

**FREQUENTLY ASKED
QUESTIONS
THE IMMORAL TRAFFIC
(PREVENTION) ACT, 1956**



KAILASH SATYARTHI CHILDREN'S FOUNDATION

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Frequently Asked Questions (FAQs): The Immoral Traffic (Prevention) Act, 1956

1. What is the objective of Immoral Traffic (Prevention) Act, 1956?

This is the Central law for the prevention of immoral traffic in India. The law regulates or curbs open manifestation of prostitution. It recognises certain acts related to prostitution as an offence. These are:

- a. Keeping a brothel;
- b. Living on the earnings of prostitution;
- c. Procuring, inducing or taking person for the sake of prostitution;
- d. Detaining a person in premises where prostitution is carried on;
- e. Prostitution in or in the vicinity of public places;
- f. Seducing or soliciting, etc.

2. What is prostitution? Is prostitution illegal in India?

In common parlance, the term prostitution or sex trade refers to an activity wherein a person, particularly a woman engages in sexual activity for payment.

As per section 2(f) of the Act, prostitution means the sexual exploitation or abuse of persons for commercial purposes for consideration in money or in any other kind, and the expression "prostitute" shall be construed accordingly.

- a. The Act neither legalises nor penalises the act of prostitution. It does not seek to abolish prostitution or sex work per se and hence practice of prostitution individually, independently and voluntarily by a woman does not constitute an offence. But the law prohibits and penalises certain acts related to prostitution such as prostitution in or in the vicinity of public places or Seducing or soliciting for the purpose of prostitution, etc.

3. What is a corrective institution?

Section 10-A defines a corrective institution as an institution where female offenders who are found guilty of offence under section 7 and 8 are detained for such term and such instruction and discipline conducive to their correction.

4. Does the offender have the right of being heard before such correction order is passed?

Yes, before passing such order the court provides an opportunity to the offender to be heard and shall also consider any representation which the offender may make to the Court as to the suitability of the case for treatment in such an institution.

5. What is the duration of detention in a corrective institution?

The detention order shall not be less than 2 years and not more than 5 years. The State Government or authority, authorised in this behalf may, after the expiration of 6 months from the date of an order for detention can order her release, if satisfied that the offender will lead a useful and industrious life, with or without condition and grant her a written licence in this regard.

6. What are the conditions for the release from Corrective Institution?

The condition for the release from the Corrective Institution includes requirements relating to residence of the offender and supervision over the offenders activities and movements.

7. What is a protective home?

A protective home is an institution where people in need of care and protection are kept under this Act. Protective homes must have certain equipment, facilities and technically qualified people.

8. Does a shelter where under trials are kept or the corrective institution comes under a Protective home?

No.

9. What is a 'Brothel' and what are the offences related to it?

According to Section 2(a)) "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.

Section 3 of this Act provides for punishment for keeping a brothel or allowing premises to be used as a brothel. They are

- a. Keeping or managing, or acting or assisting in the keeping or management of a brothel:

First conviction: RI not less than two years to three years and fine which may extend to ten thousand rupees.

Second or subsequent conviction: RI not less than three years to seven years and fine which may extend to two lakh rupees.

- b. any person who,—

(i) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises as a brothel, or

(ii) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same with the knowledge that the same is intended to be used as a brothel, or is wilfully a party to the use of such premises as a brothel, shall be punished with

First conviction: Imprisonment which may extend to two years and fine which may extend to two thousand rupees.

Second or subsequent conviction: RI which may extend to five years and also with fine.

10. What happens if person “A” is in charge of a premise, and someone else uses it as a brothel?

In this case, it shall be presumed, until the contrary is proved that “A” has knowingly allowed that premises or any part thereof to be used a brothel or has the knowledge that the premises or any part thereof are being used as a brothel.

11. How will the authorities decide that person “A” knew about the brothel?

The authorities will decide if:

- ✓ there is a newspaper report having circulation in the area in which such person resides, which says that the premise is being used for prostitution, following a search, or
- ✓ a copy of the list of things found during the search.

12. What will happen to lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence?

Such lease or agreement shall become void and inoperative with effect from the date of the said conviction.

13. Is it a crime to depend upon the earnings of prostitution?

Yes, as per Section 4 of the Act any person over the age of eighteen years knowingly lives on the earnings of the prostitution of any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or both.

If such earnings is related to the prostitution of a child, the minimum punishment shall be imprisonment for a term of not less than seven years and not more than ten years.

14. How the Court will decide that a person is living on the earnings of prostitution of another person?

If it is proved that a person over the age of eighteen years:

- (a) to be living with, or to be habitually in the company of, a prostitute; or
- (b) to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding abetting or compelling her prostitution; or
- (c) to be acting as a tout or pimp on behalf of a prostitute,

it shall be presumed, until the contrary is proved, that such person is knowingly living on the earnings of prostitution of another person

15. How procuring, inducing or taking person for the sake of prostitution is an offence?

Any person who-

- (a) procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or
- (b) induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

(c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution ;

or

(d) causes or induces a person to carry on prostitution;
shall be punished with: RI from three years and to seven years and fine up to two thousand rupees

If the offence is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years: Provided that if the person in respect of whom an offence committed under this subsection, is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life.

16. Where the offences mentioned under Q.16 shall be tried?

(a) place from which a person is procured, induced to go, taken or caused to be taken or from which an attempt to procure or taken such persons made; or

(b) in the place to which she may have gone as a result of the inducement or to which he/she is taken or caused to be taken or an attempt to take him/her is made.

17. Is detaining a person in premises where prostitution is carried on a crime?

Yes, according to Section 6 of the Act,

(1) Whoever, detains a person with or without his consent in a brothel, or in or upon any premises with an intention that such person may have sexual intercourse with a person who is not the spouse of such person, shall be punished with imprisonment not less than seven years but which may be for life or for ten years and fine which may extend to one lakh rupees. Provided that the court may for adequate and special reasons to be mentioned impose a sentence of imprisonment for a term which may be less than seven years.

(2) Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence as mentioned under sub-section (1).

- (3) Where a child found in a brothel and upon medical examination it is found that the child have been sexually abused, it shall be presumed unless the contrary is proved, that the child has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

18. Is prostitution in or in the vicinity of public place an offence?

Yes, carrying prostitution (either by the prostitute himself or person with whom such prostitution is carried on in premises which are within the notified areas or within a distance of two hundred meters of any place of public religious worship, educational institution, hotel, hospital, nursing home or such other public place of any kind as notified by the Commissioner of Police or Magistrate.

Punishment: Imprisonment which may extend to three months. In case such offence has been committed in respect of a child then the punishment shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

19. Explain Section 9 of the Act, which relates to "Seduction of a person in custody"

Any person who

- (a) having the custody, charge or care of or in a position of authority over any person;
- (b) causes or aids or abets the seduction for prostitution of that person

shall with imprisonment not less than seven years but which may be for life or for a term which may extend to ten years and fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

20. What is offence relating to seducing or soliciting for purpose of prostitution?

As per Section 8 whoever in or within the sight of any public place by-

- (a) words, gestures, wilful exposure of his person (whether by sitting by a window or on the balcony of a building or house or in any other way), or otherwise tempts or endeavours to tempt, or attracts or endeavours to attract the attention of, any person; or
- (b) solicits or molests any person, or loiters or acts in such manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency

for the purpose of prostitution shall be punished with:

First conviction: Imprisonment up to six months, or fine up to five hundred rupees, or with both.

Second or subsequent conviction: Imprisonment up to one year, and fine up to five hundred rupees:

Provided that where an offence under this section is committed by a man, he shall be punishable with imprisonment for a period of not less than seven days but which may extend to three months.

21. Can details about offenders be made public?

Yes, but only in some cases – According to Section 11 i.e Notification of address of previously convicted offenders

| If... | And... | Then... |
|---|---|---|
| A person is found guilty of a crime under this law, or of kidnapping, trafficking, selling/buying minor for prostitution under the Indian Penal Code, 1860 with imprisonment of two years or upwards. | Is within a period of five years after release from prison is again convicted of any offence punishable under this Act or under any of those sections with imprisonment for a term of two years or upwards by a court | Court may, if it thinks fit, at the time of passing the sentence of imprisonment on such person, also order that his residence, and any change of, or absence from such residence after release be notified for a period not exceeding five years from the date of expiration of that sentence. |

If such conviction is set aside on Appeal or other otherwise, such order shall become void.

22. What are the functions of Special Police Officer and advisory body under section 13 of the Act?

- (1) "Special Police Officer" not below the rank of an Inspector of Police shall be appointed for areas as specified by the State Government to deal with offences under the Act.
- (2) The District Magistrate may confer upon any retired police or military officer the powers conferred by or under this Act on a special police officer: Provided that no such power shall be conferred on—
 - (a) a retired police officer unless such officer, at the time of his retirement, was holding a post not below the rank of an inspector;
 - (b) a retired military officer unless such officer, at the time of his retirement, was holding a post not below the rank of a commissioned officer.
- (3) the special police officer of an area shall be assisted by such number of subordinate police officers including women police officer.
- (4) the State Government may associate with the special police officer a non-official advisory body consisting of not more than five leading social welfare workers of that area (including women social welfare workers wherever practicable) to advise him on questions of general importance regarding the working of this Act.

27. Why trafficking police officers are appointed under the Act?

The Central Government may, for the purpose of investigating any offence under this Act or under any other law dealing with sexual exploitation of persons and committed in more than one State, appoint trafficking police officers. They shall exercise powers and discharge all the functions as are exercisable by special police officers under this Act with the modification that they shall exercise such powers and discharge such functions in relation to the whole of India.

23. Can search under this Act be made without warrant?

Yes, the special police officer or the trafficking police officer has reasonable grounds for believing that an offence punishable under this Act has been or is being committed in respect of a person living in any premises, and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant.

24. What needs to be done during search?

Before making a search the special police officer or the trafficking police officer shall call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search, and may issue an order in writing to them or any of them so to do: Provided that the requirement as to the respectable inhabitants being from the locality in which the place to be searched is situate shall not apply to a woman required to attend and witness the search.

25. What if a person who has been called to witness a search refuses to come?

Any person who, without reasonable cause, refuses or neglects, to attend and witness a search when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187(Omission to assist public servant when bound by law to give assistance) of the Indian Penal Code, 1860).

26. What is the procedure related to rescue of a person under the Act?

Where a magistrate has reason to believe that any person is living, or is carrying on, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel, and to remove therefrom such person and produce such person before him. In case the special police officer removing a person or a police officer rescuing a person is unable to produce him before the appropriate magistrate he shall forthwith produce him before the nearest magistrate of any class, who shall pass orders for his safe custody. : Provided that no person shall be

- (i) detained in custody for a period exceeding ten days from the date of the order;
- or
- (ii) restored to or placed in the custody of a person who may exercise a harmful influence over him.

27. What are the duties of the Magistrate?

- (1) Inquiry to be made as to the correctness of the information received with regard to the
 - ✓ age, character and antecedents of the person and the suitability of his parents, guardian or husband for taking charge of him; and
 - ✓ the nature of the influence which the conditions in his home are likely to have on him if he is sent home, and for this purpose, he may direct a probation officer appointed under the Probation of Offenders Act, 1958, to inquire into the above circumstances and into the personality of the person and the prospects of his rehabilitation.
- (2) If upon inquiry it is found that the information received is correct and that the person is in need of care and protection, the Magistrate may order for the detention of such person for a period not less than one year and not more than three years in a protective home, or in such other suitable custody for reasons to be recorded in writing.
- (3) If the person is below 18, then the Magistrate can place him or her in an institution recognized under laws meant for children.
- (4) A person cannot be placed in the custody of someone of a different religious belief from them. The person in charge of the place of custody can be asked to enter into a bond to ensure that they take care of the person. This bond cannot be in force for more than 3 years.
- (5) The Magistrate can take assistance from 5 respectable persons, 3 of whom should be women.
- (6) An appeal against the order shall lie to the Court of Session whose decision on such appeal shall be final.

28. Can a Magistrate order for the closure of brothel and eviction of offenders from the premises?

Yes. The magistrate upon receiving information that a place within a distance of 200 metres of any public place is being run and used as a brothel, issue notice to the person in charge of such place to explain within 7 days why place/premises should not be attached for its improper use.

If after hearing the person in charge, the Magistrate feels that such place/premise is being used as a brothel or for carrying on prostitution may pass an order:

- ✓ For the eviction of the occupier of such place/premise within 7 days. This order cannot be appealed, and is valid for 1-3 years
- ✓ Directing that before letting it out during the period of one, or in a case where a child or minor has been found in such house, room, place or, during the period of three years immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate. Failure to comply with the order shall attract fine of five hundred rupees.
- ✓ If the owner, lessor or landlord or agent is innocent, then the Magistrate will return the space to him or her, with a direction that the space not be given back to the person who was allowing its misuse.
- ✓ If a Magistrate or court passes an order under this section, any relevant lease agreement that applies to that space will become invalid.

29. Explain Section 19, relating to the application for being kept in a protective home or provided care and protection by court.

A person carrying on or is being made to carry on prostitution may apply to a Magistrate to –

- ✓ Be kept in a protective home, or
- ✓ Be provided care and protection by the court

The Magistrate may pending inquiry can direct this person to be kept in such custody as he may consider proper. After the inquiry, the

Magistrate may order that the applicant be kept in a -

- ✓ Protective home, or
- ✓ In a corrective institution, or
- ✓ Under the supervision of a person appointed by the magistrate.

30. Can a prostitute be ordered to leave an area? What is the punishment if a prostitute fails to comply with such orders?

Yes, the magistrate after giving an opportunity to the person to be removed from any place and be prohibited from re-entering such area pass an order for is removal.

In case of non- compliance of such orders the punishment shall be in the form of fine which may extend to two hundred rupees and in the case of a continuing offence with an additional fine which may extend to twenty rupees for every day after the first during which he has persisted in the offence.

31. How are protective homes and corrective institutions set up and run?

The State Government may in its discretion establish protective homes and corrective institutions. The State Government may, on application made to it in this behalf by a person or authority issue to such person or authority a licence in the prescribed form for establishing and maintaining or as the case may be, for maintaining a protective home or corrective institution.

Procedure:

- ✓ Before issuing licence investigation needs to be done
- ✓ the management of the protective home or corrective institution shall, wherever practicable, be entrusted to women
- ✓ Revoke the license in case of non-compliance of the conditions
- ✓ Licenses should be renewed 30 days before its expiry, and are not transferable.
- ✓ Also, it is an offence to maintain a protective home or corrective institution that does not comply with this section. The first offence shall be punished with a fine of one thousand rupees and in the case

of second or subsequent offence with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

32. Who can ask for the production of records relating to a protective home or corrective institution?

A court can ask any person or authority who is licensed to maintain a protective home or corrective institution to produce their records.

33. What is the procedure for trial under the law?

No court, inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under section 3 (Punishment for keeping a brothel or allowing premises to be used as a brothel), section 4 (Punishment for living on the earnings of prostitution), section 5 (Procuring, inducing or taking person for the sake of prostitution), section 6 (Detaining a person in premises where prostitution is carried on), section 7 (Prostitution in or in the vicinity of public places) or section 8 (Seducing or soliciting for purpose of prostitution).

34. What is the provision relating to the establishment of Special Courts?


Under section 22A if the State Government for the purpose of speedy trial of offences under this Act in any district or metropolitan area, may, by notification in the Official Gazette and after consultation with the High Court, establish one or more Courts of Judicial Magistrates of the first class, or as the case may be, Metropolitan Magistrates, in such district or metropolitan area.

Under section 22AA the Central Government for the purpose of providing for speedy trial of offences under this Act and committed in more than one State, may, by notification in the Official Gazette and after consultation with the High Court concerned, establish one or more courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offences.



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