

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 Sajjan 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](#)

