

Quadrant II – Notes

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**Module Name: Scheme of Legislation, Purpose of Legislation,
Important Definition**

Module No: 33

Scheme of Legislation, Purpose of Legislation, Important Definitions

Indian Legislation on Immoral Traffic

According to Article 23 of the Indian Constitution Trafficking in Human Being is prohibited. Right against exploitation is fundamental right putting an end to all forms of trafficking in human beings including prostitution. India has also signed the International Convention at New York in 1950, which required a legislation to implement the same. There had been number of Local acts in force in India in some states but they were neither uniform nor effective

In the light of all above circumstances, The Indian parliament has thought it fit and desirable to pass a central law that will not only secure uniformity throughout the country but also would implement the fundamentals rights in Article 23 of the constitution and also convention obligation of 1950.

Accordingly, the parliament has passed the Suppression of Immoral Traffic in women and Girls Bill of 1954 which became the Immoral Traffic in women and Girls Act 1956 and it was shortly known as SITA. This act was covering only females and children.

Subsequently it has been realised that prostitution is not confined only to females and children but also covers the males. In order to cover even the males,

the act was renamed as the immoral Traffic (Prevention) Act 1956 by an amendment in 1986. Now the act covers both the males as well as females as it uses the expression the 'persons'. Power to make rules has been vested in the state Governments and accordingly many states have framed rules for carrying out the purposes of the Act effectively

Scheme of Legislation

The Immoral Traffic (Prevention) Act 1956 contains 25 sections. Those provisions are supplemented by the Rules framed by various State Governments. The Act underwent many Amendments in 1978, 1986, 2006 and in 2018 which introduced radical changes in the scope of the legislations. The persons covered thereunder and the definition of Prostitution. The Act also contains number of penal provisions which aims to punish those who keep or manage a brothel, who procure, induce or take a person for prostitution and who carry on prostitution in the vicinity of a public place etc.

Purpose of Legislation

The purpose of the enactment to inhibit or to abolish commercial traffic in women, men and children for the purpose of Prostitution as an organised means of living. The aim was not to render prostitution per se a criminal offence or punish a woman merely because she prostitutes herself.

The provisions found in sec 7 and 8 of the Act however makes the practice of prostitution in or in vicinity of certain places of public, religious worship, educational institutions, hospitals etc. punishable.

The Act not only deals with social but also socio- economic problem therefore the provision of the legislation is more preventive than punitive.

Prostitution [Sec 2 (f)]

Prostitution “means the sexual exploitation or abuse of persons for commercial purposes or for consideration in money or in any other kind, and the expression “prostitute” shall be construed accordingly.

Essentials of Prostitution

1. A female must offer her body to an indiscriminate intercourse with men, usually for hire. It must be promiscuous intercourse for hire.
2. There must be sexual Intercourse
3. It must be for hire. Consideration may be in cash or kind.

Brothel

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. It is vital to prove whether such place is used for commercial exploitation or abuse. It is a question of fact whether a single use of such a place can make it fall under the definition of the brothel. It must be noted that it largely depends on the circumstances surrounding and the person keeping the place. An accommodation would be brothel if it is used for the purpose of prostitution which must be for the gain of at least two prostitutes.

To constitute a brothel the place must have been used for the purpose of the prostitution. A solitary instance of Prostitution committed within any house or the room or place would not satisfy the ingredients of a brothel. The essential ingredient of brothel as defined in sec 2(a) of the act is the place being used for

the purpose of sexual exploitation or abuse. In order to establish prostitution evidence of not more than one customer is not always necessary. All that is essential is to prove that a girl or lady should be offering her body for promiscuous sexual intercourse for hire.

A single instance coupled with the surrounding circumstances may be sufficient to establish that the place is being used as a brothel.

Public Place

Public place means any place intended for use by, or accessible to, the public and includes any public conveyance

Punishments under the Act

The punishments imposed under the act are varied and can be found in sections 3-9, 11, 18, 20 and 21.

The offences punishable are keeping and using of premises as a brothel, living on the income earned via prostitution, pimping or else soliciting for prostitution, seducing a person in custody and prostitution in a public area etc. an offence punishable under the act

Sec 3

Section 3 punishes any person with rigorous imprisonment who keeps or allows premises to be used as a brothel. The manager of a brothel shall get a punishment between one year to three years with a fine of Rs. 2000 on first conviction and for subsequent conviction the punishment shall be between two to five years with the same amount of fine. As per sub-section (2) an owner-tenant, lessor-lessee or landlord-occupier shall be punished with at least two years with a fine of Rs. 2000 on first conviction and for subsequent conviction

the punishment may be enhanced to five years with a fine. A conviction from section 3 makes the lease of the place invalid where brothel was run.

Sec 4

As per section 4, a person living his life from the money made by a prostitute can be imprisoned for two years or a fine of Rs.1000 or both and if found such earning is made from prostituting a child or a minor then it can go up to ten years no less than seven years of imprisonment shall be served. One requisite of this section is that a person should be above the age of eighteen. Examples of section 4 are pimp, tout, a person habitually living with a prostitute etc. Section 3 and 4 do not apply to the customers of a prostitute.

Sec 5

Section 5 of the PITA pertains to procuring, inducing or taking [person] for the sake of prostitution. This offence is complete when a person procures another person for prostitution or induces such person to go from any place with intent that such person becomes the inmate of a brothel or to take such a person from one place to another to carry on prostitution.” The punishment is rigorous imprisonment of 3 to 7 years with Rs. 2000 fine. If it is done against a persons’ will or is minor, then between seven to fourteen years and if the same is done with a child then it is seven years to life imprisonment

Sec 6

Section 6 allows the court to punish a person detained in any place used for prostitution for seven to ten years imprisonment of either description along with fine.

The court has to provide special reasons if the punishment of fewer than seven years has been given to the accused. No legal proceedings would lie against any woman who has been detained under such premises by the detainer

There are certain presumptions in section 6 like: A child in a brothel found to have been sexually abused then she has been detained for purpose of prostitution, or

It is presumed under sub-section (3) that a woman is detained for sex if a person withholds her property like jewellery or induces her with the threat of legal proceedings if she dares to take away her property.

Sec 7

Section 7 (1) bars people to carry on prostitution within a specified area, violation of this provision leads to the imprisonment of three months. However, the punishment changes to seven to ten years with fine if prostitution is committed within such specified areas with a child or a minor. Any punishment less than seven years shall be recorded with special reasons in the judgement.

Sec 7(2)

Section 7 (2) not only prohibits owner-tenant, lessor-lessee or landlord-occupier or agent but even the keeper of a public place like hotels prostitution in public vicinity. For the first conviction, the punishment is three months with a fine of Rs. 200 and for subsequent conviction, it is six months with a fine.

The licence of the hotel where prostitution is carried can be cancelled for a period not less than three months to one year. However, if a child or a minor is found in such hotel for prostitution then the licence can be cancelled forever

Sec 8 and sec 9

Seduction or solicitation in public places whether from within a house or not amounts to an imprisonment of six months with fine on first conviction which increases to one year for subsequent conviction under section 8. The word 'solicit' has the essential import of an oral entreaty or persuasion for prostitution.

Custodial prostitution leads to the imprisonment of either description for a term of seven years to life or ten years with fine as per section 9. Any punishment less than seven years needs to be justified by giving special reasons.