

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.12.2018	Delivered on 02.01.2019
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CORAM:THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**W.P.Nos.29995 & 31320 of 2018

and

Crl.O.P.Nos.28535,26714,26723,26727,26729,27063 & 27064/ 2018

and

WMP Nos.35006, 35008 & 36503 of 2018

and

Crl.M.P.Nos.15383,15386,15389,15394,15610 & 16613 of 2018**W.P.No.29995 of 2018**

Ms.Kadek Dwi Ani Rasmini,
D/o.Made Alus,
Br Dinas Bulakan,
Kec.Banjar, Desa Munduk, Buleleng,
Bali-81152, Indonesia.
Repsented by her Power of Attorney Agent
T.Karunadas,
New No.13 (old) No.6A, 1st Main Road,
Lakshmi Nagar Extension,
Porur, Chennai-600 116.

..Petitioner

.Vs.

1.Mr.K.Natarajan,
Inspector of Police,
J-8, Neelankarai Police Station,
221, SH49, Neelankarai,
Chennai-600 041.

2.The Deputy Commissioner of Police,
Adyar Division,
LB Road, Adyar,
Chennai 600 020.

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3.The Secretary to Govt.of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort. St.George,
Chennai-600 009.

4.The Superintendent,
Government Vigilance Home,
16/27, Rosary Church Road,
Mylapore, Chennai-600 004.

5.The Manager,
Willows Spa,
38/B, 1st Avenue,
Vettuvankeni, ECR,
Chennai-600 115.

..Respondents

Prayer in W.P.No.29995 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to declare all the actions/proceedings against the petitioner pursuant to the registration of FIR No.1518 of 2018 dated 01.10.2018, by the 1st respondent as illegal and consequently to direct the respondents 2 and 3 to adequately compensate the petitioner towards the illegal denial of personal liberty, loss of personal reputation, mental agony and accompanying monetary losses to the extent of about Rs.10 lakhs due to abrupt loss of job and other expenses.

Crl.O.P.No.28535 of 2018

1.Suganth

2.Hema

..Petitioners

.Vs.

The Inspector of Police,
Neelangarai Police Station,
Adayar District,
Chennai.

..Respondent

Crime No.1518 of 2018

Prayer in Crl.O.P.No.28535 of 2018: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records made in Crime No.1518 of 2018, on the file of Inspector of Police, Neelangarai Police Station, the respondent herein and quash the same.

W.P.No.31320 of 2018

M/s.River Salon and Day Spa
Rep.by its Operation Head
Musthafa,
S/o.Mahoboob Basha,
Door No.19/10, Seethammal Extension,
2nd Cross Street, Alwarpet,
Chennai-600 018.

..Petitioner

.Vs. सत्यमेव जयते

Inspector of Police,
AVS II Police Station,
Chintadripet,
Chennai-600 002.
(Crime No.51 of 2018)

..Respondent

Prayer in W.P.No.31320 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent pertaining to his FIR in Crime No.51 of 2018, dated 02.11.2018 and quash the same.

Crl.O.P.Nos.26714, 26723, 26727, 26729, 27063 & 27064 /2018

N.Kathija

.. Petitioner
in Crl.O.P.No.26714/2018

.Vs.

1.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

2.T.Subramani

2.Musthafakhan

4.Halitha Beghum

5.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

6.The Superintendent,
Government Home for Women,
Mylapore,
Chennai-600 004.

..Respondents
in Crl.O.P.Nos.26714

B.Lalduhsangi

.. Petitioner
in Crl.O.P.No.26723/2018

..Vs..

1.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

2.T.Subramani

2.Musthafakhan

4.Malsawmkimi

5.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

6.The Superintendent,
Government Home for Women,
Mylapore,
Chennai-600 004.

..Respondents
in CrI.O.P.No.26723/2018

Jajo Thomas

.. Petitioner
in CrI.O.P.No.26727/2018

..Vs..

1.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

2.T.Subramani

2.Musthafakhan

4.Apem Jajo V

5.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

6.The Superintendent,
Government Home for Women,
Mylapore,
Chennai-600 004.

..Respondents in
CrI.O.P.Nos.26727/2018

Pauthak

.. Petitioner
in CrI.O.P.No.26729/2018

..Vs..

1.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

2.T.Subramani

2.Musthafakhan

4.Lungtieneile

5.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

6.The Superintendent,
Government Home for Women,
Mylapore,
Chennai-600 004.

..Respondents in
CrI.O.P.Nos.26729/2018

Ringampou

.. Petitioner
in CrI.O.P.No.27063/2018

..Vs..

1.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

2.T.Subramani

2.Musthafakhan

4.G.Ninghanlu (a) Salomi

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5.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

6.The Superintendent,
Government Home for Women,
Mylapore,
Chennai-600 004.

..Respondents in
Crl.O.P.Nos.27063/2018

S.Shakunthala

.. Petitioner
in Crl.O.P.No.27064/2018

..Vs..

1.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

2.T.Subramani

2.Musthafakhan

4.S.Vani

5.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

6.The Superintendent,
Government Home for Women,
Mylapore,
Chennai-600 004.

..Respondents in
Crl.O.P.Nos.27064/2018

Common Prayer in CrI.O.P.Nos.26714, 26723, 26727, 26729, 27063 & 27064 of 2018:

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to grant a general direction directing the 6th respondent to file the report pertaining to the detention of the detainees namely; Halitha Beghum @ Nisha, Malsawmkimi, Apem Jajo V, Lungtieneile, G.Ninghanlu (a) Salomi, Vani.S. regarding Crime No.51 of 2018, and in pursuance direct the IV Metropolitan Magistrate, Saidapet, Chennai to dispose of Criminal M.P.Nos.1985/2018 2005/2018, unnumbered criminal M.P., 1995/1998, unnumbered M.P., and 1986/2018 expeditiously.

For Petitioner

in W.P.No.29995 of 2018 : Mr.V.B.R.Menon

in CrI.O.P.No.28535/2018 : Mr.R.Sankara Subbu

in CrI.O.P.Nos.26714,26723,
26727, 26729,27063,27064 : Mr.V.C.Janardhanan
& W.P.No.31320/ 2018 for Mr.P.V.Sudakar

For Respondent/s

in W.P.No.29995/2018 : Mr.K.Venkataraman, for R1
Mr.M.Mohamed Riyaz, APP(for R2 to R4)

in W.P.No.31320/2018 : Mr.M.Mohamed Riyaz, APP
& CrI.O.P.No.28535/2018
& for respondents 1,5, & 6 in
CrI.O.P.Nos.26714,26723,26727,
26729,27063 & 27064/2018

COMMON ORDER

In recent times, this Court witnessed a flurry of cases challenging the action initiated by the Police against Spas and Massage Centres, its owners and women working as Massage Therapists in these Centres, under the Immoral Traffic (Prevention) Act, 1956, [hereinafter called as "the Act"]. In all these cases the owners were added as the accused and the women working in these centres were shown as victims involved in prostitution. Apart from the legal issues involved in these cases, the insight into human behaviour, outlook of the Society regarding Spas and Massage Centres, ignorance of the Science behind Massage and the urgent need to get out of the preconditioned mind of the majority who unfortunately see Spas and Massage Centres as brothel houses, is essential for a proper appreciation, and understanding of this issue.

2. A brief history about Massage

2.1. At some point in our lives every one suffers from minor injuries, pain or discomfort. Our instinctive reaction is to rub or hold the affected area to ease the pain. If you stub your toe or have a stomach ache, you rub it to stop it from hurting so much. Early man probably soon learnt that, whilst rubbing painful areas of his body, certain plants

could be applied which would help to ease the pain and promote healing. This basic technique has been developed through the millennia into the system of massage we know today. Massage is the systematic manipulation of the soft body tissues for therapeutic purposes. The English word massage is derived from the Arabic word 'mass'h', which means to press gently. This itself gives a hint to the long history of massage. Massage in its most basic form has been around as long as man, however today there are many highly specialized forms of massage all derived from these basic techniques.

2.2. The first documented descriptions of massage dating back to about 3,000 BC were discovered in China. Chinese Taoist priests practiced 'Qi Gong' - meditative movement revealing and cultivating the vital life force. Traditional Chinese medicine is based on the principle that every illness, ailment or discomfort in the body is due to an imbalance of 'Qi'. In about 1,000 BC Japanese monks began to study Buddhism in China. They witnessed the healing methods of traditional Chinese medicine and took them back to Japan. In Japan the practice of medicine mostly consisted of diagnosis and treatment with massage-type methods. The Japanese not only adopted the Chinese style, but also began to enhance it by introducing new combinations, eventually

reaching a unique Japanese form called Shiatsu. Shiatsu is a Japanese word derived from 'shi' meaning finger and 'atsu' meaning pressure. It is a technique similar to that used in acupuncture but without needles and with extra movements involved.

2.3. Civilization in India also dates back to about 3,000 BC. Around 1,800 to 500 BC the Vedic Indian culture spread westwards towards the river Ganges. They developed a unique form of medicine know as Ayurvedic medicine. They wrote several great books that recorded their techniques. One called 'Ayur Veda' which means 'the arts of life', dates back to 1,700 BC and describes some simple massage and herbal treatments for various conditions.

2.4. Native Americans also used heat and massage with herbs to treat many problems. The Cherokee and Navaho were among many tribes who rubbed their warriors before they went to war and when they returned. Massage was used to ease the labor pains of women and colic in infants.

2.5. The ancient Greeks valued the benefits of massage very highly, using it in most avenues of daily life. Techniques were

developed to help athletes to keep their bodies in the best condition for competitions. They also used massage for relaxation. Herodotus, a historian who lived from 484 to 425 BC, recorded the fact that certain herbs had a sedative action whilst others were more refreshing. Physicians of the time such as Hippocrates (460 to 377 BC) 'the father of medicine', used these herbs with oils and massage techniques to treat many medical conditions. He stated that "anyone wishing to study medicine must master the art of massage." Greek women also recognized the value of massage with aromatic oils, using them as a beauty treatment for the skin and face. Homer in his work Odyssey describes massage as "welcome relief to exhausted war heroes." By 326 BC elements of Ayurvedic medicine had become an integral part of Greek medicine.

2.6. The Romans learnt many of their medical techniques from the Greeks. Galen, a notable physician to several Emperors in the first century AD, used massage to treat many types of disease and physical injuries. He cited Hippocrates saying "rubbing, if strenuous, hardens the body, if gentle relaxes... rubbing should be employed, when either a feeble body has to be toned up, or one indurate has to be softened, or harmful super fluidity is to be dispersed, or a thin and infirm

body has to be nourished." Julius Caesar, who suffered from neuralgia, had his body 'pinched' every day to help greater blood flow and reduce fatty tissue below the skin. The wealthy would be massaged in their own home, by their personal physician, but many others received treatment at public baths, where both trainers and doctors plied their trade. Public baths were often funded by benefactors, so the entrance fee was nominal, hence baths were bustling places. Seneca vividly described the resulting din in his book *Epistulae Morales LVI* "I have lodgings right over a bathing establishment. So picture to yourself the assortment of sounds... I notice some lazy fellow, content with a cheap rub-down, and hear the crack of the pummeling hand on his shoulder, varying in sound according as the hand is laid on flat or hollow."

2.7. With the end of the fourteenth century came the end of the Dark Ages and the beginning of the Renaissance. The Renaissance brought along with it many great discoveries in the arts and sciences. In medicine there was a shift away from the centuries old teaching of Galen, and the spiritual basis for disease. Massage also became unpopular as Europe was overcome by a conservative and repressive religious dogma. Touching was not considered as part of the healing method as it involved corporal pleasures and these were considered sinful.

2.8. Ambroise Pare (1510-1590) a French 'barber-surgeon' developed many techniques in surgery that made it a lot safer and less crippling to the patient. He went on to become the personal physician to four of France's kings. In one of his publications he described the positive effects of massage in the healing process.

2.9. There were very few advances in massage until 1813, when Pehr Henrik Ling established the Royal Central Institute of Gymnastics in Sweden. In the nineteenth century the most common treatments for illness were blood letting and the use of purgatives. Physicians put their faith in science, and new drugs such as Calomel, mercury and arsenic based tonics, were in common usage. Ling formalized a series of gymnastic movements and massage techniques which have become known as Swedish massage. These techniques included 'effleurage' or stroking, 'petrisage' or pressing and squeezing and 'tapotement' or striking. Ling is sometimes credited with being the father of modern massage.

2.10. During the 1960s there was a backlash against the establishment and man made things that were seen to be destroying our environment and a resurgence of interest in natural ways of treating the

body. Since then there has been an increasing interest in massage and its use to relieve stress and reduce the effects of some illnesses.

2.11. Today there is still some skepticism in the medical profession as to the scientific reasons behind the use of massage as a healing technique. Therefore in 1992 the 'Touch Research Institute' was established at the University of Miami School of Medicine entirely devoted to the study of touch and its application in science and medicine. They have shown that massage can induce weight gain in premature infants, alleviate depressive symptoms, reduce stress hormones, alleviate pain and positively alter the immune system in children and adults with various medical conditions. Hence massage is becoming recognized as a viable and useful alternative or aid to modern medicine. In our modern society, where stress-related psychological disorders are becoming the number one health problem, massage is likely to gain increasing popularity to improve every body's health and well-being.

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2.12. Massage is to work and act on the body with pressure. Massage techniques are commonly applied with hands, fingers, elbows, knees, forearms, feet, or a device. The purpose of massage is generally for the treatment of body stress or pain. A person

as a **masseur** (male) or a **masseuse** (female), but those titles are outmoded, and carry some negative connotations. In the United States, those who have been professionally trained to give massages use the title **massage therapist** has been recognized as a business norm.

3. **Benefits derived out of Massage**

3.1. During massage, the hormone cortisol is released in the body. This hormone is responsible for lowering the stress levels of the body. The body is more capable of healing itself when stress levels are low. This hormone also allows us to breath easier, which lessens the feeling of anxiety which helps lead to an increase in our emotional wellbeing.

3.2. When receiving massage, it causes the hormones, serotonin and endorphin, to be released into the bloodstream, elevating moods. Massage also can stimulate pain blockers and reduce the feelings associated with chronic pain. Doctors at the University of Maryland Medical Centre have reported that massage can relieve feelings of depression in people with chronic illnesses, such as fibromyalgia.

3.3. Many coaches, athletes and sports medicine personnel

hold the belief, based on observations and experiences, that massage can provide several benefits to the body such as increased blood flow, reduced muscle tension and neurological excitability, and an increased sense of well-being. The role of massage in sports performance and rehabilitation after injury has even become an area of specialisation and research.

4. The term spa is an abbreviation of "**Sanus per aquam**" which means "**health through water**". Lately, spa centers are becoming increasingly popular. **Wellness and Spa** industries are recording a growing trend from year to year. The growing tendency of these markets comes as a result of a shift in the attitudes of the population, which is now oriented towards improving the health and quality of life, which is manifested through the use of the services of these centers.

5. **Where does the problem actually begin ?**

One of the contentious issues between the law enforcers and the spa operators is the practice of cross massages i.e. male massagers for women patrons and female masseuses for men at the spas and salons. Banning cross--gender massaging will not

guarantee stopping of illegal activity--with the gay and lesbian community on the rise, sexual favours are no longer a heterosexual domain, hence these may continue even in a same-gender scenario.

When it comes to the role of gender in the massage and bodywork profession, the spectrum of issues is great. And despite all that we might do to evade the topic, gender and, subsequently, sexuality always come back to somehow factor into the equation. It's important to recognize that both female and male therapists are subjected to the kinds of abuse that can happen behind closed doors. Clients that grope, ply for a date, or drop sexual innuendos affect both male and female therapists.

6. **Human Social Behaviour requires an immediate Change in mind set**

6.1. Human behaviour, human social behaviour, and in many cases abnormal human social behaviour involves brain chemistry, hormones, sensory cues, prenatal environment, early experience, genes, both biological and cultural evolution, and ecological pressures, among other things.

6.2. Robert Sapolsky in his Magnum opus 'Behave, The

Biology Of Humans at Our Best and Worst' says that A behaviour has occurred--one that is reprehensible, or wonderful, or floating ambiguously in between. What occurred in the prior second that triggered the behaviour? This is the province of the nervous system. What occurred in the prior seconds to minutes that triggered the nervous system to produce that behaviour? This is the world of sensory stimuli, much of it sensed unconsciously. What occurred in the prior hours to days to change the sensitivity of the nervous system to such stimuli? Acute actions of hormones. And so on, all the way back to the evolutionary pressures played out over the prior millions of years that started the ball rolling.

6.3. On the Evolution of Behaviour he says that Evolution sculpts the traits of an organism in two broad ways. "Sexual selection" selects for traits that attract members of the opposite sex. "Natural selection" for traits that enhance the passing on of copies of genes through any other route--e.g., good health, foraging skills, predator avoidance. There is a logic to evolution, where natural selection sculpts traits into adaptiveness. Importantly, natural selection works not only on anatomy and physiology but on behaviour as well--in other words, behaviour evolves, can be optimized by selection into being adaptive.

6.4. When the Author talks about how much our Genes tend to impact our behaviour, he concludes saying that Genes have plenty to do with behaviour. Even more appropriately, all behavioural traits are affected to some degree by genetic variability. They have to be, given that they specify the structure of all the proteins pertinent to every neurotransmitter, hormone, receptor, etc, that there is. And they have plenty to do with individual differences in behaviour, given the large percentage of genes that are polymorphic, coming in different flavors. But their effects are supremely context dependent. Ask not what a gene does. Ask what it does in a particular environment and when expressed in a particular network of other genes. Thus, for our purposes, genes aren't about inevitability. Instead they're about context - dependent tendencies, propensities, potentials, and vulnerabilities. All embedded in the fabric of the other factors, biological and otherwise.

6.5. The Epilogue in that book makes an interesting reading. The author concludes that ;

- While it's cool that there's so much plasticity in the brain, it's no surprise - it has to work that way.
- Childhood adversity can scar everything from our DNA to

our cultures, and effects can be lifelong, even multigenerational. However, more adverse consequences can be reversed than used to be thought. But the longer you wait to intervene, the harder it will be.

- Brains and cultures coevolve.
- Things that seem morally obvious and intuitive now weren't necessarily so in the past; many started with nonconforming reasoning.
- Genes have different effects in different environments; a hormone can make you nicer or crummier, depending on your values; we haven't evolved to be "selfish" or "altruistic" or anything else - we've evolved to be particular ways in particular settings.
- Often we're more about the anticipation and pursuit of pleasure than about the experience of it.
- Genes aren't about inevitabilities; they're about potentials and vulnerabilities. And they don't determine anything on their own. Gene/environment interactions are everywhere. Evolution is most consequential when altering *regulation* of genes, rather than genes themselves.

- Saying a biological system works "well" is a value-free assessment ; it can take discipline, hard work, and willpower to accomplish either something wondrous or something appalling. "Doing the right thing" is always context dependent.
- We are constantly being shaped by seemingly irrelevant stimuli, subliminal information, and internal forces we don't know a thing about.
- Our worst behaviours, ones we condemn and punish, are the products of our biology. But don't forget that the same applies to our best behaviours.

7. Whatever be our pre conceived notions about a Spa and a Massage centre, due to various factors influencing our thoughts and behavioural patterns, there is always a scope to evolve and start looking at things in a right perspective. Each day, many of us unintentionally place limitations on ourselves by way of our conditioned mind. What we perceive as a purely natural reaction may actually be creating limitations for us and take away our inherent ability to empower ourselves. It's time we get out of that conditioning and look at the science and real purpose behind Massage and Spa Centres.

8. Legal Issues involved

Development of the Law on Immoral Trafficking

8.1. The Colonial approach to the problem of prostitution can, without too great a risk of over-simplification, be summarized as an attempt to protect the military from the ravages of venereal disease. The Cantonment Act (XXII of 1864) was passed in response to the Royal Commission into the Sanitary State of the Army in India (1863), which had documented the high levels of venereal disease amongst British soldiers in India. Larger numbers of British military were arriving in India to increase their ratio to Indian troops, following the uprising of 1857, and they needed to be kept healthy to guarantee the security of the Raj. The Cantonment Act provided for the registration and inspection of prostitutes who served British soldiers. This act was, however, confined within a four-mile radius of the cantonment, prompting consideration within a few years of an Indian version of the British Contagious Diseases Acts for cities without major cantonments.

8.2. Then followed the Indian Contagious Diseases Act (XIV of 1868) which did not, when passed, contain provisions for

prostitutes, periodical medical examinations, and compulsory treatment of prostitutes found to be infected in the areas to which it was extended. In 1888 the Indian Contagious Diseases Act was withdrawn but a new Cantonment Act (XIII of 1889) was put in its place, allowing the expulsion from a cantonment of anyone refusing treatment for a contagious disease.

8.3. In the Madras Presidency the police resort under Section 52 and 71 of the Madras City Police Act 1888, apart from the provisions of the IPC to check the evils of commercial prostitution. Rickshaw pullers who doubled as pimps were dealt with under Section 37 of the Madras Hackney Carriage Act, 1937.

8.4. THE MADRAS SUPPRESSION OF IMMORAL TRAFFIC ACT, 1930

This Act was the precursor to the 1956 Central legislation. Enacted by the Madras legislature on 31.01.1930 it came into force on 01.04.1932. The Act provided for removal of girls under the age of 18 from brothels under the orders of the Magistrate. In 1938, Section 8-A was incorporated making persons, not below the age of 18, living on the earning of prostitution liable for prosecution.

Section 5 of the Act laid down that any person who keeps or manages or acts or assists in the management of a brothel shall be punishable under the said section. The word 'brothel' was defined in Section 4 (a) as meaning any house, room, or place which the occupier or person in charge thereof habitually allows to be used by any other person for the purpose of prostitution. Section 4 (e) defined prostitution as promiscuous sexual intercourse for hire. Section 8-A dealt with punishment for living on the earnings of prostitution, making liable any person not below the age of 18 who knowingly lives wholly or in part, on the earnings of the prostitution of another person. (IN RE AMBUJAM AMMAL AIR 1953 Madras 326)

8.5. **THE SUPPRESSION OF IMMORAL TRAFFIC ACT, 1956**

I. In November 1949, the UN General Assembly approved the text of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The UN Convention came into force on 25.07.1951, and was ratified by India on 09.01.1953.

II. The preamble of the Convention sets out its objectives in the following terms "*Whereas prostitution and the accompanying evil of*

the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community."

III. The essence of the Convention is captured by Articles 1 and 2 which are as under

"Article 1 - The Parties to the present Convention agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person.

Article 2 - The Parties to the present Convention further agree to punish any person who: 2 (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel; (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others."

Article 21 required State parties to bring their domestic laws in line with the Convention. Accordingly, in 1956, a central law i.e., the Suppression of Immoral Traffic in Women and Girls Act, 1956 was enacted. The Act came into force with effect from 01.05.1958. The Madras Suppression of Immoral Traffic Act, 1930 was repealed vide

Section 25 of the 1956 Act.

9. **Important Legal Precedents which dealt with the scope of the Act.**

9.1. Explaining the scope of the Act, the Allahabad High Court in **Shama Bai v. State of Uttar Pradesh**, 1958 SCC OnLine All 334 : AIR 1959 All 57 at page 62 observed as under :

33. It would be noticed that what has been prohibited is not the profession or trade of a prostitute but the carrying on of that profession for the gain of another person or for mutual gain of two or more prostitutes. This section has obviously been enacted to prohibit exploitation of a prostitute by a person who is not a prostitute, or by one prostitute of another. This section will also have the effect of mitigating much of the evils of the prostitution because it is well known that upkeep of brothels not only encourages prostitution but also leads to the commission of various other offences.

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9.2. In **Re: Ratnamala (AIR 1962 Madras 31)**, Ananatanarayanan, J (as he then was) had an occasion to consider to examine **the** provisions of the Act. The learned judge observes

“.....it is clear enough that the purpose of the enactment was to inhibit or abolish commercialised vice, namely, the traffic in

women and girls, for purposes of prostitution, as an organised means of living. The idea was not to render prostitution per se a criminal offence, or to punish a woman merely because she prostitutes herself. In C.A No. 536 of 1959 (K.E Adam v. State) Ramaswami, J. has reviewed the available literature upon this subject, in an extensive manner. After making a historical survey, the learned Judge proceeded to observe that legislation, by itself was almost powerless to eradicate this evil, and added "nor have all the social and administrative resources of modern civilization availed to exercise an effective control". **I desire to emphasise that a careful scrutiny of the Central Act 104 of 1956 clearly reveals that the Act was aimed at the suppression of commercialised vice, and not at the penalisation of the individual prostitute, or of prostitution in itself"**

The learned judge proceeded to castigate the condemnable practice of using decoy witnesses in the following terms "I cannot part with this appeal without making certain observations upon another grave aspect, namely, the manner in which the entire raid was carried out by the Special Police Officer, and, in general terms, the technique that

seems to be employed in these cases. So long as the civic consciousness

of citizens is so low that the evidence of private persons who have visited such premises is not forthcoming, the use of a trap and of a decoy witness, however repeatedly deprecated by courts, may be an inevitable evil. Nevertheless, it is vital to realise that the entire scheme behind the Act is not the proof of a single incident of prostitution, or of the activities of a prostitute. The Act closely follows the English Laws upon the subject, and it is noteworthy that in Archbold's Criminal Pleading and Practice (1954 Edition), the form of indictment for keeping a bawdy house under the Common Law (Chapter 18 page 1406) runs "and on other dates between that date and the date of," emphasising the continuity of maintenance of a house of ill fame as the essential ingredient. It is unfortunate that certain constructive suggestions advanced by Ramaswami, J. in C.A No. 536 of 1959 (K.E Adam v. State) appear to have been ignored. The learned Judge was aware that traps may be unavoidable, but he pointed out, after citing the observations of Lord Goddard in Brannan v. Peek deprecating the resort to traps on the part of authorities, that evidence of a different character altogether could also be made available in such cases. Arrangements could be made for maintaining direct observations on the premises, and evidence of such observations could be offered. The history of the tenancy, the particulars of the individual lodgers, the numbers of men visiting the premises, the

hours of visits and the length of stay, could all be made relevant in a case of this character. I must further observe that, so long as the trap is mainly relied upon, it is open to the criticism that the authorities are thereby abetting the very evil, the discontinuance of which is the policy behind the Act.

I hope that, in future at least, even if traps are resorted to, this evidence may form but a part or segment of the evidence offered for prosecution; other evidence of visits by different persons on different dates, and similar suspicious circumstances should also be adduced, to strengthen the impression or inference of the continuous use of the place as a brothel, and that, finally, the powers of officers acting under S. 15 (1) will be exercised with great care and caution. As observed by the Supreme Court in *State of Rajasthan v. Rehman*, where the law requires that reasons should be recorded in writing, a search made without such record is illegal. Again, the prosecution must always adduce the evidence of such record during the trial, and not merely leave it to the officer to state that the reasons were recorded.

In the present case, the record shows a further consideration of interest and significance, as it affects the rights of the

individual. **The learned Public Prosecutor does not dispute that even a prostitute is entitled to the protection of her person; certainly, she is as much entitled to protection, as the most respectable women for instance, with regard to such offences as indecent assault or rape.** Under Section 509 I.P.C, the intrusion upon the privacy of a woman, with an intention to insult her modesty, is an offence. No doubt as the learned Public Prosecutor urges, in Section 15 (6) of the Central Act 104 of 1956, the special police officer is exempted from liability in any civil or criminal proceeding, in respect of anything lawfully done for the purpose of the search. But I am quite unable to agree that this exemption could be utilised to conduct a search, in disregard of elementary decencies, even if they be decencies relating to a prostitute, in the manner disclosed, and most unfortunately disclosed, by the record in this case. **Here, we have an instance of an officer, accompanied by witnesses, proceeding into the bedroom of an young girl and pushing open a closed door, without even the civility of a knock or other warning to her to prepare for the intrusion. Such conduct would be quite inexcusable, unless the officer thereby hopes to gather the evidence which is essential for proof of any charge. But, since prostitution is not an offence, I am really quite unable to see how the officer and party were**

justified in thus bursting into the bedroom of a girl and surprising P.W 1 and the third accused together in a state of undress. There can be no doubt that such conduct implies an outrage on the modesty of the girl; and **I must reiterate that the modesty of a prostitute is entitled to equal protection, with that of any other woman.** The technique of such raids must be totally altered; otherwise, grave abuses of the law might enter into the very attempt to enforce the law. **I put it to the learned Public Prosecutor whether the officer would similarly think himself justified in proceeding into a bath-room, where an young girl suspected to be a prostitute was having a bath, in the hope of finding incriminating evidence; the learned Public Prosecutor was compelled to concede that, as raids were conducted at present, such an incident could conceivably occur.**

The implementation of this Act will hence become an evil, unless it is not merely accompanied by tact and delicacy, but regard is also paid to the true spirit of the legislation, and the technique of implementation is revolutionised, giving a very subordinate part, if part need be given to it at all, to the unfortunate practice of designing traps and using decoy witnesses. I further direct that a copy of this judgment be forwarded to the authorities of the State Government for such action as they might deem fit to take in this matter”

9.3. In *Mst. Pyari v. State*, 1962 SCC OnLine Raj 116 : 1962 RLW 598 at page 601, the Rajasthan High Court followed suit and held as under:

I must say that the technique of employing decoy witnesses for the detection of crime under the Act by the police in this case is against all standards of decency and shocks one's Conscience. Such methods instead of preventing the evil are likely to encourage it. It has been deprecated by various courts in the country and I must also add my voice to it.

9.4. **In State of U.P. v. Kaushailiya, (1964) 4 SCR 1002 : AIR 1964 SC 416 : (1964) 1 Cri LJ 304, a Constitution Bench examined the provisions of the Act and held as under**

"4. Though the preamble as well as the short title shows that the Act was intended to prevent immoral traffic in women and girls, the order sections of the Act indicate that it was not the only purpose of the Act. Section 2(b) defines "girl" to mean a female who has not completed the age of twenty-one, Section 2(j), "woman" to mean a female who has completed the age of 21 years, Section 2(e), "prostitute"

to mean a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind, and Section 2(f), "prostitution" to mean the act of a female offering her body for promiscuous sexual intercourse for hire, whether in money or in kind. There are provisions in the Act for punishing men who run brothels and who procure girls and women for prostitution, for punishing women and girls who seduce or solicit for the purpose of prostitution in public places, for placing the rescued women and girls in detention in protective homes, for closure of brothels and eviction of offenders from premises, for restricting the movements of prostitutes and even for deporting them to places outside the jurisdiction of the Magistrate. Section 7(1) provides for the punishment of a prostitute, if she carries on prostitution in any premises which are within a distance of two hundred yards of any place of public religious worship, educational institution, hostels, hospitals, nursing home or such other public place or any kind notified in that behalf by the Commissioner of Police or the District Magistrate, as the case may be. Section 8 prohibits seducing or soliciting for purpose of prostitution in any public place or within sight of, and in such manner as to be seen or heard from, any public place, whether from within any building or house or not, and makes such soliciting or seducing an offence under the Act. Section 18 provides for the closure of brothels and

eviction of offenders from the premises, if such premises are within a distance of twohundred yards from a public place mentioned in Section 7(1) and are used or run as a brothel by any person or used by prostitutes for carrying on their trade. **The Act was conceived to serve a public social purpose viz. to suppress immoral traffic in women and girls, to rescue fallen women and girls and to prevent deterioration in public morals.** The Act clearly defines a "prostitute", and gives definite indications from which places prostitutes should be removed or in respect whereof their movements should be restricted."

9.5. **In re Kamala 1965 SCC OnLine Mad 314 : 1966 Cri LJ 1021 at page 1022, Anantanarayanan, J** considered the scope of the expression "solicits" occurring in Section 8 and held as under "5. The Act itself has not defined the word "solicits" Section 8(a) which is a different offence, refers to the temptation of a person, or to attracting a person for the purpose of prostitution. Presumably, the word "solicits" conveys something more, and has the essential import of an oral entreaty or persuasion, used to achieve the object of prostitution. In "Words and Phrases", Permanent Edition, Volume 39 at page 614, I find a comprehensive commentary on the expression "solicits". The most

satisfactory definition that I can discover seems to be this: "to importune, entreat, implore, ask, attempt, try to obtain". It seems to me to be self-evident that where this takes the form of an oral pleading or request addressed to a person, either that person must give testimony on the point, or we should have the specific evidence of some one who overheard the words used. But that is precisely what is lacking in the present case. Sandhu Mohammad has not been examined, and we do not have the evidence of any other pedestrian who was there at that moment, and who overheard the conversation. The Deputy Superintendent of Police (P.W. 1) was some feet away, and he is quite unable to tell us what was the conversation between Sandhu Mohammad and the revision petitioner, and what were the words used by her. Again, those words must contain the definite import of a solicitation for prostitution. **Merely to indulge in some flirtation with a stranger, or to behave in such a way as to attract the attention of persons of the opposite sex, may, as I stressed earlier, be regrettable or immodest, but per se, it does not amount to any offence under Section 8(b) of the Act.** The learned Public Prosecutor conceded, with fairness, that the evidence on record is insufficient to bring out the essential ingredients of Section 8(b). Since the existence of such ingredients must be strictly proved, before the conviction can be

sustained, I allow the revision and set aside the conviction of the revision petitioner in this case. The fine, if paid, will be refunded.”

9.6. **In T. Jacob v. State of Kerala, 1970**
SCC OnLine Ker 23 :AIR 1971 Ker 166 : 1971 Cri LJ 952 at page
167, the Kerala High Court examined the provisions of Section 7
of the Act and held as under 6 But, the Gujarat High Court took a different view in Bai Shanta v. State of Gujarat, 1967 Cr LJ 1140 (AIR 1967 Guj211). where it is held that having regard to the use of the words “carrying on prostitution”, suggestive of more than a solitary instance of prostitution is clear that there must be indiscriminate sexuality requiring of more than one customer of the prostitute before she can be held guilty under Section 7(1) of the Act. A similar view has been taken by the Kerala High Court in a decision reported in State of Kerala v. Pathumma, 1968 Ker LT 453 : (1969 Cri LJ 697), where Sadasivan, J. held that mere accidental detection in a room in a rest house is not sufficient circumstance or evidence to hold that a person concerned had been indulging in sexual intercourse for money indiscriminately; a conviction could be sustained on evidence that the person concerned had been indulging in sexual intercourse for money indiscriminately.

9.7. In Cheriyan v. State, 1972 SCC OnLine Ker 205 : 1973 Cri LJ 839 at page 841, V. Khalid, J (as he then was) examined the scheme of the Act and evils that it purports to address and held as under;

13. The Act in question was enacted in pursuance of the International Convention signed at New York on the 9th May, 1950: the purpose being to inhibit or abolish commercialised vice, namely traffic in women and girls for the purpose of prostitution as an organised means of living. The idea was not to render prostitution per se a criminal offence or to penalise individual prostitution.

14. Opinions are not uniform in this regard. There are those who point to the failure of the law to check this social evil that has existed since the dawn of civilisation. There are others who argue with Lecky who "sneaks of prostitutes as safeguards of the sanctity of the home and of the innocence of our wives and daughters". There are yet others who argue with Bertrand Russel that "society therefore sets apart a certain class of women for the satisfaction of those masculine needs which it is ashamed to acknowledge yet afraid to leave wholly unsatisfied." Those who advocate for permissiveness and sexual liberation of women agree with Russel that "those who oppose the new freedom should face frankly the fact that they are in effect advocating

the continuance of prostitution as the sole safety valve against the pressure of an impossibly rigid code." (Marriage and Morals by Bertrand Russel).

15. Permissive sex or sexual liberation of women is something foreign to the Indian concept of womanhood though there are a sizable few even in our country who hold the view that permissive sex does not breed prostitution, it reduces its incidence. Rehabilitation of the fallen women can only be through social reform. Social reform is impossible except thro' economic emancipation. The basic problem here, as in many other cases, is economic. Now coming back to the case. I hold that the order framing charge cannot be said to be wrong. It is too premature to decide about the guilt or otherwise of the accused."

9.8. Chitan J. Vaswani v. State of W.B., (1975) 2 SCC 829 :1975 SCC (Cri) 765 at page 834, Krishna Iyer, J lamented

15. No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free—free to live without sale of their young flesh the lascivious wealth or commercialising their luscious figures. India, to redeem this "gender justice" and to proscribe prostitution whereby rich men buy poor women through houses

of vice, has salved its social conscience by enacting the Act. **But the law is so ill-drafted and lacunose that few who follow "the most ancient profession with world" have been frightened into virtue and the customers of wine-cum-women are catered to respectably in bars, hotels and nightclubs in sophisticated and subtle ways, especially in our cities.**

9.9. **THE 1986 AMENDMENT**

In 1986, the 1956 Act was amended by Act 44 of 1986. The Long title of the Act was replaced from "Suppression of Immoral Traffic in Women and Children Act" to the "Immoral Traffic (Prevention) Act" emphasizing the shift from women and children to all persons who were affected by the vice of trafficking. The most important shift, however, was seen in Section 2(f) of the Act. The old Section 2(f) read as under

(f) "prostitution" means the act of a female offering her .body for promiscuous sexual intercourse for hire, whether in money or in kind;

The amended Section 2(f) reads as under :

"2(f) Prostitution" means the **sexual exploitation or abuse of persons** for commercial purposes, and the expression "prostitute" shall

be construed accordingly;”

9.10. Explaining the effect of the amendment, the Supreme Court in **Gaurav Jain v. Union of India, (1997) 8 SCC 114 at page 128, held as under “19.**Therefore, prostitution is not confined, as in the ITP Act, to offering of the body to a person for promiscuous sexual intercourse. Normally, the word “prostitution” means an act of promiscuous sexual intercourse for hire or offer or agreement to perform an act of sexual intercourse or any unlawful sexual act for hire as was the connotation of the Act. By amendment the act of a female and exploitation of her person by an act or process of exploitation for commercial purpose making use of or working up for exploitation of the person of the women taking unjust and unlawful advantage of trapped women for one's benefit or sexual intercourse has been brought within its frame. The word “abuse” has a very wide meaning — everything which is contrary to good order established by usage amounts to abuse. Physical or mental maltreatment also is an abuse. An injury to genital organs in an attempt of sexual intercourse also amounts to sexual abuse. Any injury to private parts of a girl constitutes abuse under the JJ Act. “Public place” means any place intended for use by, or accessible to the public and includes any public conveyance. It is not necessary that it must be

public property. Even if it is a private property, it is sufficient that the place is accessible to the public. It must be a place to which the public, in fact, resorts or frequents.”

9.11. **Balancing Article 19(1) (g) and the right to regulate prostitution.** State of Maharashtra v. Indian Hotel & Restaurants Assn., (2013) 8 SCC 519 : (2013) 4 SCC (Civ) 1 : (2013) 4 SCC (Cri) 345 : 2013 SCC OnLine SC 628 at page 592, Kabir J, in his supplementing judgment opines as under **146**. Of course, the right to practise a trade or profession and the right to life guaranteed under Article 21 are, by their very nature, intermingled with each other, but in a situation like the present one, such right cannot be equated with unrestricted freedom like a runaway horse. As has been indicated by my learned Brother, at the very end of his judgment, it would be better to treat the cause than to blame the effect and to completely discontinue the livelihood of a large section of women, eking out an existence by dancing in bars, who will be left to the mercy of other forms of exploitation. The compulsion of physical needs has to be taken care of while making any laws on the subject. Even a bar dancer has to satisfy her hunger, provide expenses for her family and meet day-to-day expenses in travelling from her residence to her place of work, which is

sometimes even as far as 20 km to 25 km away. Although it has been argued on behalf of the State and its authorities that the bar dancers have taken to the profession not as an extreme measure, but as a profession of choice, more often than not, it is a Hobson's choice between starving and in resorting to bar dancing. From the materials placed before us and the statistics shown, it is apparent that many of the bar dancers have no other option as they have no other skills, with which they could earn a living. Though some of the women engaged in bar dancing may be doing so as a matter of choice, not very many women would willingly resort to bar dancing as a profession."

10. Police have no legal right to prevent a health spa being operated by anyone even if the therapy is done by persons of one sex to those belonging to the opposite sex. A health spa, where cross - gender massages is a worldwide phenomenon, there is no legal prohibition and to borrow the wordings of the Hon'ble Supreme Court, except the majoritarian impulses rooted in moralistic tradition which is attempting to impinge upon individual autonomy.

11. This is not the first occasion where this Court is

dealing with the issue of a Massage Centre/Spa, being subjected to the provisions of the Act. A learned Judge of this Court took pains to analyse the entire law on Spas and Massage Parlours, by making a comparative status of the laws prevailing in other countries and had given broad guidelines to the Police to deal with Spas and Massage Centres under the Act, in future. The relevant portions of the judgment in ***S.Rangaraj and Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others*** reported in [2015 1 LW 77], is extracted hereunder:

"7. Therefore, at the outset, it is necessary to find whether the businesses carried on by the writ petitioners, are lawful or not. To find out if a business is lawful or not, we must see if it is prohibited by law. If it is not prohibited by law, we must then see if it is atleast regulated by law. If it is regulated by law, it would be lawful so long as it is carried on as per the regulations. Otherwise, it would be unlawful.

8. The respondents do not contend that the massage centers/spas etc., ran by the petitioners are prohibited by law. They do not even contend that these are regulated by any special law enacted by the Central Government or at least the State of Tamilnadu or that the petitioners are running these centers in violation of such law. If at all there is any requirement under law, for these establishments, it is only the necessity to obtain a license under the Chennai City Municipal Corporation Act, 1919. This is why the petitioners have made even the Corporation as a party to these proceedings.

9. The only basis on which the police conduct raids in some of these establishments, is an apprehension or suspicion that activities prohibited by law may be carried on in these premises. The police think that some of these establishments are indulging in offences punishable under the Immoral Traffic (Prevention) Act. Therefore, the issues arising for consideration in these cases, have to be analysed from 3 angles, namely (i) the prescription contained in Chennai City Municipal Corporation Act, 1919 (ii) the provisions of the Immoral Traffic (Prevention) Act, and (iii) the need to regulate massage parlours/spas etc., by law, to avoid friction between both sides.

CHENNAI CITY MUNICIPAL CORPORATION ACT, 1919

15. Keeping the above provisions in mind, if we go to Schedule VI, to which a reference is made under Section 287, it is seen that Schedule VI contains a list of purposes, for which, places within the city may not be used without a licence. The purposes or activities, for which, a licence is required, are arranged in the alphabetical order. Beauty parlours, massage centres and spas are not activities, which are included in Schedule VI. But fortunately, Schedule VI contains the following purposes/activities:

(1) Hair-Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever dyeing or drying.

(2) Keeping a shaving or hairdressing saloon.

19. But the main grievance of the petitioners is against the police. The police conduct raids in the business premises of the petitioners on the suspicion that activities punishable under The Immoral Traffic (Prevention) Act, 1956 are carried on in these premises. Therefore, let me now turn on to the second issue namely the one revolving around the said Act.

IMMORAL TRAFFIC (PREVENTION) ACT, 1956

28. A careful look at the provisions of Section 15 would show that a Special Police Officer or a Trafficking Police Officer can enter upon any premises and cause a search without warrant, only after satisfying the following:—

(i) he should have reasonable grounds for believing that an offence punishable under this Act has been or is being committed;

(ii) he must believe that such an offence is committed in respect of a person living in the premises;

(iii) he should believe that the search of the premises with warrant cannot be made without undue delay; and

(iv) he must record the grounds of his belief before entering the premises.

29. The expression "Special Police Officer" is defined in Section 2(i) of the Act, to mean a Police Officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act. Similarly, the expression "Trafficking Police Officer" is defined in Section 2(j) to mean a Police Officer appointed by the Central Government under Section 13(4). I do not know and I have not come across any such Trafficking Police Officer appointed by the Central Government in terms of Section 13(4), at least in the State of Tamil Nadu.

30. Under Sub-section (2) of Section 15, the Special Police Officer or the Trafficking Police Officer should also call upon two or more respectable inhabitants, at least one of

whom should be a woman of the locality in which the place to be searched is situate, to attend and witness the search. For the purpose of enforcing the attendance of such respectable inhabitants, the Police Officer is obliged to issue an order in writing to them. If the person, who is called upon to attend and witness the search, refuses or neglects to comply with the notice, despite an order in writing being delivered to him, he is liable to be punished for an offence under Section 187 of the IPC, by virtue of Sub-section (3) of Section 15. An immunity is granted under Sub-section (6) of Section 15 to persons taking part in or attending and witnessing a search, from any civil or criminal proceedings in respect of anything lawfully done in connection with the search.

31. The Special Police Officer or the Trafficking Police Officer, who makes a search, should be accompanied by at least two women Police Officers. If any woman or girl is removed under Sub-section (4) from the premises of search, she could be interrogated only by the woman Police Officer.

32. Day in and day out, newspapers compete with each other in publishing reports along with photographs of girls, whenever any search is carried out under Section 15 of the Act and any woman is removed from a place. The website of the National Crime Records Bureau shows that a total of about 2,44,270 incidents of crime against women were reported in the whole country during the year 2012. Out of them, about 2563 constitute cases under the Immoral Traffic (Prevention) Act, 1956. Interestingly, 19.5% of such cases (about 500 cases out of those 2563 cases) were reported only in Tamil Nadu. This can be taken either as an indication that incidents of crime under the said Act is on the increase in Tamil Nadu or as an indication of the role played by the Police in the State of Tamil Nadu in taking the crimes under this Act more seriously than what their counterparts in the other States do.

33. Unfortunately, no accountability is fixed on the police to see whether all the requirements of Section 15 are complied with or not. No one calls upon the Special Police Officer or the Trafficking Police Officer (i) to produce records to show whether he has minuted the grounds of his belief that an offence punishable under the Act is committed or has been committed in respect of a person living in any premises, (ii) to produce records to show his subjective satisfaction that the search of the premises with warrant cannot be made without undue delay, (iii) to produce records to show whether two respectable inhabitants of the locality attended and witnessed the search, (iv) to show whether persons removed from such premises were subjected to medical examination and produced before the appropriate Magistrate immediately, and (v) to produce proof to show that two women Police Officers accompanied them and the interrogation of any woman was done only by them.

34. Many times, even persons who are booked under the provisions of this Act, do not appear to challenge the procedure adopted. This is perhaps due to the fact that in most of the cases, the Police find it convenient to book a person only for an offence under Section 8, which is punishable on first conviction, either with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 5,000/-. Therefore, it appears that people choose to plead guilty and pay the fine even on the first occasion and get off, instead of going through the mill, by facing the prosecution and challenging the procedure followed by the Police. The remedy is seen as worse than the disease.

36. Therefore, the only presumption that I can draw is that as against the writ petitioners herein, the Police did not carry out a search by following all the steps prescribed in Section 15. When the mandate of the law is so clear in Section 15, the respondents cannot carry out a search de hors Section 15.

37. The conclusion that we can arrive at, on the basis of the above discussion, is two fold. If the Police carry out a search of the premises where the petitioners are carrying on business activities, after following all the steps prescribed in Section 15, the petitioners cannot come under Article 226, but may have to seek redressal somewhere else. But, if the respondents are in the habit of carrying out searches in a manner not prescribed by Section 15, then the same actually tantamount to an unlawful interference with the fundamental right of the petitioners to carry on any business or profession which is not declared as unlawful by any legislation.

38. We have so far addressed two issues, one relating to the license to be obtained from the Chennai City Municipal Corporation under the provisions of the Chennai City Municipal Corporation Act, 1919 and the other relating to the action initiated by the police under the Immoral Traffic (Prevention) Act, 1956. There is one more issue that relates to the unregulated growth of massage centres/spas. Unfortunately, there is no law in any State in India which regulates the functioning of massage centres. Therefore, we may now have to take an overseas tour, of course at no cost, for educational purposes.

GLOBAL SCENARIO ON THE REGULATION OF MASSAGE CENTRES

66. Therefore, if the respondents wish to regulate the business/profession of health centres, massage parlours and spas, they must take recourse either to the enactment of a legislation or to the issue of rules/bylaws in exercise of the power conferred by the respective enactments to make subordinate legislation.

67. In the light of the above, all the writ petitions are disposed of to the following effect:—

(i) The respondents shall not, as a matter of routine and without any basis, conduct any raids and interfere with the business carried on by the petitioners;

(ii) In specific cases where the police have reasonable grounds to believe that an offence punishable under the Immoral Traffic (Prevention) Act has been or is being committed, it is open to the police to take action, after scrupulously following all the steps indicated in Section 15 of the said Act. The steps to be followed are narrated by me in paragraph 28 above; and

(iii) Based upon the laws enacted in various States of the United States of America and Singapore, which I have dealt with in paragraphs 39 to 54, the respondents may take appropriate steps for bringing in either a new legislation or a subordinate legislation in terms of the provisions of the Chennai City Municipal Corporation Act or the Chennai City Police Act, so that public order, decency and morality, which can form the basis for a regulatory law under Article 19(2) of The Constitution, are taken care of. The Government shall file a report on or before 31.3.2015, before this Court, about the decision taken. No costs. Consequently, all connected pending MPs are closed".

12. In spite of the above judgment rendered after a detailed analysis covering all the enactments, neither did the legislature nor the subordinate legislation took any efforts to enact a law governing/regulating the business/profession of Health Centres, Massage Parlours and Spas, nor did the Police follow the guidelines in every case where they proceed to take action under the Act against Spas and Massage Parlours. The judgment confined itself to the law journal, without being implemented.

13. Only during the hearing of this case, the learned Additional Public Prosecutor, brought to the notice of this Court, the steps

taken to amend the Tamil Nadu District Municipalities Act, 1920, by incorporating certain provisions to regulate Beauty Parlours, Spa, Massage Centres etc. At last, the Government has come out of a long hibernation to regulate this business/profession which is growing at a rapid pace.

14. Keeping in mind the above discussion, this Court will now proceed further to deal with the individual cases.

W.P.No.29995 of 2018

This Writ Petition has been filed by the Power of Attorney Agent of an Indonesian Citizen seeking for the relief of compensation for the violation of the personal liberty and loss of personal reputation. M/s.Kadek Dwo Ani Rasmini, hails from Bali, Indonesia, who is a professionally trained and qualified Spa Therapist. She had come to India on 04.08.2018, to work under a valid contract with the 5th respondent Spa after obtaining the Indian Employment E-2 visa, for the period from 26.07.2018 to 25.07.2019. This petitioner had earlier worked in India between 2016-2017. This is evident from the Income Tax paid by her in India as could be seen from the Income Tax returns.

2. On 01.10.2018, at about 03.30 p.m., the Inspector of Police of Neelankarai Police Station had conducted a raid at the premises of the 5th respondent, and took away the petitioner and 4 other Spa Therapists who were working in the Spa. At about 10.30 p.m., all of them were shifted to the 4th respondent - Government Vigilance Home at Mylapore and confined there. The petitioner was taken the next day on 02.10.2018, and produced before the Judicial Magistrate, Alandur, who had again sent her to the Home. Only at this point of time, the petitioner came to know that an FIR has been registered by the 1st respondent in Crime No.1518 of 2018 dated 01.10.2018, against the 5th respondent under the Act, and this petitioner has been cited as a victim. The petitioner was not even informed on what grounds she was taken from the Spa and kept at the Home and she was kept in custody for nearly 26 days in the Home. With very great difficulty the petitioner contacted her father at Indonesia who had spent a huge amount of money to come to India and he stayed here for nearly 20 days.

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3. It is the further case of the petitioner that the whole incident was never informed to the Indonesian Embassy or the Ministry of External Affairs, which procedure is mandatory, whenever foreign national is arrested or detained. The father of the petitioner on his

arrival, informed the Indonesian Embassy, and efforts were made to get the release of the petitioner.

4. The petition filed for release of the petitioner from the detention Home in CrI.M.P.No.5881 of 2018, came up for hearing on 26.10.2018, and the Court ordered release of the petitioner. The petitioner thereafter found that all her personal belongings, educational certificates, jewellery, cash etc., remained with the 1st respondent and it was not returned back. The petitioner ultimately left India high and dry on 01.11.2018 to her country. Aggrieved by the illegal action on the part of the Police, the present writ petition has been filed, seeking for compensation of a sum of Rs.10 lakhs for denial of personal liberty, loss of personal reputation and monetary loss suffered by the petitioner.

5. Mr.V.B.R.Menon, learned counsel representing the petitioner would submit that the respondent Police had treated the petitioner in a very inhuman way and have detained the petitioner illegally for nearly 26 days by branding her as a victim. The learned counsel submitted that the entire mandatory procedure under the Act has been thrown to winds and a Foreign National has been unnecessarily branded as a victim and subjected to illegal detention for nearly 26 days.

The learned counsel submitted that the 1st respondent took law into his hands, and conducted an illegal raid without following the mandatory procedure under Section 15 of the Act and without informing about the detention to the Indonesian Embassy and thereby violated the personal liberty of the petitioner. The learned counsel also submitted that the personal belongings of the petitioner was never returned back to the petitioner, and therefore the petitioner incurred a huge monetary loss. Hence, the learned counsel submitted that the State is liable to pay compensation to the petitioner, which can be recovered from the 1st respondent - Inspector of Police.

6. The learned counsel brought to the notice of this Court the educational qualifications of the petitioner and the Income Tax returns filed by the petitioner for the year 2017-2018 and 2018-2019. The learned counsel also brought to the notice of the Court the employment visa given to the petitioner and also the desperate steps taken for the release of the petitioner through the Indonesian Consulate, Chennai.

7. The learned counsel for the petitioner also relied upon the following judgment in order to substantiate his arguments for claim of

compensation.

S. Nambi Narayanan .Vs. Siby Mathews & Others Etc.,
in **C.A.Nos.6637-6638/2018 dt.14.09.2018.**

8. The learned Additional Public Prosecutor appearing on behalf of the respondent Police would submit that the Police, viz; the 1st respondent had complied with the mandatory provisions under the Act, and had also informed the Indonesian Consulate about the incident. The learned counsel would further submit that the personal belongings of the petitioner had been handed over to the 5th respondent, and the 1st respondent did not take custody of the same. The learned counsel would further submit that the 5th respondent indulged in utilising the premises to run a brothel and was involving the victims in prostitution and thereby had committed an offence under the Act. The learned counsel submitted that the 1st respondent had acted strictly in accordance with the Act, and no compensation can be claimed from the 1st respondent for the act done by him in discharge of his official duty.

9. Since the 1st respondent was named in his individual capacity, MR.K.Venkataraman, learned counsel appeared for the 1st respondent. He adopted the arguments made by the learned Additional Public Prosecutor, and further submitted that the 1st respondent took all

efforts to safeguard the victims and saved them from the clutches of the 5th respondent who was running a prostitution in the office premises.

10. The learned Additional Public Prosecutor also handed over the entire case diary pertaining to the case to this Court.

11. This Court has carefully considered the submissions made on either side, and also the materials placed on record along with the case diary.

12. The case diary clearly reveals the fact that the mandatory provisions under Section 15 of the Act, has been given a clear go by. None of the guidelines given by this Court in the judgment in ***S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others reported in [2015 (1) LW 77]*** referred supra has been followed. A reading of the FIR shows that one B.Kumar, working as a Grade-I Police Constable had given a report stating that on 01.10.2018, at about 18.00 hrs, he found one person coming out of the Spa Centre and asked him whether he is interested to have a massage done by girls belonging to Thailand, Indonesia, Manipur etc., and can even have sexual intercourse with any of these girls by paying an additional amount of Rs.2,500/-. This according to the Head Constable

was said by the owner of the 5th respondent Spa and all the girls were shown to him. Based on the report, an FIR was registered for an offence under Section 3(2)(a), 4(1) and 5(i)(a) of the ITP Act, and a raid was conducted on 01.10.2018, and all the victims were brought to the Police Station and thereafter sent to the Home. They were also produced before the Judicial Magistrate, Aladur, and the detention was continued for nearly 26 days.

13. The 1st respondent for reasons best known to him has come to the conclusion that the 5th respondent Spa is a brothel and prostitution is conducted there. Unfortunately all the persons involved, right from the complainant up to the stage of conducting the raid, not one respectable inhabitant of the locality was called as a witness. There was no proof of a single incident of prostitution, or of the activities of a prostitute. The 1st respondent has also violated the mandatory procedure of informing the Indonesian Consulate about the incident, since the petitioner is an Indonesian National. This is clearly in contravention of the office Memorandum No.14051/14/2011-F.VI given by the Ministry of Home Affairs, wherein it has been clearly stated that any Foreign national apprehended in connection with human trafficking, should be informed to the External Affairs Ministry as well as the

Consulate. Unfortunately even the Magistrate has dealt with this case in a very routine fashion, without satisfying himself whether the mandatory requirements under Section 15 of the Act has been satisfied and whether the petitioner was actually a victim and whether information was given to the Embassy and the Ministry of External Affairs. The entire reading of the case diary makes it very clear that this is a made up case as against the 5th respondent, without following any of the mandatory procedures and unfortunately this petitioner who was branded as a victim had fallen prey and was made to suffer the ignominy of detention in the Home for nearly 26 days. The 1st respondent, without any basis has proceeded to brand the 5th respondent as a brothel and has assumed that what is being carried on in the Spa Centre is prostitution.

14. The 1st respondent has assumed that he has unfettered power without realising that he is bound by the provisions of the Act . The more the power, the more must be the restrained in using the power. If the Police is permitted to exercise their powers under the Act in this manner, it is possible for the Police to brand any Spa Centre or a Massage Parlour, as a brothel. It is only to keep check on the illegal use of power, mandatory requirements are prescribed under Section 15 of the Act, and has been clearly spelt out by this Court in ***S.Rangaraj &***

Others, referred supra. Using the Head Constable belonging to the Police Station as a decoy to lay the trap and thereafter to conduct a ride, which ultimately did not result in a scrap of material to show that a brothel was run by the 5th respondent, has been frowned upon by this Court in the judgment in Ratnamala referred supra, and this Court held that such a technique is against all standards of decency and it shocks the conscience of the Court and such methods instead of preventing the evil are likely to only encourage it. It is not clear as to how the 1st respondent came to a conclusion that the petitioner is a victim. This Court is of the considered view that the entire action of the 1st respondent is illegal and it has violated the personal liberty of the petitioner and also her reputation. This is clearly a case of colourable exercise of power. If this power goes unchecked, Spa Centre or a Massage Parlour can be run only under the mercy of a Police Officer. For an extraneous consideration, the Police can brand any Spa or a Massage Centre as a brothel, and even if a brothel is being run in the name of a Spa or a Massage Centre, no action will be taken. This situation is neither good for the society nor to the Police force.

15. Having given such a finding, this Court now proceeds to deal with the claim of compensation made by the petitioner. Article 21

of the Constitution of India, which deals with the protection of life and personal liberty, is extended to "all persons", including foreigners. Useful reference can be made in this regard to the judgment of the Hon'ble Supreme Court in **Louis .Vs. Union of India** reported in [**1991 3 SCC 554**]. It will be useful to refer to the judgment of the Hon'ble Supreme Court in **D.K.Basu .Vs. State of W.B.** reported in [**1997 1 SCC 416**]. The relevant portions are extracted here under:

"40. *Ubi jus, ibi remedium.—There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.*

41. *Some punitive provisions are contained in the Indian Penal Code which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or keeps a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence. Illustrations (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code. These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong*

done and give judicial redress for legal injury is a compulsion of judicial conscience.

42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 and made a specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to the Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage *Rudul Sah v. State of Bihar* [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] ; *Sebastian M. Hongray v. Union of India* [(1984) 1 SCC 339 : 1984 SCC (Cri) 87 and (1984) 3 SCC 82 : 1984 SCC (Cri) 407] ; *Bhim Singh v. State of J&K* [1984 Supp SCC 504 : 1985 SCC (Cri) 60 and (1985) 4 SCC 677 : 1986 SCC (Cri) 47] ; *Saheli, A Women's Resources Centre v. Commr. of Police* [(1990) 1 SCC 422 : 1990 SCC (Cri) 145] .) There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See *Nilabati Behera v. State* [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899])

43. Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India. In *Nilabati Behera v. State* [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : 1993 Cri LJ 2899] the decision of this Court in *Kasturilal Ralia Ram Jain v. State of U.P.* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] wherein the plea of sovereign immunity had been upheld in a case of vicarious liability of the State for the tort committed by its employees was explained thus: (SCC p. 761, para 14)

"In this context, it is sufficient to say that the decision of this Court in *Kasturilal* [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] upholding the State's plea of sovereign

immunity for tortious acts of its servants is confined to the sphere of liability in tort, which is distinct from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity has no application in the constitutional scheme, and is no defence to the constitutional remedy under Articles 32 and 226 of the Constitution which enables award of compensation for contravention of fundamental rights, when the only practicable mode of enforcement of the fundamental rights can be the award of compensation. The decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798] and others in that line relate to award of compensation for contravention of fundamental rights, in the constitutional remedy under Articles 32 and 226 of the Constitution. On the other hand, Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] related to the value of goods seized and not returned to the owner due to the fault of government servants, the claim being of damages for the tort of conversion under the ordinary process, and not a claim for compensation for violation of fundamental rights. Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583] is, therefore, inapplicable in this context and distinguishable."

44. *The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.*

54. *Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is*

vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit".

16. It will also be relevant to rely upon the judgment of the Hon'ble Supreme Court in ***S.Nambi Narayanan .Vs. Siby Mathews & Others etc.***, in **Crl.A.Nos.6637-6638 of 2018 dt.14.09.2018**. The relevant portions of the judgment are extracted hereunder:

"31. *As stated earlier, the entire prosecution initiated by the State police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State police was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the Central Bureau of Investigation. After comprehensive enquiry, the closure report was filed. An argument has been advanced by the learned counsel for the State of Kerala as well as by the other respondents that the fault should be found with the CBI but not with the State police, for it had transferred the case to*

the CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardized as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.

32. There has been some argument that there has been no complaint with regard to custodial torture. When such an argument is advanced, the concept of torture is viewed from a narrow perspective. What really matters is what has been stated in *D.K. Basu v. State of W.B.* The Court in the said case, while dealing with the aspect of torture, held:-

"10. 'Torture' has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of human civilisation.

'Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.'

- Adriana P. Bartow

11. No violation of any one of the human rights has been the subject of so many conventions and declarations as 'torture' - all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. 'Custodial torture' is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward - flag of humanity must on each such occasion fly half-mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."

33. From the aforesaid, it is quite vivid that emphasis has been laid on mental agony when a person is confined within the four walls of a police station or lock up. There may not be infliction of physical pain but definitely there is mental torment. In *Joginder Kumar v. State of U.P. and others*⁵, the Court ruled:-

"8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction.

The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first - the criminal or society, the law violator or the law abider...."

34. In *Kiran Bedi v. Committee of Inquiry and another*⁶, this Court reproduced an observation from the decision in *D.F. Marion v. Davis*⁷:-

"25. ... 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.'"

35. Reputation of an individual is an inseparable facet of his right to life with dignity. In a different context, a two Judge Bench of this Court in *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*⁸ has observed:-

"55. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

36. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected. In this context, we may refer with profit how this Court had condemned the excessive use of force by the police. In *Delhi Judicial Service Association v. State of Gujarat and others*⁹, it said:-

"39. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property.

The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender.

The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police ... [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

37. *If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant. In *Sube Singh v. State of Haryana and others*¹⁰, the three-Judge Bench, after referring to the earlier decisions, has opined:-*

"38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant.

The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

38. *In *Hardeep Singh v. State of Madhya Pradesh*¹¹, the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench*

of the High Court in intra-court appeal had granted compensation of Rs. 70,000/-. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

39. In the instant case, keeping in view the report of the CBI and the judgment rendered by this Court in *K. Chandrasekhar (supra)*, suitable compensation has to be awarded, without any trace of doubt, to compensate the suffering, anxiety and the treatment by which the quintessence of life and liberty under Article 21 of the Constitution withers away. We think it appropriate to direct the State of Kerala to pay a sum of Rs. 50 lakhs towards compensation to the appellant and, accordingly, it is so ordered. The said amount shall be paid within eight weeks by the State. We hasten to clarify that the appellant, if so advised, may proceed with the civil suit wherein he has claimed more compensation. We have not expressed any opinion on the merits of the suit".

17. From the above judgments, it is abundantly clear that where ever there is a violation of a fundamental right to life and liberty, grant of compensation, is an automatic consequence. In this case the victim is a foreign national. Every foreign national who comes into this country, should be treated like an ambassador of the concerned country. They carry with them their opinions and impressions about our country. Therefore treating them with utmost respect, will enhance the image of this country around the world. The petitioner came into this country, with the fond hope that her services will be used as a Massage Therapist and she will be adequately compensated. She would not have thought even in the remotest of her dreams that she will be confined at a Home by the Police for 26 days. The petitioner has undergone a horrific

experience in the hands of the 1st respondent, and I am sure that she will have a very bad impression about this country and its system.

18. It is under these circumstances, this Court has to get into action and redress her grievance. She must be made to know that there is a strong judicial system in this country, which will immediately step in and undo the illegality. This is the only way in which the image of this country can be restored in the mind of the petitioner.

19. The petitioner is entitled to be paid compensation by the State. The petitioner is a foreign national, and she came into this country after obtaining a valid employment permit and she was also offered a salary of \$ 25,000/- per year. She hardly worked for three months, and she has been virtually driven out of the country. In the facts and circumstances of the case, this Court is of the considered view that the petitioner is entitled to be paid a compensation of a sum of Rs.2,50,000/- [Rupees Two Lakhs Fifty Thousand only] for infringement of her personal liberty and her reputation. This compensation must be paid by the State Government, viz; the 3rd respondent, to the petitioner through the Consulate of Republic of Indonesia, Chennai, within a period of four weeks from the date of receipt of a copy of this order. This

compensation shall be recovered from the salary of the 1st respondent in equal monthly installments.

Accordingly, this writ petition is allowed.

CrI.O.P.No.28535 of 2018

This Criminal Original Petition has been filed seeking to quash the FIR registered in Crime No.1518 of 2018, pending on the file of the respondent Police. The petitioners are the owners of the Spa called as Willows Spa. The respondent Police has registered an FIR against the petitioners for an offence under Section 3(2)(a), 4(1) and 5(1)(a) of the Act. This Court has dealt in detail the manner in which the FIR came to be registered, in gross violation of the mandatory procedures and the guidelines given by this Court, while passing orders in W.P.No.29995 of 2018, supra. Therefore, there is no requirement to deal with the same all over again in this petition.

2. One more factor that has to be taken into consideration by this Court is the Writ petition that was filed before this Court in W.P.No.17528 of 2018, wherein the above said Spa had

approached this Court seeking for the relief of a direction to the respondent Police not to interfere with the conduct of the business of the Willow Spa and Company. This writ petition was entertained by this Court and an order of *Status quo* was also granted by this Court, and this writ petition is pending. It is in the teeth of this order, the respondent Police has proceeded to conduct a raid and register an FIR on 01.10.2018 against the petitioners. What was apprehended by the petitioners in the writ petition, came true by the subsequent illegal action on the part of the respondent Police.

3. In view of the above, this Court is of the considered opinion that the continuation of the investigation against the petitioners is an abuse of process of law and in the interest of justice, the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. In the result, the FIR in Crime No.1518 of 2018, on the file of the respondent Police is hereby quashed.

Accordingly, this Criminal Original Petition is allowed.

W.P.No.31320 of 2018

This writ petition has been filed challenging the FIR registered by the respondent Police in Crime No.51 of 2018.

2. The allegations as contained in the FIR is that one Mahendran, who is working as Special Sub Inspector in the respondent team, visited river day Spa, based on a message received from just dial, to the effect that there was solicitation, inviting persons to have sexual intercourse, in the name of a Massage Centre. This Inspector had visited the Spa and he was informed by one Mustafa that there are six girls, who are working in the Spa and he can chose any girl and have sexual intercourse by paying a sum of Rs.3,500/-. This information is said to have been filed by way of a report and an FIR came to be registered on 02.11.2018, for an offence under Section 3(2)(a), 4(1) and 5(1)(a) of the Act, against the owners Subramanian and Mustafa and a ride was conducted on 02.11.2018, at 20.10 hrs. The said Mustafa was arrested and six girls were identified as victims and were sent to the Government Home for Women at Mylapore.

3. The learned counsel for the petitioner would submit that the Spa is being run after getting a proper license under Section 287 of the Chennai City Municipal Corporation Act. The learned counsel

would further submit that this licensed Spa, has now been branded as a brothel by the respondent Police. The learned counsel would further submit that the mandatory requirements under Section 15 of the Act, has not been followed, and the judgment of this Court in **Mr.S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others**, has been completely violated. The learned counsel also brought to the notice of this Court the fact that the entire cause of action for the Police to act against the Spa was an alleged SMS message and what are the contents of that message is completely absent both in the FIR as well as in the counter filed by the respondent Police. The learned counsel further submitted that the respondent Police have arbitrarily exercised the power and have completely ruined the reputation of the Spa and the so called victims who were sent to the Home, have filed independent petitions before this Court seeking for their release from the Home, and questioning the act of the Police in branding them as a victim. The learned counsel submitted that the respondent Police, for reasons best known to them, proceeded with a pre conceived notion that the Massage Centre is a brothel and the girls working there are prostitutes. The learned counsel therefore submitted that absolutely no offence has been made out, and the FIR has to be quashed.

4. The learned Additional Public Prosecutor submitted that the respondent Police have proceeded against the Spa in accordance with law and have rescued six victim girls and sent them to the Government Home. The learned counsel would further submit that the investigation is in progress and this Court should not interfere with the investigation at this stage. The learned Additional Public Prosecutor also handed over the entire case diary, on the directions given by this Court.

5. This Court has carefully considered the submissions made on either side, and also the materials placed on record along with the case diary.

6. The case diary clearly reveals the fact that the mandatory provisions under Section 15 of the Act, has been given a clear go by. None of the guidelines given by this Court in the judgment in ***Mr.S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others***, referred supra has been followed.

7. There is a striking similarity like the previous case in the modus operandi adopted by the Police in this case. The manner in

which a decoy was used and a raid was conducted and an FIR was registered, is a replica of what this Court saw while dealing with W.P.No.29995 of 2018.

8. The respondent Police for reasons best known to him has come to the conclusion that the Spa is a brothel and prostitution is conducted there. Unfortunately all the persons involved, right from the complainant up to the stage of conducting the raid, not one respectable inhabitant of the locality was called as a witness. There was no proof of a single incident of prostitution, or of the activities of a prostitute.

9. The respondent has assumed that he has unfettered power without realising that he is bound by the provisions of the Act . The more the power, the more must be the restrained in using the power. If the Police is permitted to exercise their powers under the Act in this manner, it is possible for the Police to brand any Spa Centre or a Massage Parlour as a brothel. It is only to keep check on the illegal use of power, mandatory requirements are prescribed under Section 15 of the Act, and has been clearly spelt out by this Court in **Mr.S.Rangaraj & Others .Vs. The Commissioner of Police, Chennai City, Chennai-8 & Others,,** referred supra. Using the Special Sub Inspector belonging to the same

Police team as a decoy to lay the trap and thereafter to conduct a ride, which ultimately did not result in a scrap of material to show that a brothel was run by the Spa, has been frowned upon by this Court in the judgment in Ratnamala referred supra and this Court held that such a technique is against all standards of decency and it shocks the conscience of the Court and such methods instead of preventing the evil are likely to only encourage it.

10. This Court is of the considered view that the entire action of the respondent is illegal. This is clearly a case of colourable exercise of power. If this power goes unchecked, Spa Centre or a Massage Parlour can be run only under the mercy of a Police Officer. For an extraneous consideration, the Police can brand any Spa or a Massage Centre as a brothel and even if the brothel is being run in the name of a Spa or a Massage Centre, no action will be taken. This situation is neither good for the society nor to the Police force.

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11. The respondent Police which is a specialised wing to investigate cases under the Act, does not seem to resort to the provisions of Section 16 of the said Act. By resorting to Section 16 of the said Act,

there will be a lot of authenticity in the action taken by the Police since information will be provided to the Magistrate by placing necessary materials and based on the direction given by the Magistrate, the Police can take appropriate action against any Spa or a Massage Centre, which indulges in prostitution. There are rotten apples in every business and stringent action must be taken against them. However, the Police must get out of this mind set of painting all the Massage Centres and Spas as brothels.

12. As stated above, the respondent Police being a specialised wing, should conduct the investigation in a more professional manner in accordance with the provisions of the Act, arrangements should be made for maintaining direct observations on the premises, and evidence of such observations should be recorded. Even if traps are resorted to, other evidence collected over a period of time on the observations made on the premises/centre, should also be adduced to strengthen the impression or inference of the continuous of the use of the place as a brothel. This will give a lot of authenticity while complying with the mandatory requirements under Section 15 of the Act. The Act was conceived to serve a public social purpose viz; to suppress immoral traffic in women and girls, to rescue fallen women and girls and to

prevent deterioration in public morals.

13. In this case, the so called victims have filed independent petitions before this Court questioning the action of the respondent Police in branding them as victims. The so called confessions taken from the victims on 02.11.2018, is verbatim identical and the learned Magistrate has proceeded to send all these girls, in a routine manner to the Home, even without enquiring the genuineness of the facts projected by the Police. It is high time that the Magistrates deal with these types of cases with more sensitivity and ensure that genuine Spas and Massage Centres are not labeled as brothels. Even at the time when the victims are produced before the Court along with the case diary, the Magistrate must ensure that the Police have followed the mandatory requirements under Section 15 of the said Act. This will go a long way in preventing the Police from misusing the powers under the Act, against the Spas and Massage Centres.

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14. In view of the above, this Court is of the considered opinion that the continuation of the investigation against the petitioner is an abuse of process of law and in the interest of justice, the same

requires the interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. In the result, the FIR in Crime No.51 of 2018, on the file of the respondent Police is hereby quashed.

Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

Crl.OP.Nos.26714, 26723, 26727, 26729, 27063 & 27064 of 2018

In all these cases, the petitioners had sought for the relief of releasing them from the 6th respondent - Government Home, where they have been detained by naming them as victims in Crime No.51 of 2018.

2. This Court has already dealt with the merits of the case in detail in W.P.No.31320 of 2018, and has proceeded to quash the FIR itself. All these petitioners were directed to be released from the Home by virtue of interim orders passed by this Court on 16.11.2018 and 20.11.2018. Pursuant to the orders passed by this Court, the petitioners have also been released from the Home. Now, that the FIR itself has been quashed, the petitioners are no more required for any enquiry by

the respondent Police in Crime No.51 of 2018.

Accordingly, the criminal original petitions are disposed of.

Consequently, all the connected miscellaneous petitions are closed.

02.01.2019

Index : Yes

Internet: Yes

KP

To

1.Mr.K.Natarajan,
Inspector of Police,
J-8, Neelankarai Police Station,
221, SH49, Neelankarai, Chennai-600 041.

2.The Deputy Commissioner of Police,
Adyar Division,
LB Road, Adyar, Chennai 600 020.

3.The Secretary to Govt.of Tamil Nadu,
Home, Prohibition and Excise Department,
Secretariat, Fort. St.George,
Chennai-600 009.

4.The Superintendent,
Government Vigilance Home,
16/27, Rosary Church Road,
Mylapore, Chennai-600 004.

5.The Manager,
Willows Spa,



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38/B, 1st Avenue,
Vettuvankeni, ECR, Chennai-600 115.

6.The Inspector of Police,
Neelangarai Police Station,
Adayar District, Chennai.

7.The Inspector of Police,
AVS II P.S,
Chennai - 600 002.

8.The Chief Probation Superintendent,
Office of the Chief Probation Superintendent,
CMDA Tower II, 2nd Floor,
Egmore, Chennai-8.

9.The Superintendent,
Government Home for Women,
Mylapore, Chennai-600 004.

10.IV Metropolitan Magistrate,
Saidapet.

11.The Public Prosecutor,
High Court, Chennai.



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N. ANAND VENKATESH,. J.

KP

Pre-Delivery Common Order Made in
W.P.Nos.29995 & 31320 of 2018
and
CrI.O.P.Nos.28535,26714,26723,
26727,26729,27063 & 27064/ 2018



Reserved on: 13.12.2018

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Delivered on: 02.01.2019

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