Kerala HC Ruling on ITP Act of 1956

Why in News?

Recently the Kerala High Court ruled that a customer in a brothel can be charged under the Immoral Traffic (Prevention) Act, 1956.

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

- **Human trafficking** – Forced or illegal transfer of people for the purpose of labour or other illegal activities.

  *Under **Article 23 (1)** of Indian constitution, trafficking in human beings or persons is prohibited in India.*

- **Passed in** – 1956, as All India Suppression of Immoral Traffic Act ***(SITA)*** in pursuance of the *International Convention signed by India in 1950*, for the prevention of immoral traffic.
- **Objective** – To prevent the commercialisation of vices and the trafficking of females.
- **Amendment Act of 1986** – It has amended the title to 'Immoral Traffic (Prevention) Act' and replaced the words '*Women and Girls'* with the word *'Persons'*.
- It now ***prohibits traffic in human beings*** and not traffic in women and girls alone and a framework to inhibit or abolish commercialized traffic in persons.
- It provides for ***rehabilitating*** those rescued from the vice.
- **Definition** – Section 2 of the act defines both 'brothel' and 'prostitution'.
- **Brothel** – It includes *any house, room, or place,* or any portion of any house, room 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.
- **Prostitution** – It is defined as the sexual exploitation, or abuse of persons, *for commercial purposes*.
- **Special police officer** – There shall be for each area to be specified *appointed by or on behalf of state government* who shall not be below the rank of an Inspector of Police.
- **Protective home** – An institution where people in need of care and protection are kept.
- **Corrective institution** – An institution where a person in need of correction or reformation may be detained but no victim can be sent to a corrective institution against her wishes if she is an adult.
- **Punishment** – It penalises acts such as
  - Keeping a brothel
  - Soliciting in a public place

    - Living off the earnings of sex work
    - Living with or habitually being in the company of a sex worker
- ***Section 5*** of the act deals with punishments.
    - For procuring or attempting to procure a person, with or without their consent, for prostitution purposes.
    - For inducing persons to go from any place, for prostitution purposes, to become inmates of, or frequent, a brothel.
- **Imprisonment** – Inducing persons to engage in prostitution is punishable with *rigorous imprisonment for 3–7 years*, along with Rs 2,000 fine and if it is committed against their will, the maximum sentence can be *extended to 14 years or life*.

What is the current case?

- **Petitioner** – A customer in a brothel, was arrested and accused of offences under the ITP Act's different sections like
    - 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
- **Petitioner's plea** – He shall not be implicated for any offence under the ITP Act.
    - Section 15(5) and 15(5A) mandate *producing the offender before the magistrate*, and their *medical examination* to determine age, sexually transmitted diseases (if any), and injuries caused due to sexual abuse.
- **District court ruling** – It rejected the plea of petitioner and directed that charges be framed against him.
- **Kerala HC ruling** – While the *term "procure" isn't defined in the 1956 Act,* the court construed the word to mean those getting or obtaining "domain over a person" for prostitution.
- It concluded that a ***consumer also comes within the purview of Section 5*** and held that a customer can be charged under it.
- However, the petitioner was discharged of offences under Sections 3, 4, and 7 by the High Court.

- **Significance of the ruling** – By adding that ***a customer will be held liable*** in addition to pimps/brothel-keepers who hire persons for prostitution.

Prosecution of customers
• **Mathew vs the State of Kerala, 2022**– A customer caught in a brothel can be prosecuted under the ITP Act. • **Section 7(1) of the Act** – It penalises - The person who carries on prostitution - The person with whom such prostitution is carried on • The HC also said that the act of immoral traffic cannot be perpetrated or carried on without a customer.
Against the prosecution of customers
• The Andhra Pradesh and Karnataka HCs in ***Goenka Sajan Kumar vs The State of AP (2014)*** and ***Sri Sanaulla vs State Of Karnataka (2017)*** ruled against prosecuting brothel customers under sections 3-7 of the ITP Act.

References

1. The Indian Express| Ruling of Kerala HC on ITP Act of 1956
2. Ministry of WCD| The Immoral Traffic (Prevention) Act, 1956