

“CULTURE, MORALITY AND THE RULE OF LAW: SOCIO-LEGAL PERSPECTIVE OF FEMALE PROSTITUTION IN INDIA”

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Prostitution is one of the growing concerns that each society is facing today all over the globe. Most victims of international human trafficking are women and girls that end up being sexually exploited through prostitution. Illegal prostitution of women is a violation of a woman's most basic human rights, and is one of the most overlooked and neglected abuses towards women. The paper begins with a brief history of prostitution, along with its meaning and development over the years. The paper further delves into the current scenario of prostitution in India and the situation of forced prostitution. The problem of forced prostitution has been discussed in detail, covering the causes behind this situation, along with the kinds of prostitution and the health and social concerns that are raised due to this issue. To give a legal perspective, the various provisions included by our legislators in the Constitution of India and the Indian Penal Code to prevent prostitution have been briefly dealt with, supported by various Acts, like the Immoral Traffic (Prevention) Act, 1956 which mention various implications of prostitution and the remedies for them. To provide a brief outlet of the legality of prostitution in India, the paper analyses the various laws that talk about the legality of prostitution, along with certain landmark cases and the personal opinion of the authors on the necessity for curbing this social evil to conclude the paper.

INTRODUCTION

“Prostitution will always lead into a moral quagmire in democratic societies with capitalist economies; it invades the terrain of intimate sexual relations yet beckons for regulation. A society's response to prostitution goes to the core of how it chooses between the rights of some persons and the protection of others.”¹

Female prostitution happens to be one of the oldest professions in the world. It has always existed within society from the ancient times; however, the same has been viewed as against the moral standards of the society. More than two thousand years ago, the role of prostitutes was played by the female slaves who were captured during the invasions of new lands, empires and the whole countries. Very often, the role of prostitutes was played not only by slaves but by free women who did not have any opportunity to survive and support their living. Evidently, such circumstances and tactics exist even

¹ BARBARA MEIL HOBSON, UNEASY VIRTUE THE POLITICS OF PROSTITUTION AND THE AMERICAN REFORM TRADITION 3 (Univ. of Chicago Press 1990).

now, and the role of prostitution remains the same. A prostitute has been stated as a person, "who allows her body to be used for lewd purposes in return for payment". Prostitution, in general terms, can be mentioned as a sale of sexual services, such as oral sex or sexual intercourse, for money.² The attitude towards prostitution is generally negative, as the women sell their bodies as commodities in exchange for money or gifts or any other material gain. Majority of the prostitutes, if we look into history, have been women who reflect both the traditional socio-economic dependence of women and the tendency to exploit female sexuality. The concept of women as a property,³ which prevailed in most cultures until the end of the 19th century, meant that the profits of the profession most often accrued to the men who controlled it. Surprisingly enough, the situation has in no way changed in the modern times. Prostitution was a part of daily life in Ancient Greece. In the more famous cities, and particularly the major ports, it employed a significant proportion of the population and represented one of the top levels of economic activity.⁴ Therefore it can be said to be the world's oldest "oppression" and continues to be one of the most overlooked human rights abuses of women on the planet today.

PROSTITUTION IN INDIA

The ancient India was engaged with prostitution in its cities, popularly called the '*Nagars*' and were the core units of the important Kingdoms from where all the governmental and economic affairs were controlled and regulated. There was a concept of '*Nagar vadbus*' or '*city brides*' in these old cities of India.⁵ They were prostitutes serving the common man's sexual need and desires while the kings had their harem. Women in the ancient cities of India had no rights on themselves and were considered the property of men⁶. Even during the British colonization in India, cities such as Kolkata and Mumbai were hubs of prostitution⁷. Many historical documents mention the dancing girls and the practice of "Devdasi," i.e. divine prostitution which is still believed to be followed in different parts of the country.⁸ Originally, devdasi were celibate dancing girls used in temple ceremonies, and they entertained members of the ruling class. However, sometime around the 6th Century, the practice of "dedicating" girls to Hindu gods became prevalent in a practice that developed into ritualised prostitution. The system of devdasi started only after the fall of Buddhism⁹ and records about them¹⁰ start appearing around 1000 A.D. The popularity of devdasis was at its prime during the 10th and 11th century, and this system was mostly prevalent in southern India. The practise of devadasi has been banned in India,

² Kaustubh Nandan Sinha, *The problem of "Prostitution" an Indian perspective*, Legal Service India.com, available at <http://www.legalserviceindia.com/article/1269-Prostitution-in-India.html> (last visited Feb. 12, 2014).

³ Sukunmari Bhattacharji, Prostitution in Ancient India 41, accessed <https://www.jstor.org/stable/3520437>, accessed on August 23, 2019 (21:07 IST).

⁴ Kaustubh Sinha, *supra* note 2.

⁵ N.K.Singh, *Devdasis: Devine Prostitution*, New Delhi: A.P.H. Publishing Corporation, 1997.

⁶ V. Sithannan, *Immoral Traffic- Prostitution in India*, 2006.

⁷ Philippa Levine, *Prostitution, Race and Politics: Policing Venereal Disease in the British Empire*, 2003.

⁸ N.K. Singh, *supra* note 5.

⁹ Kaustubh Sinha, *supra* note 2.

¹⁰ Bharatiya Sanskruti Kosh, IV, 448

under the Devadasi Security Act, 1934. This ban was further reinforced in the 1980s. Though the government has taken adequate steps in order to combat the problem of the devadasi, it has been observed that even the act for the prohibition of devdasi was not entirely successful in solving this problem. Most important reasons for this failure still being poverty, ignorance and hunger, which are forcing them to this kind of exploitation.¹¹ According to the Immoral Traffic (Prevention) Act, 1956, 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes.¹² Approximately, 10 million sex workers are present in India out of which 100,000 are in Mumbai alone, which makes India as Asia's largest sex industry centre.¹³ Prostitution in India is a Rs. 40,000 crore annual business and thirty per cent of the sex workers are children whose exploiters earn a whopping Rs. 11,000 crore.¹⁴ There are about 300,000 to 500,000 children involved in the sex trade in India¹⁵ among which Bangalore, along with five major cities together account for 80% of child prostitutes in the country.¹⁶ These figures are startling and point towards the importance of a genuine intervention of the State to curb this necessary evil.¹⁷ As mentioned earlier, prostitution has a long history in India right from the ancient times¹⁸ until the 19th Century¹⁹ in British India and a widely recognised social reality today. The victims of the trap are the poor, illiterate and ignorant sections of the society and are the target group in the flesh trade; rich communities exploit them and harvest at their misery and ignominy in organised gangsterism, in particular, with police nexus."²⁰

THE PROBLEM OF FORCED PROSTITUTION

Forced Prostitution is another aspect of this system of prostitution. In this, women and girls are forced into the lives of prostitution. More than anything, for them, prostitution is not a choice, as some claim. Survivors of prostitution have described it as "the choice made by those who have no choice."²¹ No matter how a girl enters prostitution - whether she is responding to the pressures of her circumstances or is coerced - the experience leaves a lasting imprint on her future. Paradoxically, it is the countries with the most straitlaced and sexually conservative societies, such as India, Pakistan and Iran, which

¹¹ Kaustubh Sinha, *supra* note 2.

¹² Section 2(f), Immoral Traffic (Prevention) Act, 1956 (hereinafter ITPA).

¹³ Robert I. Freidman, *India's Shame: Sexual Slavery and Political Corruption Are Leading to An AIDS Catastrophe*, The Nation, April 8, 1996 c.f. Donna M. Hughes et al, *Factbook on Global Sexual Exploitation*, Coalition Against Trafficking in Women (CATW), <http://www.catwinternational.org/factbook/india.php>.

¹⁴ S. Sridevi Goel, *Girl Child Prostitution, Society's Responsibility - Indian Scenario*, 7 CBI BULLETIN 14 (1999).

¹⁵ Donna M. Hughes et al, *Factbook on Global Sexual Exploitation*, Coalition Against Trafficking in Women (CATW), <http://www.catwinternational.org/factbook/india.php>.

¹⁶ Robert I. Freidman, *supra* note 13.

¹⁷ Asim Sarode, Contesting legal positions on prostitution from a human rights perspective, *Prostitution and beyond: an Analysis of Sex Work in India* (New Delhi: SAGE Publishers, 2008) 231.

¹⁸ See Sukumari Bhattacharji, *Prostitution in Ancient India*, 15 (2) SOCIAL SCIENTIST 32 (1987).

¹⁹ See Sumanta Banerjee, *The 'Beshya' and the 'Babu': Prostitute and Her Clientele in 19th Century Bengal*, 28 (45) ECONOMIC AND POLITICAL WEEKLY 2461 (1993).

²⁰ *Gaurav Jain v. Union of India and others* AIR 1997 SC 3021 (K. Ramaswamy J.).

²¹ Melissa Farley, "Prostitution, trafficking and cultural amnesia: What we must not know in order to keep the business of sexual exploitation running smoothly," Yale Journal of Law and Feminism, (2006), 102.
<<http://www.prostitutionresearch.com/laws/000151.html>>

have disproportionately large numbers of forced prostitutes.²² There are 2 million to 3 million prostitutes in India, a significant number of whom entered the sex industry unwillingly. One study found that of Indian and Nepali prostitutes who began as teenagers, about half said they had been coerced into the brothels. Meanwhile, women who started in their 20s were more likely to have made the choices themselves, often to feed their children. Girls from certain castes are pushed into prostitution from a young age, many times by their mothers. Some studies report that close to 90 per cent of sex workers' daughters in India join the profession. Once a girl or a woman enter prostitution, it can be hard to leave. It is not uncommon for pimps to use a variety of methods to force women to continue serving as prostitutes. Often, they lure girls with alcohol or drugs, build up their dependency and use this addiction as a means of control. They may also threaten girls with the shame they might bring on their families if they leave or the punishments they might suffer if they go to the police.²³ Therefore, educating and empowering women and girls is an essential key to helping them escape and stay out of this corrupt system of prostitution.

SOCIAL ASPECTS BEHIND PROSTITUTION

Causes

The prior reasons and aspects of life that mainly force any women into this system of prostitution are social customs, poverty and economic backwardness, family prostitutes, etc. The other reasons leading to this practice of prostitution can be from drug addiction, bad company, desertion by husband at an early age, lack of sex education in schools and through media, prior incest and rape or lack of recreational facilities, ignorance, and acceptance of prostitution. The reason to join this system of prostitution can also be psychological, which includes the desire for physical pleasure, greed, and dejection. Women who are not well educated and suffer from acute poverty, this profession provides sufficient money to sustain. Moreover, most of the children of these prostitutes are forced to become a prostitute.²⁴ Every hour, four women and girls in India enter prostitution, three of them against their will. Prostitution is a problem in itself and child prostitution is making it more complicated. Out of the total number of prostitutes in the country, 35.47 per cent entered the trade before the age of 18 years.²⁵ A direction was given in *Gaurav Jain vs. Union of India and others*²⁶ for the upliftment of prostitutes and establishment of the juvenile home for the children of prostitutes.

²² Alex Majoli / Magnum, *Forced Prostitution*, Half the Sky, available at <<http://www.halftheskymovement.org/issues/forced-prostitution>>

²³ Id.

²⁴ Mandelbaum, D. G. *1970 Society in India (2 Vols.)*. Berkeley: University of California Press. Mannheim

²⁵ Kaustubh Sinha, *supra* note 2.

²⁶ AIR 1997 SC 3021 (K. Ramaswamy J.).

Health Concerns

The practice of prostitution leads to many health problems for the prostitutes like cervical cancer, traumatic brain injury, HIV and other sexually transmitted diseases. It also leads to psychological disorders among sex workers. In a country like India, where most of the people indulge themselves in unprotected sex with prostitutes, it is challenging to eradicate the problem of AIDS. Historically, the AIDS epidemic in India was first identified amongst sex workers and their clients, before other sections of society became affected.²⁷

LAWS RELATED TO PROSTITUTION IN INDIA

The laws which govern prostitution in India are:-

- The Constitution of India, 1950
- The Indian Penal Code, 1860 and
- The Immoral Traffic (Prevention) Act, 1956.

In the Constitution of India apart from the equality provisions²⁸ and provisions of freedom of association²⁹, right to life and personal liberty³⁰, guarantees prohibition of trafficking of human beings and forced labour.³¹ Part IV of the Constitution talks about the Directive Principles of State Policy, where the State is required to direct its policies towards securing, inter alia, that both men and women have an equal right to an adequate means of livelihood³², that health and strength of workers not be abused, and that citizens are not forced by necessity to enter avocations unsuited for their age and strength³³, promotion of the educational and economic interests of weaker sections of the society, ensuring their protection from social injustice and exploitation (emphasis supplied)³⁴, requirement of fostering respect for international law and treaty obligations³⁵, obligation on the state to raise the levels of standard of living³⁶ and the renunciation of practices by citizens that are derogatory to the dignity of women.³⁷ The High Court of Andhra Pradesh has also affirmed that these combined

²⁷ Kaustubh Sinha, *supra* note 2.

²⁸ The equality provisions are Articles 14 and 15 in Part III dealing with Fundamental Rights of the Constitution of India, 1950. Article 14 provides for equality before the law and equal protection of the laws; Article 15 prohibits the state from discriminating on the grounds of religion, race, caste, sex or place of birth, though it can make special provisions for women, children, "socially and educationally backward" classes, scheduled castes and scheduled tribes.

²⁹ Article 19(1), Constitution of India, 1950

³⁰ Article 21, Constitution of India, 1950.

³¹ Article 23, Constitution of India, 1950.

³² Article 39 (a), Constitution of India, 1950.

³³ Article 39 (e), Constitution of India, 1950.

³⁴ Article 46, Constitution of India, 1950.

³⁵ Article 51, Constitution of India, 1950.

³⁶ Article 47, Constitution of India, 1950.

³⁷ Article 51 A (e), Constitution of India, 1950.

duties are placed on the state, and a corresponding right is placed on citizens, including sex workers.³⁸ In the Indian Penal Code, 1860, there are at least 20 provisions³⁹ that make trafficking punishable. Most of them deal with abduction for illicit intercourse⁴⁰, wrongful confinement after abduction⁴¹ inter alia. The primary piece of legislation that deals with prostitution and other sex work is the Immoral Traffic (Prevention) Act, 1956 (hereinafter ITPA). The Act mainly makes pimping and other activities punishable, which gives a commercial aspect to prostitution that is likely to exploit the person of the prostitute.⁴² The Act does not prohibit prostitution per se, but it does prohibit commercial activities of the flesh trade.⁴³ In order to prove prostitution, all that is necessary is that a woman or girl has offered her body for promiscuous sexual intercourse for hire, and that sexual intercourse is not an essential ingredient⁴⁴. Offences under the ITPA are under Sections 3 to 9.⁴⁵ Even a single incident of prostitution, with surrounding circumstances, is sufficient to prove the offence of keeping a brothel.⁴⁶ It has been held in a couple of judgments that the ITPA did not aim to abolish prostitutes and prostitution as such, and did not make it per se a criminal offence for a woman to prostitute herself, but was instead intended to inhibit or abolish the commercialised vice of trafficking in women.⁴⁷ The Gujarat High Court has refused to recognize prostitution as a legitimate means of livelihood, as that would give an open invitation for women to be trafficked and also that the right to prostitution is not a fundamental right of women or girls and it was also held that the restrictions imposed under Section 7 of the ITPA were held to be legitimate and not discriminatory.⁴⁸ Under the ITPA, a Magistrate, if he deems it to be necessary, can order the removal of a prostitute from any place in the interest of the general public.⁴⁹ The ITPA also allows for the reformation of female offenders by detaining them in established corrective institutions⁵⁰ and for the enforcement of which Special Police Officers can be

³⁸ P.N.Swamy, *Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad* 1998 (1) ALD 755.

³⁹ Sections: 293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, and 366, 370, 371, 372, 373, 375, 376, 496, 498, 506, 509, 511, Indian Penal Code, 1860.

⁴⁰ Section 366B, Indian Penal Code, 1860.

⁴¹ Section 368, Indian Penal Code, 1860.

⁴² Manoj Wad and Sharayu Yadav, *The legal framework of prostitution in India, Prostitution and beyond: an Analysis of Sex Work in India* (New Delhi: SAGE Publishers, 2008) 212.

⁴³ Id.

⁴⁴ Gaurav Jain, *supra* note 20.

⁴⁵ Section 3 provides for punishment for keeping a brothel or allowing premises to be used as a brothel, Section 4 provides for punishment for living on the earnings of prostitution, Section 5 provides for offences in procuring, inducing or taking persons for the sake of prostitution, Section 6 provides for detaining a person in premises where prostitution is carried on, Section 7 provides for offences regarding prostitution in or the vicinity of public places, Section 8 provides for seducing or soliciting for the purpose of prostitution, Section 9 provides for seduction of a person in custody: Immoral Traffic (Prevention) Act, 1956.

⁴⁶ Gaurav Jain, *supra* note 20.

⁴⁷ In Re: Ratnamala and Another v. Respondent AIR 1962 Madras 31 pg. 5; Bai Shanta v. State of Gujarat AIR 1967 Gujarat 211 pg. 8

⁴⁸ Sahyog Mahila Mandal v. State of Gujarat (2004) 2 GLR 1764.

⁴⁹ Section 20, ITPA, 1956; See also Prabha Kotishwaran, *Preparing for Civil Disobedience: Indian Sex Workers and the Law*, 21(2) BOSTON COLLEGE THIRD WORLD JOURNAL 161(2001).

⁵⁰ Section 10A, ITPA, 1956.

appointed.⁵¹ However, it is interestingly shocking to note that the client faces no punishment whatsoever.⁵² The 2006 Bill⁵³ omits section 8 of the original Act, thus removing the offence of soliciting or seducing for the purpose of prostitution, it also omits section 20 of the Act regarding the removal of the prostitute from any place. However, the responsibility, on the flip side, and severity of the punishment of traffickers and clients is increased. The newly proposed section 5(c) provides for the punishment of any person visiting a brothel for sexual exploitation of any person. These proposals have been criticized as the livelihoods of the workers would be stifled by the increased punishments of the clients.⁵⁴ After having so many stringent laws as well, we still witness the inadequacy of law enforcement and ITPA during its implementation. The following are the reasons for this inadequacy and limited impact are:

- The customer, without whom the act of prostitution cannot be committed, goes scot-free.⁵⁵ Moreover, as a result of raids, the police frequently rounds up the female sex workers rather than the pimps, procurers, brothel owners.⁵⁶
- The complexity of collection of sufficient proof to make a conviction absolute is one of the major problems⁵⁷ as there is an immense gap between the numbers of crimes committed in reality and the number of registration of crimes in the police records (around 60 per cent of these crimes are not registered).⁵⁸
- The reformatory homes that are set up under the Act are inadequate⁵⁹ as such homes are overburdened and cannot accommodate the large number of sex workers who are convicted under the ITPA.⁶⁰

Lately, there has been an introduction of the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill in 2018 at the monsoon session of the parliament; however, the bill has been

⁵¹ Section 13, ITPA, 1956.

⁵² Prabha Kotishwaran, Preparing for Civil Disobedience: Indian Sex Workers and the Law, 21(2) BOSTON COLLEGE THIRD WORLD JOURNAL 161, 170 (2001).

⁵³ The Immoral Traffic (Prevention) Bill, 2006.

⁵⁴ Laya Medhini et al-- Indian Sex Workers rally over law, BBC News, March 8, 2006, http://news.bbc.co.uk/2/hi/south_asia/4787580.stm.

⁵⁵ Poonam Pradhan Saxena, Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation, 44 JILI 504, 523 (2002)

⁵⁶ Id.

⁵⁷ See NHRC-UNIFEM-ISS Project, A Report on Trafficking in Women and Children in India 2002-2003, Volume 1, 248, <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>; Jean D'Cunha, Prostitution in a Patriarchal Society: A Critical Review of the SIT Act, 22 (45) ECONOMIC AND POLITICAL WEEKLY 1919, 1921 (1987); The ground realities of the legal framework have also been discussed in: Anil Awachat, Prostitution in Pune and Bombay: A Report, 21(12) ECONOMIC AND POLITICAL WEEKLY 478 (1986) and Puja Yadav, Ground realities of the legal framework, Prostitution and beyond: an Analysis of Sex Work in India (New Delhi: SAGE Publishers, 2008) 229.

⁵⁸ NHRC-UNIFEM-ISS Project, *supra* note 57.

⁵⁹ Jean D'Cunha, *supra* note 57.

⁶⁰ NHRC-UNIFEM-ISS Project, *supra* note 57.

criticised on its lack of clarity and comprehensiveness. Also, it has been argued that the bill targets the sex workers and there is nothing in the bill for the victims of human trafficking.⁶¹ It would end up giving power to authorities who would not differentiate between sex workers and victims/criminals.⁶² Hence, this has been another failed attempt to get proper implementation on the already existing laws. Justice Ramaswamy stated that “women found in flesh trade should be viewed more as victims of socio-economic circumstances and not offender of the society, some police authorities have already set out the process of sensitisation towards the sex workers and their treatment.”⁶³

ISSUE OF LEGALISATION OF PROSTITUTION

Issues can be divided into two parts – those in support of legalization and those against it.

This is the most complex and tangled issue involved in the system of prostitution. In India, attempts are made to license or register prostitutes and brothels and to require that prostitutes be monitored and checked for venereal diseases. The underlying assumption being that prostitution serves the different sexual needs of men and women and must be regulated to regulate its worst side-effects.⁶⁴ ITPA permits for prostitution especially in 'closed houses', this system requires prostitutes to mandatorily register themselves with local authorities and submit themselves to periodic health check-ups and receive a police clearance to work professionally, generally in officially designated areas. Legalisation is thus perceived as a means of ensuring 'public health' through regulation and control of prostitutes and their health while permitting unfettered male access to women.⁶⁵ Prostitution as per a good economic development policy means prostitution on demand.⁶⁶ The ILO suggests that by including prostitution as an economic sector, poor countries of South East Asia can benefit economically through the revenues generated by the industry.⁶⁷ Legalisation makes more prostituted women available to more men.⁶⁸ Some feminist commentators feel that an Indian man's carnal desire for sex is insatiable and subscribe to the view that legalisation of prostitution protects society.⁶⁹ Alternatively, other Indian

⁶¹ Tripti Tandon, *India's Trafficking Bill 2018 is Neither Clear Nor Comprehensive*, The Economic And Political Weekly, available at <<https://www.epw.in/engage/article/trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018-is-neither-clear-nor-comprehensive>>.

⁶² Surangya, Sex workers in India continue resistance against draconian anti-trafficking bill, PEOPLES DISPATCH, available at <<https://peoplesdispatch.org/2019/02/10/sex-workers-in-india-continue-resistance-against-draconian-anti-trafficking-bill/>>

⁶³ Gaurav Jain, *supra* note 20.

⁶⁴ Frances M. Shaver, Prostitution: A Critical Analysis of Three Policy Approaches, 11(3) CANADIAN PUBLIC POLICY 493 (1985).

⁶⁵ Jean D' Cunha, Prostitution Laws: Ideological Dimensions and Enforcement Practices, 27(17) ECONOMIC AND POLITICAL WEEKLY WS-34 (1992); For a general understanding of the USA policy on Prostitution, See B. J. George, Jr., Legal, Medical and Psychiatric Considerations in the Control of Prostitution, 60(6) MICHIGAN LAW REVIEW 717 (1962).

⁶⁶ Janice C. Raymond, Prostitution on Demand: Legalizing Buyers as Sexual Consumers, 10(10) VIOLENCE AGAINST WOMEN 1156, 1162 (2004).

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Geetanjali Gangoli, Indian Feminisms: Law, Patriarchies and Violence in India 67 (2007).

feminists believe the decision to enter prostitution represents a personal choice by a woman asserting her independence in an ordinarily male-dominated society.⁷⁰ Both the arguments as mentioned above for legalising prostitution fail because they do not take into account the degraded role of women in Indian society or the flagrant human rights abuses that characterise the practice of prostitution in India.⁷¹ Many feel that legalising prostitution is akin to legalising child labour¹²³ and tantamount to slavery.⁷² Some suggest that the social stigma regarding prostitution will fade away after legalisation or decriminalisation, yet the shame of those in prostitution remains after legalization or decriminalisation.⁷³“If brothels are to be legalised, the employees should be protected like any other workers under the appropriate provincial labour standards legislation. Regulation going beyond this minimum is likely to contribute to the continued stigmatisation of prostitutes and the institutionalisation of yet another working ghetto for women.”⁷⁴

Janice G. Raymond of the Convention Against Trafficking in Women (CATW), in her article⁷⁵, mentioned ten reasons for not legalising prostitution. These ten reasons are:

1. *Legalisation of prostitution is a gift to pimps, traffickers and the sex industry* because it will give legitimacy to the consumers (including third-party businessmen, brothel owners and pimps) of sex who would buy sex and would not be beneficial to the sex worker herself. Legalisation will dignify only the industry but not the sex worker.⁷⁶
2. *Legalisation of prostitution and the sex industry promotes sex trafficking* as there would be no method to ensure that immigrant sex-workers from other countries would voluntarily consent to their being a part of the sex industry. There is no definite mean to identify coercion or forced sex work.⁷⁷
3. *Legalisation of prostitution does not control the sex industry;* it expands it. Prostitution, as an industry, would flourish with private entrants coming into the business. This would, in turn, increase the atrocities against which sex work was legalised in the first place. It could open doors for other forms of sexual exploitation such as phone sex, table-top dancing, peep shows, pornography, beer bars, and so on.⁷⁸

⁷⁰ See Geetanjali Gangoli, *Silence, Hurt and Choice: Attitudes to Prostitution in India and the West*, 12–15 (Asia Research Centre Working Paper No. 6, 2002).

⁷¹ Frances M. Shaver, *supra* note 64.

⁷² *Id.*

⁷³ Mellissa Farley, “Bad for the Body, Bad for the Heart”: Prostitution Harms Women Even if Legalized or Decriminalized, 10(10) VIOLENCE AGAINST WOMEN 1087, 1090 (2004).

⁷⁴ Frances M. Shaver, *supra* note 64.

⁷⁵ Janice G. Raymond, 10 Reasons for Not Legalizing Prostitution,

[http://action.web.ca/home/catw/attach/10_Reasons_9-15-03_FINAL_\[1\].doc](http://action.web.ca/home/catw/attach/10_Reasons_9-15-03_FINAL_[1].doc); See also Janice G. Raymond, *Prostitution, Trafficking and Traumatic Stress* (Mellissa Farley ed., Binghamton: Haworth Press, 2003).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

4. *Legalisation of prostitution increases clandestine, illegal and street prostitution* because many sex workers would not be eligible to register with the local authorities. Some could be minors, some could be illegal migrants, and some could have diseases such as HIV or other venereal diseases which would lead them to stay away from legalisation. Many sex workers would, therefore, move underground and in turn, contribute to illegal sex work and street prostitution.⁷⁹ There are many dangers of working on the street, which include rape, police abuse, and substance abuse, also known as occupational hazards.⁸⁰
5. *Legalisation of prostitution increases child prostitution* as research shows that after sex work was legalised in Netherlands and Victoria, Australia, child prostitution has grown exorbitantly and this leads to various forms of commercial sexual exploitation of children.⁸¹
6. *Legalisation of prostitution does not protect the women in prostitution* as there would be no safeguards against abuse during sexual contact. Legalisation would instead benefit the client rather than the sex worker herself.⁸²
7. *Legalisation of prostitution increases the demand for prostitution.* It encourages men to buy women for sex in a broader and more permissible range of socially acceptable settings. When such legal barriers disappear, the men forget their social and ethical barriers and view women as just sexual merchandise, and this leads to commoditisation of women.⁸³
8. *Legalisation of prostitution does not promote women's health* as it is necessary that the clients also need to be monitored for Sexually Transmitted Diseases such as HIV/AIDS. With such mandatory health check-ups in place only for the sex workers, there is no guarantee that they will be safe from contracting any disease during their work. The enforcement of a condom policy has also failed as it is left to the sex worker herself to decide whether she wants to practice safe-sex or not.⁸⁴
9. *Legalisation of prostitution does not enhance women's choice* in terms of wages earned for their sex work. Most women do not make a rational choice of sex work to be their profession. Many are victims of trafficking and illegal pathways and land up in prostitution beyond their will. So, legalisation would, in turn, deny them their freedom.⁸⁵
10. *Women in systems of prostitution do not want the sex industry legalised* as this would increase the risks and humiliation that is faced by the sex workers. They are definite that this would increase violence against them, and they do not consider this to be their legal profession as it destroys their life and health.

⁷⁹ Id.

⁸⁰ Ilse Pauw and Loren Brener, Naming the Dangers of Working on the Street, 36 AGENDA 80 (1997).

⁸¹ Janice G. Raymond, *supra* note 75.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Id.

CONCLUSION

It is usually believed that trafficking is generally caused by prostitution and combating prostitution with the force of the law would reduce trafficking. It can be said that Prostitution and Trafficking are sacrosanct to each other. However, trafficking does not mean prostitution. They are not synonymous, and thus should not be linked to each other. As per the ITPA, prostitution becomes an offence only when there is commercial exploitation of a person. If a woman or child is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (hereinafter referred to as 'CSE'), which is a legally punishable offence wherein the culpability lies against all exploiters. Trafficking is the process of recruiting, contracting, procuring or hiring a person for CSE. Therefore, trafficking is a process, and CSE is the result. The 'demand' in CSE generates, promotes and perpetuates trafficking. This is a vicious cycle. Therefore, forced prostitution of women and girl child is a major social evil present in our society which needs to be curbed down. This can only happen if there are proper educational facilities made available to women and children; employment opportunities and training are given to them. Most of the Government personnel, as well as the community members, are unaware of the problems of the forced prostitution in their areas. Those who understand this issue are not willing to acknowledge the presence of this phenomenon in their areas of operation. The magnitude and the misery associated with this gross violence are not being given the required amount of attention by the concerned personnel in most of the states. There is a great need for awareness generation at all levels and community policing to reduce the vulnerability of women and children to these social evils. Special police officers need to be designated to look into trafficking and prostitution cases specifically under all police stations. NGOs, however, have done a much better job by themselves throughout the country. They have been able to identify the minor victims from the red light areas and more specifically from brothels. They have been able to rescue them with the involvement of the police. More rescues have to be handled professionally by the special police officers designated to look into these trafficking and prostitution cases as police need to be further sensitized to the field of sex work and they need to respect the human rights of such sex workers. Thus, it is essential to take strict measures in order to curb these social evils which have been causing menace in the society from ancient times and protect our society from further degradation as women are an inherent and fundamental part of our society. Moreover, we shall preserve, respect and protect the interests of our womenfolk in India.
