a person appointed by the magistrate, for such period as may be specified in the order.

Object of Section 19:

Section 19 deals with application for being kept in a Protective Home or provided care and protection by the Court.

Section 19(1) provides that a person who is carrying on or is being made to carry on, prostitution, may make an application to the magistrate within the local limits of whose jurisdiction she is carrying on or is being made to carry on prostitution, for an order that she may be (a) kept in Protective Home or (b) provided care and protection by the Court in the manner specified in Sub-section (4).

While the objective behind such a provision may be laudable, the issue here is how anyone could expect a woman, who has been tortured, caged, and socially and economically handicapped, to make an application before the court for requesting for her care. An additional sub-section needs to be introduced whereby it is possible for any woman in prostitution or in moral danger to directly seek admission in the Protective Home or re-admission if required, provided the Court later ratifies it, suitable amendments need to be made in the State Rules for this purpose.
Section 20: Removal of prostitute from any place:

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

(2) Every notice issued under sub-section (1) shall be accompanied by a copy of the record aforesaid, and the copy shall be served along with the notice on the person against whom the notice is issued.

(3) The magistrate shall, after the service of the notice referred to in sub-section (2), proceed to inquire into the truth of the information received, and after giving the person an opportunity of adducing evidence, take such further evidence as he thinks fit, and if upon such inquiry it appears to him that such person is a prostitute and that it is necessary in the interests of the general public that such person should be required to remove himself there from and be prohibited from re-entering the same, the magistrate shall, by order in writing communicated to the [person] in the manner specified therein, require him after a date (to be specified in the order) which shall not be less than seven days from the date of the order, to remove himself from the place to such place whether within or without the local limits of his jurisdiction, by such route or routes and within such time as may be specified in the order and also prohibit him from re-entering the place without the permission in writing of the magistrate having jurisdiction over such place.

4) Whoever

(a) fails to comply with an order issued under this section, within the period specified therein, or whilst an order prohibiting him from re-entering a place without permission is in force, re-enters the place without such permission, or
(b) knowing that any person has, under this section, been required to remove himself from the place and has not obtained the requisite permission to re-enter it, harbours or conceals such person in the place,

shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

Object of Section 20:

Section 20 deals about removal of a prostitute from any place. This section is akin to exterminate proceedings against offenders under Bombay Police Act. There is hardly any rehabilitative element in this section and it can be applied to any victim in a manner which uproots her without providing her an alternative. In such a context, other rehabilitative Sections such as 10A, 17(2) or 19(3), could be used instead of this section, which is punitive against the victim. This section may be deleted as it works against the victim of prostitution.

The procedure prescribed by Section 20 of the Act cannot be equated with a true Judicial trial by a court of Law. At best it provides for a quasi-Judicial inquiry.\(^{398}\)

In Dr. Upendra Baxi v. State of U.P.,\(^{399}\) the Apex Court issued directions to authorities to improve the conditions of protective Home and to State Government to constitute Board of visitors and to formulate programme of rehabilitation of inmates.

In Smt Kaushalya v. State\(^ {400}\), it was held that a Magistrate is competent to take action under Section 20 of the Act on the basis of a report by a Sub-Inspector even though he has not been appointed as a Special Officer under Section 13 of the Act.

It is obligatory on the part of the State to provide for protective homes for such women rescued from brothel houses.\(^ {401}\)

\(^{399}\) AIR 1987 SC 191
\(^{400}\) AIR 1963 All. 71
Section 20 of the Act is constitutionally valid and does not offend Art. 14 or Art. 19(l)(d)(e) and (g) of the Constitution of India.

An order under Section 20 of the Act directing petitioner to remove herself from the local limits of a municipality and not to reenter except with the written permission of Magistrate cannot be said to be bad in Law since it is open to her to live in any place except the prohibited area.

In *Smt. Kaushailya v. State*402, it was held that a Magistrate is competent to take action under Section 20 of the Act on the basis of a report by a Sub-Inspector even though he has not been appointed as a Special Officer under Section 13 of the Act.

**Section 21. Protective homes:**

(1) The State Government may in its discretion establish as many protective homes and corrective institutions under this Act as it thinks fit and such homes and institutions, when established, shall be maintained in such manner as may be prescribed.

(2) No person or no authority other than the State Government shall, after the commencement of this Act, establish or maintain any protective home or corrective institution except under and in accordance with the conditions of a license issued under this section by the State Government.

(3) The State Government may, on application made to it in this behalf by a person or authority issue to such person or authority a license in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home or corrective institution and a license so issued may contain such conditions as the State Government may think fit to impose in accordance with the rules made under this Act:

Provided that any such condition may require that the management of the protective home or corrective institution shall, wherever practicable, be entrusted to women:

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402 AIR 1963 All. 71
Provided further that a person or authority maintaining any protective home at the commencement of this Act shall be allowed a period of six months from such commencement to make an application for such license:

Provided also that a person or authority maintaining any corrective institution at the commencement of the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1978 (46 of 1978), shall be allowed a period of six months from such commencement to make an application for such license.

(4) Before issuing a license the State Government may require such officer or authority as it may appoint for this purpose, to make a full and complete investigation in respect of the application received in this behalf and report to it the result of such investigation and in making any such investigation the officer or authority shall follow such procedure as may be prescribed.

(5) A license, unless sooner revoked, shall remain in force for such period as may be specified in the license and may, on application made in this behalf at least thirty days before the date of its expiration, be renewed for a like period.

(6) No license issued or renewed under this Act shall be transferable.

(7) Where any person or authority to whom a license has been granted under this Act or any agent or servant of such person or authority commits a breach of any of the conditions thereof or any of the provisions of this Act or of any of the rules made under this Act, or where the State Government is not satisfied with the condition, management or superintendence of any protective home or corrective institution[, the State Government may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded, revoke the license by order in writing provided that no such order shall be made until an opportunity is given to the holder of the license to show cause why the license shall not be revoked.

(8) Where a license in respect of a protective home or corrective institution has been revoked under the foregoing sub-section such protective home shall cease to function from the date of such revocation.
Subject to any rules that may be made in this behalf, the State Government may also vary or amend any license issued or renewed under this Act.

[(9A) The State Government or an authority authorized by it in this behalf may, subject to any rules that may be made in this behalf, transfer an inmate of a protective home to another protective home or to a corrective institution or an inmate of a corrective institution to another corrective institution or to a protective home, where such transfer is considered desirable having regard to the conduct of the person to be transferred, the kind of training to be imparted and other circumstances of the case:

Provided that,

(a) no person who is transferred under this sub-section shall be required to stay in the home or institution to which he is transferred for a period longer than he was required to stay in the home or institution from which he was transferred;

(b) reasons shall be recorded for every order of transfer under this sub-section.]

Whoever establishes or maintains a [protective home or corrective institution] except in accordance with the provisions of this section, shall be punishable in the case of a first offence with fine which may extend to one thousand rupees and in the case of second or subsequent offence with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

Section 21 deals with the establishment of Protective Homes and corrective institutions. The establishment of such Homes has been left to the discretion of the State Governments whether or not to set up such structures and how many numbers. This strikes at the heart of the Act, as without the necessary infrastructure: rehabilitation is not possible. Half hearted attempts will result in half-hearted results. While Protective Homes have been set up - one or two in each State, corrective homes have hardly been set up.
One suggestion which could be discussed is whether the existing State Homes and Reception Centers could also be used as Protective Homes, since they are more in number and present in most districts.

Another question we would like to raise is whether rehabilitation programmes to be carried out in such Homes needs to be specified; at least their basic components in the State Rules, and rehabilitation should be included in the definition of Protective Homes.

Section 21A: Production of records:-

Every person or authority who is licensed under sub-section (3) of Section 21 to establish or maintain, or as the case may be, for maintaining, a protective home or corrective institution shall, whenever required by court, produce the records and other documents maintained by such home or institution before such court.

Object of Section 21A:

Section 21A deals with production of records whenever required by a court to produce the records and other documents:

It says that every person or authority who is licensed under sub-section (3) of Section 21 to establish or maintain or as the case may be, for maintaining, a protective home or corrective institution shall whenever required by a court produce the records and other documents maintained by such home or the institution before such court.

Section 22: Trials:

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.

Object of Section 22:

Section 22 of the Act deals with Trials and it specifies that no court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of 1st Class shall try any
offence under sections 3, 4, 6, 7 or 8. It is abundantly clear that section 537 of the Code of Criminal Procedure would be applicable to the proceedings in the present case. Section 5 (2) of the Code provides that all offences under the Indian Penal Code shall be investigated, inquired into, tried or otherwise dealt with according to the provisions of said Code. All offences under any other Law shall be similarly investigated etc., according to the same provisions but subject to any enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. According to Section 22 no court inferior to that of a Magistrate as defined in clause (c) of Section 2 shall try any offence under Sections 3 to 8 of the Act.403

**Section 22A: Power to establish special courts:**

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 Magistrates, in such district or metropolitan area.

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.

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.

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 II. 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.

Explanation: 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).

Object of Section 22A:

Section 22A specifies the powers of the State Government to set up Special Courts for speedy trials of cases under the Act and Section 22(A)(a) confers the same powers to the Central Government. This section has not been used by any State or Central Government till now. Setting up of such Courts will result in better disposal of cases, conviction of offenders and assist the rehabilitation process. The Special Court should be presided by a judicial officer of the rank of District Magistrate. The Judge should be trained and possess special knowledge about the subject and should have a panel of social workers attached to the Court, along the lines of the Juvenile Justice Board under the Juvenile Justice (Care & Protection of Children) Act, 2000.

Section 22AA: Power of Central Government to establish special courts:

(1) If the Central Government is satisfied that it is necessary for the purpose of providing for speedy trial of offences under this Act and committed in more than one State, it may, by notification in the Official Gazette and after consultation with the High Court concerned, establish one or more courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offences.

(2) The provisions of Section 22A, shall so far as may be, apply to the courts established under sub-section (1) as they apply to courts established under that section.

Object of Section 22AA:

The provision was inserted by Act 44 of 1986 and deals with power of Central Government to establish special courts.

Section 22B: Power of court to try cases summarily:

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, if it considers it necessary so to do, direct that
offences under this Act shall be tried in a summary way by a magistrate: including the presiding officer of a court established under sub-section (1) of Section 22A] and the provisions of Sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section it shall be Lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness, who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code.

Object of Section 22B:

Section 22B of the Act deals with the power of the court to try cases summarily.

Chapter XXI i.e. Sections 260 to 265 of the Code of Criminal Procedure deal with Summary Trials.

Section 23- Power to make rules:

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for

(a) the notification of any place as a public place;

(b) the placing in custody of persons for whose safe custody orders have been passed under sub-section (1) of Section 17 and their maintenance;
(bb) the discharge of an offender under sub-section (3) of Section 10A from a corrective institution and the form of license to be granted to such offender;

(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;

(d) the carrying out of the provisions of Section 11 regarding notification of residence or change of or absence from residence by released convicts;

(e) the delegation of authority to appoint the special police officer under sub-section (1) of Section 13;

(f) the carrying into effect of the provisions of Section 18;

(g) (i) 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;

(ii) the form in which an application for a license may be made and the particulars to be contained in such application;

(iii) the procedure for the issue or renewal of a license, the time within which such license shall be issued or renewed and the procedure to be followed in making a full and complete investigation in respect of an application for a license;

(iv) the form of a license and the conditions to be specified therein;

(v) the manner in which the accounts of a protective home and a corrective institution shall be maintained and audited;

(vi) the maintenance of registers and statements by a licensee and the form of such registers and statements;
(vii) the care, treatment, maintenance, training, instruction, control and discipline of the inmates of protective homes and corrective institutions;

(viii) the visits to and communication with such inmates;

(ix) the temporary detention of [persons] sentenced to detention in protective homes or in corrective institutions until arrangements are made for sending them to such homes or institutions;

(x) the transfer of an inmate from one protective home to another, or to a corrective institution; one corrective institution to another or to a protective home, under sub-section (9A) of Section 21;

(xi) the transfer in pursuance of an order of the court from a protective home or a corrective institution to a prison of a [person] found to be incorrigible or exercising bad influence upon other inmates of the protective home or the corrective institution and the period of [his] detention in such prison;

(xii) the transfer to a protective home or corrective institution of [persons] sentenced under Section 7 or Section 8 and the period of their detention in such home or institution;

(xiii) the discharge of inmates from a protective home or corrective institution either absolutely or subject to conditions, and their arrest in the event of breach of such conditions;

(xiv) the grant of permission to inmates to absent themselves for short periods;

(xv) the inspection of protective homes and corrective institutions and other institutions in which [persons] may be kept, detained and maintained;

(h) any other matter which has to be, or may be, prescribed.
(3) In making any rule under clause (d) or clause (g) of sub-section (2) the State Government may provide that a breach thereof shall be punishable with fine which may extend to two hundred and fifty rupees.

(4) All rules made under this Act shall, as soon as may be, after they are made, be laid before the State Legislature.

Object of Section 23:

Sections 23 of the Act deals with power to make rules by the State Government by notification in the official gazette for carrying out the purposes of the Act.

Section 24: Act not to be in derogation of certain other Acts:

Nothing in this Act shall be construed to be in derogation of the provisions of the Reformatory Schools Act, 1897 (8 of 1897), or any State Act enacted in modification of the said Act or otherwise, relating to juvenile offenders.

Object of Section 24:

Section 24 of the Act deals with Act not to be in derogation of certain other Acts Viz, the Reformatory Schools Act 1897 or any State Act enacted in modification of the said Act or otherwise, relating to juvenile offenders.

Section 25: Repeal and savings:

(1) As from the date of the coming into force in any State of the provisions other than in Section 1 of this Act, all State Acts relating to suppression of immoral traffic in '[persons] or to the prevention of prostitution, in force in that State immediately before such date shall stand repealed.

(2) Notwithstanding the repeal by this Act or any State Act referred to in sub-section (1), anything done or any action taken (including any direction given, any register, rule or order made, any restriction imposed) under the provisions of such State Act shall in so far as such thing or action is not inconsistent with the provisions of this Act be deemed to have been done or taken under the
provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Explanation: In this section the expression "State Act" includes a "Provincial Act".

Object of Section 25:

Section 25 of the Act deals with Repeal and Savings

When the Act came into force in 1956, the corresponding provisions of Madras Suppression of Immoral Traffic Act, Act 5 of 1930 stood repealed by virtue of Section 25(1) of the Act.

By virtue of sub-section (2) the conviction of appellant under Section 5(1) of the Madras Act would be deemed to be conviction under Section 3(1) of the Act, an Act deemed to be in force at the time the conviction took place.  

Implementation of ITP ACT - Directions laid down by Supreme Court for eradication of evil of prostitution:

The Apex Court gave the following directions, which if implemented go a long way in eradicating the evil of prostitution and in rehabilitation of the unfortunate victims in Vishaljit vs. Union of India.

1. All the State Governments and the Governments of Union Territories should direct their concerned Law enforcing authorities to take appropriate and speedy action under the existing Laws in eradicating child prosecution without giving room for any complaint of remissness or culpable indifference.

2. The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologist members of the women’s organisations, members of Indian Council of Child Welfare

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405 AIR 1990 SC 1412
and Indian Council of Social Welfare as well as the members of various voluntary social organisation and association etc. the main object of the Advisory Committee being to make suggestions of:

(a) The measures to be taken in eradicating the child prostitution; and

(b) The social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

3. All the State Governments and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

4. The Union Government should set up a committee of its in the line, Court have suggested under direction No. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc., of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing Laws or for the prevention of sexual exploitation of children.

5. The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

6. The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the Government could do in that regard.

7. The copies of the affidavits and the list containing the names of 9 girls are directed to be forwarded to the Commissioner of Police, Delhi for necessary action.\footnote{Vishal Jeet v. Union of India, (1990) 3 SCC 318 at 323-24: AIR 1990 SC 1412.}
Necessity for appropriate and drastic action to eradicate prostitution:

No denying the fact that prostitution always remains as a running sore in the body of civilisation and destroys all moral values. The causes and evil effects of prostitution maligning the society are so notorious and threatening the community at large slowly but steadily making its way onwards leaving a track marked with broken hopes. Therefore, the necessity for appropriate and drastic action to eradicate this evil has become apparent but its successful consummation ultimately rests with the public at large.

It is highly deplorable and heart rendering to note that many poverty stricken children and girls in the prime of youth are taken to ‘flesh market’ and forcibly pushed into the ‘flesh trade’ which is being carried on in utter violation of all cannons of morality, decency and dignity of humankind. There cannot be two opinions – indeed there is none that this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps.\(^{407}\)

Eradication of prostitution in any form is integral to social weal and glory of womanhood:

The Convention of the Elimination of All Forms of Discrimination Against Women, 1979 enjoins by Article 11, Prohibition of discrimination of women. Article 5 enjoins to modify social and patterns of conduct of men and women with a view to achieving elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women. Article 12 prescribes discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services, including those related to family planning. Article 13 prescribes discrimination and directs that the State Parties shall eliminate discrimination against women in other areas of economic and social life in order particular, the right to family benefits, the right to participate in recreational activities sports and all aspects of cultural life. Article 16(d) enjoins the State to ensure on the basis of equality of men and women, the same rights and responsibility as parties, irrespective of their marital status in matters relating to their children, in all cases the interests of the children shall be paramount. In Madhu Kishwar v. State Court

\(^{407}\) Vishal Jeet v. Union of India, (1990) 3
considered the provisions of the SCC 125: 1996 AIR SCW 2178. Supreme Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination, against Women, 1979 (CEDAW) and held the same to be integral scheme of the Fundamental Rights and the Directive Principles. Article 2 (e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, International Convention and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights, Article 2 (f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national developments, social and family stability and growth-cultural, social and economical. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prosecution. Eradication of prostitution in any form is integral to social weal and glory of womanhood. Right of the child to development hinges upon elimination of prosecution. Success lies upon effective measures to eradicate root and branch of prostitution.\(^{408}\)

In spite of the stringent and rehabilitative provisions of Law under various Acts, it cannot be said that the desired result has been achieved. It cannot be gain-said that a remarkable degree of ignorance of callousness or culpable indifference is manifested in uprooting this cancerous growth despite the fact that eh day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. This

malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

Further, this malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these hapless and helpless victims most of whom are unwilling participants and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout.

The devastating malady can be suppressed and eradicated only if the Law enforcing authorities in that regard take very severe and speedy legal action against all the erring persons such as pumps, brokers and brothel keepers. The Courts in such cases have to always take a serious view of this matter and inflict condign punishment on proof of such offences. Apart from legal action, both the Central and the State Governments who have got an obligation to safeguard the interest and welfare of the children and girls of this country have to evaluate various measures and implement them in the right direction.409

Rehabilitation of prostitutes by socio-economic empowerment and justice is the constitutional duty of the State:

Society is responsible for a woman’s becoming victim of circumstances. The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio economic empowerment and justice is the constitutional duty of the State. Their economic empowerment and social justice with dignity of person, are the fundamental rights and the Court and the Government should positively endeavour to ensure them. The State in a democratic polity includes its three constitutional organs-the Legislature, the Executive and the Judiciary. Legislature has already done its duty. The Executive and the Judiciary are required to act in union to ensure enforcement of fundamental and human rights of the fallen women. The Union of India as well as the State Governments are sensitive to the conscience of their constitutional duty under Article 23 and are desirous to have the prosecution eradicated from the root with the aid of ITP Act, IPC and other appropriate legislative or executive actions. Sequential rehabilitation of the fallen women rescued from the red light areas and other areas requires enforcement. The

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observations made in this Order, the constitutional provisions, the human rights and other International Conventions referred to in the Order and the national policy would aid the Union of India and the State Governments as foundation and guide them to discuss the problems in Ministerial and Secretarial level Conferences and as suggested in this Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order to evolve procedures and principles to ensure that the fallen women also enjoy their fundamental and human rights mentioned in the Order.\textsuperscript{410}

There cannot be any scope for dispute that “prostitution and traffic in human beings for the purposes are incompatible with human dignity and worth of human persons”. It also cannot be disputed that it adversely affects the society both morally and physically. Even a most tolerant person would not like his or her family and children to come in contact with a prostitute. From time to time international agreements are made from suppression of the traffic in one form or another. The first was as early as on 18\textsuperscript{th} May, 1904, of 11-10-1933 and the fifth in 1950, a convention for the suppression of the traffic in women and girls and of the exploitation of the prosecution of others. This convention was signed by several national including India.

Even before this Act was enacted, there were provisions for similar purposes and also for preventing prostitution in certain States. Moreover this is not the first time when the international Convention in this respect was signed by different countries. The Articles of 1950 are merely as amendments to the Article signed on May 4, 1910 for the same purpose at Paris. It is with a view to prevent immoral traffic in women and girls that the present Act was enacted. Though it is directed at prevention of the immoral traffic in women and children that would not appear to be its only purpose as the reading of the whole Act discloses. It has not also a further purpose and that is to prevent such influences as encourage prosecution.\textsuperscript{411}

\textbf{Supreme Court Advisory Committee to make suggestion for eradicating child prostitution, etc:}

While dealing with the rights of the children of prostitutes the modules to give protection, care treatment, development and rehabilitation of the young victims, in the

\textsuperscript{410} Gaurav Jain v. Union of India, AIR 1997 SC 3021 at 3052-53; (1997) 8 SCC 114.
mainstreams of national life the Apex Court in Gaurav Jain v. Union of India observed.

“Three Cs. Viz. counselling, cajoling and coercion are necessary to effectively enforce the provisions of ITP Act and Juvenile Justice Act. By order dated May 2, 1990, this Court after hearing the Counsel, passed an order to set up an Advisory Committee to make suggestions for eradicating child prostitution and point out social aspects for the care, protection, treatment, development and rehabilitation of the young victims, children and girls prostitutes from red light area and get them free from the abuses of prostitution to amend the existing Law or to enact a new Law, if so warranted, to prevent sexual exploitation of children and to take various measures for effective enforcement thereof. It is seen that the Committee constituted by this Court under the Chairmanship of Shri V.C. Mahajan travelled far and wide to have a look into the field of operation of the Governmental agencies and has suggested nodal programme for the eradication of the twin facets of prostitution, viz. protection, care and rehabilitation of the fallen women and neglected juveniles. The Committee has opined that the problem of child prostitution does not stand by itself and is a component of overall phenomenon in the country. It highly concentrates on identified red light areas as well as on areas which are not so clearly identified. Though the problem of prostitution is mainly found in large cities, but in the urban areas and some rural areas, the problem gives frequent recurrence. Among the fallen women the child prostitutes constitute major bulk of the component. A Child prostitute constitutes 12 to 15% of prostitutes in any area. On account of the social sanctions, women are exploited by the monstrous customs of Devadasis, jogins and Venkatansis known by other names in different parts of the country. The unfounded social and religion based sanctions are only camouflage; their real motive is to exploit the unfortunate women. Most of them belong either to Scheduled Castes or Backward Classes coming from socio-economically lower groups. They are prevalent highly in Karnataka, Maharashtra and Andhra Pradesh. The specific area in major cities is identified as red right areas as well as some semi-urban but rural areas. The number of red light areas having increased in recent times brothel based prostitution is on the vane but there is an increasing trend towards decentralised mode of prostitution. 86% of the fallen women hail from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Bihar.
Maharashtra, Uttar Pradesh, Assam, Gujarat, Goa, Madhya Pradesh, Kerala, Meghalaya, Orissa, Punjab, Rajasthan and Delhi. Delhi received prostitutes from about 70 districts in the country; Bombay from 40 districts; Bangalore from 70 districts; Calcutta from 11 districts, Hyderabad from 3 districts etc. There is growing evidence that the minimum number of prostitutes get into flesh trade either voluntarily or by organised gangster force women and girls by offering rosy future to innocent fallen women and trap them often with the connivance of the police.

The Committee has also identified ten types of prostitutes like Street walker, religious prostitute, prostitutes in brothel, singing and dancing girls, bar nude, massage parlour and some are call-girls. Comprehensive study conducted by another Committee in six metropolitan cities, viz. Delhi, Bombay, Calcutta, Madras, Hyderabad and Bangalore, reveals the group of the prostitutes below 20 years of age are 75%, 21 to 30 years are 40%. 30 to 35 years are 18% and above 35 years 12%. At the time of induction into the prostitution, 9% are below 15 years, 24.9% between 16 to 35 years. At the time of entry therefore, 15% of the fallen girls are in the category of neglected juveniles, and about 25% are minors between the age group of 16 to 18 years. The major reasons for induction of prostitution are poverty and unemployment or lack of appropriate rehabilitation etc. above all social stigmas 16% due to family tradition and 9% due to illiteracy. 94.6% prostitutes are Indians while 2.6% are Nepalis and 2.7% are Bangaldeshis, 84.36% are Hindus; 18.8% are Muslims and 3.5% are Christians. In terms of castes classification, Dalits and Tribes constitute 36%. other Backward Classes 24% and others 40%. In terms of marital status only 10.6% of the prostitutes are married, 34.4% are unmarried and 54.2% are divorcee or widows. In terms of education level; 70% of them are illiterates while 4% only are literates. Only 24% of the prostitutes are educated at primary and secondary level while 1.4% have higher qualification. Therefore, prostitution is primarily due to ignorance, illiteracy, coercive trapping or scare of social stigmas. In India, they enter into the prostitution between the ages of 16 to 19 years and lose market by the time they became 35 years of age. Thereafter such persons either manage brothels or develop contact with high lead. Recent trend is that ladies from higher levels of income are initiated into the prostitution to sustain sufficient day to day luxurious style of life so as to ensure continuous economic support for their well-being.
The Mahajan Committee report indicates that in two villages in Bihar and some villages in West Bengal, parents send their girl children to earn in prostitution and the girls in turn send their earnings for maintenance of their families. It further indicates that certain social organisations have identified the poverty as the cause for sending the children for prostitution in expectation of regular remittance of income from prostitution by the years have already gone into the brothels. It is also an inevitable consequence that over girls who the fallen women are accustomed to certain life style and in terms of expenditure they spend certain amount of money for their upkeep and maintenance when they bear children it becomes additional burden for them. They are led and get caught in the debt traps. The manager of the brothels is generally ladies. They do not allow the girls to bear children. In case of birth against their wishes the unfortunate are subjected to cruelty in diverse forms. In the process of maintaining the children, again they land themselves in perpetually growing burden of debt without any scope to get out from the bondage. Thereby, this process lends perpetuity to slavery to the wile of prostitution. To support their children for education etc. 44% of them desires to leave the red light traps and 43% of them express their despondence languishing between hope and despair. Most of those who want to leave, have given the reasons to save their children from prostitution and protection of the future of their children fear of contacting the venereal disease, the fear of their children following the path; some of them expressed dislike for the profession, social stigma and their yearning is to start new life. Those who want to remain in prostitution have given absence of alternative source of income, their social non-acceptability, family customs, poverty, ill-health and their despondence as the reasons and, thus, they want to continue in the prostitution as the last resort for their livelihood. They do not like to remain in red light area and the profession but lack of alternative source of livelihood is the prime cause of their continuation in the profession.

If alternatives are available and society is inclined to receive them they will gladly shed off their past and start with a clean slate as a fresh lease of life with renewed vigorous hope and aspiration to live a normal life, with dignity of person, respect for the personality, equality of status crave for fraternity and acceptability in the social mainstream. Therefore, it would be imperative to provide a permanent cure to the malady. There would be transition from the liberation from the prostitution to
start with fresh lease of life. This period should be taken care of by providing behavioural corrections by constant interaction counselling, cajoling and coercion as the last resort assurance of social acceptability inculcating faith in them. An avenue to earn sufficient income for rehabilitation relates their resolves to start with fresh lease of life without their craving to shed off the past and to start with a new lease of life would remain instant dream and a futile attempt. Therefore, rubicon has to be bridged between the past and the hope to make them realise their desire as normal citizenry, by providing opportunity and facilities. Provision of opportunities and the facilities is input of the constitutional guarantee to the disadvantaged, deprived and denied people. The directive principles of the Constitution, in particular Articles 38,39 and all relevant related Articles enjoin the State to provide them as impregnable inbuilt right to life guaranteed by Article 21 and equality of opportunities with protective discrimination guaranteed in Article 14 the genus and its species.

Therefore, it is the duty of the State and all voluntary non-Government organisations and public spirited persons to come in to their aid to retrieve them from prostitution, rehabilitate them with a helping hand to lead a life with dignity of person, self employment through provisions of education financial support, developed marketing facilities as some of major avenues in this behalf. Marriage is another object to give them real status in society. Acceptance by the family is also another important input to rekindle the faith of self respect and self confidence. Housing, legal aid, free counselling assistance and all other similar aids and services are meaningful measures to ensure that unfortunate fallen women do not again fall into the trap of red light area contaminated with foul atmosphere. Law is a social engineer. The Courts are part of the State steering by way of judicial review. Judicial statesmanship is required to help regaining social order and stability, interpretation is effective armoury in its bow to steer clear the social malady, economic reorganisation as effective instruments, remove disunity, and prevent frustration of the disadvantaged, deprived and denied social segments in the efficacy of Law pragmatic direction pave way for social stability, peace and order. This process sustains faith of the people in rule of Law and the democracy becomes useful means to the common man to realise his meaningful right to life guaranteed by Article 21.
V.C. Mahajan Report states that an organisation by name Prerana, selected Kamathipura red light area, Bombay, where 14 lanes are in the occupation of the Managers of the brothels and has located a centre for counselling. Therein, they organise regular counselling and service centre for the fallen women and do work for the children. The national plan of action for the girl child in the SAARC Decade of the Girl Child (1991-2000) was launched as a project for the welfare and development of the girl children including adolescent girls and street children in particular, an inter-departmental monitoring committee was also set up under this plan in some of the red light areas. The provisions of Integrated Child Development Services Scheme were extended. A number of voluntary agencies have also been involved in the care, rehabilitation and advocacy to retrieve prostitutes including child prostitutes. The rehabilitation and welfare organisation is to be initiated.

Women found in the flesh trade, should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society. Prostitution in five star hotels is a licence given to persons from higher echelons. The commercial exploitation of sex may be regarded as crime but those trapped in custom oriented prostitution and gender oriented prostitution should be viewed as victims of gender oriented vulnerability. That could be arrested by not only Law enforcing agencies but by constant counselling and interaction by NGOs impressing upon them the need to shed off the path and to start with a new lease of life. The ground realities should be tapped with meaningful action imperative apart from the administrative action which aims at arresting immoral traffic of women under ITP Act through inter-State or Interpol arrangements and the nodal agency like the CBI is charged to investigate and prevent such crimes. We are concerned in this case more with the rehabilitation aspect than with prevention of the crime. Therefore it is emphasised on the review of the relevant Law in this behalf, effective implementation of the scheme to provide self-employment, training to weaving, knitting, painting and other meaningful programmes to provide the fallen women the regular source of income by self-employment or, after vocational education, the appropriate employment generating schemes in Governmental, Semi-Governmental or private Organisations.

The customary initiation of women in the practice of Devdasis Jogins and Venkatasin is prevalent in Andhra Pradesh, Karnataka and Maharashtra areas: in
particular the practice of prostitution is notorious. It is an affront to the human dignitary and self-respect but the pursuit of customary beliefs traps the fair-sex into this glorified self-sacrifice and ultimately leads to prostitution service in the temples and charitable institutions etc. which is a crime against humanity, violation or human right and obnoxious to Constitution and Human rights Act. They are void under Article 13 (sic 23) of the Constitution of India and punishable under the Law. They are anti-thetical to the Constitutional scheme. Fundamentalists and proponents of these practices are constitutional criminals. The unfounded custom cannot have legal sanction. On the other hand, penal enactments provide for abolition thereof. Instead of progressive outlook, regressive unfortunate tendancy, of late, is raising its ugly head to glorify these ignominious practices which is leading not only to abatement of commission of the crime, but also misleading the unfortunate illiterate and weaker sections of the society, to be taken in seriously by the later by their false promises or false theories such as God’s ordain which finds easy acceptance by the prior and illiterate and is acted upon. Every right thinking person should condemn such attempts apart from keeping and helping strict implementation of the Law prohibiting initiation of the nasty practice wherein the eldest girls child in particular families, is offered as Devdasis or Jogins or Venkatasins, by whatever local name they are called. They are making the lives of the girls miserable, in the guise of prosperous future and custom, the girls is detained in prostitution for no fault of her. This is prevalent in particular in six districts of Karnataka, viz. Raichur, Bijapur, Belgaum, Dharwar, Bellary and Gulbarga where their number is identified as 21,306. In Andhra Pradesh, in five districts, namely, Medak, Karimnagar, Nizamabad, Nalgonda and Warangal, such girls are known as Jogins, Nizamabad District has the largest number of Jogins as per the survey conducted in 1996, as many as 16,300 Jogins were found in that State. Similarly, in Maharashtra, they are found in large number, in particular in Marathwada and Vidarbha regions. The common features of such women are that predominantly they are from Scheduled Castes, Scheduled Tribes and other Backward Class. The eldest girl in every family is being offered as Devadasi, Jogin or Venkatasin. Sometimes, they do redeem the pledge made to the Gods or Goddesses, etc. original families of these Devadasis, Jogins or Venkatasins were by and large poor. They are primarily agricultural labourers having no access to credit facilities or literacy. The eldest girl in each family is driven to prostitution. The system has been in existence for years as a result of lack of awareness about the exploited segments of
the Devadasis etc. many families which dedicated their girls, do so due to the pursuit of customary practices.

Economic rehabilitation is one of the factors that prevent the practice of dedication of the young girls to the prostitution as Devadasis, Jogins or Venkatasins. Their economic empowerment and education gives resistance to such exploitation, however, economic programmes are necessary to rehabilitate such victims of customs or practices. They are being rehabilitated with the help of vocational training centres set up in Maharashtra giving preferential admission into educational training institutes; they are admitted into informal adult education. In Maharashtra, educational training centres have been opened for Devadasis. In Karnataka, Devadasi women have been assisted under DWCRA schemes in various districts, in particular six districts, where an extensive devadasi rehabilitation programme is in full force. The Karnataka State Women’s Development Corporation and the Karnataka State Scheduled Castes and Scheduled Tribe Development Corporation are implementing this programme in the aforesaid six districts where the phenomenon of devadasi system is being observed; training is imparted in hand weaving. 50% subsidy is given in weaving; good work-shed is given to them free of costs; income assistance like micro-business enterprises, rope and basket making etc. are being provided to devadasi women for rehabilitating them. Training in production of soap, chaak making, Khadi and weaving activities being imparted in Andhra Pradesh, Karnataka State also has taken the lead in forming self helping group of devadasis; a thrift and saving programme is being implemented in some areas. Social Welfare Departments should undertake these rehabilitation programmes for the fallen victims of social practice so that the foul practice is totally eradicated and the fallen women are redeemed from the plight and are not again trapped in to the proposition. In Andhra Pradesh, the State Government is providing housing sites or house facilities to devadasis women; they are getting free treatment in hospitals. Devadasis women aged about 60 years and above are being given pension. In order to improve literacy, adult literate programmes are being organised for them. The NGOs in these three States are playing important role in implementation of various programmes and they are largely concentrating on generating of various programmes and they are largely concentrating on generating awareness among these persons and their economic rehabilitation. It would, therefore, be meaningful if rehabilitation programmes are launched and
implementation machinery is set not only to eradicate the fertile source of prostitution but also for successful rehabilitation of the fallen women who are the victims of circumstances to regain their lost respect to the dignity of person to sustain equality of status, economic and their social empowerment.”

1. **Flesh trade:**
   In the landmark judgment of Vishal Jeet v, Union of India⁴¹³, the Supreme Court observed, “Many unfortunate teen-aged female-children (hereinafter referred to as ‘the children’) and girls in full bloom are being sold in various parts of the country, for paltry sum even by their parents finding themselves unable to maintain their children on account of acute poverty and unbearable miseries and hoping that their children would be engaged only in house hold duties or manual labour. But those who are acting as pimps or brokers in the ‘flesh trade’ and brothel keepers who hunt for these teenaged children and young girls to make money either purchase or kidnap them by deceitful means unjustly and forcibly inveigle them into ‘flesh trade’. Once these unfortunate victims are taken to the dens of prostitutes and sold to brothel keepers, they are shockingly and brutally treated and confined in complete seclusion in a tiny claustrophobic rook for several days without food until they succumb to the vicious desires of the brothel keepers and enter into the unethical and squalid business of prostitution. These victims though unwilling to lead this obnoxious way of life have no other way except to surrender themselves retreating into silence and submitting their bodies to all the dirty customers including even sexagenarians with plastic smile.”

2. **Action is to be taken to rescue, rehabilitate and bring the children of fallen women into mainstream of society:**

   While dealing with the rights of the children of fallen women, the modules to segregate them from their mothers and others so as to give them protection care and rehabilitation in the mainstream of the national life the Apex Court in Gaurav Jain v. Union of India⁴¹⁴, observed thus: “the three Cs (CCC) are necessary for successful implementation, to rescue and rehabilitate the children of the fallen women living in the red-light area. Counselling, cajoling by persuasion and coercion, as the last resort, are the three Cs for their successful implementation. 65.5% of the fallen women have

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⁴¹³ (1990) 3 SCC 318 at 319: AIR 1990 SC 1412
⁴¹⁴ (1997) 8 SCC 114 at 137-139: AIR 1997 SC 3021 at 3039-41
children and usually they are in the age group of one to ten years. Generally, they prefer to keep their children away from them while they are in the act of intercourse except those children who are very young. Out of 71% children of the illiterate fallen women 39% are literate while 58% of the total have had primary or secondary or higher education. They show keen interest in educating their children. The children tend to spend their time at study or leisure; though girls children tend to be engaged in house hold jobs as is usual among poorer classes. The children face the problems mainly due to (i) lack of a father figure to provide security, care and guidance; (ii) increased responsibilities of mother; (iii) economic hardship; (vi) lack of facilities to meet basic needs; (v) unhealthy social environment; (vi) malnutrition; (vii) coercive attempts by managers of brothels; (viii) taunting due to dislike by surrounding people; and (ix) lack of proper counselling and guidance; motivation and opportunity gaps.

Many a prostitute themselves are child prostitutes (for short “the CP”); they and the children of the prostitutes (for short “the COP”) need to be removed from the red-light areas. Generally, the police resort to IPC and ITP Act in this behalf but the forceful rescue of CP or COP in reality is not successful in their rehabilitation. In this behalf, it is necessary to take aid of the definition of “neglected child” defined in the JJ Act. It is already seen and is reiterated for continuity that “neglected juvenile” means one found begging; or found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or has a parent who is unfit or incapacitated to exercise control over the juvenile; (or lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; or who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. The JJ Act makes distinction between “delinquent juvenile” and “neglected juvenile” attributing to a delinquent juvenile an act or omission punishable by Law to identify his as a delinquent juvenile. A neglected juvenile is one who is of the age of 16 years in the case of a boy and 18 years in the case of a girl, or whose parents are one who frequents or associates with prostitution becomes a neglected juvenile. A child brought to associated with a or is engaged in prostitution or the profession of prostitution or another juvenile who leads an immoral or depraved life or one who is likely to be abused or exploited for immoral or illegal purposes for unconscionable
gain is also a juvenile. The crime is not attached for identifying him/her as neglected juvenile; it is so in the case of a delinquent juvenile under the Act. They are to be kept in the juvenile home as a place of safety.

An institution established or certified by a State Government under Section 9 of the JJ Act is a juvenile home. The object of the Act is not to punish the juvenile but to rehabilitate him/her, be it a delinquent juvenile or a neglected juvenile. In the latter case, it is one of obligations of the State to provide for care and concern and to establish a juvenile home under Section 9 of JJ Act. Section 4 of JJ Act enjoins the State to constitute, by a notification, for any area specified in the notification, one or more Juvenile Welfare or imposed, under the JJ Act, on such Board in relation to neglected juveniles.

The Board shall consist of a Chairman and such other members as the State Government thinks fit to appoint, of whom not less than one shall be a woman; and every such member shall be vested with the powers of a Magistrate under the Cr. P.C. The Board shall function as a Bench of Magistrates and shall have the powers conferred by the Cr. P.C., as the case may be, on a judicial Magistrate of the First Class or Metropolitan Magistrate in metropolitan cities. Even, in certain cases, a delinquent juvenile who commits an offence like begging, being a neglected juvenile, is covered as a neglected juvenile and should not be treated as delinquent juvenile since he began begging due to destitution or was forced to beg by organised gangsters. Therefore, all the types of juvenile defined within the ambit of neglected juvenile, though attached with certain acts of omission, are punishable under Law, they still remain to be neglected juvenile and should be dealt with by the Welfare Board and be brought within the protective umbrella of the juvenile home established under Section 9. Establishment of juvenile home, thus, is a mandatory duty of the State to provide teeth to the provisions of the Constitution, the Directive Principles, the Convention on the Right of the Child read with the principles of the United Nations Declaration and National Policy of the Government of India referred to hereinbefore, and are protected by the JJ Act.

Every child who is found to be a neglected juvenile should be death by the Board and should be brought within the protective umbrella of the juvenile home. The attribute “neglected children” is not a social stigma; the purpose is to identify the
children as juvenile to be dealt with under the JJ Act which is more a reformative and rehabilitated centre rather than for punishing the child as criminal; and to mend their behaviour and conduct. In an appropriate case, where the treatment of bringing the neglected juvenile into the national mainstream takes a long time, the definition coupled with age prescription, should not be strictly interpreted to deny the ameliorative care, consideration and rehabilitation of the neglected juveniles. The benefit of reformation, rehabilitation and bringing them into the mainstream after the passing of the age prescription under the Act, is the goal sought to be achieved. Lest, it has the effect of throwing the neglected juvenile into the vile practice of prostitution or exploiting him for organised crimes by the organised gangsters taking advantage of his immaturity and despondence; that would be between hope and reality in the operation of the provisions here in before referred to. The definition of “neglected juvenile”, therefore, should be interpreted broadly which is an important function for the purpose of identifying the grounds of children who need care and attention and protection for rehabilitation. Their withdrawal from the protective umbrella of the JJ Act foils the goals set out; besides all measures to bring the neglected juvenile into the mainstream of the social status end up in failure and frustration.”

3. **Maxim-ex turpi causa non oritur action**:

   The case of Upfill v. Wright\(^{415}\) is a decision of Darling. J., on the points, that the plaintiff was not entitled to recover rent because the flat for which rent was sought, was let for an immoral purpose. The learned Judge there expressly says” that it is unnecessary for him to go through the authorities because he took the Law as well settled by Pollock C.B. in Pearce v. Brooks.\(^{416}\) That proceeds on the maxim I have elsewhere already quoted, viz. Ex. Turpi Causa non oritur action. The English Law on which that case was decided was different from the Law in our country. There the case is not a case of void transaction by statute but avoidable one under the common law. Two significant and outstanding differences have been ignored in our desire to follow the English precedents, one is the uncritical application of the equitable doctrine or equitable rules of procedure where the statute is clear and the other is the difference between void and voidable transactions. The result has been a confusion and a disregard of the statute, in this country on this point. Finally the decision of the

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\(^{415}\) (1911) 1 KB 506 (p)

\(^{416}\) (1866) 1 Ex. 213 at page 217, 218 (Q)
English Court of Appeal in Bowmakers Ltd. v. Barnet Instruments Ltd.,\(^\text{417}\) has been cited at the Bar on behalf of the respondents. That case decides that no claim founded on an illegal contract will be enforced by the Court but as a general rule a man’s right to possession of his own chattels would be enforced against one who without any claim of right is detaining them or has converted them to his own use even though it might appear from the pleadings or in the course of the trial that the chattels in question came into the defendant’s possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not either seek to enforce or found his claim on the illegal contract, or to plead his illegality in order to support his claim. An exception to this general rule arises in cases in which the goods claimed are of such a kind that it is Unlawful to deal in them at all.”

This case is more important for what it does not say than for what it does say. It is plain from this decision that the rule laid down in Lord Selborne’s judgement in Averest v. Jenkins (‘A’), is not an inflexible rule at all and the Court has always tried to make such inroads upon the rule wherever and wherever proper considerations demand that course.\(^\text{418}\)

4. **Doctrine of pari delicto:**

The mythology that was slowly and imperceptibly growing in Indian case-Law as an unqualified character for denying relief in a Court to an immoral party was first exploded by Sir S. Subrabmania Ayyar, Acting Chief Justice and Benson, J. in Thasi Multhukannu v. Shunmugavalu Pillai.\(^\text{419}\) wherein it was said that “where the transaction, though completed, was intended to be for consideration, it can impeached if the consideration is immoral, and it makes no difference whether the transaction is executed or executor.”

That great and erudite Judge, Sir Subrahmania Ayyar also drew a significant distinction for not applying the much misused doctrine of ‘pari delicto’ on the ground of the plaintiff’s extreme youth and by holding that the young man of 20 in that case was led into evil ways at the instance of those persons mentioned in the judgment. If that could exclude a man from the rigours of the doctrine of pari delicto as in fact he was and he could be exonerated, how very much more it would be in the case which

\(^{417}\) (1945) 1 KB 65
\(^{418}\) Pranballav v, Tulsibala Dassi, AIR 1958 Cal. 713 at 722.
\(^{419}\) ILR 28 Mad 413 at p. 418 (H)
had nothing to do with the delict such as the present executors and trustees in this appeal. Sir Subrahmanya Ayyar was very clear in indicating at page 418 of the report of his judgment:

“And Wootton v. Wootton referred to and distinguished by Lord Selborne in Averst v. Jenkin’s (A) is decisive instance against the Courts laying down broadly that relief will never be given to a plaintiff in pari delicto in cases of completed transactions having for their consideration future illicit cohabitation”.

5. Use of word “punishable” in prescribing a punishment:

In the instant case Bombay High Court took the view that the word “punishable” in the aforesaid section instead of “punished” necessarily postulates a certain discretion on the Court to impose a sentence of imprisonment or a sentence of fine discretion on the Court to impose a sentence of imprisonment or a sentence of fine or both. The High Court felt that there was no escape “from this construction in view of the interpretation put by the Full Bench of that Court as to the meaning to be adopted in view of the use of the word “punishable” in prescribing a punishment”. The decision relied upon by the High Court is emperor v. Peter D’Souza. That was a case under Section 43 (1) of the Bombay Abkari Act, 5 of 1878. The provision which the Full Bench had to construe was substituted for the original provisions by Bombay Act 29 of 1947. The original provision was that a person “shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to six months, or with fine which may extend to Rs. 1,000, or with both.” The Amending Act, 1947 substituted for this the following provision:

“shall on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to Rs. 1,000 provided that in the absence of special reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and fine shall not be less than Rs. 500.”

It was contended before the Court that the object of the amended provision was to make it obligatory upon the Court convicting a person of an offence under that Act to pass a sentence of imprisonment which shall ordinarily not be less than three

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420 Pranballav v. Tulsibala Dassi, AIR 1958 Cal. 713 at 720
421 AIR 1949 Bom 41 (FB)
months while it was not obligatory to pass a sentence of imprisonment under the original provision.

It is significant to notice that the expression used in the original provision is “punished” and not “punishable”. A bare perusal of the Penal Code would show that the Legislature has in the penal provisions also used the expression “punished”. This is so even where discretion has been conferred upon the Court to award a sentence of fine in lieu of or in addition to a sentence of imprisonment. The mere use of the word “punished” or the word “punishable” select one or more kinds of sentence prescribed by it for an offence or to making it obligatory upon it to pass a particular sentence or sentences so prescribed. One thing follows with certainty from the use of either of these expressions and that is that upon the conviction of a person for the particular offence the Court is bound to award punishment. What the nature and extent of the punishment to be awarded has to be ascertained by a consideration of the entire penal provision. Court considered Section 43 (1) as it was before its amendment in the year 1946. There the Legislature had said that the convicted persons shall be “punished”. Then it proceeded to say that the punishment shall be (a) imprisonment for a term which may extend to six years ‘ (b) or a fine which may extend to Rs. 1,000; (c) or imprisonment as well as fine. If the whole provision is construed it is clear that despite the use of the words “punished with “the nature of the sentence was left to the discretion of the Court. Even if the word “punishable” had been used instead of “punished” the result would have been the same because of the use of the word ‘or’. That is to say that the provision would have been open to only one construction and that is that it was discretionary with the Court to choose the nature of punishment to be awarded to a convicted person. Since all this was clear there would have been no point in amending the provision in the year 1947 if the nature of the punishment was “shall, on conviction, be punishable for the first offence with imprisonment for a term which may extend to six months and with fine which may extend to rupees one thousand” would be that the Court convicting a person of an offence under the Act was bound to award to sentence consisting both of imprisonment and fine. The words “may extend” preceding “six months” and “rupees one thousand” respectively merely give discretion to the Court in so far as the extent of imprisonment or fine to be awarded is concerned and nothing more. It is obvious that the Legislature replaced the original “or” which gave an option to the Magistrate by “and” to make its intention
clear. The Full Bench, however, expressed the view that by using the expression “punishable” the legislature conferred a discretion on the Court and because of the used of that expression the Full Bench has construed “and” as meaning “and / or”. It is non doubt true that the expression “punishable” means “liable to punishment”. “Liable to punishment” only means that a person who has contravened a penal provision will have to be punished. Thus it does not mean anything different from “shall be punished”. Punishment is obligatory in either case. But, as already observed, what the nature of punishment is to be must be ascertained by a consideration of the whole of the penal provisions. Their Lordships therefore, were unable to accept the view of the Full Bench that by merely using the expression “punishable” the Legislature intended to say that a discretion was left with the Court to determine the nature of the punishment. If the view of the High Court that the word “punishable” imports a discretion in the Court were to be accepted an astonishing result would ensue; it would follow that there is discretion in the Court whether to punish a convicted person at all or not – State of Maharashtra v. Jagmander Lal 422.

Public safety Measures Ordinance was promulgated by the Rajpramukh on 2-4-1948.

The Ordinance, as stated already, provided principally for preventive detention and imposition of collective fines; and it was hoped that armed with these extraordinary powers the State Government would be able to bring the situation under control. These hopes, however, were belied, and the affidavit gives a long list of offences in which murder and nose cutting figure conspicuous in addition to looting and dacoity, which were committed by the dacoits during the year 1948 and 1949 If special Courts were considered necessary to cope with an abnormal situation it cannot be said that the vesting of authority in the State Government to select offences for trial by such Courts is in any way unreasonable. In the light of the principles stated already, Court was unable to hold that Section 11 of the Ordinance in so far as it authorities the State Government to direct classes of offences of cases to be tried by the special Court offends against the provision of the equal protection clause in our Constitution.

The present case is also dissimilar to the case of Kedar Nath Bajooia v. State of West Bengal, where after considering the back ground of the legislation and its preamble, purpose and the provisions of the Supreme Court came to the view that the impugned legislation was based on a perfectly intelligible principle of classification having a clear and reasonable relation to the object sought to be attained.

8. Tangible and rational basis of classification. – Justice Sahai of Allahabad High Court discussing the constitutional validity of Act 104 of 1956 observed in Shama Bai v. State of U.P. as under:

“In the present case the provisions of the Act can be no guide to the Magistrate to decide in which case he should consider it necessary to remove a prostitute. The preamble only says as follows:

“An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the suppression of immoral traffic in women and girls”.

It has not been mentioned anywhere in the Act as to what are the guiding principles on which a Magistrate has to make up his mind that it is reasonable to remove a particular prostitute. There is no classification at all in the Act. The Act gives a Magistrate discretionary power not to be exercised upon a consideration of the circumstances of the case but a naked and arbitrary power to remove a prostitute outside the limits of his jurisdiction and to prohibit her from re-entering it.

An Act which gives uncontrolled authority to discriminate can be hit by Article 14”. Prima facie therefore, there appears some substance in the petitioner’s contention that it is not a reasonable classification but an arbitrary selection where the selection is left to an absolute and unfettered discretion of the executive Government, “with nothing to guide or control its action.”

The present case is quite different from the case of Kathi Raning Rawat v. State of Saurashtra, where the clear recital of definite objective furnished a tangible and rational basis of classification to the State Government for the purpose of

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423 AIR 1953 SC 404
424 Shama Bai v. State of U.P. AIR 1959 All 57 at 64-65; 1959 Cr. R. 427 (All)
425 AIR 1959 All. 57 at 64-65
426 AIR 1952 SC 123
applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and preservation of peace and tranquillity. In that case Section 11 of the Ordinance was challenged. That section reads as follows:

“A Special Judge shall try such offences or class of offences or such cases as the Government of the United State of Saurasthra may, by general or special order in writing, direct.”

The majority view was that the section was intra vires of the Constitution of India. Fazl Ali, J., who was one of the Judges who took that view observed as follows:

“As regards the present Ordinance, we can discover a guiding principle within its four corners, which cannot but have the effect of limiting the application of the special procedure to a particular category of offences only and establish such a nexus (which was missing in the West Bengal Act) between offences of a particular category and the object with which the Ordinance was promulgated, as should suffice to repel the charge of discrimination and furnish some justification for the special treatment of those offences”.

The Ordinance, as already stated, purported to amend other Ordinances, the object of which was to provide for public safety, maintenance of public order and preservation of peace and tranquillity in the State. It was not disputed that the preamble of the original Ordinance would govern the amending Ordinance also and the object of promulgating the subsequent Ordinance was the same as the object of promulgating the original Ordinance.

Once this is appreciated, it is easy to say that there is something in the Ordinance itself to guide the State Government to apply the special procedure not to any and every case but only to those cases of offences which have a rational relation to or connection with the main object and purpose of the ordinance and which for that reasons become a class by themselves requiring to be dealt with on a special footing.

The clear recital of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provision of the Ordinance and for choosing only such offence or cases as affect public safety,
maintenance of public preservation of peace and tranquillity. Thus under Section 11, the State Government is expected to select only such offences or class of offences or class of cases for being tried by the special Court in accordance with the special procedure as are calculated to affect public safety, maintenance of public order etc., and under Section 9, the use of special procedure must necessarily be confined to only disturbed areas or those areas where adoption of public safety measures is necessary.”

9. Involvement of Non-Government Organisations (NGOs) in the field of rehabilitating and educating the children of prostitute mothers:

Supreme Court in Gaurav Jain v. Union of India427, observed that even if the economic capacity of the mother of neglected juvenile in the red light area to educate and to bring him up would not relieve the child from social trauma; it would always be adverse to keep the neglected juvenile in the custody of the mother or the manager of the brothel; thus, the child prostitute is unsafe and insecure. So, they should be rescued, cared for and rehabilitated. As stated earlier, the three Cs, namely, counselling, cajoling and coercion of the fallen woman to part with the child or child prostitute herself from the manager of the brothel is more effective, efficacious and meaningful method to rescue the child prostitute or the neglected juvenile. The income criteria, therefore, is not a factor not to rescue the child prostitute or the neglected juvenile for rehabilitation.

It is of necessity to remember that the arms of the Law are long enough to mould the Law to operate on an even keel. The coercive power with the Law-enforcement agency to rescue the child prostitute or the neglected juvenile may not necessarily end up as a successful means. It would be the last resort when all avenues fail. On the other hand involvement of the Non-Governmental Organisations in particular women’s organisations which are more resourceful for counselling and cautioning, would be a source of success for their retrieval from prostitution or sending the neglected juvenile to the juvenile homes for initial treatment. psychologically and mentally, and all yield place to voluntariness to surrender guardianship of the child prostitute or neglected juvenile to the Welfare Board or to the NGOs to take custody of a child prostitute or the neglected juvenile for care, protection and rehabilitation.

The V.C. Mahajan Committee Report states that the resort to Sections 14 and 17 of the JJ Act has met with resistance by the mothers and in the case of child prostitutes, by the managers of the brothels. The coercive method adopted on one occasion by the Delhi Police pursuant to a complaint under Section 13 of the JJ Act on 7-3-1990, led to frustration of the entire operation, when on an early morning, the prostitutes were taken by surprise by a tap on the doors and children were taken into custody, on the pretext of being examined by the doctors. Total 450 juveniles were taken into custody but no prior arrangement was made with the doctors for their examination. The children were not given custody immediately. The children were taken into custody, 112 children below 16 years were kept in the custody of the police. Their examination went on up to 23-3-1990 by which time, the agitated mothers and the managers of the brothels resorted to pressure tactics. Ultimately, it all ended in a fiasco. All were released by managers of juvenile homes. This would indicate apathy on the part of the police improper implementation and lack of prior planning, understanding and concerted action between the Law-enforcement agency, the NGOs and public-spirited persons and doctors. Instead of doing well, it does harm. It, therefore, gives a stark lesson that until proper arrangements are made and connected action taken ad hoc attempt to enforce Law results in defeat of the purpose of the JJ Act if the NGOs in particular women members of the children or managers of child prostitutes to give them into custody and if proper care and treatment is given, rehabilitation is the sure road to successful results; it would be a success, rather than frustration of the enforcement of the JJ Act. It is, therefore, a clear imperative that proper planning, constant counselling and persuasion are the appropriate means, rather than abrupt or ad hoc coercive steps, unless it becomes the last resort, for a successful enforcement of the scheme.

The question then is what is the proper method required to rehabilitate the neglected juvenile or child prostitute taken into custody under the JJ Act for enduring results? It is rather unfortunate that the juvenile homes established and being run by the Government are not effectively being managed and yielding expected results. They become an ornament for statistical purposes defeating the constitutional objectives and international conventions which are part of the municipal Law. This Court on 2-4-1990 had directed the enforcement agencies to bring the prostitute and neglected juveniles for rehabilitation in the juvenile homes manned by well-qualified
and trained social workers. The child prostitutes rescued from the red-light areas should be shifted into the juvenile homes. They should ensure their protection in these homes. The officers in charge of the juvenile homes, the welfare officers and the probation officers should co-ordinate the operation and enforce it successfully. They should be made responsible for the protection of the child prostitutes or the neglected juveniles kept in the juvenile homes for psychological treatment in the first instance relieving them from the trauma to which they were subjected to while in the brothels and red-light areas. Special police authorities should be established to co-ordinate with the social welfare officers of the State Government and public spirited persons, NGOs locally available, and see that the juvenile homes are entrusted to efficient and effective management, the child prostitute or neglected juveniles are properly protected and psychologically treated, education imparted and rehabilitation succeeded. They should also be provided with proper accommodation maintenance facilities for education and other rehabilitation facilities.

V.C. Mahajan Committee’s Report specifies at p. 31 that since its inception till November 1989, 102 boys and 34 girls were admitted by a responsible institute, a non-statutory body in Pune run on voluntary basis to impart education to the destitute children in general and neglected juveniles and child prostitutes in particular, with all facilities, it is run by Bal Sangopan Centre run by Shreemant Dagausheth Halwai Ganpat Trust which gets funds from the Ministry of welfare, Government of India under the scheme for children in need of care and protection. Similar homes are also being run for 75 children at Kolhapur and Bombay. As a policy, the Trust does not keep girls above 12 years in the institute. On the other hand, it has tied up with hinges Stree Sikshan Sansthan at Pune for placement of the girls above 12 years into their custody but the Trust continues to be the parent institution, paying their fees and holding the overall responsibility to bring up the girls above 12 years. The report also states that the mothers are allowed to visit the children once in a month and they are allowed to take them home for brief spells during festivals and other special occasions. There is another institution, viz. “Nihar” run by “Vanchit Vikas” institute at Pune. It is founded on the basis of the felt needs of the neglected juvenile. Social workers of Pune Corporation co-operate with them. There are special health reforms available to prostitutes, the workers come into frequent contact with the prostitute mothers and their children, gradually, they are getting acquainted with the situation
and awareness is generated of the disadvantages to keep the children with them while remaining in the red-light areas. The motivation yielded positive results in helping the children rescued from the mothers and their placement in the home. The institute is run through donations. It is being run for the past 15 years. Much progress has been made in the struggle to rehabilitate the neglected juveniles. Therein they have established a school for 25 children being used in that “Nihar”. Most of the children are in the age group of 5 to 10 years. They take only female children with the female staff to attend to the needs of the children. Their basic requirements of food, clothing and shelter are taken care of by “Nihar”. Health, education and overall development is also taken care of. The children are enrolled in Zila Parishad Schools. Residential staff help them to take them to the schools and bring them home. On Saturdays, teachers spend their time in “Nihar” teaching music and playing games with the children. On Sundays, teachers come from Pune and spend time with the children and keep them in their studies. The mothers of the children visit once in a month. The management does not allow the mothers to take the children except for short duration. The prostitute mothers themselves have realised the advantage to keep their children away from vile environment and are happy with the education progress of their children. Similarly, “Devadasi Niradhar Mukti Kendra, Gandhiganj” is running a centre by name “Devadasi Chhata Vasti Graja” at Pune from October 1986. It is a residential institution for the children of Devdasis. 80% of the Devdasi’s children while 20% from socio-economic backward classes. Funds for the institution are granted by the Department of Social Welfare, Government of Maharashtra. It has on its roll, 75 boys and girls. As on the date of the visit of the Committee on 7-7-1990, 57 boys and 8 girls (total 65) were found in the institute. Similar institutions are being run elsewhere, the details of which are not material. They have been elaborated in the Report of the V.C. Mahajan Committee.

The above facts do indicate that the NGOs are actively involved in the field of rehabilitating and educating the children of the fallen women as neglected juveniles not brought within the net of JJ Act. The mothers have their legitimate aspirations to bring their children into the mainstream of the nation. What needs to be done is proper, efficient and effective co-ordination and management in particular entrustment to the NGOs which would yield better results than the management solely by the Governmental agencies. The motivation by the NGOs makes a deeper
dent into the mind of the prostitute mothers or child prostitutes to retrieve them from the flesh trade and rehabilitate the children as useful citizens in the mainstream of the society.”

**Provisions of the ITP ACT which attracts punishments**

The following are various penal provisions of the Immoral Traffic (Prevention) Act, 1956, and the punishment provided for each offence:

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<th>S.No.</th>
<th>Section</th>
<th>Offence</th>
<th>Punishment</th>
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</table>
| 1     | 3 (1)   | Keeping or managing or acting or assisting in the keeping or management of a brothel | **First conviction:** Rigorous imprisonment, for a term of not less than one year and not more than three years and also with fine extending to Rs. 2000  
**Second or subsequent conviction:** Rigorous imprisonment For a term of not less than two years and not more than five years and also with fine extending to Rs. 2,000 |
| 2     | 3 (2)   | Using or knowingly allowing the use of premises as a brothel of which the accused is the tenant, lessee, occupier or person in charge or Being the owner, landlord, or lessor of any premises or being the agent of such owner, lessor or landlord and letting the premises or any part thereof with the knowledge that the same is intended to be used as a brothel. | **First Conviction:** Imprisonment for a term extending to two years and fine extending to Rs. 2,000.  
**Second or subsequent conviction:** Rigorous imprisonment. For a term extending to five years and also with fine. |
| 3     | 4       | Knowingly living wholly or in part on the earnings of prostitution of any person.  
And where such earnings relate to the prostitution of a child or a minor | Imprisonment for a term extending to two years or fine extending to Rs. 1,000 or both.  
Imprisonment for a term of not less than 7 years and not more than 10 years. |
| 4     | 5       | Procuring, inducing or taking a person for the sake of prostitution. | Rigorous imprisonment for terms of not less than three years and not more than seven years and also with fine extending to Rs. 2,000.  
If the offence committed is 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.  
If the offence committed against the child, the punishment shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.  
If the offence committed is against the minor the punishment shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years. |
<p>| 5     | 6       | Detaining a person in a brothel or in premises where prostitution is carried on. | Imprisonment of either description not loss than seven years, but may be for life or for a term which may extend to ten |</p>
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<tr>
<td><strong>6</strong></td>
<td>7 (1)</td>
<td>Prostitution in or in vicinity of a public place. Imprisonment up to three months</td>
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<tr>
<td><strong>7</strong></td>
<td>7 (1A)</td>
<td>Where the offence committed is in respect of a child or a minor. Imprisonment of either description not less than seven years, but may be extended for life or ten years and also fine. (Read with Section 10-A)</td>
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<td><strong>8</strong></td>
<td>7 (2)</td>
<td>(a) Being the keeper of a public place knowingly permitting prostitution in that place <strong>First conviction:</strong> Imprisonment up to three months or fine extending to Rs. 2000. <strong>Second or subsequent conviction:</strong> Imprisonment up to six month and also fine up to Rs. 2000, and if the public place is a hotel, its licence may be suspended for three month to one year. (Read with Section 10-A)</td>
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<tr>
<td><strong>9</strong></td>
<td>7 (2)</td>
<td>(b) Being the tenant, lessee, occupier or person incharge knowingly permitting prostitution in the premises or any part thereof. As in Section 7 (2) (a). (Read with Section 10-A) (c) Being the owner, lessor or landlord, or agent of such owner, lessor or landlord of the premises letting the same or any part thereof with the knowledge that the same may be used for prostitution. As in Section 7(2)(a). (Read with Section 10-A)</td>
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<tr>
<td><strong>10</strong></td>
<td>8</td>
<td>Seducing or soliciting in public place for the purpose of prostitution <strong>First offence:</strong> Imprisonment up to six months or fine up to Rs. 500 or both. <strong>Second or subsequent conviction:</strong> Imprisonment up to one year and also fine up to Rs. 500. (Read with Section 10-A).</td>
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<td><strong>11</strong></td>
<td>9</td>
<td>Seducing a person or causing or aiding or abetting her seduction when she is in the custody, charge or care or in a position of authority over any person. Imprisonment of either description for a term of not less than seven years but which may extend to life or up to ten years and fine.</td>
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<td><strong>12</strong></td>
<td>18 (5)</td>
<td>Failure to comply with a direction given under Section 18 (1) (b). Fine up to Rs. 500.</td>
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<td><strong>13</strong></td>
<td>20 (4)</td>
<td>(a) Failure to comply with an order for removal of prostitute from any place, or Re-entering a place without permission whilst the order under Section 20 (3) is in force. Fine up to Rs. 200 and in the case of a continuing offence with additional fine which may extend to Rs. 20 per day after the first day.</td>
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<td><strong>14</strong></td>
<td>20 (4) (b)</td>
<td>Knowingly harbouring or concealing a person who has disobeyed an order issued under Section 20 (3) Fine up to Rs. 2000 and in the case of a continuing offence with additional fine which may extend to Rs. 20 per day after the first day.</td>
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<tr>
<td><strong>15</strong></td>
<td>21 (10)</td>
<td>Establishing or maintaining a protective home or corrective institution without licence <strong>First conviction:</strong> Fine up to Rs. 1,000. <strong>Second or subsequent conviction:</strong> Imprisonment up to one year or fine up to Rs. 2,000 or both</td>
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<tr>
<td><strong>16</strong></td>
<td>23 (3)</td>
<td>Contravention of the rules framed under clause (d) or clause (g) of Section 23 (2) Fine up to Rs. 250</td>
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4.5 State Rules under the ITP Act:

After going through the ITP Act Rules of some of the States, one gets an impression that most of the rules are similar in nature. The major areas pertain to maintenance of discipline, diet, training, education, arranging marriages, punishments, powers of the Superintendent, etc. It seems from the rules that rehabilitation consists of giving some basic educational/literacy inputs, basic vocational skills, handing over to family and arranging for marriages. There is no rehabilitation scheme with components such as job-oriented training programmes, loan for self-employment, and housing, enhanced access to certain types of jobs, etc. The Maharashtra State Rules under ITP Act have not been framed after the Act was amended from SITA 1956 to ITP Act, 1986. Such rules, which specify the rehabilitation process, have to be immediately framed.

Some of the rules, which have progressive outlook, are reproduced below (taken from various State Rules):

1. Bihar - Definition of Medical Officer: Should ordinarily be a lady doctor.

2. A. P. - Inmates of Protective Home may be sent, whenever advisable to other institutes for similar educational or vocational training with prior approval of the Chief Inspector.

3. A.P. - Inmates may be taken to places of interest under the supervision of the Superintendent.

4. Delhi - Suitable inmates may be sent to Aftercare Homes from Protective Home for their further rehabilitation.

5. Himachal Pradesh - Adequate number of trained teachers and qualified instructors shall be appointed.

4.6 Andhra Pradesh Devadasis (Prohibition of Dedication) Act 1988
[Act No. 10 of 1988]:

The obnoxious practice of exploitation of women commonly known as Devadasi, Bason, Jogini, Parvathi etc., is still prevalent in parts of Andhra Pradesh State. This is a system of exploitation of women, resulting in dehumanization of the women who became objects of indignity and exploitation during their whole life. Most of them are turned into prostitutes living at the mercy of village people and looked down upon by the society. The women so dedicated often belong to socially and economically weaker sections of the society.

Objects of the Act:

The Act is enacted with a view to achieve the following objectives

1. To eradicate the evil system of Devadasi, Bason, Jogini, Parvathi etc., by enacting suitable legislation, declaring such practices as illegal, providing for deterrent punishment to those who perform promote, take part in or abet the performance of any ceremony for dedicating a woman as Devadasi or any ceremony connected therewith.

2. To prohibit the dedication of woman as Devadasi in the State of Andhra Pradesh to Hindu deities, Idols, objects of worship, temples and other religious institutions or places of worship exists in certain parts of the State of Andhra Pradesh; and such practice, however ancient and pure in its origin, leads many of the women so dedicated to degradation and to evils like prostitution; and

3. To put an end to the practice.

Short title, extent and commencement :- (1) This Act may be called the Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988. This Act came into force on 31.3.1988. It extends to the whole of the State of Andhra Pradesh.
Section 2: Definitions:

In this Act, unless the context otherwise requires,

(a) “dedication” means the performance of any act or ceremony by whatever name called, by which a woman is dedicated to the service of a Hindu deity, Idol, object of worship, temple or other religious institution or place of worship and includes tying “tali with jakini” to a woman or tying a woman by a garland to a Garuda Khambham, dhaarana and deeksha;

(b) “Devadasi” means any woman so dedicated by whatever name called and includes Basavi, Jogini, Parvathi, Mathamma and Thyamma;

(c) “Government” means the state Government;

(d) “notification” means a notification published in the Andhra Pradesh Gazette and the word ‘notified’ shall be construed accordingly;

(e) “Woman” means female of any age.

Section 3: Dedication as Devadasi to be Unlawful:

(1) The dedication of a woman as Devadasi, whether before or after the commencement of this Act and whether she has consented to such dedication or not, is hereby declared Unlawful and void; and any woman so dedicated shall not thereby be deemed to have become incapable of entering into a valid marriage.

(2) Any custom or usage, prevailing in any Hindu community such as the Begum, Kalavanthula, Sani, Nagavasulu, Devadasi, Kurmapulu, Basavi, Jogini and Parvathi and the like, that a woman of that community who gives or takes part in any melam (nautch), dancing or music performance in the course of any procession or otherwise is thereby regarded as having adopted a life of prostitution and becomes incapable of entering into a valid marriage, and the performance of any ceremony or act in accordance with any such custom or usage, whether before or after the commencement of this Act and whether the woman concerned has consented to such performance or not, are hereby declared Unlawful and void.
Section 4: Marriage of Devadasis:

No marriage contracted by a woman in accordance with any Law, custom or usage shall be invalid and no child of such marriage shall be considered as illegitimate by reason only of such woman being a ‘Devadasi’

Section 5: Penalties:

Any person who performs, promotes, takes part in or abets the performance of any ceremony or act for dedicating a woman as Devadasi or any ceremony or act connected therewith shall on conviction be punishable with imprisonment of either description for a term which may extend to three years but which shall not be less than two years and with fine which may extend to rupees three thousand but which shall not be less than rupees two thousand:

Provided that where the person referred to in this section is a parent or guardian or relative of a woman so dedicated, he shall on conviction be punishable with imprisonment of either description for a term which may extend to five years but which shall not be less than two years and with fine which may extend to rupees five thousand but which shall not be less than rupees three thousand provided further that the woman who is dedicated in such ceremony or act or in respect of whom such ceremony or act is performed shall not be punishable.

Section 6: Punishment for propagation:

whoever propagates the practice of dedication of woman as Devadasi shall on conviction be punishable with imprisonment of either description for a term which may extend to three years but which shall not be less than one year and with fine which may extend to rupees five thousand but which shall not be less than rupees two thousand.

Section 7: Powers to be conferred on Collector:

The Government may confer such powers and impose such duties, on the Collector or any other officer of the Revenue Department not below the rank of Mandal Revenue Officer, as may be necessary to ensure that the provisions of this
Act, are properly carried out and may specify the local limits within which such powers or duties shall be carried out by such officers.

**Section 8: Duties of Collector and other officers:**

It shall be the duty of every Collector and other officers specified under Section 7 to inquire whether after the commencement of this Act, the system of Devadasi is being practiced and if as a result of such enquiry, any such practice is found to exist, he shall forthwith take such action as may be necessary to put an end to such practice.

**Section 9: Offences to be tried by Executive Magistrates:**

The Government may confer, on an Executive Magistrate, the powers of a Judicial Magistrate of First Class or of the Second Class for the trial of offences under this Act; and on such conferment of powers, the Executive Magistrate, on whom the powers are so conferred, shall be deemed for the purposes of the Code of Criminal Procedure, 1973 to be a Judicial Magistrate of the First Class, or of the Second Class, as the case may be.

**Section 10: Offences under the Act to be cognizable and non-bail able:**

Every offence under this Act shall be cognizable and non-bail able.

**Section 11: Power to make rules:**

1. The Government may, by notification, make rules for carrying out all or any of the purposes of this Act.

2. Every rule made under this Act shall immediately after it is made, be laid before the Legislative Assembly of the State if it is in session, and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session in which agrees in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be; so however
that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 12: Repeal and Saving Act XXXI of 1947:

(1) The Andhra Pradesh (Andhra Area) Devadasis (Prevention of Dedication) Act, 1947 is hereby repealed.

(2) On such repeal the provisions of Sections 8 and 18 of the Andhra Pradesh General Clauses Act, 1891, shall apply.

4.7 Section 145 - Indian Railways Act, 1989:

Section 145 provides for punishment for the acts of drunkenness or nuisance - if any person in any railway carriage or upon any part of the railways is in a state of intoxication: or commits any nuisance or act of indecency or uses abusive or obscene language; would be punishable with a fine of up to Rs. 100/- (now Rs. 500/-) on conviction and on second or subsequent conviction, imprisonment of one month and a fine.

It has been found that in practice, this section is being used regularly by the GRP against street prostitutes found soliciting in railway premises. Using such section against women victims of prostitution does not serve any purpose beyond penalizing an already victimized group. If action is to be taken by the GRP, they may use sections of ITP Act for this purpose.

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4.8 Sections 110 - Bombay Police Act:

This section provides for punishment for behaving indecently in public places or indecently exposing persons in any street, of fine up to Rs.1200/- or imprisonment in lieu of it.

This is a widely used section by the police against a wide variety of persons who are taken charge of in Law and order situations, including for picking up victims of prostitution. In fact, the usage of this section is far wider than the usage of the ITP ACT. The impact of this section on the victims does not go beyond temporarily driving them away, and in fact, add to their financial burdens. The use of this section against women found soliciting in public places should be stopped and Section 7 and 8 of ITP ACT may be used, if necessary.

In the case of A.G. Narvel V/s B.I. Nhinglavha and others (1999), the Mumbai High Court observed that conviction under Section 110 of the BP Act, ipso facto does not mean that a person arrested is a prostitute. For the control of prostitution, the High Court suggested the use of ITP Act.

4.9. Juvenile Justice Act, 2000:

2(D) - Child in need of care and protection

Minor girls rescued from red-light areas, beer bars, massage parlours, hotels, lodges or such other places are being produced before the legally constituted (under the said Act) Child Welfare Committees, as children in need of care and protection.

The issue of the age verification process assumes significance here. Whether a rescued person will be dealt with under this Act entirely depends on the findings of the age verification process ordered by the CWC. Often, allegations are made about how this process gets vitiated through exchange of money at the police / Government hospital. Also the issue of the accuracy of a process where a person's age is calculated on the basis of X-Rays of bones and teeth count comes into question. There is also
the question of whether such tests should be carried out without the consent of the persons concerned i.e. the alleged minors in question.

Section 49 makes it clear that age verification does not only rest on medical examination, as is currently being interpreted. It states that the CWC shall collect whatever information or evidence they deem fit to arrive at a finding on this issue and that their decision on this matter would be final. This implies that other processes such as getting the birth certificates, any other documents, photographs, home visit, etc, could be taken recourse to by the CWC.

4.10 The Child Labour (Prohibition & Regulation) Act, 1986:

The Child Labour (Prohibition & Regulation) Act 1986 aims to prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other engagements. This Act intends to prohibit the employment of children who are under the age of 14 years, in certain occupations and processes. It also intends to regulate the conditions of work of children in employment in which they are not prohibited from working. This Act does not abolish child labour. Its object seems to be mostly regulatory in nature than prohibitory. This Act does not seem to be in consonance with the spirit of the Constitution of India. Article 24 of the Constitution prohibits employment of children below the age of 14 years in any factory, or mine or any other hazardous employment. This Act only provides a list of hazardous occupations.

4.11 The Information Technology Act 2000:

The information technology Act analyses publications are transmission in the electronic form of any material which is lascivious or appeals to prurient interest or if it effect is such to tend to deprive and correct persons to read, see or near the matter contained or embodied there in the Law has relevant to address the problem of pornography. India also adopted a code of conduct for Internet Service providers with the objective to enunciate and maintain high standard of ethical and professionals practices in the field of Internet and related services.
4.12 The Protection of Children from Sexual offences Act 2012:

The Protection of Children from Sexual Offences Act, 2012 has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children.

Sexual offences are currently covered under different sections of IPC. The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims.

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court.

An offence is treated as “aggravated” when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.

Punishments for Offences covered in the Act are:

- Penetrative Sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4)
- Aggravated Penetrative Sexual Assault (Section 5) – Not less than ten years which may extend to imprisonment for life, and fine (Section 6)
- Sexual Assault (Section 7) – Not less than three years which may extend to five years, and fine (Section 8)
- Aggravated Sexual Assault (Section 9) – Not less than five years which may extend to seven years, and fine (Section 10)
- Sexual Harassment of the Child (Section 11) – Three years and fine (Section 12)
• Use of Child for Pornographic Purposes (Section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:

• Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector
• No child to be detained in the police station in the night for any reason.
• Police officer to not be in uniform while recording the statement of the child
• The statement of the child to be recorded as spoken by the child
• Assistance of an interpreter or translator or an expert as per the need of the child
• Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
• Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
• In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
• Frequent breaks for the child during trial
• Child not to be called repeatedly to testify
• No aggressive questioning or character assassination of the child
• In-camera trial of cases

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the commission of the offence.
The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.

For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted on the accused. This provision has been made keeping in view the greater vulnerability and innocence of children. At the same time, to prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year).

The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year.

For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible.

To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.
The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act


A comprehensive Policy and action plan covering various accepts such as prevention of trafficking, rescue, repatriation, economic empowerment, health care, education, housing, legal reforms and creation of corpus fund is necessary for addressing the problem of trafficking. There is also need for planning and co-ordination both at the district level and state level for addressing the deep rooted and underlying causes of trafficking and also taking adequate measures for psychological support, economic empowerment and re-integration so that the victims do not get drawn in to the trade against on account of non availability of other options for lively hood. As most of the components of action plan have to be implemented at the district level, Government has decided to constitute district level committees for taking of activities for prevention, rescue and rehabilitation of victims under G.O.M.S No-1, dated: 03-01-20003. Accordingly the Government has constituted district level committees in Andhra Pradesh, India with the following composition.

District Collector : Chairman
Superintendent of Police : Member
District Education officer : Member
PD, District Medical and Health officer : Member
PD, District Rural Development Authority Authority : Member
Representative of the SC/ST/BC Women Finance corporations : Member
NGOs/prominent social workers working in related areas : To be nominated by district collector
Project Director Women Development & Child welfare Agency : Member-Convener

Government has also decided that the following activities shall be taken up by the district level committees.
Prevention:

Prevention of trafficking in women and children can be achieved only by the addressing the root causes. Poverty and illiteracy have been identified as two primary causes of trafficking. It is, therefore, necessary to ensure that the various schemes for eradication of poverty are focused at benefiting families in which women and children are vulnerable or are at high risk of being trafficked for sexual exploitation and commercial purposes.

The district committee shall, therefore among other measures=, take the following preventive action.

- Create a reliable and relevant data base with the help with of NGOs on the high supply areas, routes, destinations, causes of trafficking, exploitation and magnitude of the problem.
- Create public awareness and motivate public resistance to trafficking through programs in educational institutions, Self help groups (SIGs), Women groups, youth groups using print and visual media extensively.
- Adopt a campaign approach/mode to combat the evils of trafficking and sexual exploitation with the help of local bodies, educational institutions, NGOs, etc.
- Organize social boycott of the persons indulging in trafficking.
- Prepare Panchayath level and Mandal level action plans by establishing similar committees at the Mandal and panchayath levels.
- Set up community vigilant Groups in every Panchayath especially in high-risk areas to monitor, report and take action if necessary against persons involved in trafficking.
- Establish and run care homes in all high supply areas for high risk groups like street children, neglects children, etc. so as to prevent exploitation of their vulnerability.
- Create a proper convergence of various benefit schemes for women and girl children to empower high-risk-groups.
**Trafficking Measures:**

The district committees shall set up an Anti-Trafficking squad in every District headed by an officer not below the rank of Deputy Superintendent of Police. The Anti-Trafficking squad shall be supported by the Project Director of Women Development & Child welfare, probation officers, Social workers and other NGOs who are specially sensitized and trained for rescue and rehabilitation.

**The Anti Trafficking Squad shall:**

- Be vigilant at all entry and transit points its control area and act quickly on any report from the community vigilant groups or from any concerned citizens on cases of trafficking.
- Establish contact centers at major transit point like bus stops/Railway stations to monitor migration of women and children.
- Establish help lines, help-booths and support centers under the jurisdiction of each Police station and assist the victims in getting immediate help.
- Conduct rescues with sensitivity, confidentially and care of victims.
- Enforce strictly the law against pornography including possession, production, sale and exhibition of any kind of pornographic material.

**Rescue:**

The District Committee shall:

- Immediately arrange for shelter facility for rescued victims.
- Submit proposals for establishment of Transit homes with facilities for trauma counseling, victim care, vocational guidance, re-integration which will be co-managed with credible NGOs, under centrally sponsored scheme SWADHAR.

**Economic Empowerment:**

The District committee shall:

- Formulate special schemes, which will converge with existing schemes to economically empower a victim.
• Provide guidance and assistance through self-Help groups (SHGs) of victims for micro credit facility and income generating facilities.
• Provide special assistance schemes under Women’s SC/ST/BC finance corporation for training and employment or self-employment on priority basis.
• Establish livelihood training programmes and training-cum-production centers for victims with collaboration and support of private institutions.
• Establish adequate marketing tie-ups.
• Make it mandatory for NGOs supported by the Government to employ victims who will form 50% of the total staff strength.

Health Care Services:

The District committee shall:

• Provide Health cards to women and child victims ensuring free medical treatment, adequate drugs and medication in all Government Hospitals.
• Provide care and support for HIV +ve victims of trafficking so as ensure holistic and non-discriminatory unbiased access to health services.
• Establish homes or support reputed NGOs to establish Homes wherever required for terminally sick victims by utilizing existing infrastructure under various departments/Agencies.
• Start mental Health intervention centers or counseling for victims for effective reintegration back to the mainstream society.

Education and Child care:

The District committee shall:

• Establish residential transit schools with proper counseling facilities in all Mandals so as to prevent second generation trafficking.
• Make it mandatory to admit all child victims and children of victims of trafficking in main stream schooling.
• Admit child victims or children of victim of trafficking in residential schools over and above the sanctioned strength.
• Provide free and compulsory education with support services like scholarships, Supplementary Nutrition and tuition so as to prevent Dropouts.
• Establish Vocational Training centers with adequate marketing links so as to provide livelihood skills for mainstream reintegration.
• Declare the children of trafficked women as Orphans and provide benefits in SC/ST/BC residential institutions/Hostel/Homes.

**Housing and Civic amenities:**

The district Committee shall:

• Arrange to provide victims of trafficking with electoral photo identity cards, if they are registered electors of the relevant consultancy.
• Provide while ration cards as a separate eligible category as a special case adopting existing income criteria.
• Provide allocation of house sites to rescued persons of priority.

**Legal Reforms:**

Government has also decided that necessary legal reforms shall be introduced for ensuring effective and speedy justice by:

• Working on amendments of criminal procedures to ensure gender and child sensitive application of judicial process and efficient, tight and stringent prosecution of traffickers including summary disposal of such cases ensuring proper and quick justice.
• Making provisions in the law for confiscation of assets of exploiters and for compensation to the victims.
• Setting up night courts so as to prevent holding of victims in police custody at night.
• Enacting a Law for imposing fine on the traffickers and crediting the amounts to the rehabilitation fund for the victims of trafficking.

**Rehabilitation and Relief Fund:**

The Government has also decided to utilize the existing the rehabilitation and relief fund for providing relief to victims of trafficking. The fund shall be utilized for:
• Facilities to the repatriated victims rescued from brothels and other places of trafficking to their homes.
• Providing immediate and timely relief to the victims of trafficking.
• Meeting Expenditure towards travel, clothing, other immediate necessaries, urgent medical care and other contingencies for victims of trafficking and their children.
• Supporting and networking with NGOs who are engaged in rescue and rehabilitation.

State Level Co-ordination Committee:

For reviewing the activities of the district committees and achieving the required inter departmental / multi sectoral co-ordination a state level co-ordination committee under the Chairmanship of the Chief Secretary to Government is setup with the following composition.

Chief Secretary to Government : Chairman
Principal Secretary to Government, Home department : Member
Principal Secretary to Government, Medical, Health & family welfare department : Member
Principal Secretary to Government, Social Welfare Department : Member
Secretary Government, School education department : Member
Secretary Government, Law Department : Member
Commissioners, Juvenile welfare, Correctional service & welfare of street children department : Member
Project Coordinator, AP State Aids control society : Member
Director, Women Development & Child welfare Department : Member
Two Non Government organization (NGOs)/Social Workers to the nominated by the Government : Member
Principal Secretary Government, Women Development, Child welfare & Disabled Welfare department : Member- Convener.

The state level co-ordination committee will meet once in three months to review the situation relating to trafficking and the implementation of messenger for rescue, rehabilitation and mainstreaming of the victims of trafficking.
All the concerned departments are requested to take further action and issue detailed guide lines for the proper implementation of the policy. The collectors and District Magistrates are also requested to constitute the District level committees and to take up Vigorous campaigns against trafficking as well as implementation of the various measures envisaged for the rehabilitation of the victims of trafficking.

**Relief and Rehabilitation Fund:**

A relief and rehabilitation fund was setup for providing relief to women who become unfortunate victims of atrocities, like Rape, Molestation, Kidnapping, Abduction of women and girls, Dowry deaths, etc., Under G.O.No-47 WDCW &DW Dept. dt:12-07-1999. Government has issued orders on the policy for combating trafficking of women and children for commercial sexual exploitation for providing relief to victims of trafficking. The Government have ordered that an amount of Rs. 20,000/- are actual, whichever is lower be paid either by director, women development and child welfare or the district collectors to the children or women were rescued from trafficking as immediate relief for the purpose of travel, clothing, medicine and other immediate necessities, without budget control.