



The Strategy of Closure of Brothels

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A news appeared in print and digital media on 12 Oct 2023 about the rescue of 33 women and arrest of 25 people from 7 rooms in a Search operation (raid) carried out on V P Rd Girgaum, Mumbai by the Crime Branch of Mumbai police under Sec. 15 of the ITP Act. The news also stated that the Commissioner of Police, Mumbai conducted a hearing of brothel keepers and brothel owners and finally sealed the brothels for two months. Some of them were represented by their lawyers. This part of the news is new for lay readers and people in the Anti- Human Trafficking sector as well. While they would find it interesting, it is only natural that they will have many questions seeking answers. Here is an attempt to meet some of those questions:

As of now, legally speaking what are brothels?

Sec 2 (a) of **THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956** (ITP Act 1956) defines brothel as follows;

(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;

This is quite a progressive and radical and still simple definition of brothel.

In the abovementioned incident, why did the authorities seal the brothels just for two months?

The provision for closure of brothels comes under Sec 18 of ITPA1956. That provision allows sealing for a maximum period of 1 year and in cases where a minor or a child has been found the sealing can be for 3 years. However, there is a provision to get the premises opened with the permission of the authorities or leased out with the permission of the competent authority for using the said premises for other legitimate purposes. The ITPA 1956 doesn't provide for permanent closure of the place used as brothel. In that sense the provision is weak.

Were there official brothels in India?

Yes. Under British rule, specifically governed by The Indian Contagious Diseases Act 1868 (TICD Act) and the Cantonment Act around 1860, the health department was tasked with the responsibility of controlling and eradicating sexually transmitted infections. These infections were prevalent among British sailors and soldiers at that time.

Just as in modern times, the HIV/AIDS control programme of the Indian government focused its attention on the redlight areas (conglomerations of brothels or localised sex trade) presuming that such areas are the capital of unsafe sex, storehouse and exchange points of the infections and so the public health department of that time also started closely monitoring the transactions in the redlights areas. The administration on its own concern towards the demands of the sailors and soldiers for commercial sex and as empowered by the TICD Act had encouraged the formation and tolerated the existence of brothels in port cities and cantonment areas.

The TICD Act had provisions to conduct health check up of women in these brothels as well as in the mainstream society. For monitoring purposes, the brothels were issued numbers. Those numbers were by no way licenses to sell sex, and neither were they any kind of comprehensive monitoring systems of the sex trade. The "madams" (Brothel Keepers) were expected to prominently display these numbers on their doors for the ease of monitoring by the health department.

In the post-independence time, the passage of the ITP Act in 1956 made it very clear that brothels are illegal;

Sex trade was punishable, and women victimised in the trade were victims and hence were not to be punished. Their rehabilitation was recognised as their right. To counter the fear and anxiety in the minds of the customers post 1956, the sex traders continued to display number plates outside the brothels to give a misimpression to the customers that their activity had recognition of the State. From 1956 till date, brothels have been illegal in any part of India.

Isn't closure of brothels something new?

No and yes! Theoretically, brothels are illegal and the state has the responsibility to shut them down. Practically however, few police stations have shut them down by a positive action of enforcement. [RTI] The ITP Act 1956 explicitly mentioned that those who give place or premise in their possession and under their control to anyone either (i) to sell sex voluntarily (Sec 7-1) or (ii) to use for running a brothel (After 1986 amendment for 'commercial sexual exploitation') U/Sec. 3 were punishable. This Section did not mention what was to be done to the premise used for these two purposes. That part of the follow up action viz a viz the premise i.e. the brothel was covered in Sec 18 of the ITP Act-1956 revised in 1986.

When did serious enforcement of Sec 18 start?

To the best of our knowledge, even though the predecessor of the ITP Act 1956, known as the Suppression of Traffic in Women and Girls Act 1956 (SITA), included provisions for closing brothels, very few brothels were actually closed under Section 18 or any other legal provision. In the year 2006 in connection with a Writ Petition (Prerana Vs State of Maharashtra & Others Criminal Writ number 1694 of 2003) the police sealed a place used as a brothel.

However, the accused challenged this action of the police arguing that the police had not followed the law in closing the brothel. The High Court of Mumbai ordered the police to un-seal the brothel keeping the option of sealing it again this time, properly following the procedure laid down in the law. The law required the closure notice to be issued by the District Magistrate in rural areas and by the Commissioner of Police in urban areas. The said brothel was then sealed following the law. Subsequently, the bench of Justice Smt. Ranjana Desai and Justice D.B. Bhosale in their final Order in the Writ Petition Prerana Vs. State of Maharashtra in 2007 number 1694 of 2003 in their directives mentioned Section 18 and the procedure to be followed.

Prerana PIL 1694 of 2003

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1694 OF 2003

PRERANA PETITIONER VS. STATE OF MAHARASHTRA & ORS. ... RESPONDENTS

CORAM: SMT. RANJANA DESAI & D. B.
BHOSALE, JJ.

DATED: 18-4-2007

Order- Point 3(k) (the Special Police
Officer to do)

upon raid of a brothel, to immediately inform the District Magistrate or Sub-Divisional Magistrate of the same, with a request to initiate action under section 18(1) of ITPA for closure of the brothel;

Point 6

6. The Magistrates and Sessions Judges are instructed:

(d) to pass orders under section 18(1) of ITPA when convicting a person of an offence under Section 3 and/or Section 7 of ITPA;

What are the provisions of the ITPA 1956 on closure of brothels?

Sec 18 of ITPA 1956 deals with closure of brothels. Before we go to the actual provision let us try to understand the logic behind the closure. It is an established theory and common wisdom that if the public has to be protected against drugs and other illegal practices the demand has to be curbed. One way of doing that is to attack the retailing and easy availability of drugs. The retailing points of the sex trafficking and sex trade are the brothels and it is required that the retailing must be stopped. Closure of brothels, and penalising soliciting in public places are expected to affect the supply and eventually the demand.

What does the Sec 18 of ITPA state?

Sec. 18. Closure of brothels and eviction of offenders from the premise. -

(1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred metres of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person, or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper use thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place, or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders-

- (a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;
- (b) directing that before letting it out during the period of one year, (or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, 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:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord, with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A court convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1) without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal, and the said orders shall cease to have validity after the expiry of one year, or three years, as the case may be]:

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.

In simpler terms, Section 18 talks about shutting down places like brothels and making those responsible leave. It prescribes that:

(1) If the police or someone else tells a magistrate that a house, room, or place within 200 meters of a public area is being used as a brothel or by prostitutes for selling sex then the magistrate can send a notice to the owner or person in charge. They have to explain within a week why the place shouldn't be taken away for being used inappropriately. If the magistrate agrees after listening to their explanation, the magistrate can make orders like:

- Telling the person using the place to leave within seven days.
- Saying that before the owner can rent it out for the next year (or three years if a child was found there), they need permission from the magistrate.
- If the magistrate thinks the owner and others didn't know about the inappropriate use, the place can be given back to them with a condition not to rent it to the person causing trouble.

(2) If someone is found guilty of a crime under Section 3 or Section 7, a court can use subsection (1) to make them leave without giving them another chance to explain.

(3) Orders made by the magistrate or court under (1) or (2) cannot be appealed, changed, or cancelled by any other court, and they are only valid for one or three years, depending on the case. But if someone wins an appeal saying the place wasn't really being used as a brothel or for prostitution, any order made by the first court is cancelled too.

(4) Even if there are other laws, when a magistrate or court uses (1) or (2), any lease or agreement for the place becomes useless.

(5) If the owner or person in charge doesn't follow the magistrate's instructions from (1), they can be fined up to five hundred rupees. If they don't follow the special instructions in (1) for innocent owners, they are considered to have committed an offense and will be punished accordingly under Section 3 or Section 7.

Isn't the initiative for the closure of brothels something new and weak?

Yes; The initiative for the closure of brothels is new and weak too!

Why is the initiative weak and what can be done to strengthen it?

While the programme for the closure of brothels is not taken up with zeal by the police one must also take into consideration the fact that the provision under Sec 18 itself is very weak. It only provides for the state to close down the premise after an enquiry and for a temporary period of 1 to 3 years. Although the guilt is presumed, the benefit of the doubt given to the accused is quite vast. In a society marked by regional growth imbalances and widespread migration, the practice of renting out spaces for legitimate purposes is very common. Expecting the owner to keep a close watch on the lessee in terms of the use of the property is unfair. Hence, the enforcement lacks the conviction to enforce Sec 18 (although it is a weak provision) with zeal. It is quite fair to hold the actual user and the possessor of the premises for the misuse by following the due process of law.

Moreover, there is a matching lack of trust in the police. A lay person asks a simple question- *"How come what a lay person can see day in and day out, the police cannot see?"* No doubt a due process of law and a fair trial is everyone's right. After having done that, if found guilty the punishment must follow. The punishment has to be certain more than extreme.

We, the Anti-Trafficking Centre of Prerana in the year 2002 had suggested (Ref to our knowledge product "In Search of a New Legislation Against Commercial Sexual Exploitation and Trafficking", ATC- 2002) a detailed approach for confiscation of the properties knowingly and deliberately used for or made from the proceeds of trafficking and Commercial Sexual Exploitation.

In our advocacy efforts, we proposed confiscation and liquidation of properties, with the proceeds being allocated to various anti-trafficking initiatives. This includes providing incentives to Investigating Officers (IOs), Public Prosecutors (PPs), and State Witnesses, as well as supporting Anti-Human Trafficking Civil Society Organizations (AHT CSOs), and other service providers within Civil Society Organizations (CSOs) after a successful conviction. We had suggested that the then-proposed amendments in ITPA should incorporate these suggestions. We are happy that although the Union government has not followed these suggestions as can be seen in the draft of ITPA Amendment Bill 2006, around that time it revised the Prevention of Money Laundering Act 2002 and added some Paragraphs (Schedules). Under that, the ill-gotten wealth and proceeds of crime can be confiscated and merged into the state funds. The following offences of ITPA now come under the PML Act 2002:

Paragraph 7 of Prevention of Money Laundering Act 2002 includes offences under Sec 5,6,8,9 of The Immoral Traffic (Prevention) Act, 1956 (104 of 1956)

For a better implementation of the ITPA we need to ensure that this provision under PMLA is also included in the training of police on Human Trafficking especially sex trafficking and commercial sexual exploitation.

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