



Immoral Traffic (Prevention) Act, 1956

For Prelims: [Immoral Traffic \(Prevention\) Act, 1956](#), Freedom of Profession, Ujjawala, [National Commission for Women](#)

For Mains: Recognition of sex Work as a Profession, Rights of Sex worker, Government Policies & Interventions

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Why in News?

Recently, the Kerala High Court has widened the **definition of the word 'procure' in Section 5 of the [Immoral Traffic \(Prevention\) Act, 1956](#)**, to include customers seeking the services of prostitutes.

What is the Immoral Traffic (Prevention) Act of 1956?

▪ About:

- The Immoral Traffic (Prevention) Act (ITP), 1956, aims to prevent the **commercialisation of vices and the trafficking of females**.
- It delineates the legal framework surrounding sex work. While the act itself **does not declare sex work illegal, it prohibits running brothels**. Engaging in prostitution is legally recognized, but soliciting people and luring them into sexual activities are considered illegal.

▪ Definition of Brothel:

- Section 2 defines a brothel as any **place used for sexual exploitation or abuse for the gain** of another person or for the mutual gain of two or more prostitutes.

▪ Definition of Prostitution:

- Prostitution, as per the act, is the sexual exploitation or abuse of persons for commercial purposes.

▪ Offenses Under the Act:

- The section 5 of the act penalizes those who **procure, induce, or take individuals for prostitution purposes**. The punishment includes rigorous imprisonment for **3-7 years and a fine of Rs 2,000**.
 - For offenses against a **person's will or a child**, the maximum sentence can extend to fourteen years or life.
 - Child means a person who has not completed the age of **sixteen years**.

What did the Kerala High Court Rule?

▪ The current case:

- The petitioner was arrested for being a customer in a brothel. Accused of offenses under the ITP Act's Sections 3 (keeping a brothel or allowing premises to be used as one), 4 (living on prostitution earnings), 5 (procuring, inducing, or taking persons for prostitution), 7 (punishing prostitution in or around public places),

- The accused filed a plea seeking discharge, arguing that as a **customer, he should not be implicated under the ITP Act.**

▪ **Ruling:**

- The Kerala High Court, while recognizing that the **term "procure" in section 5 is not explicitly defined in the 1956 Act**, interpreted it in the context of the act's objective of suppressing immoral trafficking and preventing prostitution.
 - The court ruled that the **term includes customers, and therefore, a customer can be charged under Section 5.**

▪ **Implications of the Ruling:**

- The Kerala High Court ruling expands the meaning of "procure" in Section 5, asserting that **customers, in addition to pimps and brothel-keepers**, can be held liable for procuring persons for prostitution.
- The ruling does not declare the petitioner guilty under Section 5; rather, it **allows charges to be filed, necessitating a trial.**
 - Notably, the petitioner was discharged of offences under Sections 3, 4, and 7 by the High Court.

▪ **Differing High Court Opinions:**

- **Mathew vs the State of Kerala(2022):**
 - The Kerala HC ruled that a customer caught in a brothel can be prosecuted under the ITP Act. **"Section 7(1) of the Act penalizes two types of persons for indulging in prostitution within the areas specified.**
 - Those persons are (i) the person who carries on prostitution and (ii) the person with whom such prostitution is carried on," the HC said, adding that the act of immoral traffic **cannot be perpetrated or carried on without a 'customer'.**
- **Goenka Sajan Kumar vs The State Of AP (2014) and Sri Sanaula vs State Of Karnataka (2017):**
 - The Andhra Pradesh and Karnataka HCs ruled against prosecuting brothel customers under sections 3-7 of the ITP Act.

What is the Legality of Sex Work?

▪ **Sex Work as a Profession:**

- The Supreme Court has [recognised sex work as a "profession"](#) and observed that its practitioners are **entitled to equal protection of the law and criminal law** must apply equally in all cases, on the basis of **'age' and 'consent'**.
 - The Court held that **Voluntary sex is not a crime.**

▪ **Equality in Business:**

- Courts have held that individuals, regardless of their chosen profession, have an **equal right to carry on any business.**
- The [Supreme Court of India](#) in **Budhadev Karmaskar v. State of West Bengal (2011)**, secured the rights of sex workers and emphasized the **protection afforded by Article 21.**

▪ **Fundamental and Human Rights:**

- In the case of **Gaurav Jain vs Union Of India And Ors(1989)** the Supreme Court recognized the fundamental and human rights of sex workers, asserting their right to dignity and protection under the law.
 - The Court found that the children of the sex workers have the **right to equality of opportunity, dignity, care, protection and rehabilitation** and to be part of the **"mainstream of social life" without any attached "pre-stigma".**

What Initiatives Have Been Taken to Address Sex Workers?

▪ **Ujjawala:**

- The Ministry of Women and Child Development is implementing "Ujjawala" – a Comprehensive Scheme for the Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and **Repatriation of Victims of Trafficking for Commercial Sexual Exploitation.**

▪ **National Commission for Women:**

- The establishment of the [National Commission for Women](#) reflects the government's commitment to ensuring the rights of women and girls involved in prostitution are protected.
- **National Human Rights Commission:**
 - [NHRC](#) recognised sex workers as informal workers.
- **Awareness Campaigns:**
 - The Supreme Court urged the government in 2018 to take action against the **exploitation of women in the sex industry** and consider legalization in specific locations with rigorous regulation.
 - In response to the court's directive, the **government initiated widespread awareness campaigns** to educate the public about the risks associated with the commercial sex trade.

What are the Societal Perceptions Regarding the Sex Work?

- **Cultural Stigma:**
 - While legal in certain contexts, prostitution is often viewed as unethical and a breach of cultural values. Some cultures perceive it as a threat to the sanctity of marriage and family.
 - Women in Sex Work (WSW) have been identified as one of the most discriminated and vulnerable populations in India.
 - Sex workers often face **social isolation** due to the stigma attached to their profession.
- **Gender Dynamics:**
 - Many see prostitution as a **degrading and abusive profession**, particularly targeting women.
 - The profession is often associated with exploitation and harm.
 - Sex workers encounter derogatory terms, physical violence, and discrimination, exacerbating their vulnerability.
- **Advocacy for Autonomy:**
 - On the flip side, proponents argue that **women should have the agency to decide how they use their bodies**.
 - Some view prostitution as a profession where women can exercise their freedom of choice.

Way Forward

- The ethical implications of prostitution in India remain a subject of ongoing debate. Regardless of one's stance, **upholding trafficking laws is deemed crucial** to preventing women and girls from falling victim to enslavement.
- Encourage **open dialogue and educational programs** to sensitize communities to diverse perspectives on sex work, considering cultural sensitivities.
- **Emphasize the legal recognition of the equality of all citizens**, regardless of their chosen profession.