

The Immoral Traffic (Prevention) Act, 1956: An Overview

In India, the legal regime on sex work in India is laid down under the **Immoral Traffic (Prevention) Act, 1956 (“ITPA”)**. ITPA does not proscribe sex work *per se* but penalises specific activities related to commercial sex. It also provides for rescue & rehabilitation of persons in sex work. The Act is implemented through Police & the Magistracy. Acts punishable under ITPA include:

- **Brothel keeping** (Section 3)
- **Living on earnings of sex work** (Section 4)
- **Procuring, inducing or detaining for prostitution** (Section 5 & 6) Penalties are higher where offences involve children (<16 yrs) & minors (< 18 yrs)
- **Prostitution** in areas notified by Police & near **public places** (Section 7)
- **Soliciting** (Section 8)

All offences are cognizable i.e Police do not require a warrant to arrest or search. (Section 14)

Police personnel entrusted with the implementation of the Act locally (**Special Police Officers**) as well as at the national level (**Trafficking Police Officers**) are accorded **special powers** (Section 13) to **raid, rescue & search** premises suspected of serving as brothels (Section 15). Magistrates are authorized to **order arrests & removal, direct custody of rescued persons, close down brothels & evict sex workers** (Sections 16, 17, 18 & 20). The Act provides **institutional rehabilitation** for ‘rescued’ sex workers. (Sections 19, 21, 23 & ITPA State Rules)

Implications

- Sex work *per se* is not illegal under the Act, but, its *de facto* criminalization through prohibition of soliciting, brothel & street work, has effectively undermined sex workers’ ability to claim protection of law
- Absence of safeguards has intensified violence & exploitation by brokers, agents & the mafia.
- Punitive provisions are inimical to public health interventions to reduce HIV.
- Fear of arrest, infringement by Police makes negotiation of safer sex difficult
- Peer educators carrying condoms are apprehended for ‘promoting sex work’
- Attempts to promote condom use in brothels have been aborted.
- Disempowerment of sex workers increases harms of HIV & Trafficking

Specific Problems

I. Prohibition of Brothels: Section 2(a) defines ‘brothel’ as “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’.” Section 3 provides punishment for keeping, running & managing a brothel. The term “mutual gain of two or more sex workers”, renders premises shared by sex workers illegal, including their residence. There have been several instances where sex workers have lost their homes & earnings under the guise of ‘closing down brothels’. As long as brothels remain illegal, universal condom use cannot be achieved.

II. Criminalisation of Earnings of Sex Work: Section 4 punishes adult persons being economically supported by sex workers including those living with sex workers. Therefore, aged parents, siblings, partner(s), children over 18.yrs, who are dependent on sex workers are treated as criminals. In reality, a significant majority of persons, particularly women, turn to sex work to support their families including children & parents. Ironically, these very persons are punishable by law.

III. Penalties for Soliciting: Section 8 punishes a sex worker drawing attention of potential customers from a visible, conspicuous site, whether in a street or private dwelling. The criminalisation of soliciting is one of the most obvious legal problems for sex workers, who are faced with arrests, court hearings & convictions on a routine basis. Sex workers are arrested even when they're not soliciting. Most plead guilty finding themselves in a vicious cycle of criminalization. Though this provision does nothing to prevent or abate trafficking, it is "most-used", with maximum arrests & convictions being reported under Section 8, ITPA.

IV. Statutory Powers & Procedures: ITPA confers wide powers on Police to conduct & Magistrates to order:

- **Raid**
Police can enter and search any premises on suspicion. Raids are often carried out in breach of statutory procedure for public witness, female Police etc. Violence, abuse & humiliation of sex workers is common. Raids impair sex workers' ability & result in increased harm.
- **Medical examination**
Section 15 (5A) mandates medical examination of persons removed from brothels for, *inter alia* detection of sexually transmitted diseases. Sex workers are reportedly forcibly tested for HIV & their results disclosed in open Court. This is contrary to national policy, which requires consent, confidentiality & counselling for HIV Testing.
- **Rescue & Rehabilitation**
Police can remove any person found in premises where sex work is carried out regardless of age & consent. Rehabilitation is synonymous with detention in State run homes for indefinite periods. Viable economic alternatives are either non-existent or unavailable to sex workers on account of stigma.
- **Expulsion of sex workers**
Sections 18 & 20 authorize Magistrates to close down brothels & expel persons from premises where sex work is being carried out, including their residence. Threatened with eviction, sex workers are forced to relocate with no access to health & HIV services.

Over the last 50 years, ITPA has failed to prevent & intercept trafficking. On the contrary, it has become a source of repression for sex workers, who face routine harassment & repeated arrests. **The Act is an abject failure & requires a complete overhaul.**