The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

REGISTERING THE BODY: COLONIAL DRAFTING AND THE INDIAN CONTAGIOUS DISEASES ACT, 1868

~Pragna Putcha

ABSTRACT

This paper pertains to a close reading of the Indian Contagious Diseases Act, 1868 as a primary source, looking at how a twenty-six section statute was drafted and what that drafting shows about colonial attitudes towards prostitution and the regulation of women's bodies. The paper notes that the Act defines "Magistrate", "Contagious disease" and "Brothel-keeper" but leaves "common prostitute" undefined, although registration, examination and detention all depend on it. It compares how the Act treats women and brothel-keepers, in particular the open-ended registration particulars demanded of women, the heavier penalties on brothel-keepers on paper, and the burden of proof placed on women. It also discusses the restriction of prosecution to government officers, the presumption in favour of official documents, and the delegation of rule-making to Local Governments. The only duties the Act places on the state are free treatment and lodging during hospital detention and a subsistence allowance during outdoor treatment. The paper then considers what kind of evidence the Act is. It records what colonial administrators intended and the perspective of the legislative and administrative elite, and it cannot show how many women were registered, how examinations were carried out, or how the women themselves experienced or resisted the system.

ANALYSIS

The Indian Contagious Diseases Act of 1868 is a short act consisting of twenty-six sections, yet the way it is put together and written tells us more than its content alone. The Act follows the standard drafting conventions of that period: a preamble citing the expediency of the Act, a short title, an interpretation clause, and marginal notes running beside each section to provide a summary of what it does. This is a standard form of drafting, yet it's attached to a law that never defines the term that it regulates the most heavily. Section II defines “Magistrate”, “Contagious disease”, and “Brothel-keeper”, but never bothers to define “common prostitute”, even though that word carries the weight of registration, examination, and detention throughout the Act. A statute that is this careful about defining the other major relevant parties has nothing to say about who counts as the woman it is built around.

This void in definition sits inside a larger rift between how the Act treats brothel-keepers and how it treats the women themselves. Section V requires the register to include a woman’s name, age, caste if any, residence, “and such other particulars respecting her as the Local Government

shall from time to time direct." There is no matching open-ended clause for brothel-keepers, whose registration entry is limited to name, residence, and the situation of the house. The information that can be demanded of a woman has no ceiling, yet the information that can be demanded of a brothel-keeper does. Enforcement, on the other hand, runs the opposite way– under Section VI, a woman who fails to report a change in residence faces up to fourteen days imprisonment or fifty rupees, while a brothel-keeper's identical failure carries up to a month or a hundred rupees. On paper, the brothel-keepers' lapse is punished more heavily, yet the regulatory burden, registration, disclosure, and ongoing reporting still fall mainly on the women.

Further, the procedural design of this Act reinforces the idea that it moves women through a sequence of state mechanisms rather than stopping at a single prohibition. Through registration, examination, outdoor treatment, etc., the law becomes less a single offense with a single punishment than a set of administrative statuses a woman can occupy, each with consequences attached. Section XXII gives the power to prosecute only to a government officer, so a woman has no standing to bring a case herself against a brothel-keeper or an official who oversteps. Section XVI and XVIII shift the burden of proof onto the accused woman– she must show that she was properly discharged from the hospital in writing, or that she held a certificate of freedom from disease at the relevant time. Section XXIII then generalizes this into a rule that any notice, order, or certificate bearing what looks like an official signature is presumed genuine "until the contrary is shown." The Act starts from a default of trusting the paperwork of officials and puts the work of disproving it on whoever is contesting their own confinement or conviction.

Delegation is the other structural feature worth delving into. Registration procedure, examination arrangements, what counts as a certified hospital, and what a brothel-keeper must disclose are not fixed in the act itself. It is left to the Local Government to prescribe the rules "from time to time", without stated limits. This concept also applies to the territory of the act. Section III applies the Act only to places that the Local Government specifies by notification, instead of automatically across all territories of British India. The central government's role within the Act is merely confined to sanctioning salaries, as well as the initial notification of the Act. The substance of the law belongs to local administration, pushing rule-making downward while keeping the statute itself vague. This is a clear demonstration of how colonial law was built, and it's a structure that Indian administrative law continued to rely on.

Additionally, two provisions run from the state toward the woman rather than the other way. Section XV requires free treatment, lodging, and food during hospital detention, and Section XIX provides a subsistence allowance during outdoor treatment. These are the only obligations placed on the government in the entire Act. In furtherance, facilitating or continuing unregistered activity is treated worse than simply being unregistered, as can be seen in Section XVIII and Section IV, respectively.

Turning to what kind of evidence this Act actually is, it is prescriptive rather than descriptive. It sets out what colonial administrators thought should happen in terms of registration, examination, and confinement, not what actually happened on the ground. What can be seen through this Act is the manner in which the state intended to control the involved parties, instead of whether the women complied, how often officials actually carried out inspections, or what enforcement actually looked like. In the same way, the Act tells us about ideology

more than behavior. It encodes a set of assumptions– that prostitution is a matter for police and medical surveillance rather than criminal prohibition, that a woman's body is the appropriate object of registration and examination while the client's is not, and that local officials can be trusted with broad discretion and that women cannot. It does not tell us how registered women actually behaved, resisted, or navigated the system they were placed into.

The perspective throughout the Act is that of the legislative and administrative elite: the Government-General in Council, which assented to the Act, the Local Government that makes the rules, and the Secretary who certifies hospitals and signs documents. Nowhere does the Act give the perspective of the women it registers, the brothel-keepers it regulates, or the wider public in the towns it was notified. This source merely guides how a colonial administration thought about a problem, but not about how the people caught inside the resulting system experienced it.

Due to this, there are many limits as to what the source can answer. It tells us about how colonial legislators structured legal categories, how they distributed burdens of proof, how they delegated and localized rule-making, and how they thought about state obligations toward the people they confined. It does not tell us anything about the lived realities of those undergoing registration or detention, whether the examinations were medically sound, how many women were actually registered or how many evaded it, or what resistance to the Act looked like.