

Appendix V - Proposed Bill on ITP

**THE PREVENTION OF IMMORAL TRAFFIC AND
THE REHABILITATION OF PROSTITUTED
PERSONS BILL, 1993**

A Bill to prohibit immoral trafficking especially in women and children and to mitigate the suffering of victims of prostitution

*Be it enacted by Parliament in the Forty-fourth Year of the Republic of
India as follows:*

CONTENTS

1. Statement of Objects and Reasons		
2. Title, Extent and Commencement	Section	1
3. Definitions	"	2
4. Offences		
(i) Punishment for Immoral Traffic	"	3
(ii) Punishment for Prostitution	"	4
(iii) Punishment for Facilitating Prostitution	"	5
(iv) Presumptions under the Act	"	6
5. Welfare of Prostituted Persons		
(i) Government to conduct periodic Survey of Prostitution	"	7
(ii) State to set up adequate number of Protective Homes	"	8
(iii) State to Provide Health Care for Prostituted Women	"	9
✓(iv) Protective Homes to Accommodate Women and Girls in moral danger	"	10
(v) Rehabilitation to be Community-based with NGO Assistance	"	11
(vi) Welfare Fund for Women and Children in moral danger	"	12
(vii) Liability to pay compensation for injuries caused in Prostitution	"	13
6. Special Police, Special Court and Procedure		
(i) Special Police Officer and Voluntary Police	"	14
(ii) Offences to be Cognizable	"	15
(iii) Search without Warrant	"	16
(iv) Special Courts for Trial of Offences	"	17
(v) Special Court to Commit Women to Protective Homes	"	18
(vi) Power of Special Court to try cases Summarily	"	19
7. Power to make Rules	"	20
8. Repeal and Savings	"	21

Statement of Objects and Reasons

An increasingly large number of young girls and women are driven to the flesh trade every year. Finding an expanding market, more and more victims are lured from the countryside and even from neighbouring countries. Immoral trafficking which the Constitution has prohibited from the beginning of the Republic is continuing unabated in different forms and shades violating human rights and dignity. Often these practices have led to atrocities against women and children. Furthermore, it has led to spread of dreaded disease including AIDS threatening public health generally and the life of prostituted persons in particular. It is a complex problem which the State is obliged under the Constitution and under International Instruments to find satisfactory solutions. While voluntary sexual relations is the right of every adult citizen, it cannot be commercialised to the detriment of innocent victims, immature children, destitute women, and at the cost of social hygiene and public health.

The Suppression of Immoral Traffic in Women and Girls Act, 1956 was enacted in pursuance of the International Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of Others signed at New York on 9th May 1950. It was amended in 1978 and again in 1986 to make good some inadequacies in the Implementation of the Act. Despite the amendments to the Act, it has been felt that the enforcement of the Act has not been effective enough to deal with the problem of immoral traffic in all its dimensions.

Human rights groups and women's organizations have been seeking amendments to make penal provisions more stringent and to make people who indulge in prostitution (customers) also liable under law. Others have been demanding to empower prostituted women with a view to minimise exploitation by intermediaries and to seek better conditions for "sex workers". The question of the welfare of children of prostituted women also posed certain problems. Finally, the spread of sexually transmitted diseases including the dreaded AIDS demands new approaches and strategies from the law for effective regulation of the harmful effects of prostitution in society. The proposed Bill aims to respond to these problems and perspectives.

The main objects of the Bill are as follows

- (1) The name of the Act is to reflect the twin objectives intended to be achieved by the law, namely,
 - (a) the prevention of immoral trafficking in human beings, and (b) the protection and rehabilitation of victims of prostitution, particularly of girls.
- (2) It is proposed to prevent the exploitation of sex for commercial purposes (prostitution) by making the exploiters including the customers pay exemplary fine and do compensatory work.
- (3) It is proposed to make offences against children under the Act punishable very severely.
- (4) Sentences under the Act are proposed to be diversified in order to make it deterrent and effective in different situations.
- (5) It is proposed to involve voluntary organizations in the investigation of offences under the Act and in the implementation of objects under the Act.
- (6) It is proposed to empower women with certain rights for protection from exploitation and to provide for them effective rehabilitation.
- ✓ (7) Enabling provisions are included in the Act to authorise appropriate governments to constitute special investigation machinery for enforcing the provisions of the Act and to ~~set up special courts~~ with civil and criminal jurisdictions for trial and disposition of cases under the Act.

1. Title, extent and Commencement:

- (i) This Act may be called the Prevention of Immoral Traffic and the Rehabilitation of Prostituted Persons Bill, 1993.
- (ii) It extends to the whole of India.
- (iii) The Act shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

2. Definitions:

- (a) 'Immoral traffic' means and includes any buying, selling, procuring, seducing or otherwise causing women and children to be used for prostitution;
- (b) 'Prostitution' means sexual abuse and exploitation for commercial purposes or for consideration in money or in kind;
- (c) 'Customer' means a person who sexually abuses or exploits another for purposes of prostitution;
- (d) 'Child' means a person of either sex who has not completed the age of eighteen years;
- (e) 'Brothel' means and includes any house, room, conveyance or a portion thereof used for the purposes of prostitution;
- (f) 'Brothel keeper' means a person who owns, controls, manages or otherwise is associated with the organization and conduct of the activity of prostitution.
- (g) 'Prostituted Women' means women who are victims of prostitution.
- (h) Persons in 'moral danger' means women and children who are destitutes or living in fear of sexual abuse in circumstances where there are reasons to believe that they may be prostituted.

CHAPTER II OFFENCES

3. Punishment for Immoral Traffic:

Notwithstanding anything contained in any other law for the time being in force, immoral trafficking in women and children shall be punishable with rigorous imprisonment which may extend to three years and with fine of not less than fifty thousand rupees.

Provided that on conviction for a second or subsequent time, the offence will carry a minimum imprisonment of seven years and fine of not less than rupees two lakhs.

Provided further, that the court ^{shall} ~~may~~ when the victim involved is a child of tender age increase the punishment appropriately to make it deterrent enough for prevention of such serious offences.

4. Punishment for Prostitution:

Persons who commit prostitution on women with or without consent are liable to be punished with fine which may extend to rupees fifty thousand ^{if the prostituted women prefer a complaint of sexual abuse, exploitation, physical harassment or refusal to use medically advised hygienic procedures.}

Provided where prostitution is committed on children, anyone on their behalf can prefer a complaint of sexual abuse or exploitation which is liable to be punished with imprisonment which may extend to five years and fine of not less than rupees one lakh.

shall

increased
to 7 yrs.

5. *Punishment for Facilitating Prostitution:*

(1) Those who abet in making people go for prostitution, those who detain persons in premises where prostitution is carried on and those who allow premises or vehicles to be used for the sake of prostitution, are guilty of facilitating prostitution and are liable to be punished with fine of not less than rupees fifty thousand and in appropriate cases, for a period of correctional or compensatory work. *or imprisonment - 5 yrs.*

(2) In public interest, the court may decide to get the names, addresses and guilty practices of persons convicted under clause (1) to be circulated among such agencies in government and outside as it may find appropriate.

Art Explanation: Correctional or compensatory work in this connection means and includes non-paid work such as (a) instruction in adult education programmes if the person is educated; (b) service to the aged and handicapped persons; (c) service in traffic and public security duties; (d) service in public works projects of the State/local government, etc.

6. *Presumptions under the Act:*

Notwithstanding anything to the contrary in the Evidence Act, in prosecution under Sections 3, 4 or 5 of this Act, the Court may presume:

(a) that a child found in a brothel or under suspicious circumstances in the custody of a person other than the parent or lawful guardian who is unable to explain satisfactorily the presence of such child has procured the child for purposes of prostitution;

(b) that a child found accompanying in suspicious circumstances a person who is neither its parent or lawful guardian and who is leaving the country is committing the offence of immoral trafficking.

Explanation: "Suspicious circumstances" in this section includes situations in which (i) the mother-tongue of the accused is different from that of the child or the language of the child is different from that generally spoken in the locality; (ii) where the child is wrongfully confined without access to others; and (iii) where the child is married to a foreigner.

victimised CHAPTER III : WELFARE OF PROSTITUTED PERSONS

7. *Government to conduct periodic survey of prostitution:*

The appropriate Government shall conduct with the help of social action groups working for welfare of women in the area, a survey every five years of prostitution and the nature of problems prostituted women suffer from. Special effort should be taken to identify in such surveys the extent of HIV/AIDS cases among them, their children and their spouses. *or - Periodic survey*

8. *State to set up adequate number of protective homes:*

a) It shall be the duty of the State Government to set up adequate number of "protective homes" with facilities for vocational training and rehabilitation of prostituted women and girls.

b) The appropriate Government shall frame uniform rules in consultation with the National/State Commission for Women for the maintenance and management of such protective homes in the State.

c) It shall be the policy of the Government to associate local NGOs working for the welfare of women in the maintenance and management of protective homes and rehabilitation of prostituted women and the policy shall be reflected in the rules framed under clause (b) of this Section.

9. *State to provide health care for Prostituted Women:*

Health care services to prostituted women deserve priority attention in health care planning. Towards this end, the appropriate Government shall set up a special cell in the health Administration to organise mandatory health check ups on prostituted women. The services rendered should consist of health schemes for the children of prostituted woman as well.

10. *'Protective Homes' to accommodate women in "moral danger":*

(a) Every "protective home" shall receive, besides those sent by a court or welfare board, all women who either on their own submission or on written statement of an NGO working for the welfare of women, seek admission to a protective home on grounds of "moral danger".

(b) Their stay in the protective home will be regulated by rules specially made for the purpose by the State Government.

11. *Rehabilitation to be community-based with NGO assistance.*

- (1) No Protective Home shall keep a person beyond a maximum period of two years after which community-based rehabilitation shall be arranged if necessary in association with NGOs of the area.
- (2) Every State Government shall develop one or more community-based rehabilitation schemes for prostituted women who need long-term attention and assistance.
- (3) The rules applicable in this regard shall be framed by the State Government in consultation with the State Social Welfare Board.

12. *Welfare Fund for Women and Children in "Moral Danger":*

- a) Every State Government shall create a separate fund for utilisation towards supporting rehabilitation schemes for prostituted women and those in "moral danger".
- b) The fines collected under this Act shall be remitted to this Fund by the State Government.
- c) The Fund shall be administered by a Board of Trustees appointed by the Government from among persons who have special skills and experience in the rehabilitation of prostituted women and children.
- d) The Fund shall receive special grants from the Government and other sources for the prevention and treatment of sexually transmitted diseases especially of HIV/AIDS among the prostituted women.
- e) Children of prostituted women will be entitled to receive free medical and educational services out of the Fund till they attain the age of eighteen years.

13. *Liability to pay compensation for injuries caused in Prostitution:*

Notwithstanding anything in any other law for the time being in force, prostituted women and children are entitled to claim against their sexual exploiters damages for injuries suffered in the Special Court constituted under the Act. Such damages may cover injuries, physical or mental, suffered in the sexual activity or prostitution.

Explanation

The injury for which special damages are allowed under this section includes:

- a) Physical torture or sexual abuse including intercourse after being refused and intercourse in an intoxicated condition;
- b) knowingly transmitting diseases;
- c) refusal to practise safe sexual conduct.

CHAPTER IV SPECIAL POLICE, COURT AND PROCEDURE

14. *Special Police Officer and Panel of Voluntary Police:*

1) There shall be for each area to be specified by the State Government in this behalf a Special Police Officer of the rank of an Inspector appointed for dealing with offences under the Act in that area.

2) The special police officer shall be assisted by a panel of honorary police officers preferably women, drawn from among social welfare workers of the area, retired police, military and judicial officers, public interest advocates and professors of law, social work, psychology and women studies departments. The panel to be prepared by the District Magistrate will serve for a period of three years according to rules framed by the State Government for the purpose. The honorary police officers thus empanelled will discharge all or any of the functions delegated to him/her by the Special Police Officer and generally advise him on the efficient enforcement of the provisions of the Act.

3) The State Government shall prepare a handbook containing guidelines for investigation of offences under the Act including welfare proceedings of the prostituted women. Such handbook should not only incorporate the relevant provisions of the Criminal Procedure Code, Police Act and the Evidence Act, but also the standard of conduct expected from police officers in dealing with women and children involved in sexual exploitation and "moral danger". The twin objects of the Act, namely, punishing the traffickers and exploiters on the one hand, and rehabilitating the prostituted women and children on the other must be adequately reflected in the hand book.

4) The State Government shall arrange periodical training courses at the State level with assistance from Social Welfare department to the Special Police Officers and honorary police officers involved in enforcement of the Act.

15. *Offences to be cognizable*

Notwithstanding anything contained in the Code of Criminal Procedure, any offence punishable under the Act shall be deemed to be a cognizable offence within the meaning of the Code.

Provided that arrest without warrant may be made only by the Special Police Officer or under his direction.

16. *Search Without Warrant:*

(i) Notwithstanding anything contained in any other law for the time being in force, the Special Police Officer can conduct a search without warrant any premise in which he has reason to believe that an offence under the Act is being committed.

(ii) Before making a search under sub-section (1), the Special police officer shall record the grounds as to why an immediate search (without warrant) is necessary and shall also take with him at least one woman honorary police officer so designated under the panel.

(iii) The Special Police Officer who apprehends anyone during search under sub-section (1) has to produce such person forthwith before the appropriate Magistrate.

(iv) Any person who is produced before a Magistrate under sub-section (iii) shall be examined by a registered medical practitioner for the purposes of determination of age, for detecting symptoms of sexual abuse or of any sexually transmitted diseases.

17. Special Courts to try offences under the Act:

(i) The State Government shall set up a Special Court of the rank of a district judge in every metropolitan area to deal with offences under the Act.

(ii) Notwithstanding anything contained in any other law for the time being in force, all proceedings (civil and criminal) under the Act shall be disposed off expeditiously and the Court should record reasons if any proceeding is unable to be decided within a period of one year from the date of framing of charge.

(iii) The Special Court besides having powers of a Sessions Court under Criminal Procedure Code for the trial of offences under the Act, shall also have civil jurisdiction under the Civil Procedure Code to process claims under Section 13 of the Act.

18. Special Court to commit women to Protective Homes:

(i) Notwithstanding anything contained in any other law for the time being in force the Special Court is empowered to commit upto a period of two years, women and girls to protective homes within the area who have either approached the court with an application for such protective custody on the ground of being compelled into prostitution or have been rescued in the course of search under Section 16 or have been referred as cases involved in moral danger by voluntary organisations working for women's welfare.

(ii) The procedure for confinement in the protective home shall be determined by rules framed by the appropriate Government in this regard.

19. Power of Special Court to try cases summarily

Notwithstanding anything contained in the Code of Criminal Procedure, the Special Court has the authority to try offences under the Act in a summary way.

Provided in the course of summary trial, it appears to the Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding two years may have to be passed or for any other reason it is undesirable to try the case summarily, the judge shall record an order to the effect and thereafter recall any witness, who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

20. Power to make rules:

(1) The State Government may, by notification in the Official Gazette, make rules for carrying on the purposes of this Act.

(2) All rules made under this Act shall, as soon as may be after they are made, be laid before the State Legislature.

21. Repeal and Savings:

(1) As from the date of the coming into force in any State of the provisions of this Act, all State Acts relating to prohibition of Immoral traffic and prevention of prostitution, in force in that State immediately before such date shall stand repealed.

(2) Notwithstanding the repeal by this Act referred to in sub-section (i), anything done or any action taken under the provisions of such State Act shall in so far as such thing or action is not inconsistent with the provisions of this Act be deemed to have been done or taken under the provisions of this Act as if the said provision were in force when such action was taken and shall continue in force accordingly unless superseded by any action taken under this Act: