

Understanding ITPA:
Impact on the lives of
Sex workers



Sangram 2014



 Veshya Anyay Mukti Parishad
(VAMP)

Authors

Rakesh Shukla,

Advocate, Supreme Court, New Delhi

Aarthi Pai,

Centre for Stigma and Marginalisation, SANGRAM

Illustrations

YS Braham,

Suresh Kumar

Understanding ITPA: (Immoral Traffic Prevention Act)

**Its impact on the lives of
sex workers**



Introduction

Sex workers face police action under various laws.

The Police Act is used some times while the Indian Penal Code (IPC) is also applied some times. Women in sex work are also accused of disturbing public life or indecency. If a customer visiting the sex worker happens to be a thief, dacoit, murderer or an offender, the police interrogate the sex workers also.

A commonly used law against women in sex work is known as ITPA or the Immoral Traffic (Prevention) Act.

The law was introduced to prevent trafficking and protect women from sexual exploitation.

Various sections of ITPA are used against adult consenting sex workers. Indiscriminate raids are carried out to rescue consenting sex workers. Laws are used to arrest sex workers for soliciting or doing sex work in public places.

It is important for sex workers to have knowledge of these laws. We are providing information about the sections of ITPA in clear, simple and easy to understand terms. We encourage you to discuss these sections and its impact on the lives of sex workers.

VAMP Collectives, India

STOP!

Police cannot beat any woman
under any circumstances



ITPA has various sections which impact



The Sex Worker



Client



Third parties or those people who support sex workers in various ways – such as client procurers, brothel managers



Criminalization

All aspects of sex work are
criminalized

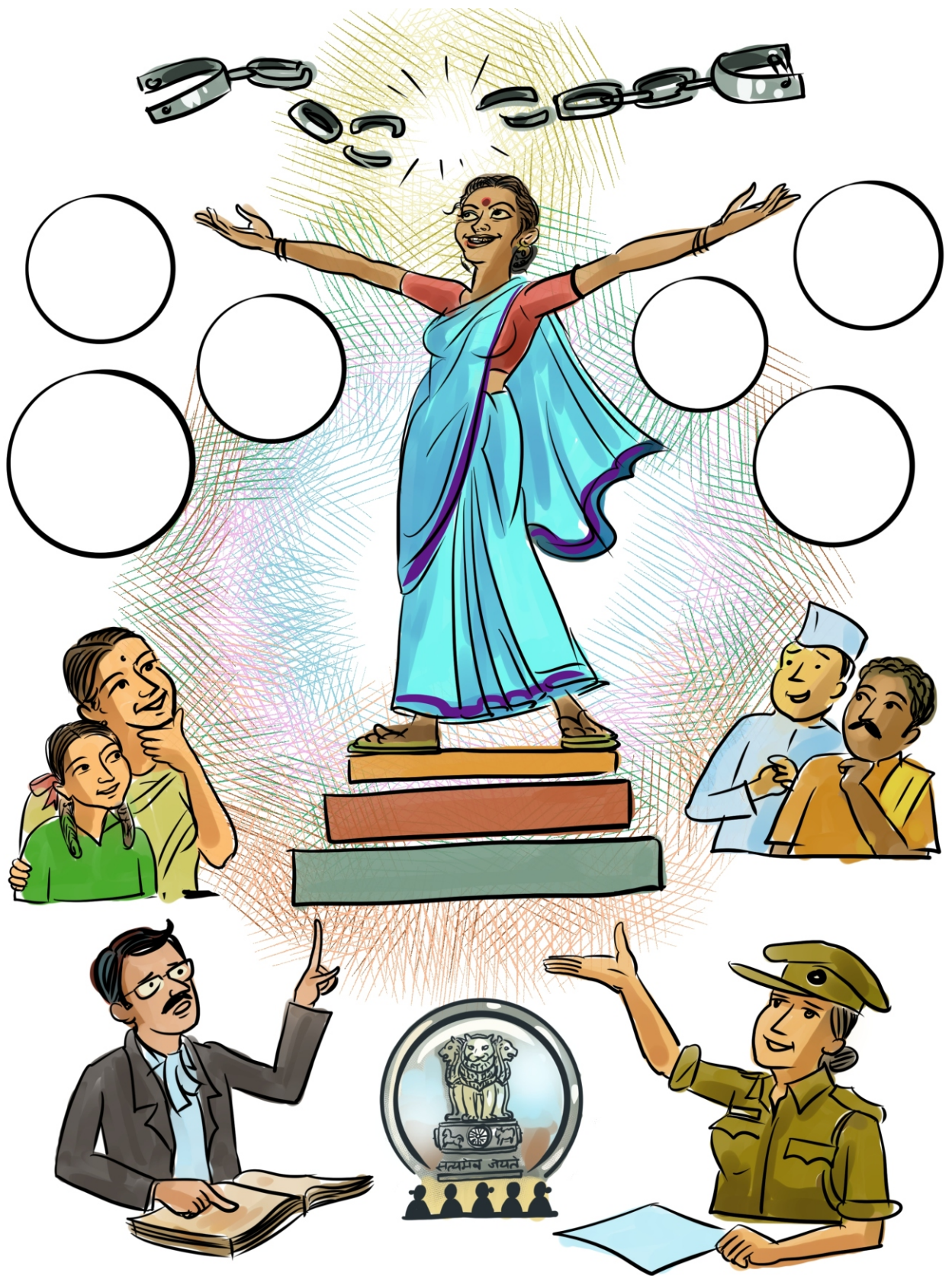


CRIMINALISATION

Decriminalization

Repeal or remove all laws that criminalize any aspect of sex work.

Collectives of sex workers will ensure regulation of work including rates, working hours etc.



DECRIMINALISATION

Legalization

Make laws to regulate sex work including issuing mandatory licenses, mandatory regular health check –ups and zoning regulations

Include sex work within labor laws and regulations



LEGALISATION

Brothel (Section 2A)

A brothel is a house or a room or a place where prostitution is conducted for the benefit/ profit of two or more people.

If a person is alone engaged in prostitution, then the place cannot be called as a brothel.

Section 3

Keeping a brothel or allowing a place to be run as a brothel

3 (1) Running a brothel, giving assistance to run a brothel, are punishable with 1 to 3 years of imprisonment, or a fine of Rs 2000/-.

If held for the same offence on the second occasion, the imprisonment ranges from a minimum of 2 to a maximum of 5 years.

3 (2) If a house is intentionally made available for running a brothel, it can lead to a fine of Rs 2000/- or imprisonment for two years.

If the news is published in the newspaper about a place being used as a brothel or if the list of items found at the house during the investigation is given to the owner of the house, it means that the owner was aware that the house was going to be used for prostitution.

If the offence is proven, the rent agreement will stand cancelled from date of conviction.

Engaging in sex work while living alone is not a crime.

Two or more people need to engage in sex work in a room or house for the space be called a brothel.



Old Court decisions

If a woman is living alone and is engaged in sex work, her house cannot be termed as a brothel and she cannot be accused of running a brothel. Such a woman cannot be sent to a rehabilitation home.

Girls engaged in sex work / prostitution cannot be charged with running the brothel or assisting in running the brothel.

The owner of a hotel can be charged with running a brothel if a room in the hotel is used for sex work/ prostitution.

Running a brothel implies that sex work/ prostitution is going on at the place for a long time.

A brothel doesn't mean a place frequented by the customers.

If a person demands a woman engaged in prostitution, and if the person is taken inside the house and shown different women, and if the person selects one of the women, then this testimony is enough to prove that the brothel was being run from the house.

If a person is convicted for giving premises for running a brothel, then the women occupying the house must be thrown out of the premises.

A woman engaged in sex work/
prostitution cannot be charged with
running the brothel or assisting in
running the brothel



Many times the police send a decoy customer to a brothel.

The testimony of such a decoy customer can be accepted only after a thorough investigation.

To prove a crime, the event and the testimony must corroborate with each other.

Go inside and ask for a girl. Give these same notes when asked for the money.



Take this 200/-rupees



Caught red handed with the rupee notes supplied by the police.



Section 4 Living on earnings of prostitution

[Section 4 (1)]

If a person older than 18 years of age is intentionally living on the earning of prostitution, the person may be imprisoned for 2 years or fined Rs. 1000/-.

The punishment is applicable even if the earnings are not fully used for supporting the livelihood of that person. *(check if this is the right translation)*

Those living from earnings of minor girls can face imprisonment for a minimum of 7 years and a maximum of 10 years.

[Section 4 (2)]

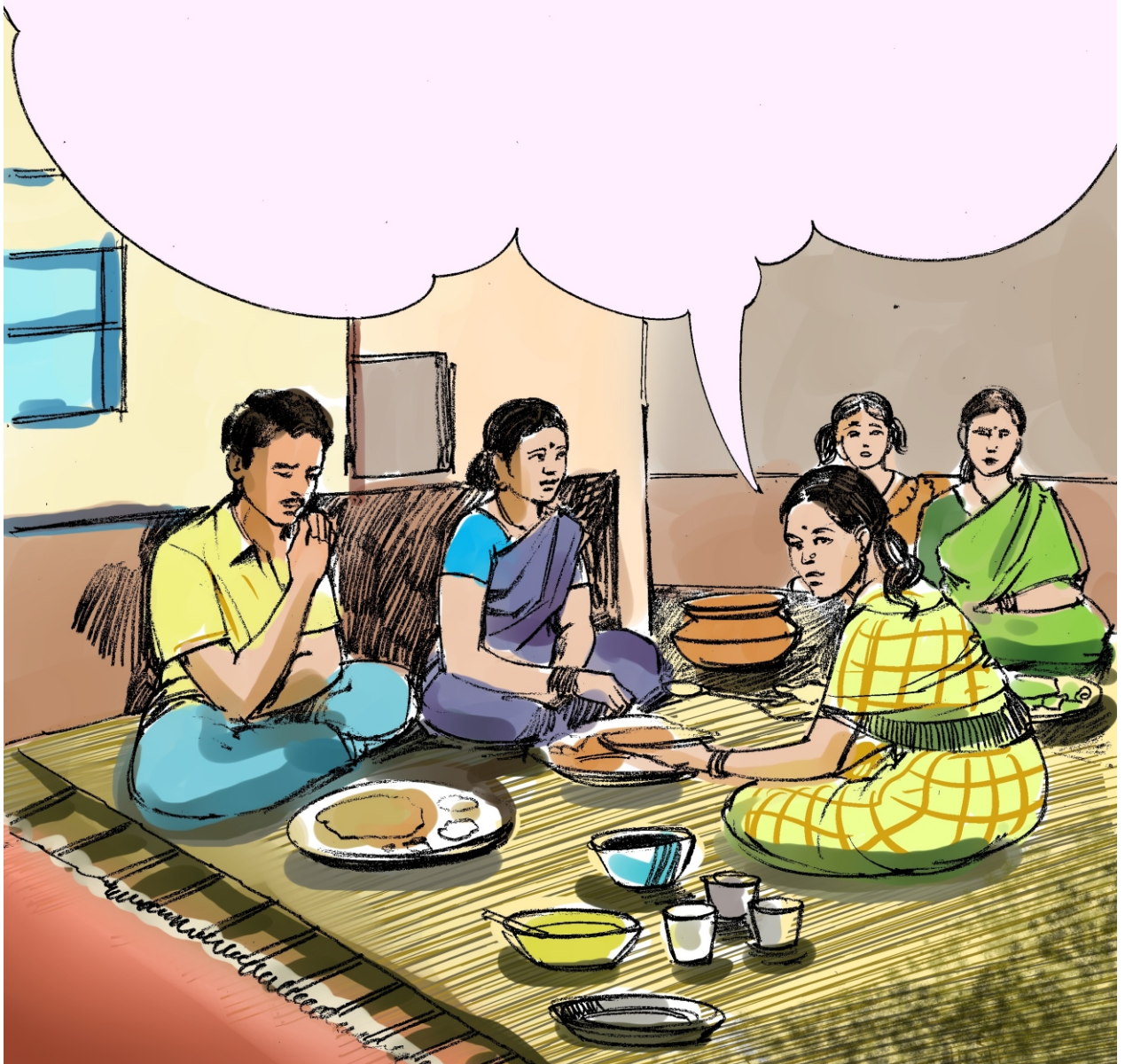
If a person lives with a sex worker/ prostitute, then the person will be considered as living on the earnings of prostitution. Such a person can also be punished for forcing or controlling the woman's prostitution as a beneficiary.

Agents, managers and pimps are also punishable.

Some Other Points

- ✍ The Husband of a sex worker can also be punished for living off the earnings of prostitution.
- ✍ A person visiting the sex worker cannot be charged with living off the earnings of prostitution. Visiting or interacting with a sex worker does not make the person a criminal.
- ✍ It is not a crime to be present at the brothel while prostitution is going on. The police cannot prove a person to have committed a crime without adequate evidence of that person being an agent, pimp or beneficiary.
- ✍ If the witness is in the custody of the police, and is testifying in connivance with the police, or is himself engaged in criminal activities, then his testimony is not sufficient to prove a crime.

A person living with a sex worker or constantly in the company of a sex worker can be charged as a beneficiary of prostitution.



Section 5. Procuring or Inducing a person for prostitution

It is an offence to procure a person for prostitution.

The offence is punishable with an imprisonment for a minimum of 3 years to a maximum of 7 years and Rs 2000/- fine.

Even if the person has willingly accompanied the procurer; the procurer can still be punished. Consent is immaterial

Enticing and trafficking a person from one place to another for prostitution is illegal and is punishable under the law.

Forcing somebody into prostitution is also punishable with 3 to 7 years of imprisonment and fine.

A person forcing somebody into prostitution against wishes is punishable with 14 years of imprisonment.

Children and Minors

Offences involving girls and boys up to 16 years of age are punishable with a minimum of 7 years to a maximum of life imprisonment.

Offences involving person from 16 to 18 years of age are punishable from 7 to 14 years of age.

If a person has willingly accompanied the procurer; the procurer can still be punished.



Section 6 Detaining a person in a brothel

6 (1) if a person keeps somebody at a brothel, with or without the consent, then the offence is punishable with an imprisonment for a minimum of 7 years to a maximum of life imprisonment and fine.

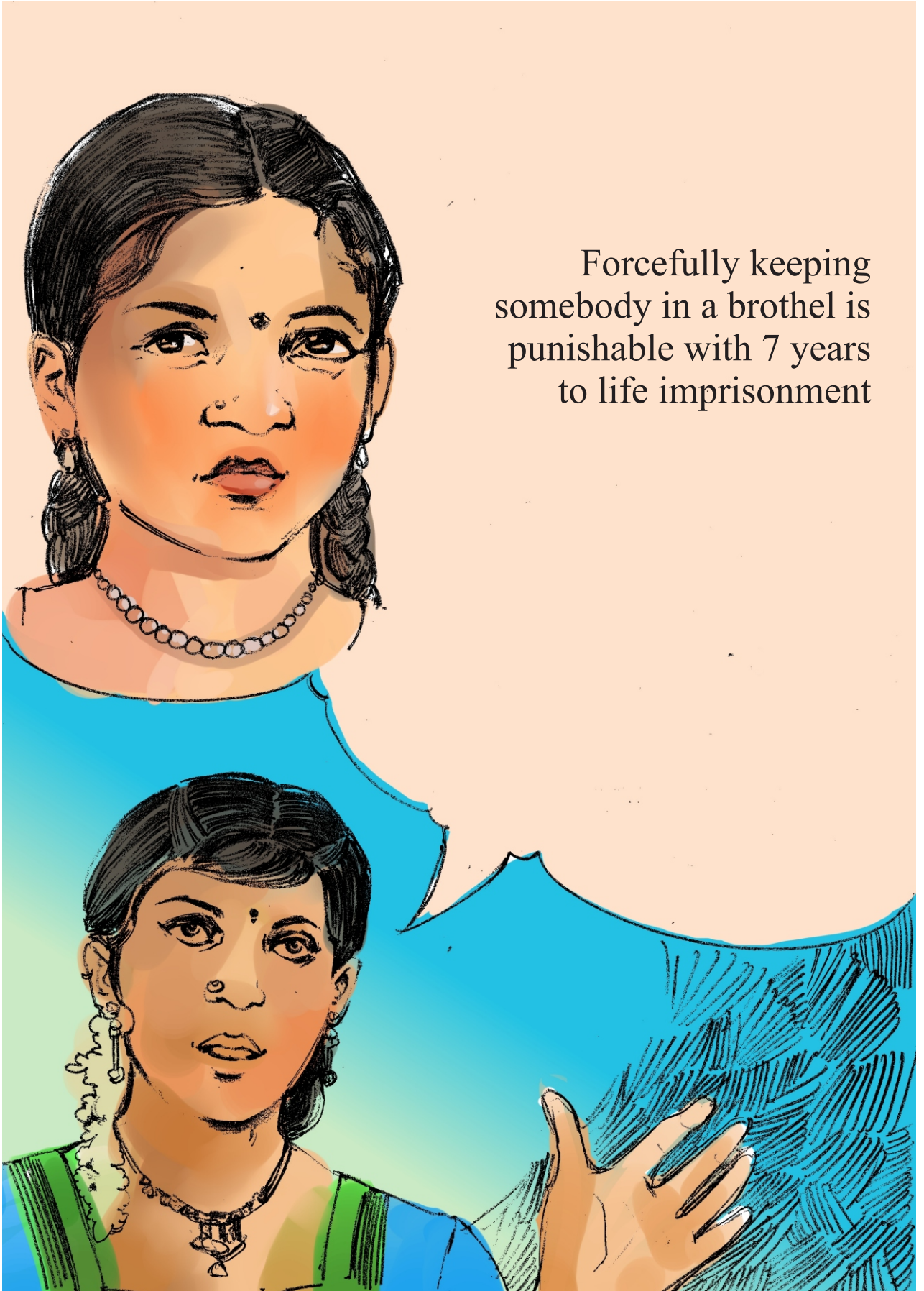
If a person keeps somebody for sexual intercourse other than between a husband and wife, the offence is punishable with an imprisonment from 7 years to life imprisonment.

6 (2) If a minor girl is found in the brothel with a person, then the offence of detaining a person at the brothel is proved.

If the medical examination of the girl indicates sexual intercourse, then it is proved that the girls were kept at the brothel for sexual exploitation.

6 (3) If a person takes possession of a woman's belongings, clothes, jewellery, or any other thing, and threatens legal action if the woman tries to take back the possession, then it is assumed that the woman is being forced to have sexual intercourse with men other her husband.

6 (4) A person who has detained a woman cannot initiate legal action to reclaim any jewellery, clothes and other things. Even if the person had paid for it or even if the woman owes him the money, no legal action can be initiated.



Forcefully keeping somebody in a brothel is punishable with 7 years to life imprisonment

Section 7. Prostitution in or near public places

7 (1) Engaging in prostitution at places within a distance of 200 meters from temples, schools, colleges, hospitals etc is punishable with a maximum of 3 months of imprisonment.

The client and sex worker can be punished.

The Commissioner of Police or magistrate can notify such places.

State government can notify public places and state that prostitution cannot be carried on in that area.

If held doing prostitution at a notified place, then the offence is punishable with an imprisonment for 3 months.

Offences involving Children and minors attracts an imprisonment for 7 years to life imprisonment.

7 (2) Owners or tenants of public places allowing prostitution to be carried face imprisonment for 3 months and fine of Rs. 200 .

If held twice for the same offence, it is punishable with 6 months imprisonment and suspension of the hotel license for 3 months to 1 year.

If minors are found at the hotel, the license can be suspended.

Engaging in prostitution at places within a distance of 200 meters from temples, schools, colleges, hospitals is an offence



Section 8 Soliciting customers

Soliciting customers at public places, roads, by lanes, from balcony, by calling or through gestures or exhibiting body is punishable with a fine of Rs 500/- or 6 months imprisonment.

Creating disturbance at public places by obscene gestures and flouting social norms is punishable with a fine of Rs 500/- or 6 months imprisonment.

Talking to a man on the street is not a crime.

Bargaining with the customers, fixing of rates, and inviting them inside is a crime.

The customer's testimonial is required to prove the offence but other evidence is also important.

If caught for the second time, the punishment is one year imprisonment.

If a man is caught under this offence he is punished for a period from 7 days to 3 months.

Chatting on the roads, soliciting customers through gestures or obscene exhibition of body is punishable with a fine of Rs 500/- or 6 months imprisonment.



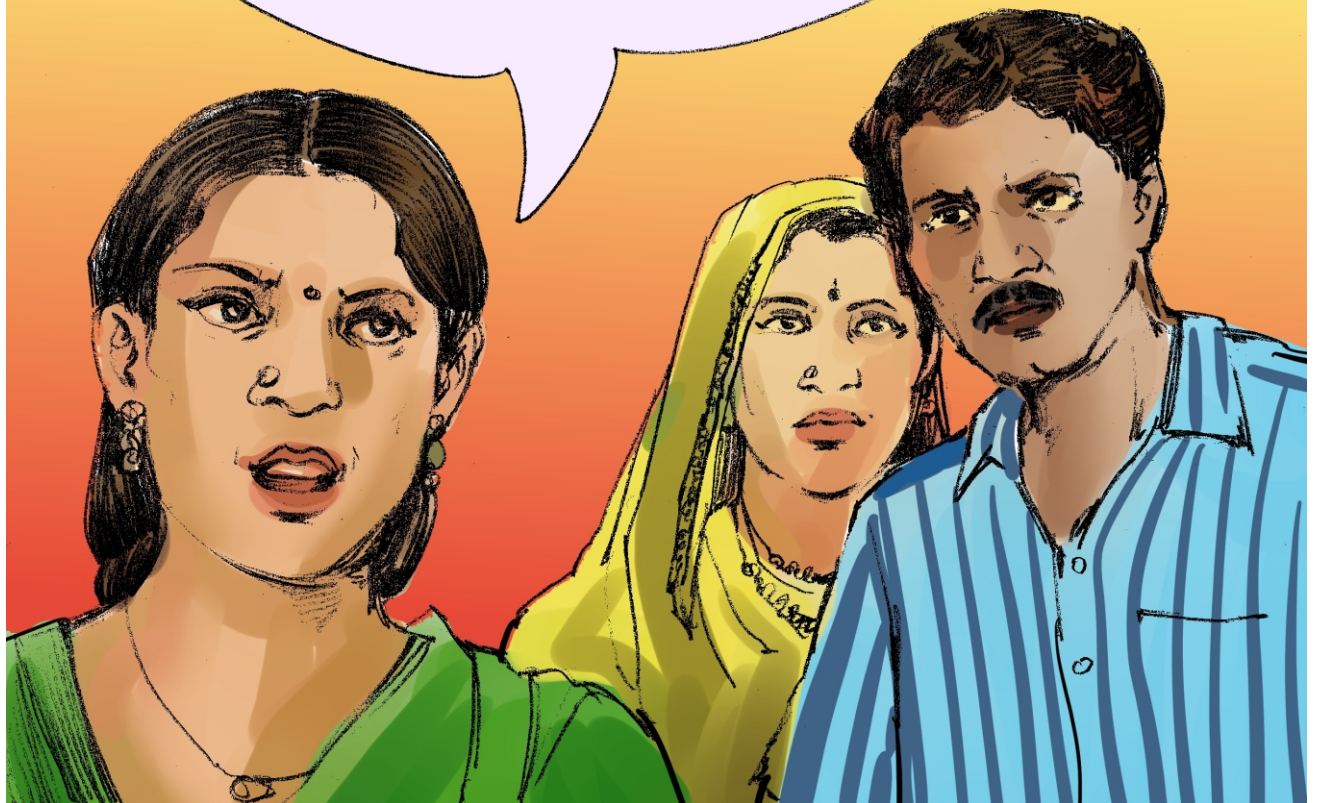
Section 9 Seduction in custody

If a person is pushed into prostitution;

by her supervisor/ caretaker / person in charge of her care;

or forced to have a sexual relationship with others, the offence is punishable with 7 years to life imprisonment.

A supervisor / caretaker forcing a person in his or her custody or care; into prostitution or into having sexual intercourse with others; commits an offence



Section 10 A. Sending to a Corrective Institution instead of a prison

If a woman is convicted of soliciting customers or engaging in prostitution at a public place, she is directly sent to a Corrective Institution.

The court can also direct the woman to be sent to the rehabilitation home considering her health, mental state and other parameters.

The stay at the rehabilitation home is a minimum of 2 years and for a maximum period of 5 years.

The woman can represent herself at the court before being sent to the rehabilitation home.

After six months of the order if the authorities are satisfied that the woman's behaviour is good and she can lead a useful life, then the woman can be released.

A sex worker caught soliciting can be sent to a rehabilitation home instead of prison. Imprisonment can be for 6 months.

But stay at the rehabilitation home can be from 2 to 5 years.



Section 11. Notifying address of offenders

In case a person has been convicted of an offence under ITPA; is within five years once again convicted; the court may order for her residence to be notified for a period of five years.

In case a person has been convicted of an offence under ITPA resulting in imprisonment for two years; also the court can order her residence to be notified for a period of five years.

The police has to be notified of any change in address.

The police stations in the area are informed of her residence.

The person must report to the police station once a month till the completion of the period of notification.

The person must report to the police station once a month till the completion of the period of notification.



Section 13 Special police officer and Advisory Body

The state government must appoint a special police officer to deal with offences under ITPA.

This officers needs to be of the rank of a police inspector.

The state government may appoint a panel of 5 social activists to guide these special police officers.

*Only such special police officers can investigate the offences under ITPA.

Any investigation by other police officers will not be considered valid.

The central government can appoint a Trafficking Police officer for offences involving multiple states.

Such a trafficking officer has jurisdiction across the country.



Section 14 . Nature of offence under ITPA

The special police officer can arrest a person without a warrant for an offence committed under ITPA.

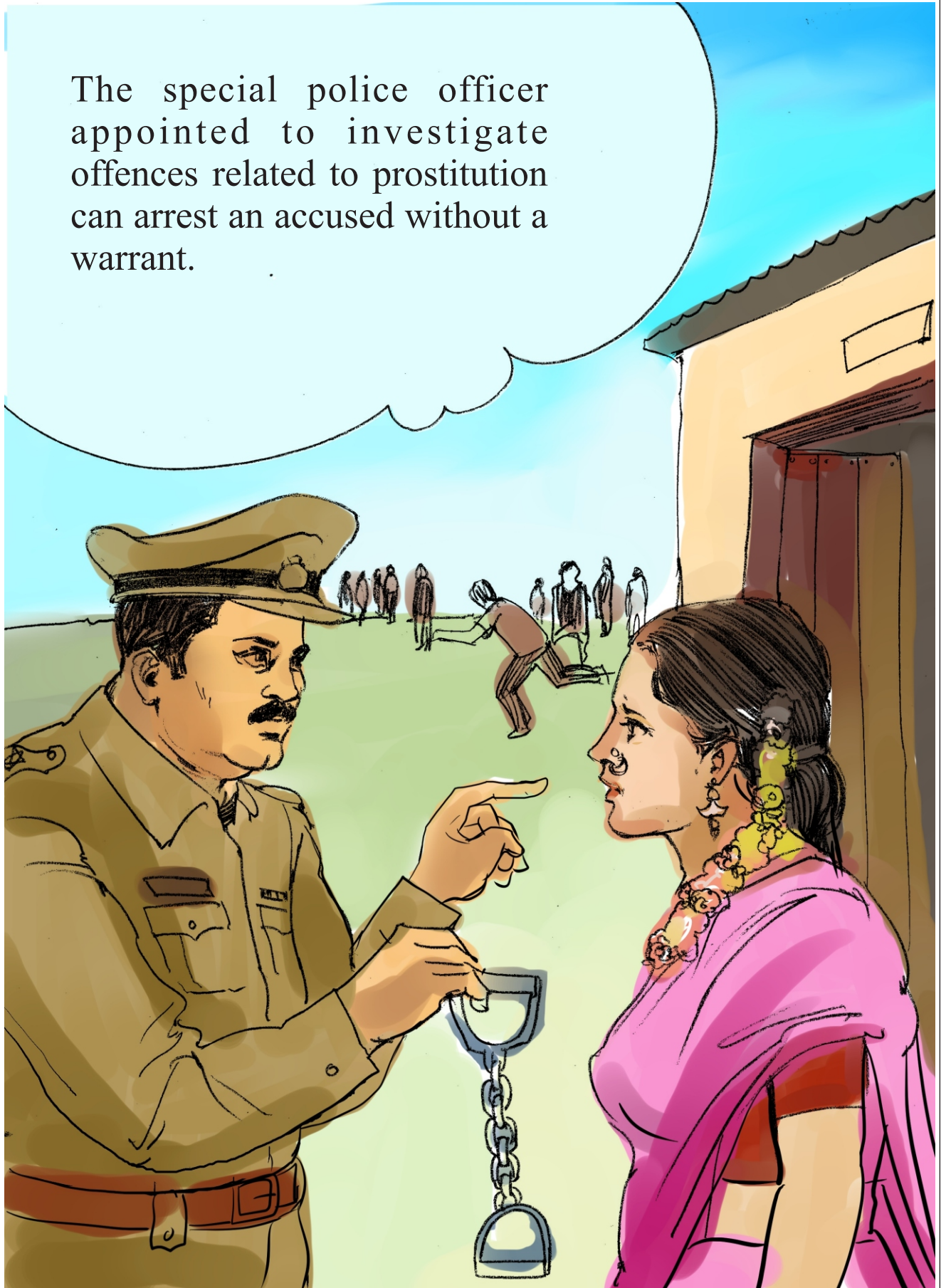
The Special Police Officer can confer the powers through a written order to a subordinate for the arrest of a person for an offence under ITPA.

Such an order must have the name of the accused, offence, and the reason for the arrest.

It is mandatory to provide a copy of the arrest order if demanded by the accused.

If the subordinate believes that a delay will lead to evidence being destroyed, or the person is likely to escape; he or she can also arrest without the order of the Special Police Officer.

The special police officer appointed to investigate offences related to prostitution can arrest an accused without a warrant.



Section 15. Search without a warrant (Raid and Rescue)

If the special police officer or trafficking police officer investigating an offence under ITPA believes that any delay can lead to the accused escaping, then the officer can search a place without a warrant.

However, the special police officer must provide an explanation for entering without warrant.

Two people from the area are necessary to accompany the police officer before the search begins. One of these two needs to be a woman, whether she lives in that area or not.

The special police officer must be accompanied by two women police officers during the search.

The special police officer has the right to remove a person from the place of search.

Such a person must be immediately presented before the judicial magistrate.

A person removed from the premises; can be made to undergo a Medical examination to ascertain age, sexual abuse, and sexually transmitted disease.

Any interrogation of a person removed, must be done by a lady police officer.

If a lady police officer is not available, then the interrogation can be conducted in presence of a lady from a welfare organization.

Two lady police officers, one local male and one female resident must be present during the search of a house.



Section 16. Rescue

If a magistrate receives information about prostitution being conducted at a brothel, then the magistrate can direct the police to remove the person and bring them to the court.

Such orders can be given to an officer of the rank of an inspector and the persons rescued must be immediately brought to the court.



Section 17. Presenting before the magistrate

A person removed from a brothel or rescued under section 16 has the right to present his case in front of a magistrate.

The magistrate can decide to send the person home after considering the person's age, character and history. The magistrate can hand over custody to the person's parents, guardian or husband after considering their suitability. The magistrate considers the impact of sending the person back home.

The magistrate can also consider the rehabilitation of the person. A panel of 5 eminent citizens can be formed for consultation. 3 members of this panel must be women.

During the course of investigation, the magistrate can confine the person to custody for a maximum of 3 weeks.

The person should not be kept in the company of a person who is likely to have harmful influence.

Minors

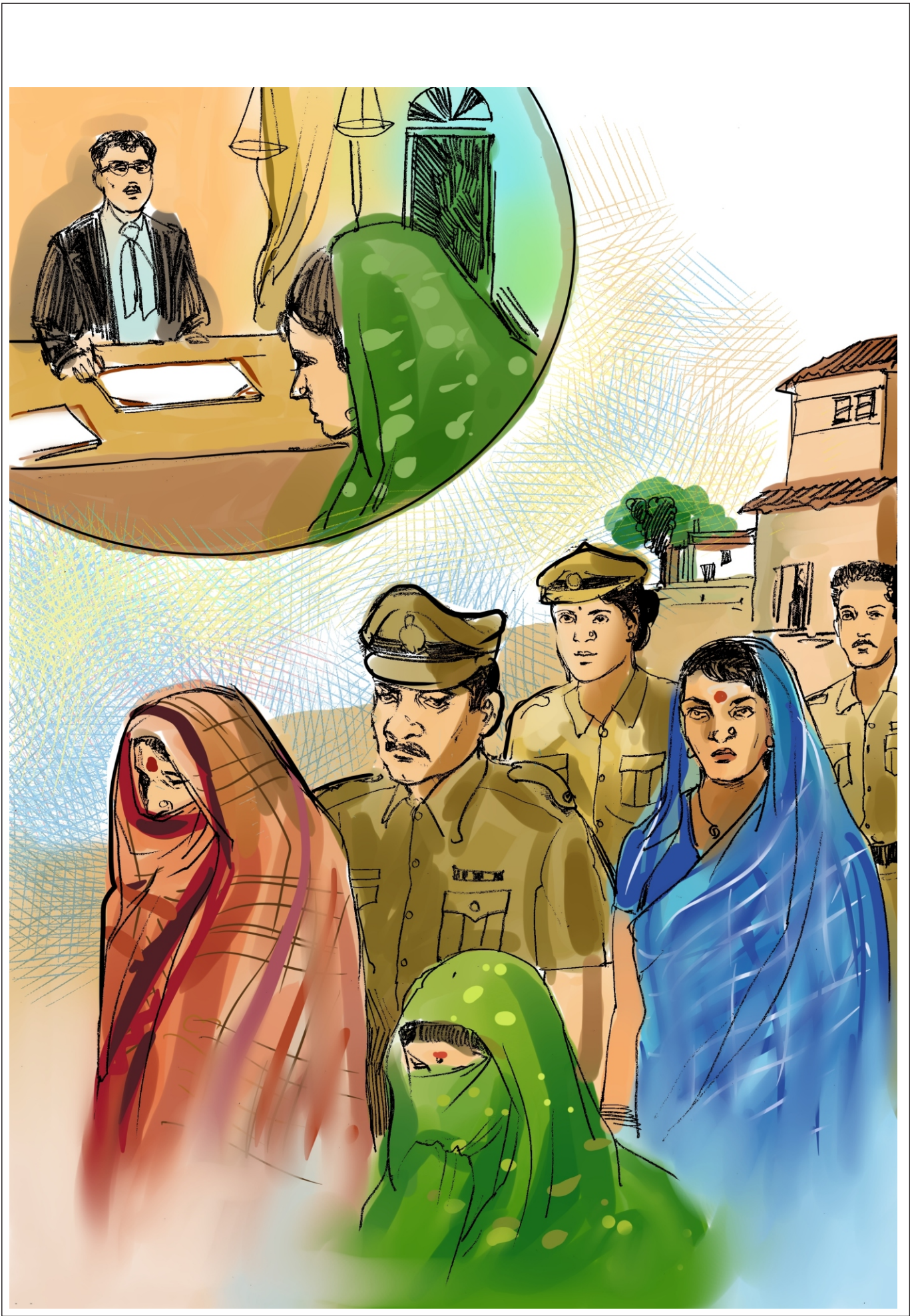
Minor girls rescued from brothels can be handed over to voluntary organizations working for the welfare of such girls.

Rehabilitation home

The magistrate can send the persons held from a brothel to a rehabilitation home for a period of one year or more, based on the person's character and mental state.

Section 17 A

A social organization can assess the situation before a woman rescued from a brothel is handed over to her parents, husband or guardians.



Section 18. Closing a Brothel and Eviction

A magistrate can issue a notice on receiving information about a brothel being run within a distance of 200 meters of a public place such as school, college or place of worship.

The owner, tenant and occupants of the brothel are given 7 days to present their case. If the magistrate feels that the place is being run as a brothel, an order to close the place can be issued. People occupying that place can be evicted within seven days.

The magistrate's permission is necessary to rent the same place again.

If a minor is found at the place, then it can not be rented for 3 years. If the place is rented without an agreement, then a fine of Rs 500/- is imposed.

Contempt of court

The magistrate can return the house if it is proved that the house owner was not aware of the brothel being run from the premises.

The magistrate can issue a warning for not renting out the place for such activities. If the house is given for running a brothel again, it is punishable with 3 months imprisonment and Rs 200/- fine.

If it is proved that the brothel was being run under section 3 and prostitution was being done under section 7, then the magistrate can order closure of the place without a notice.

If the magistrate feels that the place is being run as a brothel, an order to close the place can be issued. People occupying that place can be evicted within seven days.



Section 19. Application for protective Home

A person doing sex work or being forced into prostitution, can make an application to be sent to a Protective Home.

The magistrate can send the person to the rehabilitation after examining the applicant's personality, domestic background, and the possibility of rehabilitation.

The person can be kept in a corrective institution, protective home or under observation of an officer appointed by the magistrate.

A person doing sex work or being forced into prostitution, can make an application to be sent to a Protective Home.



Section 20. Removal of a Prostitute

A magistrate can summon a person on the basis of information received about her being a sex worker prostitute and living in or frequently visiting a place.

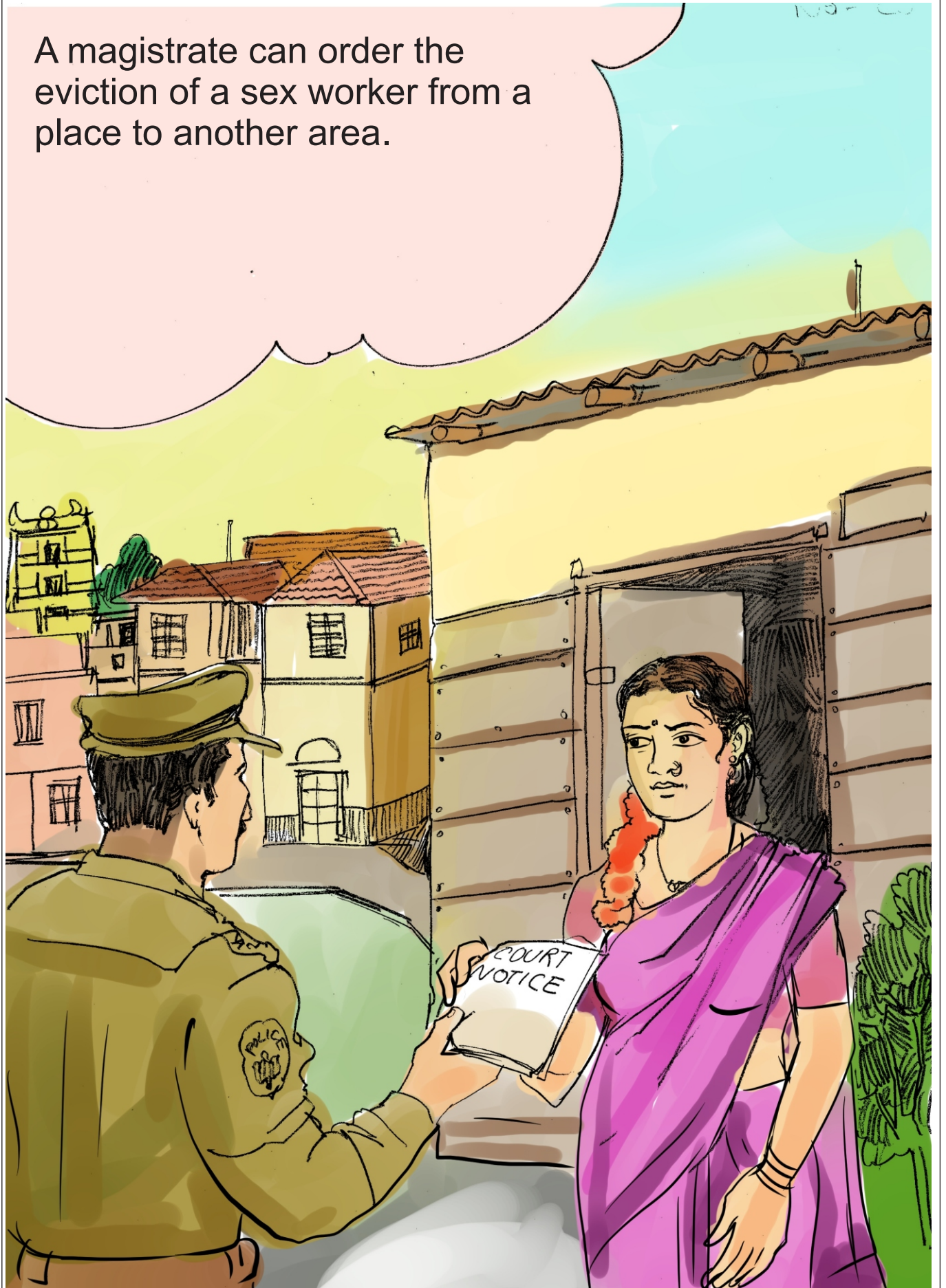
After verifying the information, hearing the person; the magistrate can order eviction of the person from that place to another place outside that area.

A notice of 7 days is important to be given before removal.

If the person does not obey the court , a fine of Rs 200/- and Rs 20/- per day is imposed.

If a person is evicted and another person assists her to hide or re- enter the place, then the person who assists also faces the fine.

A magistrate can order the eviction of a sex worker from a place to another area.





Sangram 2014

Sampada Grameen Mahila Sanstha
'Aarohan', Ghanshyamnagar,
Madhavnagar road, Sangli 416416. India
Phone 0233 2312191
Website: www.sangram.org.