

# EXPLOITATION OF THE SEX WORKERS AND THE EFFECT ON THEIR POSTERITY

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**ABSTRACT:-** Sex workers all over the world face a constant risk of abuse. This is not news. Nor is it news that they are an extremely marginalized group of people, frequently forced to live outside the law. No one would be surprised to learn that they face discrimination, beatings, rape and harassment – sometimes on a daily basis – or that they are often denied access to basic health or housing services. Conversations around “sex work” often focus on the issue of “choice” – whether or not, for example, women should have the right to “choose” prostitution as a “career”, or whether or not “consenting adults” should have the right to engage in sex in exchange for money. What we don’t talk about enough is the context behind said “choices”. Issues like poverty, abuse, gender inequality, racism and a history of colonialism **all play a role** in leading women into prostitution and keeping them there. The paper focuses on the effect of prostitution on the future generations of those involved in this “profession.”

**Key Words:** sex workers, discrimination, sexuality, gender abuse, inequality, racism, prostitution

## INTRODUCTION

With an ever-increasing demand for identification of the socially grounded or ostracized classes of persons, the movement demanding recognition of Prostitution as a sex industry has become an important subject of discussion. This paper attempts to understand the realm of prostitution in India, which has an inherently complicated culture and legal regime and how India deals with a sensitive issue like Prostitution.

The whole issue concerning prostitution is not solely political; it has stakeholders from social-cultural and economic domains. It is not a matter of concern to the ruling party but has an impact upon the society in many direct and indirect ways. The need to reform laws is the call of modern-day society that voices for recognition of basic human rights, which every human regardless of his or her profession, is bestowed with naturally. It is the struggle to ensure prostitutes a place in the society and uplift them from the abominable status of “characterless” that can be victorious provided the political, societal and economic forces come together.

Prostitution is not a modern or western phenomenon, as alleged by some traditionalists, who, in the pretext of protecting indigenous culture, tend to blow irrational and baseless claims. Prostitution has a long, probably untraceable history and interestingly, it did not begin as a shabby, an immoral business carried out in isolated, filthy streets for the forbidden pleasure of men. It once commanded royal respect.

Mesopotamian religious practices purportedly gave birth to the prostitution trade, as women in Ishtar’s service would help men who offered money to her temples with the ‘sacred’ powers of their bodies. Prostitution, or at least the religious prostitution involved in these sacred sex rituals, existed without taboo or prohibition, as evidenced in some of our species’ earliest literary works. In Hammurabi scripts, it is revealed that prostitutes were considered not merely provider of sex but also a force of civilization. Hindu civilization, too, did not originally stigmatize the devadasis and tawaifs as it does in the name of depraved morality today.

The aforementioned paragraphs must not be construed to be propagating prostitution. The point is that once prostitutes enjoyed rights, which seem to be a far-fetched reality in a conservative country like India, which is grappling with escalating conflict between liberal and traditional ideologies. The purpose of the discussion is to point out major issues with prostitution, circling majorly around the under-developed appreciation of several aspects engaged in this activity.

People tend to confine their understanding on prostitution as an unlawful trade involving trafficked, forced, or coerced women or minors, who sell their bodies. Even in this Age where there is hardly any profession, or trade or profession left entirely to one sex, prostitution is still considered a women-related problem. Male prostitution often goes unheard of because it is nearly impossible for a male-dominated society to conceive the idea of forced participation of men in prostitution since they are the

'stronger' sex. In addition, there is a common preconception among the people that prostitutes cannot be abused sexually. This misconception adds on the misery of the poor individuals involved in prostitution and tries to stymie progressive steps towards the realization of prostitute rights.<sup>i</sup>

All of this paints a dismaying condition of prostitutes in the country, who suffer from societal rejection and removal from economic benefits due to lack of rights. The precarious situation of these individuals has not been properly realized in our society that is gradually becoming porous to new societal norms and values. Despite monumental efforts of the civil society, the hard-line thought line still downright rejects the idea of any intrinsic self-respect and dignity in these individuals. The causes to such thought line are philosophical, political, societal, and economical and whittling down each is a herculean task, especially in a society like ours.

Sex workers all over the world face a constant risk of abuse. This is not news. Nor is it news that they are an extremely marginalized group of people, frequently forced to live outside the law. No one would be surprised to learn that they face discrimination, beatings, rape and harassment – sometimes on a daily basis – or that they are often denied access to basic health or housing services. <sup>ii</sup>Despite the politically correct movement to effectively rebrand prostitution as "sex work" and to decriminalize prostitution as a whole, many who have dealt with the abuses of the industry wouldn't help the women who get exploited and trafficked. Sometimes in early 2013, the lower house of French Parliament passed a bill that would decriminalize the selling of sex. The idea behind the bill is to crack down on human trafficking, which all too often is connected to sex work, and address the demand for prostitution while supporting women trapped in the industry. The bill would fine those who hire prostitutes in an effort to wipe out the sex trade entirely.<sup>iii</sup>

Conversations around "sex work" often focus on the issue of "choice" – whether or not, for example, women should have the right to "choose" prostitution as a "career", or whether or not "consenting adults" should have the right to engage in sex in exchange for money. What we don't talk about enough is the context behind said "choices". Issues like poverty, abuse, gender inequality, racism and a history of colonialism **all play a role** in leading women into prostitution and keeping them there. With regard to sexual exploitation or sex work, scholars and advocates are generally divided into two opposing theoretical camps. One group, usually referred to as neo-abolitionists, condemns all forms of voluntary and involuntary prostitution as a form of oppression against women. Neo-abolitionists, including radical and Marxist feminists, postulate that prostitution is never entirely consensual and cannot be regarded as such (Tiefenbrun, 2002). The other group, including many sex positivists, argues that a woman has a right to choose prostitution and other forms of sex work as a form of employment or even as a career.<sup>1</sup>The issue of prostitution brings to the fore many of the contradictions in feminist politics, and the ambivalence in dealing with issues of sexuality, reflected both in Indian and Western feminist politics. This is not a complete or comprehensive literature survey. There are, essentially, at least three ways in which Indian feminists have addressed the issue of prostitution – silence, as hurt and violence and as potential choice and liberation. I suggest that these perspectives are limited, in that they do not necessarily take in the wide range of experiences that woman in prostitution encounter. And in different ways, they may feed into mainstream patriarchal views on prostitution.<sup>iv</sup>

## 1. RELIGIOUS AND SECULAR VIEWS OF PROSTITUTION

Traditional morality, religion and established convention combine to promote not only the extreme of rigid abstinence but also that of reckless license. They preach and idealise the one extreme; they drive those who cannot accept it to adopt the opposite extreme. The consideration of the orgy, it may be said, lifts us beyond the merely sexual sphere, into a higher and wider region which belongs to religion. The orgy is an institution which by no means has its significance for the past. On the contrary, the high tension, the rigid routine, and the gray monotony of modern life insistently call for moments of organic relief, through the precise form that orgiastic relief takes must necessarily change with other social changes.<sup>v</sup>

### 1.1 Origin and development of Prostitution

The more refined forms of the orgy flourish in civilization, although on account of their mainly cerebral character they are not the most beneficent or the most effective. The more primitive and muscular forms of the orgy tend, on the other hand, under the influence of civilization, to fall into discredit and to be so far as possible suppressed altogether. It is partly in this way that civilization encourages prostitution. For the orgy in its primitive forms, forbidden to show itself openly and respectably, seeks the darkness, and allying itself with a fundamental instinct to which civilized life, and thereby constitutes a problem of immense difficulty and importance.<sup>vi</sup>

It is commonly said that prostitution has existed always and everywhere. That statement is far from correct. A kind of amateur prostitution is occasionally found among savages, but usually it is only when barbarism is fully developed and is already approaching the stage of civilization that well developed prostitution is found. It exists in a systematic form in every civilization.<sup>vii</sup>

## 1.2 Concept of Prostitution

What is Prostitution? There has been considerable discussion as to correct definition of Prostitution.<sup>viii</sup> The Roman Ulpian said that a prostitute was one who openly abandons her body to a number of men without choice, for money. Not all modern definitions have been so satisfactory. It is sometimes said a prostitute is a woman who gives herself to numerous men. To be sound, however, a definition must be applicable to both sexes alike and we should certainly hesitate to describe who had sexual intercourse with many women as a prostitute. The idea of venality, the intention to sell the favors of the body, is essential to the conception of prostitution. Thus, Guyot defines a prostitute as *“any person for whom sexual relationships are subordinate to gain”*.

It is essential that the act of prostitution should be habitually performed with “various persons.” A woman who gains her living by being mistress to a man, to whom she is faithful, is not a prostitute, although she often becomes one afterwards, and may have been the one before.

## 1.3 Appearance of the Courtesan

The superior modern prostitutes, “the courtesan” who had no connection with brothel, seem to have been the outcome of the Renaissance and made their appearance in Italy at the end of the 15<sup>th</sup> century. “Courtesan” meant a lady following the court, and the term began in this time to be applied to a superior prostitute observing a certain degree of decorum and restraint. Before the term “courtesan” came into repute, prostitutes were even in Italy commonly called “sinners”. The change during the Renaissance period reveals a profound alteration in ideas and in life. The best of the courtesan seems to have been altogether unworthy of the honor they received.<sup>ix</sup>

## 2. CASUAL INVESTIGATION OF PROSTITUTION

The history of the rise and development of prostitution enables us to see that prostitution is not an accident of our marriage system, but an essential constituent which appears concurrently with its other essential constituents. The gradual development of the family on a patriarchal and largely monogamic basis rendered it more and more difficult for a woman to dispose of her own person. She belongs in the first place to her father, whose interest it was to guard her carefully until a husband appeared who could afford to purchase her. In the enhancement of her value the new idea of market value of virginity gradually developed, and where a ‘virgin’ had previously meant a woman who was free to do as she would with her own body its meaning was now reversed and it came to mean a woman who was precluded from having intercourse with men.<sup>x</sup>

### 2.1 Prostitution as Choice and Identity

Some feminists in the West have argued that radical feminist analysis of the prostitution as a story of unmitigated oppression and patriarchal violence is incomplete and inherently flawed. Representatives of prostitute rights groups in West accuse anti-prostitution feminists of being condescending and patronizing, as one woman in prostitution is cited saying, “they find it necessary to interpret prostitutes” experiences of their lives and then feed it back to the prostitutes to tell them what’s really happening. Prostitute rights ‘group in India have similarly challenged feminist silence or indifference on this issue. Women in prostitution – when they organize – have used the tactics of mobilization and protest differently from feminists.<sup>xi</sup>

Prostitute rights groups are important not only in what they say but in that they articulate positions that are based on their experience. What is at stake here is the articulation of the experiences of prostitutes and the creation of identities that challenge feminist hegemonic constructions of their lives.<sup>xii</sup>

## 3. SOCIAL RESPONSE TO PROSTITUTION

We have now surveyed the complex fact of prostitution in some of its most various and typical aspects, seeking to realize, intelligently and sympathetically, the fundamental part it plays as an elementary constituent of our marriage system. Finally we have to consider the grounds on which prostitution now appears to a large and growing number of persons not only an unsatisfactory method of sexual gratification but a radically bad method.

The decay of brothels, whether as cause or as effect, has been associated with the vast increase of prostitution outside brothels. But the repugnance to brothels in many essential respects also applies to prostitution generally, and, as we shall see, it is exerting a profoundly modifying influence on that prostitution.<sup>xiii</sup>

### 3.1 Prostitution as a Part of Marriage System

While they accept the historical and sociological evidence which shows that prostitution is an inevitable part of the marriage system which still survives among us, they ask whether it is not possible so to modify our marriage system that it shall not be necessary to divide feminine humanity into “dishonorable” women, who makes sacrifices which it is dishonorable to make, and “respectable” women, who takes sacrifices which it cannot be less dishonorable to accept.

The developing sense of a fundamental human equality underlying the surface divisions of class tends to make the usual attitude towards prostitutes, the attitude of her clients even more than that of society generally, seem painfully cruel. The callous and coarsely frivolous tone of so many young men about prostitutes, it has been said, is “simply cruelty of a peculiarly brutal kind”, not to be discerned in any other relation of life.<sup>xiv</sup> And if this attitude is cruel even in speech it is still crueler in action, whatever attempts may be made to disguise its cruelty.

## 4. PROSTITUTION AND SEXUAL MORALITY

Morality may be outraged with impunity provided that the law and religion have been invoked. The essential principle of prostitution is thus legalized and sanctified among us. That is why it is so difficult to arouse any serious indignation, or to maintain any reasoned objections, against our prostitution considered by it. The most plausible ground is that of those who, bringing marriage down to the level of prostitution, maintain that the prostitute is a “blackleg” who is accepting less than the “market rate of wages,” i.e. marriage, for sexual services she renders.<sup>xv</sup> But even this low ground is quite unsafe.

### 4.1 Marriage and Morality

The only legitimately moral end of marriage – whether we regard it from the wider biological standpoint or from the narrower standpoint of human society – is as a sexual selection, effected in accordance with the laws of sexual selection, and having as its direct object a united life of complete mutual love and as its indirect object the procreation of the race.<sup>xvi</sup>

*Idea of marriage* – it must, of course, be clearly understood that the idea of marriage, as a form of sexual union based not on biological but on economic considerations, is very ancient, and is sometimes found in societies that are almost primitive. Whenever, however, marriage on a purely property basis, and without due regard to sexual selection, has occurred among comparatively primitive and vigorous peoples, it has been largely deprived of its evil results by the recognition of its merely economic character, and by the absence of any desire to suppress, even nominally, other sexual relationships on a more natural basis which were outside this artificial form of marriage. Polygamy especially tended to conciliate unions on an economic basis with unions on a natural sexual basis.<sup>xvii</sup>

A man who marries for money or for ambition is departing from the biological and moral ends of marriage. A woman who sells herself for life is morally on the same level as one who sells herself for a night. The fact that the payment seems larger, than in return for rendering certain domestic services and certain personal complacencies – services and complacencies in which she may be quite inexpert – she will secure an almshouse in which she will be fed and clothed and sheltered for life makes no difference in the moral aspect, of her case.<sup>xviii</sup>

### 4.2 Prostitution as Caste-Based Sexual Exploitation: Uncovering the Hidden Voices

In the context of the ‘sex war’, there is another voice that is articulated, yet is hardly heard. This voice defines prostitution as a caste-based exploitation. It focuses on certain group of women – such as the *Bedia* and the *Bacchara* women in Madhya Pradesh or the *Devadasis* in Maharashtra among others, who are seen as a major source of recruitment to prostitution. This articulation, as revealed through legislations, social campaigns and NGO activities, has often collapsed into the anti-trafficking framework as it seeks to eliminate commercial sexual exploitation among particular lower castes. There is a need for the resurrection of this ignored voice.

Interestingly the engagement of non-brahman movements and dalit movements, specifically of colonial Maharashtra and Tamil Nadu in these debates, shifted the terrains on which the prostitution was contested. State measures and anti-nautch campaigns hardly acknowledged the caste-based exploitative nature of practices branded as prostitution. On the other hand

the non-brahman and dalit movements underlined prostitution as brahmanical exploitation and fought to abolish the practices through which lower-caste women were recruited in prostitution. They highlighted how lower-caste women were engaged in cultural and sexual labor for gratification of largely upper-caste men.<sup>xix</sup>

## 5. BUYING SEXUAL SERVICES

*Prostitutes stand at the flash point of marriage and market, taking sex into the street and money into the bedroom. Flagrantly and publicly demanding money for sexual services that men expect for free, prostitutes insist on exhibiting their sex work as having economic value.* This part of the project deals with the economic aspect of prostitution and how it is perceived as of today. It explores the different groups of people who buy commercial sexual services. In terms of the exchange, it is the economic value of the sexual services provided and availed that is referred to as – the economics of sex work. Starting by soliciting for a customer, to finding one, to negotiating a price and concluding with the services, one can identify the services of events that culminate in this transaction.<sup>xx</sup>

### 5.1 Economics of Sex Work in India

At a broader level, the contemporary economics of sex work would comprise three stages. **First**, it is the recognition of sex work as having economic value, and the process of discovering it or arriving at it.

A part-time sex worker says,

*I began working (at a construction site) and the contractor asked me to have sex with him. I had heard from others that if I refuse, either I will lose the work or will be given difficult work. And I started having sex with him and got into sex work and it became a way of supplementing income.*<sup>xxi</sup>

A Delhi based newspaper brought the case of a Nepali girl named Sharda into public notice. A father from rural Nepal sold his daughter for Rs. 500 to an agent. The agent further transported the girl across the border into India in trucks. On the Bihar border, they are re-sold to another set of agents. They are sold once again to brothel owners in cities like Mumbai or Delhi.

These examples are representatives of the extremity of economic circumstances that preceded the entry of girl or the woman into sex work. The former case is illustrative of how a woman may herself come to recognize the potential of generating income through her sexuality. In the latter case, the sexuality of the young girl is being exploited for generation of a single lump-sum payment for the father. The difference here is of who made the decision of this economic choice, and who the beneficiaries are. In the journey of a woman's recognition of sex work as earning option, different economic circumstances emerge as the immediate causes which influence such decision. These causes have higher visibility and, in the process, divert the attention from deep-rooted social and economic processes operating underneath, of which they are mere outcomes.<sup>xxii</sup>

After having recognized the possibilities of economic gains, the **second stage** of the economics of sex work comprises of the woman's involvement with the profession. The decision here is whether she is engaged in it full time, or uses it as an alternative occupation to supplement her income. What differentiates the women across these options are the existences of familial support structures or connection to the mainstream; the part-time workers are still the part of a family, with husband and children, however flimsy these ties may be. They could also be engaged in economic activities such as contractual labor for construction work, house maids and vegetable selling. This veil of alternative identities either at home or at work enables them to perform dual roles within the family as well as of a sex worker. The loss of this veil would shift the woman from part-time to a full time sex worker. The issue of generating income through sex work also depends on the ability of women to find her place in this hierarchy of structures that exist. Again, factors such as her social background, her education levels and economic desperation, to mention a few, determine her place in this finer differentiation of structures from where she can operate.<sup>xxiii</sup>

Throughout this working span, one can discern the constant struggle of the sex worker against the fluctuating income which needs to be aligned to their expenditures on themselves and their children. This would comprise of the **third stage** of a sex worker's life. With increasing vulnerabilities to HIV, do the economic costs of the profession become too overbearing, wiping out all economic benefits derived from a lifetime of being a sex worker? Here, the issue is of economic opportunities forgone on account of being a sex worker.

The three stages described so far differentiates the journey of sex workers as observed in a contemporary context.

## 5.2 Paying for pleasure

When considering who buys sexual services it is common to think that men buying sex from women, and often the classic example of the male 'kerb-crawler' cruising the street to find a street sex worker under the dark of night in a well-known urban 'red light district'. This scenario is made popular by repeated media images of street prostitution, and high profile cases of male celebrities arrested for buying sex on the street. Popular culture is awash with *Pretty woman* images of a rich man 'saving' a down-trodden street prostitute from a life of poverty and misery.<sup>xxiv</sup>

**Men buying Sex from women** – Although there are clear methodological problems with estimating the proportion of population that purchases sex, the recent statistical evidence suggests that there has been a wide increase in buying sex from 40% in 2013-14 to 75% in 2015-16. In Greater London, the figure rose to 87%. In this survey, the most notable change was increase in men in the age group 25-34 yrs, although there was no association with ethnicity, social class, homosexual contact or injecting drug use. The first thing to say about the largest group of purchasers of sex is that there is no 'type' and that men who engage with female sex industry are from all walks of life across the population.<sup>xxv</sup>

**Types of clients** – From various studies on men who buy sex, it is clear that there are different types of purchasing habits, as men buy sex in different ways.

- Occasional Customers – infrequent entertainment, often around 'celebrations' and opportunistic scenarios.
- Repeat customers – men who regularly engage in the sex industry but visit different markets, use different geographical locations and usually visit different sex workers.
- Regular clients – men who visit the same sex worker over a prolonged period of time.
- Sugar daddies – sex workers meet a single man and they are 'kept' by him. He pays rent, utilities and pocket money, often return for stopping sex work and having sexual relations only with him.

The many different forms of engagement with the sex industry demonstrate that there is wide range of clients who will buy commercial sex at different points in their life stage. Men are often involved in various forms of conventional relationships such as marriage and long-term relationships whilst commercial sex runs parallel to these 'ordinary' relationships.<sup>xxvi</sup>

## 6. LEGAL ASPECTS: ISSUES AND CONCERNS

The Indian Penal Code, 1860, drafted by Lord Macaulay, lays down certain provisions, which according to the conditions prevailing, acted as a ban on prostitution or any other kind of immoral behavior. The said activities were made offences; thereby carrying on such activities was made punishable offence either by of fine or punishment. The following section, which per se do not ban prostitution, but restrict those activities connected to prostitution –

1. **Section 268** – Chapter XIV, deals with offences affecting the public health, safety, convenience, decency and morals, relates to public nuisance. It is stated therein as to when a person who does an act or makes an omission shall be guilty of public nuisance, e.g. if a person were to solicit people for sex in public place by passing lewd remarks and exposing her person in order to solicit customers, the said person would be guilty under this section. According to this provision, it can be said that where a prostitute solicits customers in public place or where a brothel is established and the same causes annoyance to the persons living in the vicinity, the same shall be punished under this section.<sup>xxvii</sup>
2. **Section 269<sup>xxviii</sup>** – deals with a negligent act likely to spread infection of disease that is dangerous to life. Such person who unlawfully does an act which he has reasons to believe to be likely to spread infection of any disease which is dangerous shall be punished with imprisonment for a term of six months. Thus a prostitute who continues to carry on the trade on having knowledge of her person being infected with a dangerous disease may be booked under this section.
3. **Section 270<sup>xxix</sup>** – deals with malignant act likely to spread infection of disease. This section deals with a malignant act as opposed to a negligent act on the part of a person to spread infection, which is dangerous to life. Such person shall be punished for a term of 2 yrs.
4. **Section 372&373** – deals with kidnapping and abduction which makes it an offence to buy or sell a minor for the purpose of prostitution. A person who sells or lets on hire or otherwise disposes any person below 18yrs for the purpose of prostitution or for illicit intercourse with any person or any unlawful or immoral purpose shall be booked under this section. On the other hand, section 373 makes it punishable to buy a minor for the purpose of prostitution. It is stated therein that whoever buys, hires or otherwise obtain possession of any person below age of 18 with

intention to engage such person in prostitution for illicit intercourse with any person or any unlawful or immoral purpose shall be punished.

### 6.1 Immoral Traffic (Prevention) Act, 1956

This act replaced the Suppression of Immoral Traffic (in Women and Girls) Act making certain changes in the prior act. According to the prior Act immoral trafficking only in women and girls was attempted to be suppressed. The present Act makes the scope wider by encompassing not only women and girls but also boys, men, eunuch and koti sex workers. The Act mainly makes pimpism and other activities punishable, which give a commercial aspect to prostitution that is likely to exploit the person of the prostitute. The Act does not prohibit prostitution per se. However, it does prohibit commercial activities of the flesh trade<sup>xxx</sup>.

**Provisions of the Act** – in order to improve upon the defect of SITA, the Immoral Traffic (Prevention) Act, 1956 was enacted in the 1986, thereby substituting SITA. One of the most important changes brought about by this Act is the definition of the term ‘prostitution’. This term has been defined under Section 2(f)<sup>xxxii</sup> of ITP, Act as *prostitution means the sexual exploitation or abuse of persons for commercial purposes, and the expression “prostitute” shall be construed accordingly.*

According to this definition, prostitution is no more restricted to women and girls only and a wider term, namely ‘persons’ has been used instead, thereby widening the scope of the terms and getting within its purview boys, men, eunuch and koti sex workers.

**Section 6<sup>xxxiii</sup>** deals with detaining a person in premises where prostitution is carried on. Any person who detains any other person in any brothel, or in or upon any premises, for the purpose of prostitution, shall be liable to be punished with:

- a) Imprisonment for not less than 7 yrs but up to for life;
- b) Imprisonment upto 10yrs and fine.

Sub-section (4) of section 6 affords protection to such a woman or girl as no suit or legal proceeding shall be brought against such woman or girl. This provision is to mainly protect the identity of female, taking into consideration our social structure which gives utmost importance to a woman with high virtue. Though in our case the woman would be a victim and yet there is likelihood of her being condemned by the society.

**Section 7** deals with prostitution in or in the vicinity of public places. It is stated therein that any person who carries out the activities of prostitution in any premises which are within the area or areas, notified or which are within a distance of 200m of any place of public religious worship, educational institutions, hostel, hospital or such other public places shall be punished with imprisonment upto 3 months. Therefore, prostitution has been prohibited by this section in public places.

**Section 8** deals with seducing to soliciting for the purpose of prostitution. It is provided therein that any woman who attempts, or attracts or endeavors to attempt or attract the attention of any person for the purpose of prostitution shall be punished with imprisonment upto 6 months

**Section 20<sup>xxxiii</sup>** deals with removal of a prostitute from any place. This section empowers the magistrate to require the person (who is a prostitute) to remove them from the place and not to re-enter the same, subject to conditions specified in his order. The magistrate shall while removing the prostitute from any area shall however follow the procedure laid down therein regards notice and hearing.

### 6.2 Drawbacks of the legislation

This Act could have served its purpose effectively had it been drafted properly. There are certain major problems that need to be addressed:

**‘TRAFFICKING’ NARROWED:** This act concerns ‘immoral’ trafficking and should have covered all forms of trafficking but it does not. Throughout the length and breadth of the Act, “trafficking” concerns trafficking related to sex. The legislation (ITPA) deals with acts like keeping a brothel, soliciting in a public place, living off the earnings of prostitution. It does not even have a definition of trafficking! Yet so deep is the association of prostitution with trafficking, that the law with regard to sex work is called prevention of “immoral traffic”.<sup>xxxiv</sup> It does not cover other forms of trafficking and invariably attaches significance of trafficking with prostitution as if the former exists only for the latter cause.

**DEFINITION OF BROTHELS:** The Act goes through a drafting glitch in the definition clause only wherein the term 'brothel' is defined.

Section 2(a) defines brothels as "*any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes*".<sup>xxxv</sup> Under Section 3, keeping, running or maintain brothels is punishable.

The problem with this definition is that it patently gives leeway for exploitation. Let us consider the first part of the definition, which says "*any house, room, conveyance or place or any portion of any house, room, conveyance or place which is used for purposes of sexual exploitation or abuse for the gain of another person*" would be a brothel. A logical deduction would mean that two consenting persons, having sexual intercourse within the premises of a hotel, or even a house would be a brothel or that those families, wherein women are often sexually abused by their husbands would constitute running a brothel.

The last part of the definition is arbitrary and greatly jeopardizes right to shelter guaranteed under Art. 21 of the Constitution. The last part says "*for the mutual gain of two or more prostitutes*", which means if two more prostitutes are living together in a house, from where they often indulge in commercial sexual activities—which *per se* is not illegal—is illegal. There have been several instances where sex workers have lost their homes& earnings under the guise of closing down brothels"<sup>xxxvi</sup>

**LIVING ON THE EARNINGS OF PROSTITUTES:** The Act puts women engaged in prostitution in a dilemmatic situation where they cannot utilize their earnings lawfully, as Section 4 of the Act prescribes that "*any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of any other person, shall be punished*"

The purpose of this provision would have ordinarily meant to thwart pimps and pounces from exploiting women sexually for commercial benefits but unfortunately, the loose or rather; reckless drafting of the provision can even penalize children above 18 years, family members or any other persons for living on the earnings of a prostitute. As it is a well-known fact that many women—especially from low socio-economic backgrounds—are forced to enter into this industry due to lack of alternative recourse, the Act further aggravates their situation by criminalizing living on their expenses.

**ABUSE AND REHABILITATION:** Section 14 and 15 are the most empowering yet most abused sections from the Act and their abuse indicates a trend that is nothing but a blot on our law enforcing agencies.

Section 14 makes offences under PITA, 1956 cognizable, that is, the police do not require an arrest warrant before conducting raids and searches. Section 15 is an extension of Section 14, which states that the special officer or trafficking police officer, on 'reasonable' grounds of belief, may conduct raids without search warrants. These provisions have become a weapon of subjugation against poor prostitutes, who in order to avoid being exposed or socially stigmatized, succumb to lewd demands of police officers, who shamelessly violate these women.

Under Section 15, there is a provision that is grossly violative of the procured person's right to privacy as it mandates a medical examination of persons removed from brothels for, *inter alia* detection of sexually transmitted diseases. Sex workers are reportedly forcibly tested for HIV & their results disclosed in Open Court. This is contrary to national policy, which requires consent, confidentiality, counseling for HIV Testing.<sup>xxxvii</sup>

Section 16 deals with rescue and rehabilitation of prostitutes. Since the Act treats prostitute—who willingly or unwillingly participated in the commercial sex activity—as victims, they are indiscriminately 'rescued' and 'rehabilitated'. The Act presumes that a prostitute is nevertheless a victim and would need rehabilitation, even if forcibly done. However, viable economic alternatives are either nonexistent or unavailable to sex workers on account of stigma.<sup>xxxviii</sup> Stressing on the urgent need for rehabilitation, the Supreme Court had said: "*It is only if a sex worker is able to earn a livelihood through technical skills rather than by selling her body that she can live with dignity, and that is why we have requested all the states and the Union of India to submit schemes for giving technical training to these sex workers.*"<sup>xxxix</sup>

Thus, the provisions of the Act come down heavily on prostitutes and force them to abject social and economic stress.

**PROSTITUTION LIMITED TO WOMEN:** Throughout the Act, the prostitutes have been referred to as women. A presumption runs throughout the length and breadth of the Act that only women can indulge in prostitution or for that matter, be forced into prostitution. The reality is different and, on an emphatic note, abhorrent.



According to a United Nations report, certain Indian traditions and customs also have a role to play in the perpetuation of the male sex trade. The report "Traditionalizing male prostitution in India" says that boys in the age group of 15 to 25 with feminine demeanor migrate to Bihar and Uttar Pradesh from various states to perform, what is called the 'Laundanaach.'<sup>xi</sup> Poor families hire the Laundas (a native term for young boys), as they cannot afford "more expensive" women dancers. The dancers mainly belong to lower-middle-class and poor families of West Bengal, Bihar, Uttar Pradesh and Maharashtra while some hail from Nepal and Bangladesh. These dancers are vulnerable to physical and sexual assault.<sup>xli</sup> "A group of 10 to 15 men could physically carry a dancer to a field and gang-rape him. And, this is a very common trend. Resistance only leads to greater torture and sometimes even death," the report reveals.<sup>xlii</sup>

Amidst the feminist debates on prostitutions, we become ignorant on the rising cases of male prostitution, which is equally exploitative. That age-long presumption is shattered as we see the rising percentage of males, who have been forced into prostitution for commercial purposes. Commoditization of any gender is not acceptable as both groups possess human instincts and basic fundamental rights.

### 6.3 Legal Interpretations of Prostitute

Immoral Trafficking (Prevention) Act sources its powers, as mentioned from Article 23(1) and 35 of the Constitution. Article 23 is a fundamental right – right against exploitation. Article 35 further deals with DPSP – positive, although non-justifiable obligations that are to serve as guidelines in policy-framing and implementation. Recent decisions stand testimony to a tendency of the courts to minimize sympathy when dealing with the victims under the act. They are remanded to reform homes that are hopelessly ill-equipped to provide the kind of capability expansion that victim of immoral trafficking require. As a result, they often run away from these homes, only to return to pimps and brothels.

In *Khushi Harikishan Malhotra v. State of Maharashtra*<sup>xliii</sup>, the Bombay High Court was faced with a case where a woman caught in a hotel room was, under ITPA, remanded to a mahila vastagirha and unduly detained there, without following any due procedure and examination of the details of the fact and situation. She managed to escape and it was revealed that in the preceding 2 yrs, over 140 inmates had done the same. The High Court observed – the approach of the courts below ought to have been very cautious considering the fact that the court was dealing with the victim and the accused. The courts should have shown more sensitivity. In fact, a mechanical approach has been adopted by the court.

In the same vein, the Allahabad High Court seized emphatically on the possibility of abuse of the provision for Reform Homes, lamenting that ... as in the present case, while action is hardly ever taken against the keepers of brothels and the pimps and other exploiters of the women, the women languish in Protective Homes for long periods of time in oppressive conditions thirsting for freedom. It is hardly unlikely that a trafficked woman may end up in a Protective Home by the collusion of the keepers of brothels, and pimps with some corrupt authorities, as that would throw her at their mercy and she would willingly succumb to their dictates, in a bid to secure her freedom, as there are no provisions for legal aid, and occasionally she has been abandoned by her family or they are too weak economically to give her any worthwhile support.<sup>xliv</sup>

## 7. SEX WORKERS AND THEIR FAMILY LIVES

This part of the project focuses on street prostitution, which represents the most degrading form, where the person practicing it is exposed to multiple forms of abuse and stigmatization by society. Even if prostitution, by its nature, is an activity that makes women vulnerable to pregnancy and maternity, the mother-child relation within this context is relatively recent and the studies in this field are quite reduced as number. This can be due to the fact that the lives of women who practice prostitution were often defined by their work, which makes it difficult to portray them in other roles. In this respect, it is asserted that women practicing street prostitution are rarely recognized as individuals with a life story, with parents and sisters, husbands, partners or children. Hence, this part mainly focuses on other challenges these women face: sexual transmitted diseases, stigmatization, violence, and alcohol and drug addiction.<sup>xlv</sup>

Prostitution is associated with an increased risk of rape, assault, and sexually transmitted diseases, just to mention a few issues. In a study of 294 female street-based prostitutes in Miami, Florida, 76% reported experiencing violence in the previous 90 days. In addition to these problems, women in prostitution are often single mothers who have borne children from different sexual partners. Apart from the stress of being trafficked, these women often face the daunting task of having to raise their children within the context of an unfamiliar environment.

The child of a prostitute faces extraordinary danger; female children face difficult prospects and are expected to enter the trade like their mothers, while males are expected to help in the trade. Moreover, the brothel keeper has vested interests in maintaining this oppressive structure, because it results in the perseverance of the flesh trade and the continuation of future sources of income.

### **7.1 The voices unheard**

One common result of the brothel keeper's oppressive structure is that the children of prostitutes often struggle to meet their basic needs. Frequently, these children do not have adequate food, safe shelter, education, and clothing. Furthermore, brothel keepers take advantage of this deprivation, commonly using children to pressure their mothers into providing sexual acts to customers without condoms or to work extra hours so that the brothel keeper can make more money. This typical pattern is used in red light areas of Kamathipura and Falkland Road, two neighboring red light areas in Mumbai, India. The red light district itself also presents prostitutes and their children with a series of challenges. These areas, which are full of criminal activities such as drug trafficking and use, gambling, and gang violence, create a dangerous environment for women and children. As a result, these districts are not safe for a child's growth and development. There is continuous fear among mothers that their children either will become the victims of sexual exploitation or be forced into the trade.<sup>xlvi</sup>

Sanitary conditions are also a concern in these areas, and poor environmental health standards have been known to increase health hazards for children, which in turn can put children's development at risk. Not surprisingly, these districts are not hygienic places to live, and women and children who reside in these areas are at risk for any number of infectious diseases, including malaria, typhoid, hepatitis, and other environmentally related maladies. Past studies have shown that environmental hazards have adverse effects on children's development. Hence, it is important to look at what challenges these children face and what support is necessary for them to overcome these situations.

The lack of family structure in the red light district puts complete responsibility on the prostitute to provide for her children. In the red light area, there is an absence of a traditional family structure. Most children do not know their biological fathers, so they call the dominant male in their mother's life father. This male usually is the mother's lover, favorite customer, pimp, or trafficker. The male does not take any responsibility for the child or the mother. This person often abuses the prostitute physically, emotionally, and sexually and even takes her earnings. In such a situation, the only family a prostitute may have is her children, who are also completely dependent on her.

### **7.2 The Dilemma of Sex Workers to protect their children**

As most people get to enjoy the best kind of medical care and services, there are actually quite a number of female sex workers along with their kids whose needs for medical care are unmet, putting them at risk for potentially fatal health problems. The trade of the flesh has been around since time immemorial. Women, especially mothers in a number of societies across the globe, enter sex work because of the primary need to feed their children.

In one research, Brian Willis of Global Health Promise in Portland and his colleagues stressed out that the majority of female sex workers become pregnant, while many perform unsafe abortions or lack access to prenatal care. These female sex workers may die during childbirth or may suffer serious complications in delivery seeing that they have little or no access at all to any medical care during labor and delivery. Moreover, Willis believed that infants who survive in these dire situations are left alone, if not left in poor childcare facilities while their mothers work at night. These infants may be at risk for injuries because of poor supervision or illness due to poor nutrition.

The place where female sex workers live is also a factor why they face health risks. For instance, in sub-Saharan Africa, the highest risk of death comes from unsafe abortions and HIV as well as a lack of care during labor and delivery. Furthermore, Shira Goldenberg believed that female sex workers do need better access to reproductive health services. Goldenberg is a gender and sexual health researcher at Simon Fraser University in Burnaby, Canada. "Many sex workers are also parents and yet face substantial barriers to accessing health and parenting supports due to the criminalized and stigmatized nature of sex work," Goldenberg said.

Female sex workers have the same pregnancy intentions just like any other women of childbearing age. Nevertheless, worse outcomes emerged because of narrow access to reproductive health services as well as poor treatment when sex workers seek care considering the stigma of their profession. This deeply concerning gap in supports for pregnant and parenting sex

workers underscores the critical need for efforts to support reproductive rights and access to voluntary, respectful and appropriate maternal and parenting services for sex workers.

## 8. CONCLUSIONS

Prostitution has now drawn the attention of everyone since the last decade. The globe drive to eradicate discrimination and torture directed toward prostitutes is pervading across nations and has been successful in many. The International organizations, such as the United Nations, have repeatedly urged their member-nations to take pro-active steps towards betterment and rehabilitation of prostitutes, regardless of the stance towards prostitution. All of this has even compelled the Apex Court of India to take up the issue as a whole.

Recently, the Supreme Court of India had suggested that Prostitution in India should be regularized and sought suggestions on formulating conditions which would enable those who wish to "continue working as sex workers" to do so "with dignity." Holding that the right to live with dignity was a constitutional right, the bench constituted a panel comprising senior advocates and NGOs to look into the problems faced by sex workers and give suggestions aim at the protection of their fundamental rights.

However, regularization of Prostitution cannot be effective unless abuse of the prostitutes is not effectively addressed. Mere Regulating commercial sex industry would not ensure protection and preservation of rights of the prostitutes. The prostitutes, whether male or female, undergo a systematic chain of rape and torture in brothels and these issues often remain unheard because many people do not accept the notion that a prostitute can be raped.

The legislature also has to look into the possibility of abuse of regularization wherein a minor prostituted has consented for prostitution. If the State allows prostitution, whether a minor prostitute, who willingly consents to sex be covered under legal prostitution and if not, how it will determine minor prostitutes as most of the prostitutes are trafficked and lack basic official formalities, like a birth certificate or registration.

Apart from discussing the possibility of regularization, the issue of alternative employment needs utmost attention. The PITA Act is a poor legislature reflective of the most orthodox societal mindset that has unhealthy repercussions on the primary stakeholders, the prostituted. The Apex Court has poignantly highlighted the need for alternative employment in the case of State Of Maharashtra & Anr. vs Indian Hotel & Restaurants Assn. & Ors<sup>xlvii</sup>, where the court had said that:

*"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 run-away 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.*

The PITA Act is an obsolete legislation that needs balanced, pro-rehabilitative modern-day legislation as a replacement. This, however, can be achieved only when the society becomes receptive to the constitutional and natural needs of prostitutes, who have for ages suffered unparalleled stigmatization. We need to have our representatives in Parliament appreciate the distressing condition of prostitutes that can be only remedied through positive, rehabilitative process, not by means of guns and batons.

As a concluding note, the quote from J. Jeffery Means will be most fitting. She describes the dilemmatic conditions of women in prostitution in following words:

*"When basic human needs are ignored, rejected, or invalidated by those in roles and positions to appropriately meet them; when the means by which these needs have been previously met are no longer available: and when prior abuse has already left one vulnerable for being exploited further, the stage is set for the possibility these needs will be prostituted. This situation places a survivor who has unmet needs in an incredible dilemma. She can either do without or seek the satisfaction of mobilized needs through some illegitimate source that leaves her increasingly divided from herself and ostracized from others."*

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