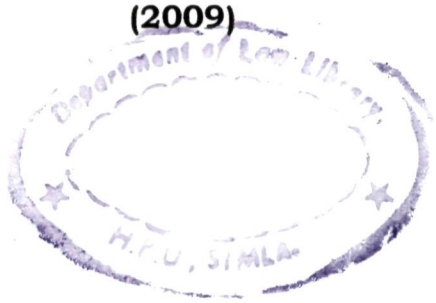
A CRITICAL ENQUIRY OF PUBLIC POLICY AND LEGAL FRAMEWORK ON THE PROFESSION OF SEX WORKERS TOWARDS DEVELOPING REGULATORY MECHANISM

A THESIS
SUBMITTED TO THE HIMACHAL PRADESH UNIVERSITY IN PARTIAL FULFILMENT OF THE DEGREE OF DOCTOR OF PHILOSOPHY (Ph.D.) IN THE FACULTY OF LAW
(2009)



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CERTIFICATE

It gives me immense pleasure to certify that the thesis entitled **"A Critical Enquiry of Public Policy and Legal Framework on the Profession of Sex Workers Towards Developing Regulatory Mechanism"** embodies an original work done by Mr. Vishal Guleria, under my supervision. Further the work has not been submitted in part or in full, for any degree of this or any other University and is worthy of consideration for the award of degree of Doctor of Philosophy of Himachal Pradesh University, Summer Hill, Shimla - 171005.

Dated : July 10, 2009

(Dr. A. C. Pal)

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(Vishal Guleria)

LIST OF ABBREVIATIONS

AIDS	:	Acquired Immuno Deficiency Syndrome
AIR	:	All India Reporter
ASP	:	Additional Superintendent of Police
CBI	:	Central Bureau of Investigation
CMIE	:	Centre for Monitoring the Indian Economy
CrLJ	:	Criminal Law Journal
CrPC	:	Criminal Procedure Code
FACSE	:	Forum against Child Sexual Exploitation
GDP	:	Gross Domestic Product
GPAT	:	Global Programme against Trafficking
HIV	:	Human Immuno Deficiency Virus
ICMR	:	Indian Council of Medical Research
ILO	:	International Labour Organisation
INTERPOL	:	International Police
IPC	:	Indian Penal Code
IPEC	:	International Programme for Elimination of Child Labour
ITPA	:	Immoral Traffic Prevention Act
JILI	:	Journal of Indian Law Institute
NACO	:	National AIDS Control Organisation
NCW	:	National Commission for Women
NGO	:	Non-Governmental Organization
NHRC	:	National Human Rights Commission

NRI	:	Non-Resident Indian
OHCHR	:	Office of the High Commissioner for Human Rights
p.	:	Page
pp.	:	Pages
SAARC	:	South Asian Association for Regional Cooperation
SITA	:	Suppression of Immoral Traffic Act
STD	:	Sexually Transmitted Diseases
STI	:	Sexually Transmitted Infections
UN	:	United Nations
UNDP	:	United Nations Development Programme
UNICEF Fund	:	United Nations International Children's Emergency
UNIFEM	:	United Nation's Development Fund for Women
UNODC	:	United Nations Office of Drugs and Crimes
USA	:	United States of America
USAID	:	United States Agency for International Development
V. D.	:	Venereal Disease
WHO	:	World Health Organisation

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CHAPTER - 1

INTRODUCTION

It was thousands and thousands of years ago that the human species evolved on planet earth. Since his or man's appearance on mother earth, the sexual urge in him has remained an integral part of his life. This sexual urge continues to be a dominant and integral part and feature of the biological makeup of the present day male as well. Sex and the questions associated with sex have remained an engima to mankind from the beginning, perhaps from the time of Adam and Eve. The sexual urge was satisfied by the primitive male by following the old saying of 'might is right'. In those times, a dominant male would just use brute force with a female to satisfy his sexual urges wherever and whenever he felt the need to do so.

As the time rolled on, man realised that this practice of forced sex by the use of sheer force was giving rise to a multitude of problems, difficulty in determination of parentage of a child, being one of them. He soon realised that he had to evolve a way to control, discipline and channelize the sexual power so as to promote to some extent well being and harmony in the society. The solution was found in the institution of marriage which essentially meant that one male would have one female as his sexual partner for the better part of his life. As such, the institution of marriage with an appended cult of morality evolved into social practice.

However, marriage could not completely meet the sexual needs and demands of all. And often frustrated and compelling sex knows not the abstract barriers of religion, custom, law and ethics. So, there arose a class of women to cater to the needs of such libido seeking unconventional satisfaction. They found support in pseudo-religious beliefs, customs and other convictions. This, it may be said that while marriage is the product of civilization, prostitution is its by-product.[1]

The adage 'prostitution' is the world's oldest profession may read as a tired cliche, but it highlights key issues salient for understanding women's experiences in the commercial sex industry.[2] Prostitution or sex work[3] as it is generally called these days has been viewed in different ways throughout the world but the eternal truth remains that whatever are the views on handling of this profession, this institution has continued since ages and will continue till the time humans exist in this world. Prostitution has outlived every social, economic, ethical and political system which the West has known since the times of Greek city states. It has its vicissitudes, but flourishing or languishing, public or clandestine, it has existed in large towns for the last 2500 years, thereby it is proved that it is deep rooted in human social life. The prostitute has been a universal being throughout civilization. It is not known as to where she made her first appearance though there is a view that Greece, the seat of ancient culture and civilization, is her land of birth. In any case she has been a persistent, all time

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1 Punekar and Rao, *A Study of Prostitutes in Bombay,* 1, (1967, 2nd ed.)
2 Jody Miller, *Source Book on Violence against Women,* 459 (2004] 1st ed.)
3 Though the term 'sex work' or 'sex workers' has been used throughout this work but where absolutely necessary the term 'prostitution' has been used to connote 'sex work'.

figure in the chequered history of almost every civilization of the world.

Prostitution and prostitutes have existed in all ages and in all societies to meet the masculine needs of the society. Bertrand Russel has rightly said that so long as the virtue of respectable women is regarded as a matter of great importance, the institution of marriage has to be supplemented by another institution which may really be regarded as part of it - the institution of prostitution. We must in the beginning acknowledge the fact that it is a mere absurdity to assert that prostitution can ever be eradicated. Suppressed in one form, it immediately assumes another. Again pursued, it is driven underground where it is less susceptible to control and supervision. Laws have been framed declaring prostitution and houses of prostitution and all who live by such means, illegal or immoral. There the laws stand. The great law of nature is not abrogated by any artificial state of society. Moral or religious principles will restrain its operation in some, human laws in some, the fear of consequences in some. Yet there always have been and probably always will be, many of both sexes who are not restrained by any of these considerations. They have sustained and will continue to sustain, not only, prostitution but houses of prostitution, in the face of every man made laws.[4] Prostitution, is but a survival of promiscuous cohabitation similar to that which existed in the earliest types of human tribe organisation. History shows that it has always existed, and it is probable that it will always continue to exist, suppression of prostitution will never be possible, regulation is possible.[5] In fact the 64th Report of Law

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4 S. K. Ghosh, *The World of Prostitutes*, 7-8, (1996, 1st ed.)
5 O. A. Wall, *Sex and Sex Worship in the World*, 202 (1979, 1st ed.)

Commission of India also states in very clear term that the profession of prostitution cannot be abolished. To quote the report "Prostitution, though an evil, has been regarded in almost all societies as an unfortunate but a necessary evil, and Indian society is no exception. Various measures have been adopted form time to time to check the evil effects of prostitution and to control its undesirable aspects, but the inatriculate assumption that the law cannot abolish it effectively, has been the basis of legislation in India as well as in many other countries.[6] Though some of the terms used by the Law Commission for 'prostitution' such as 'evil', 'undesirable' are rather harsh but then the reality has been effectively conveyed. Prostitution will persist not because it always has, it will persist because it satisfies a definite and important biological need, and answers it in a way that no other present arrangement does.[7] Though the early Christian writers were more inclined to refer to prostitution as a necessary evil or filth but nevertheless they did maintain that this institution is a human necessity which cannot be done away with. Saint Augustine believed that what the prostitute did was morally wrong but that still worse evils would arise if she did not provide an outlet for human lust. Saint Thomas Aquinas while reiterating this position wrote:

> Prostitute is like the filth in the sea or the sewer in the palace. Take away the sewer and you will fill the place with pollution and likewise with the filth in the sea.

---

6 64th Report, Law Commission of India, 64.12 (1975)

7 Fernando Henriques, *Prostitution in Europe and the New World*, 346 (1963, 1st ed.)

> Take away prostitutes from the world and you will fill it with sodomy.[8]

In the modern context the debate on pros and cons of sex-work seem endless but what has to be kept in mind at all times is that prostitution is not right or wrong but it is real. Prostitution may be as old as the human race itself but our attitude towards it borders on the infantile. At best, we hem and haw. At worst, we argue with half informed passion. Almost always, the debate is loaded with moral overtones. The absence of frank discussion about the many dimensions - social and economic - of prostitution merely reflects out hypocrisy.

The profession of sex-work in this country represents generally the unequal status of women in society. Today women in this profession suffer endlessly at the hands of unscrupulous elements. This policy on sex work of India, which was meant to have targeted these elements has rather targeted the sex-workers themselves in a profession which majority of them have chosen voluntarily.

The present Indian policy on sex-work has been inspired by the U. N. Convention on trafficking of the year 1949. India follows a policy wherein the actual sexual act itself is not declared illegal but all the associated activities with it have been declared illegal. The policy is based on the model of abolition/toleration. This model has not punished individualized acts of prostitution but seeks and aims to curb the commercialized form of sex-work.

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8 Quoted form Herbert A Bloch, Gilbert Geis, *Man, Crime and Society,* 362-363 (1985, 1st ed.)

I. Definitional Dimensions

If we talk about the origin of the word 'prostitute' it has been derived from the Latin word '*prostibula*' or '*proseda*'. The houses of ancient Greek Prostitutes or harlots were allowed to be opened in such a way as not to keep young men away from their exercise. These girls stood before the lupanaria to entice persons going from there. Hence, they were called '*prostibula*' or '*proseda*'.[9]

As far as the term 'sex work' is concerned, it was coined by Carol Leigh, a Western sex worker in the year 1998[10] and since its inception the term has been increasingly used to denote prostitutes worldwide. Regarding the definitions of prostitution, Encyclopedia Britannica defines prostitution as 'the practice of engaging in relatively indiscriminate sexual activity in general with individuals other than a spouse or a friend in exchange of immediate payment of money or other valuables.'[11]

Random House Dictionary describes prostitution "as the act or practice of engaging in sexual intercourse for money."[12] Encyclopedia Americana describes prostitution as the act or "practice of indulging in promiscuous sexual relationship especially for payment."[13]

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9 See, Times of India, 11th May, 2007
10 Quoted form Jo Doezema, Ouch Western Feminists, Wounded Attachment' to the Third World Prostitute, Feminist Review, 20, No. 67, 2001
11 8, *Encyclopaedia Britannica*, 737 (2002, 15th ed.)
12 22, *Random House Dictionary*, 1063 (1981)
13 *Encyclopedia Americana*, 675 (1965, 1st ed.)

Kingsley Davis, the American sociologist, has suggested that prostitution "is distinguished by elements of hire, promiscuity and emotional indifference."[14]

Similarly Geofry May in the Encyclopedia of Social Sciences defines prostitution as "characterized by three elements : payment, usually involving the passing of money, although gifts or pleasures may constitute equivalent consideration, promiscuity, with the possible exercise of choice, and emotional indifference, which may be inferred from payment and promiscuity."[15]

Bonger states that "those women are prostitutes who sell their bodies for the exercise of sexual acts and make of this a profession. Act of prostitution is intrinsically equal to that of a man or woman who contracts a marriage for economical reasons."[16]

According to Havelock Ellis a definition of prostitution to be sound, must be applicable to both the sexes alike. Therefore, according to him "prostitute is a person who makes it a profession to gratify the lust of various persons of the opposite sex or the same sex.[17]

According to Alfred C. Kinsey, known for his classic and scientific studies of sexual behaviour in the human male and sexual behaviour in human female, a prostitute is "an individual who indiscriminately provides sexual relation in return for money payment. He felt that "the person who is specially paid for a single sexual relation is, for that particular occasion a prostitute" and he

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14 Quoted form, M. S. Bedi, *Protection of Woman in Moral Danger*, 1 (1992, 1st ed.)
15 *Id.* at 2
16 *Ibid.*
17 *Ibid.*

further stated that "payment for sexual relation should be in currency and be made for each particular contact."[18]

Dr. Fernando Henriques has given a wider definition of prostitution, which according to him meant "any sexual act, including those which do not actually involve copulation, habitually performed by individuals with other individuals of their own or the opposite sex for a consideration which is non-sexual. In addition, sexual acts habitually performed for gain by single individuals or by individuals with animals or objects, which produce on the spectator some form of sexual gratification, can be considered acts of prostitution. Emotional involvement may or may not be present."[19]

Abraham Flexner has said that "any person is a prostitute who habitually or intermittently has sexual relations more or less promiscuously for money or other mercenary consideration."[20]

Elliot and Merill have defined prostitution as an "illicit sex relations on promiscuous and mercenary basis for money or other consideration.[21]

Gagon and Simon stated that "prostitution is conventionally defined in order to distinguish it from other socio-sexual activities as a granting of sexual access on a relatively indiscriminate basis for payment of the local economic system, with the payment acknowledged to be for a specific sexual performance." They further pointed out that "this service may be performed by either males or females for either males or females, though in practice in

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18 Supra note 14 at 8
19 Supra note 7 at 9
20 Supra note 14 at 8
21 *Ibid.*

nearly all societies acts of prostitution are commonly performed by females for males or by males for females."[22]

Paul H. Gebbard states that "a prostitute is a person who for immediate payment in money or valuables will engage in sexual activity with any other person known or unknown who meets minimal requirements as to gender, age, cleanliness, sobriety, ethnic group and health."[23]

Joardar defines prostitution as "the practice of habitual or intermittent sexual relation, more or less promiscuous, for money or for other mercenary consideration with emotional indifference."[24]

The sole central legislation on the subject i.e. Immoral Traffic (Prevention) Act, 1956 defines prostitution as "sexual exploitation or abuse of persons for commercial purposes and the expression prostitute shall be construed accordingly."[25]

A bare perusal of these definitions of prostitution brings out the following essential elements:

(a) The act of prostitution essentially involves two parties

(b) Out of these two parties, most of the times, one of the parties is a female and the other is a male, though the opposite may also be true.

(c) The most essential element of the whole process is that the female offers her body for sexual purposes to the male in consideration for monetary payment in cash or in kind.

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22 Supra note 14 at 8.
23 *Ibid.*
24 *Ibid.*
25 The Immoral Traffic (Prevention) Act, 1956, sec. 2(f)

(d) Acts of prostitution may also involve members of the same sex offering sexual services for consideration to members of the same sex, for e.g. males to males.

(e) Normally, there is emotional indifference and no personal attachment on part of the female or the male.

Thus, when coitus is practised purely as a means of personal income and where the buyer has nothing but personal pleasure (sexual release) in mind, it amounts to the act of prostitution. Thus, economic value is being derived from the sexual act. Generally, prostitutes may be selective about the kind of sexual activities that they perform. Payment for the specific act is what distinguishes the prostitute from mistress or from females who accept a range of gifts while having sexual contacts with a male.[26] As stated earlier, the primary cause of existence of prostitution since ages is the insatiable human, rather male desire for sex and it is not that only young, unmarried men visit prostitutes. To quote Kingsley Davis:

> The common and ignorant assumption that prostitution exists to satisfy the gross sexuality of the young unmarried man, and that if he is taught to bridle gross sexual impulse or induced to marry early, the prostitute must be idle, is altogether incorrect. . . The prostitute is something more than 'a channel to drain off superfluous sexual energy and her attraction by no means ceases when men are married, for a large number of men who visit prostitutes, if not the majority, are married. And alike whether they are married or unmarried the motive is not one of uncomplicated lust. The craving for variety, for perverse gratification, for mysterious and provocative

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26 R. Jayasree and K. A. Parvathy, Sexual Behaviour of Commercial Sex Workers and Risks in Reproductive Health, *The Indian Journal of Social Work*, 617, Vol. 65, No. 2 (2004)

surroundings, for intercourse free from entangling cares and civilized pretence, all play their part."[27]

Thus, we see that the world's oldest profession came into being and still thrives as an answer to man's insatiable thirst for intimacy and physical pleasure. It continues as a counter-measure to the restriction that the organised society imposes on the sexual life of men. In fact prostitution is a unique business where money, the most public object, meets without conflicting the most private values - the sexual experience which is expected to be individually effective and incommensurable. In fact sex is a universal need and no power on earth will possibly wipe it out.[28]

II. Historical Perspective

An in depth understanding of the profession of sex-work or prostitution will only be possible after analysing the growth of the profession in our country since ancient times till the modern period. This would give an insight as to how the profession has evolved from then to now.

(A) Ancient Period

Evidence from the remote period of Indian history indicates that prostitution was an accepted profession to which certain prerogatives, rights and duties were attached. It is referred to in Vedas, Puranas, Mahabharata and Ramayana. As a matter of fact public women occupied an important place in the city life of ancient India. There are numerous references in ancient literature to the 'city of beauties' as they were called. The Puranas state that

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27 Quoted form, Ahmad Siddique, *Criminology, Problems and Perspectives*, 422 (1997, 4th ed.)

28 K. L. Raghuramiah, *Night Birds*, 6 (1991, 1st ed.)

the very sight of prostitutes brings good luck. They had an honoured place because it was believed that cohabitation of men with the *Apsaras* of heaven had resulted in the creation of prostitutes. These women were the ubiquitous adornment of all public festivals where special seats were allotted to them. The kings used to keep them in their inner apartments and a visiting Prince was entertained by a free entry into their houses.[29]

The presence of *Apsaras* (celestial nymphs) among the godly personages of the Rigveda is clear evidence of the existence of courtesans and perhaps common prostitutes in their society. There is also evidence which indicates the presence of commercial prostitution based on traffic in women in Vedic times. Yajnavalkya and Vishnu, both ancient law makers, have referred to pimps of women as the worst sinners. Srishotikanda of Padma Purana has indicated about the purchase of girls of temples.[30] It is mentioned in Rig Veda and Buddhist Jatakas, that courtesans were not only encouraged, but commanded a certain amount of respect. They were accommodated in the royal palaces, were highly paid and occupied a recognised position in the social scale. They even acquired a certain legendary distinction.[31]

As for the Brahmanical period, epics such as Ramayana and Mahabharata contain numerous references to prostitutes who appear to have been an integral part of Indian society. In Ramayana, there are frequent references to prostitutes. Rama while speaking with Bharata mentioned that the company of prostitutes was a form of recreation. During the war of

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29 Shobha Saxena, *Crime Against Women and Protective Laws*, 256 (2001, 1st ed.)

30 K. K. Mukherjee, *Flesh Trade - A Report*, 1, (1989, 1st ed.)

31 Supra note 14 at 15

Mahabharata, prostitutes were present in the war camps. Raja Virata ordered the beautiful courtesans to sing in accompaniment with musical instruments.[32]

Vatsayaya's Kamasutra written around the 1st and 4th century A. D. refers to courtesans and eunuchs who depended upon their livelihood by offering variety of sexual pleasures to men.[33] He classified prostitutes (courtesans) into four categories namely, *Kumbhadasi* or the lowest type or common harlot or street type. *Kulta* was a married woman practising prostitution. *Pracharika* or attendant type who was married titularly, but practised prostitution. At the top of the hierarchy was the most accomplished prostitute known as *Ganika* and she enjoyed the highest social status amongst prostitutes.[34]

The category of *Ganikas* consisted of women who properly took to prostitution as an occupation and the laws of the state regulated their activities. They were usually required to be well versed in the sixty-four arts described by Vatsyayna before they could be called a *Ganika*. A *Ganika* by virtue of her intellectual attainments, singularly good qualifications and fine beauty received a seat of honour in the assemblage of men. She was held in esteem by the king and highly eulogized by the appreciative people. Her company and favours were always sought for and she became the cynosure of all eyes.[35] Thus, *Ganika* constituted a highly accomplished and talented group of women who earned themselves respect in the society and who were probably the only

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32 Supra note 30 at 1
33 S. M. Edwardes, *Crime in India*, 71 (1988, 1st ed.)
34 Supra note 14 at 16
35 Preparing for Civil Disobedience : Indian Sex-workers and the Law, an article by Prabha Koteeswaran, available at www.bc.edu/bc_org

women to have access to education. In addition, of the three types of prostitutes, *Ganikas* were the only ones who were allowed to formally learn to sing and dance. *Ganikas*, were also considered a source of good luck. Hence, *Ganikas* used to bless the sacred thread that was tied around a bride's neck during the wedding ceremony. This was considered an auspicious gesture since a prostitute never married or became attached to any one man, and hence, was thought to be someone who could never become a widow.[36]

The Artashastra of Kautilya also gives an account of prostitutes during the times of great king Chandragupta Maurya. In fact there is a full chapter in the Artashastra by the name of 'Superintendent of Prostitutes' which is devoted to discussing the duties and liabilities of these prostitutes.[37] During this period prostitutes occupied a well defined position in the royal court. Their duties were principally those of bathroom servants, shampooers, bedroom attendants, washer women and garland makers. They waited upon the king, presented him with water, scent, fragrant powders, flowers, etc. and were supervised and controlled by an official known as 'The Superintendent of Prostitutes'.[38]

From among the more beautiful and accomplished were selected those who were privileged to hold the royal umbrella, fan the king and accompany him on his travels. They were generally trained in singing and dancing and were, from the very nature of their calling, expected to earn their up-keeping by selling their

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36 Ibid.
37 R. P. Kangle, *The Kautilya Arthashastra*, 164 (2000, 2nd ed.)
38 Supra note 14 at 15

favours to all comers, that their daily earnings amounted to a considerable sum is not unlikely, for the Mauryan Government appears to have levied on each prostitute attached to the royal household, a tax amounting to two days earning per month or an equivalent of 7 per cent of her total monthly income, and to secure for the state, so profitable a source of revenue, made it a criminal offence for those women to refuse their favours to any man willing to pay for them, the offence being punishable with a flogging or a fine and in extreme cases, death by burning or drowning.[39]

Kautiyla's Arthashastra further informs us that the *Ganika* was treated like a government servant. A *Ganika* received a fixed government salary of 1000 *panams* per year. As a result, the amount that she received from her customers was turned over to the king's treasury. They worked under the '*Ganikadhyaksha*' (Superintendent of Prostitutes) who fixed their fees, resolved their disputes and decided matters of succession relating to their property. *Ganikas* were also taxed on their income, similar to musicians, dancers and other court performers.[40] In addition to the regulations on income the state controlled and regulated a *Ganika's* very freedom. In theory a *Ganika* could be redeemed, however, the price for doing so was prohibitive. As a result, her freedom and that of her children realistically could not be bought. Moreover, if her daughter had the qualifications of a *Ganika*, she could be made one as well. However, *Ganikas* did have the freedom to organise into associations that could voice prostitute women's concerns and draw the attention of the state to their complaints. They made financial contributions to these associations that were

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39 *Ibid.*
40 Supra note 35

used to assist prostitute women who were in dire need of money or were sick.[41]

In case of illness or old age, the state took care of *Ganika's* needs. For example, royal households could employ a retiring prostitute as a mid-wife, nurse, cook or maid. In addition to these rules that governed the women, clients faced certain restrictions as well. For example, when a man had sex with a *Ganika* against her will or with her virgin daughter, he would suffer the highest punishment possible. Similarly, if a client kept a *Ganika* under confinement, abducted her against her will or disfigured her, he would be fined 100 *panams*. This amount could be increased to double her ransom depending upon the circumstances of the abduction and abuse of the *Ganika*.[42]

Common prostitutes were subject to similar rules. For example, if a common prostitute promised to entertain a particular client, collected money from him and then backed out from the arrangement, she had to return twice the amount that she had been paid. Similarly, if she promised sex but did not collect any money from her client and subsequently refused to have sex with him, she was required to pay an amount equal to what she would have been compensated. On the other hand, if the client agreed to sexual activity, paid the prostitute a fee and then went back on their agreement, the prostitute was not obliged to return his payment. Instead the client was required to pay an equal amount

41 *Ibid*
42 *Ibid.*

to her as retribution. If he refused to do so, the client was fined four times that amount.[43]

In addition to setting these fines, the state also defined and regulated permissible sexual conduct between a client and a prostitute. For example, a man could, along with his friends, use the services of a prostitute at any given point of time; however, in that case, she was allowed to charge each one of them double the amount she would have ordinarily charged one client. Similarly, a client would be subject to a fine if he indulged in extra-vaginal intercourse with a prostitute.[44]

Shillapadikaram, written between 2nd and 5th century A.D. gives details of courtesans in South India. When Harsha ascended the throne the traditional freedom and patronage of the dancing girls continued. Vijayanagar empire at the zenith of its glory conferred considerable social recognition on the *devadasis*. From Elliot's work on History of India, one gets a clear description of prostitution in the Vijayanagar empire. He describes it as follows:

> Behind the mint there is a sort or *bazar* which is more than 300 yards long and 20 yards broad . . . and anyone who passes through this place makes choice of whom he wishes. The servants of these brothels take care of whatever is taken into them, and if anything is lost they are dismissed. There are several brothels within these fortresses and the revenues from them, which amount to 12,000 *panams*, go to pay the wages of the policemen.[45]

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43 *Ibid.*
44 *Ibid.*
45 Quoted from M. Rita Rozario, *Trafficking in Women and Children in India*, 8 (1988, 1st ed.)

(B) Mughal Period

The remarks of Alberuni, made in the 11th century A. D. on the issue of prostitution make the picture of those times pretty clear, he observed:

> In reality the matter is not as people think, but it is rather this, that Hindus are not very severe in punishing whoredom. The fault, however, in this lies with the kings, not with the nation. But for this no Brahmin or priest would suffer in their idol-temples, and so also the women who sing, dance and play. The kings make them an attraction for their cities, a fait of pleasure for their subjects, for no other but financial reasons. By the revenue which they derive from the business both as fine and taxes, they want to recover the expenses, which their treasury has to spend on the army.[46]

During the Mughal period, prostitution was a recognised institution, but amongst Muslims prostitution was antithesis of family life. Emperor Akbar made some regulations so that the services of prostitutes were available at one particular part of the city. Prostitutes were confined to a place outside the capital city and this place was called the 'devil's quarter' or '*shaitanpura*'.[47] Officials appointed in *Shaitanpura* noted down the names of persons who visited the prostitutes or took them to their houses with permission. The king even reprimanded the nobles as had initially seduced prostitutes. From Badauni's and Abul Fazal's accounts we come to know that Akbar privately called a number of well known prostitutes of the city and asked them to disclose the

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46 Supra note 14 at 16
47 *Ibid.*

names of the persons who had seduced them. Such Amirs were then reprimanded and severely punished.[48]

Emperor Shahjahan reviewed the activities once again. When Aurangzeb became the ruler, most of his rules were directed towards prohibition of prostitution. In spite of the many regulations imposed by the Mughal emperors like Akbar and Aurangzeb, prostitution received great encouragement from the rich and well to do sections of the society. Not only some of the Mughal emperors, but also the Hindu Rajas like Baz Bahadur, the ruler of Malwa and Raja Indrajit Singh, the ruler of Orchha state in Rajasthan were great patrons of prostitutions.[49]

During the rule of later Mughals except Aurangzeb, the superior category of prostitutes known as *Kanchans*, were invited in state celebrations and on the marriages in the families of the nobles, to sing and dance. However, Aurangzeb during his rule prohibited prostitution and even the singing and dancing by *Kanchans* and ordered that either they be married or asked to leave the empire and in fact several among them were married. The names of *Kanchans*, such as Lal Kunwar during the rule of Jahandar Sah, Noor and Bai were well known during the rule of later Mughals for their resourcefulness and riches. At all times especially in medieval India, kings maintained harems, where hundreds and even thousands of women would be maintained as concubines, and keeps for providing recreational and sexual services to the kings.[50]

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48 Supra note 45 at 9
49 *Ibid.*
50 Quoted form, M. S. Bedi, *Protection of Women in Moral Danger*, 17-18 (1992, 1st ed.)

(C) British Period

In ancient India one witnessed the regulation or legalization of prostitution whereas during the colonial period, one saw the rise of criminalization of prostitution. Accompanying this shift was the shunting of prostitute women's bodies between treacherous lock hospitals in cantonment areas, British armies assisting in an imperialist project and a nationalist movement that, in its anxiety to resist the British, colluded with them to degrade its own women. A very different situation was revealed in the patterns of prostitution in 19th century, leading to a sizeable entry of Europeans on the Indian soil. Development of industries leading to urbanization, caused large disparity in sex-ratio in the new emerging cities of Bombay, Calcutta, Madras, Delhi and Surat. They were the centres which were booming with prostitutes, catering to the sex needs of the sailors, soldiers, single male inhabitants and other components of floating population.[51]

The British were amazed by the tolerance accorded to prostitution in India as evidenced by writings of S. M. Edwardes in Crime in India.[52] In fact, he begins his essay on prostitution related offences in India by Quoting Dr. W. Crooke, who had once remarked "at the present day prostitutes are tolerated in India to an extent which can hardly be paralleled in any other part of the world."[53] He then observed:

> Of recent years a certain number of educated Indians, who have imbibed western ideas and education, have openly dissociated themselves from practises of long standing, which tend to popularize the prostitute's

51 *Ibid*
52 S. M. Edwardes, *Crime in India*, 69, (1988, 1st ed.)
53 *Ibid.*

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> profession . . . it is hardly an exaggeration to say that the great majority of India's inhabitants representing orthodox and conservative opinion, still regard the profession and those who follow it, with tolerance and sometimes even with respect and approval . . . it results in social anachronisms, which strangers view with amazement and are unable to understand.[54]

British officials working in India echoed this statement. For instance Maj. C. A. McMohan observed that prostitution was an occupation in India equivalent to choosing the blacksmith's work or carpentry. He also reported that prostitute women in India did not lead as degraded a life as did British prostitute, nor were they looked down upon by their communities as were prostitute women in Great Britain. In some instances, the British were so confused by this phenomenon that they labelled native women as hypocrites with regard to prostitution, viewing them as a typical example of women who said 'no' when they actually meant 'yes'. This inability to comprehend Indian social mores was, however, not explored convincingly. Instead, the British relied on superficial religious and superstitious reasons to explain away this toleration of prostitution.[55]

British used these reasons to further the project of colonial rule to the detriment of India's prostitutes. Having recognized the need for British troops to have access to Indian women's bodies, the British had to find a way to salvage the superiority of the British race. As attempts to manage sexuality through morality were integral to the very identity and authority of the colonial project, the British found that the most convenient way of maintaining superiority with regard to prostitution would be

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54 *Ibid.*
55 *Ibid.*

degrading Indian prostitutes themselves. Since Great Britain was using India simply to service the industrial revolution in Britain, British rule had taken a toll on Indian economy. This forced many women to leave their traditional occupations and migrate to urban areas, due to lack of jobs in factories, many turned to prostitution as a source of livelihood.[56]

The British administration regulated the health of prostitute women in order to protect the health of the troops stationed in Indian cities. The manner in which the administration set about doing this makes interesting reading. For the first half of 19th century, the government regulated the health of prostitute women through executive resolutions. For e.g., in 1805, Lord Bentick passed a resolution which provided for the following:

(i) Formation of lock hospitals, or *Lal Bazars* as they were known in Hindi, in areas where European soldiers were stationed.

(ii) Identification of and medical inspection of all prostitute women in each district.

(iii) Powers to the Magistrate to direct the arrest of any woman who, on the recommendation of military officials was suspected of being infected. She could then be produced before the Civil Magistrate and sent back to lock hospital.

(iv) Confinement of women found to be infected to the lock hospital until they were finally cured. All contacts with British soldiers were prohibited till that point.

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56 *Ibid.*

(v) Expulsion by the British government, on the recommendation of the medical board, of infected women from the cantonments, where the above measures did not work.

However, some of these measures did not last very long. For example, the lock hospital system proved ineffective and it was ultimately abolished in 1830's.[57] In 1892, the British House of Commons appointed a committee to enquire into the practice of prostitution in India and also the spread of venereal diseases. It was found that special arrangements were made for supply of women. Medical check-up and segregation till the women was cured, was the usual practice. All those efforts were however, not considered adequate and more vigorous steps were felt necessary.[58]

During these times (19th century) special brothels notoriously called as *Chaklas* were maintained by the British army authorities, near cantonments, to meet the sexual needs of the soldiers. The inmates of these *Chaklas* functioned under the strict supervision of a brother keeper known as *Mahaldarni*, who shared the earnings of the prostitutes (mostly one fourth) and also at times was paid by army authorities. This lady ensured discipline, cleanliness, supply of prostitutes, medical examination and general administration of brothel houses. The general charges per visit to the prostitute were four *annas* where three *annas* was a full day's wages for a labourer. During 1893 there were around 280 prostitutes who served 11,000 soldiers in three cantonments at Ambala, Meerut and Lucknow. Recruitment of prostitutes for the

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57 *Ibid.*
58 64th Report of Law Commission of India, 64.9 (1975).

army or general population was either from communities traditionally engaged in prostitution or from widows, unhappy wives, women, whose love affairs became public making it intolerable for them in their homes, all provided their quota.[59]

In 1866 Contagious Diseases Act was enacted requiring compulsory medical examination of prostitutes in the *Chaklas* in the army cantonments, through the police. The practice of state administration in *Chaklas* came under criticism by social reformers in Britain, lead by Mrs. Josephine Butler, which led to the repeal of the Act in 1886. However, these *Chaklas* continued to function, though unofficially under army patronage and supervision.[60] Thus, the Contagious Diseases Act, 1866 in its various forms, laid the foundation for the conceptualization of prostitute women as criminals. Ultimately, the irony of this approach was that British officials realized that these laws were ineffective and that their efforts at prevention hinged solely on the restrain that soldiers displayed. The harm had, however, already been done; laws reflecting a tolerationist approach that criminalizes all acts leading to prostitution, but excepting the sexual act itself, had already taken root.[61]

As far as pre-independence nationalist movement was concerned, their reaction towards prostitutes was more than that of contempt. Reformers constantly urged the government to pass more stringent laws against prostitution and trafficking in women and children. They relied on the notion of the victimized prostitute that the abolitionist movement had previously introduced and that

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59 Supra note 14 at 21
60 *Ibid.*
61 Supra note 35

groups, both Indians (the Brahmo Samaj and Indian Vigilance Organizations) and British (usually missionary institutions), seeking to curb what they called a 'social evil', had reinforced. The post-independent Indian states, engrossed in its nation-building exercise, carried on the nationalist movements legacy of contempt for prostitute women. On the legislative front, the post-colonial state continued its use of the tolerationist model of prostitution law previously cast during colonial rule despite the radical normative departure expected from the adoption of the Indian Constitution after the advent of independence.[62]

The historical mooring from ancient times till the British times reveal the extent and changes that the profession has witnessed. As observed, during the ancient period from Vedic age to epic age and from Vatsayayna's and Kautilya's account we find that prostitution was a common social phenomenon and the profession enjoyed a certain amount of respectability. From Kautilya's Artashastra we find that prostitutes were regulated by the state and there was a separate minister-in-charge of prostitutes known as '*Ganikadhyaksha*'. Prostitutes were patronized during the Mughal period also but their respect and honour had suffered as many Muslim monarchs banished them from their royal courts as well as their kingdom. After the arrival of British the image suffered further blow, as British as well as leaders of the national movement degraded the institution of prostitution and through their laws branded them as criminals. The current law is an outcome of British policies which criminalizes all the activities of the prostitute except the sexual act

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62 *Ibid.*

itself. The Indian Policy on sex-work has essentially evolved after the U. N. Convention of 1949 to which India was a signatory.

III. Statement of Research Problem

The profession of 'sex work' is in the limelight world over for a plethora of reasons, the primary being the AIDS epidemic and trafficking. The AIDS epidemic is giving sleepless nights to heads of almost all the nations especially the South East Asian nations. Sex workers are considered a high risk group in the spread of AIDS and for this particular reason the debate on 'sex-work' and the best approach for it, is gaining steam. The other primary reason being trafficking of persons, especially young girls for the purposes of prostitution. Trafficking, which is estimated to be a £ 7 billion enterprise is causing headaches to law enforcement agencies of all countries. Trafficking of girls and they being pushed into brothels where pimps and brothel owners buy them lead to intense exploitative conditions of these girls. The problem is that the current Indian policy on prostitution, which is a legacy of the British regime is proving utterly futile and helpless in managing and controlling the situation, in fact the situation has already spiralled out of hands. The law of the country follows a tolerationist approach where all the associated activities of sex-work, except the sexual act itself are declared illegal. In essence, rather than targeting the real exploiters like pimps, madams, traffickers, etc., the law is targeting the hapless sex-worker itself. Moreover, there is a strong police-pimp-traffickers nexus which is further deteriorating the already 'worse' condition. The current Indian policy on sex-work as such is inherently flawed, lacking vision, direction and following a purely moralistic approach. The question which arises at the end is can a change be brought about

for the good in the bleak scenario by adopting a regulatory mechanism to effectively deal and come out of the present mess.

IV. Research Questions

The following questions emerge from the chosen problem:

(a) Whether the current tolerationist approach towards sex work is yielding the desired results?

(b) Whether criminalizing the sex-workers will solve the problem?

(c) Whether the current policy on sex-work is working effectively to tackle the AIDS problem?

(d) Whether trafficking of persons especially for prostitution is on the rise?

(e) Whether sex-workers are working under an exploitative work environment under pimps and madams?

(f) Whether there is a police-pimp-trafficker nexus which is further deteriorating the already bad condition?

(g) Whether the regulatory model for sex-work will help tide over the current impasse?

V. Objectives of the Study

The study aims to undertake the following objectives:

(a) To make an in depth study on the current Indian policy on sex-work.

(b) To find out and examine the shortcomings and drawbacks of the current policy on sex work.

(c) To study and examine the legal framework employed to deal with sex-work.

(d) To examine the impact of the present policy on combating the AIDS menace.

(e) To make an in depth study of the phenomenon of trafficking and its ill-effects.

(f) To study the sex-work related laws of some foreign countries.

(g) To look at the issue of sex-work from the view point of sex-workers themselves.

(h) To evolve a comprehensive regulatory mechanism to effectively handle the issue of sex-work.

VI. Hypotheses

(a) The current tolerationist approach being followed by India may not be yielding the desired results.

(b) Criminalizing the sex-workers may not solve the issue at hand.

(c) The current policy on sex-work may not be working effectively to solve the AIDS problem.

(d) Trafficking of persons for the purpose of prostitution may be on the rise.

(e) Sex-workers may be working under the exploitative work environment under pimps and madam.

(f) There may be a police-pimp-trafficker nexus.

(g) The regulatory model for sex-work may provide an effective solution to the current problem.

VII. Research Methodology

In order to study the concept of sex-work the research methodology has been chosen in such a manner that basic data derived from different sources and disciplines may be coordinated effectively and a link may be set up between them. Traditional doctrinal research methodology has been adopted to study the concept. As such in order to achieve the objects of the present study, the researcher has used the secondary data and such data has been collected from related book, journals, reports, newspapers, websites etc.

VIII. Chapterization

I. Introduction

II. The Present Indian Policy on Sex Work

III. Legislative and Judicial Approach Towards Sex Work

IV. Fallouts of the Current Policy on Sex Work

V. The Menace of Trafficking

VI. International Perspective

VII. A Regulatory Mechanism to Seek Solutions and Find a Way Forward

VIII. Conclusion and Suggestions

CHAPTER – 2

THE PRESENT INDIAN POLICY ON SEX WORK

I. Introduction

Prostitution or 'Sex-work' as it is generally referred to these days is not a new enterprise as it has flourished throughout history. Though as a trade which has continued since time immemorial, still it has neither been given it's due in society nor legal recognition. The society and its respected persons have sustained this trade for the satisfaction of their sexual urges, without any legal recognition or protection to those who are engaged in sex-trade. In the absence of legal protection, women in the sex industry are in vulnerable positions, subject to sexual abuse and exploitation. As their work is not recognised they are commonly excluded from mainstream society. They are thereby denied whatever national and international protection from abuse is available to others as ordinary citizen, women or workers.

II. Systems to deal with Sex-Work

Essentially, there are three major systems which are being used to deal with sex-work. Different countries of the world have adopted either if these systems for dealing with sex-work. So, an indepth probe into these three systems becomes important before taking up the Indian policy on prostitution. These three systems

are (a) suppression, (b) regulation and (c) abolition (toleration). An insight into these systems becomes imperative.

(A) The system of Suppression (Prohibition)

The suppression of prostitution is the total prohibition imposed on acts of prostitution and other activities that promote, organize or facilitate prostitution. The system of suppression[1] makes prostitution a crime. Technically all the parties are criminalized; including the sex-worker, client and others who profit (e.g. pimps, brokers, traffickers, managers, etc.). However, with few exceptions it is the sex-workers themselves who are arrested and prosecuted under these laws.[2]

The system of suppression makes prostitution per se a criminal offence. It punishes the prostitute and sometimes the client too for engaging in it, even when, both parties are consenting adults and the sexual act is committed in private. Full suppression requires the prohibition of every act directly or indirectly connected with prostitution. Thus a landlord who lets premises with the knowledge that they are to be used for prostitution is often guilty of an offence. Taxi-cab drivers who knowingly transport prostitute or customers to any destination for the purpose of committing acts of prostitution may also commit an offence. The prostitute herself may be guilty of an offence of being a prostitute, or of entering a bar or restaurant for any purpose whatsoever, or of taking a customer to a hotel room or flat for the purpose of prostitution. She may further be guilty of being an inmate of a house of prostitution. Customers initiating contact with a prostitute may

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1 Often also referred to as system of 'prohibition'.
2 Jody Miller, *Source Book on Violence against Women*, 462 (2004, 1st ed.)

commit an offence and they may also be caught by the wording of various provisions by which persons of opposite sexes are penalized for entering any place for illicit intercourse or lawlessness.[3]

This system is followed in many countries around the world but the main proponent is United States of America (USA). It would be worthwhile to have a look at the Model Penal Code of the American Law Institute whose 'proposals on prostitution' follow the same basic principles as the American law. The Code provides as follows:

Section 27.12 : Prostitution and Related Offences

(1) Prostitution : A person who engages, or offers or agrees to engage in sexual activity for hire, or is an inmate of a house of prostitution, or enters this state or any political sub-division thereof to engage in prostitution, commits a petty misdemeanour. Such activity is hereinafter referred to as prostitution, and the actor is referred to as prostitute.

(2) Promoting Prostitution : A person who knowingly promotes prostitution commits a misdemeanour or felony. The following acts shall, without limitation of a foregoing, constitute promoting prostitution:

(a) Doing, controlling, managing, supervision or otherwise keeping alone or in association with others, a house of prostitution or a prostitution business;

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3 Abraham Sion, *Prostitution and the Law*, 43, (1997, 1st ed.)

(b) Procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) Encouraging, inducing, or otherwise purposely causing another to become a prostitute;

(d) Soliciting a person to patronize a prostitute;

(e) Procuring a prostitute for a patron;

(f) Transporting a person into or within this state with purpose to promote that person's engaging in prostitution, or procuring or paying for transportation with that purpose;

(g) Being employed in a house of prostitution;

(h) Leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by effecting the tenant, notifying law enforcement authorities, or legally available means; or

(i) Soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this sub-section.[4]

These foregoing paragraphs include some important points typical of the system of suppression. A woman is forbidden to engage in prostitution, or to offer to engage in prostitution, although the activities preliminary to prostitution are performed in

4 *Id.* at 44.

private. A woman is also forbidden to be an inmate of a house of prostitution.[5]

The residue of the provisions above mentioned are mainly concerned with intermediaries and promoters of prostitution, such as pimps, procurers and organizers. Some provisions, being characteristic of the system are worth highlighting. Thus, a taxi driver, or a hotel porter, who is to oblige a client, introduces him to a prostitute may commit an offence. Another provision forbids a person from being employed in a house of prostitution; this covers a maid, cook or charwoman. It is forbidden for a client to hire a prostitute to engage in sexual activity with him, or to be present in a house of prostitution for the purpose of engaging in such activity.[6]

The enforcement of these laws lies with a special department of the police force that makes use of plain clothes police officers. They frequently resort to excessive and improper methods for the detection of offences connected with prostitution such as 'entrapment', the use of 'informers' and 'wire-trapping'. To commit what is generally known as 'entrapments', plainclothes officers are assigned to places where prostitutes acquire customers. They pose as prospective clients. They may approach the prostitute themselves or may wait for her to approach them. Then they totally indicate their interest in sexual intercourse, and allow the woman to go far enough to make her purpose to engage in sexual activity

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5 *Ibid.*
6 *Id.* at 46.

for payment clear. At that stage she is arrested and taken to the police station.[7]

The system of suppression is naturally concerned with the spread of venereal disease, since this is a major motive for the application of this system. In the United States, health departments have been established in all states to seek out persons suffering generally from venereal disease[8] or other infectious diseases and to quarantine them until they are cured. In addition, most states have special statutes that deal specially with the spread of venereal disease by prostitutes. In some states of the United States persons reasonably suspected of being infected with venereal disease may be compelled by a health officer to undergo a medical examination and if they are found to be infected they may be detained for treatment. In other states prostitutes and customers found in their company are automatically suspected of infection and are examined and held until the results of the examination are known. Prostitutes who are detained in any prison, whether before or after conviction, may be forcibly examined and they may be further detained without bail until a final report is made.[9]

A system of suppression, when properly applied, does not eradicate prostitution but it drives prostitutes underground. They disappear from the scene and resort to new, less conspicuous methods. By going underground and by losing their social status as a result of being made criminals, they tend to associate more readily with other criminals. This promotes and sometimes

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7 *Id.* at 47
8 For details on Venereal Disease, see Chapter IV
9 Supra note 3 at 47

necessitates a relationship between prostitute and ponce, and increases the possibility of exploitation. The prostitute is made to work much harder and to provide a large income for her ponce, a factor which may contribute to formation of criminal gangs.[10] No criminal gangs can successfully operate without the aid of large funds necessary to hire professional racketeers, to bribe public officials and to gain immunity from the law. Underground prostitution acts as a major source of such funds. The more powerful the gang or individual pimp, the greater the temptation for public officials to be corrupted, and the greater the threat to the safety and welfare of any individual or group who attempt to tand in their way.

The suppression or prohibitionist model is widely believed to be the most oppressive for sex workers. This approach leaves women with no legal apparatus to defend themselves. Rarely do states enforce laws against clients, pimps, traffickers, although women are routinely subjected to arrest and incarceration. Moreover, because of illegal nature of their work, many women are hesitant to go to law enforcement when they are crime victims and conduct their work so as to conceal their activities which increases the risk of their victimisation.[11]

The system of suppression contributes to the corruption of public officials whose responsibility is to enforce it. Occasionally it is not possible to obtain evidence against an offender without committing despicable acts which may give rise to a public outcry, the result of which is little police action. The proper enforcement of the system requires vigorous and incessant action on the part of

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10 *Id.* at 47-48.
11 Supra note 2 at 461.

the administration to detect, try and punish offenders. For this purpose, a large number of public officers are needed for duties connected with prostitution, thus exerting pressure on an already undermanned police force occupied with more serious crimes. For these reasons the system of suppression cannot be vigorously and continuously enforced.[12]

The system of suppression generally tends to drive the profession of sex-work underground and they inevitably land up in the clutches of pimps and brothel owners. Their disappearance from the scene makes it very difficult for Non-Governmental Organisations and Health officials to get through to them. In the context of 21st century when AIDS is spreading its tentacles world over, such a system only perpetuates the misery of those in the profession and increases their risk of acquiring AIDS.

Besides United States, countries like China, Iceland, Japan, Malta, Nepal, Philippines, Romania, Slovenia, Sri Lanka, Tanzania, Uganda and Vietnam practise the system of suppression in dealing with sex-work.[13]

(B) The System of Regulation (Legalisation)

Regulation/Legalisation is a very important paradigm dealing with 'sex-work'. Under this model, there is a state tolerance of sex-work through Government regulatory schemes. The regulatory model is based on the premise that 'prostitution' has existed at all times and will continue to exist in the future also. So, for a phenomenon which has a perpetual continuity, there is no point trying to suppress or prohibit it. The best way to deal with it

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12 Supra note 3 at 48.
13 Supra note 2 at 462

is to adopt a practical approach and allow the profession to continue but within the regulations designed by the state.

Regulation includes direct government interventions such as registration of brothel houses, as well as neo-regulatory systems such as mandatory health check-ups and taxation.[14] The system requires prostitutes to mandatorily and compulsorily register themselves with the local authorities and submit themselves to periodic health checkups for V.D. clearance after which a prostitute is issued a police clearance to work professionally, generally in officially designated areas.[15]

What is known as the system of regulation consists of many systems that differ at times fundamentally though they are all based on the same general principles. There are divergences in types of registration – whether compulsory or voluntary; in the method of practice – whether in a licensed brothel or in private premises, and whether concentrated in one part of the town or scattered all over, in the circumstances that lead to arrest, in the registration of minors, in the registration of married women, in the registration of women with other means of livelihood, in the cancellation of registration and in the employment of non-judicial administrative punishment.[16]

The system of regulation generally operates as follows. If a non-registered woman is found practising prostitution she is liable on conviction to punishment and summary registration. Registration usually follows an early warning and is often carried

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14 *Id.*, at 463
15 Jean D'Cunha, *Prostitution Laws – Ideological Dimensions and Enforcement Practices*, 61 (1991, 1st ed.)
16 Abraham Sion, *Prostitution and the Law*, 34 (1997, 1st ed.)

out only if the offender has attained the age of twenty one. Registered prostitutes are permitted to ply their trade without interference from the authorities provided they obey police regulations as regards order and decency and venereal disease, they are liable to punishment only when they violate these police regulations.[17]

If we talk about Europe, we will find that enforcement of these regulations normally lies with a morals police force (*police des moeurs* in France and *Sittenpolizei* in Germany). Members of this force are officers in plain clothes who usually walk the streets in pairs. The uniformed police do not interfere in offences connected with prostitutes or prostitution unless the case is one of emergency, such as, for example, when there is a street brawl and no morals policemen is readily available, to take control. The duty of the morals police is to observe both registered and non-registered prostitutes, the former lest they violate the regulations and the latter lest they practice prostitution.[18]

This model is followed in a number of Western countries including Australia, Austria, Germany, Greece, Netherlands, Switzerland as well as Curacao, Peru and Turkey. The same approach is found in some states of United States such as State of Nevada.

(C) System of Abolition (Toleration)

The term abolition is a misnomer in the sense that it signifies not the abolition of prostitution as such by means of the criminal law but the abolition of the laws and public ordinances

17 *Id.*, at 35
18 *Ibid.*

which regulate and license the practice of prostitution. Abolitionists are those who oppose all statutory enactments or police ordinances authorizing the registration and medical examination of prostitutes and the existence of licenses brothels. The term 'abolition' came into prominence in the 19th century through the struggle to abolish the regulation of prostitution by the state. The approach is also called the tolerationist approach.

The abolitionist approach calls for the elimination of laws against prostitution itself. It criminalizes the parties rather than the actual transaction. This is the approach adopted by United Nations Convention of 1949.[19] Abolitionism decriminalize's women's involvement in prostitution and does not distinguish between voluntary and forced prostitution. Instead, prostitutes are defined as victims. As such, the abolitionist approach does not distinguish between voluntary and forced prostitution.[20]

The advocates of this system hold that the system of regulation should be abolished because of its many disadvantages and this system would promote a pattern whereby prostitution per se is ignored but its public manifestations and its harmful effects are dealt with. The mere act of prostitution is treated as a private vice or a contravention of moral law in the same manner as drunkenness or gluttony. Neither the prostitute nor the client is punished for participating in acts of prostitution in private, but street walking, soliciting in public places, brothel keeping, living on the earnings of prostitution and the procuration of prostitutes are all acts punishable by law. The intervention of the law is

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19 Suppression of the traffic in person and of the exploitation of the prostitution of others, (1949)

20 Supra note 2 at 462

conditioned not on the act itself but on certain conditions or results which make it something more than an affair involving two participants. If decency is violated, if disorder is created, if neighbours are scandalized, in some countries, if disease is communicated, society considers itself warranted in interfering just as it interferes in other circumstances to preserve or to promote the peace and health of the community.[21]

Countries under a system of abolition do not normally employ a morals police in plain clothes to observe prostitution, but a morals police might not necessarily be inconsistent with such a system. The police are not, under abolition, the guardian of the morals but the guardians of public peace. Breaches of the peace are obvious and open, whereas the task of enforcing private morality cannot be performed without many abuses, including corruption. During certain periods when prostitutes become more aggressive, they can be found in considerable numbers loitering and soliciting in public thoroughfares. A situation of this kind may pave the way for corruption. The police, armed with powers of arrest, do not carry out their duties vigorously. Though a number of prostitutes are arrested every night many others ply their trade openly in the streets, for their actions can be more easily concealed. The public is incapable of knowing whether prostitutes are able to solicit in public places because of laxity in law enforcement or because of police corruption.[22]

Prostitution can, with some difficulty, be practised under a system of abolition without violating the law. The laws are normally designed in such manner as to afford the individual

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21 Supra note 3 at 51.
22 *Id.* at 51-52.

prostitute just the possibility of practising her profession without any offence being committed, otherwise the system will be similar to suppression except in name. Thus, for e.g. in England, where a system of abolition is in force, loitering or soliciting by a common prostitute in a street or public place is a criminal offence. It is also an offence for a practising prostitute to allow another prostitute to practise prostitution on her premises. For this reason, living with a prostitute and receiving her earnings, procuring a woman to become a prostitute and keeping a brothel are all offences.[23] These are the three major systems which are invoked worldwide to deal, manage or handle the profession of sex-workers.

III. Indian Policy on 'Sex-work'

India has adopted the system of abolition/toleration to deal with sex-work. Having analysed in the pages gone by the working of the aboilitionist model, the picture becomes clearer that our leaders while framing this policy were more concerned with moralistic attitudes of what is good and what is bad rather than adopting a rationale and practical attitude towards this 'oldest profession'.

The present policy ensures that the sex-trade is accessible but not offensively public and that sex-workers are allowed to work but without legal protection. No other profession suffers from such a confusion about what is legal and what is illegal, nor is any other worker punished only when her/his profession is visible to the public. The impact of these laws on sex-workers themselves is considered of secondary importance to maintaining society's sexual

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23 *Ibid.*

double standards.[24] India follows the tolerationist approach which criminalizes the organisors of the sex-trade but not the sex-workers themselves. As seen earlier, this approach intends to suppress prostitution gradually by tackling the exploitative elements without harming the sex-workers. An important United Nations Convention in 1949[25] promoted the tolerationist approach, which was later adopted by many countries including India.

The policy of prostitution in our country is reflected in its legal approach towards prostitution. As a result of being signatory to the 1949 United Nations Convention, the Suppression of Immoral Traffic Act (SITA) was passed in the year 1956. This was later amended in 1986 in the form of Immoral Traffic (Prevention) Act, 1956. The Indian approach is one of tolerance, where being a sex-worker per se is not an offence and practising sex-work privately and independently is not a crime.[26] This Act in a way provides for punishment for sex-workers, who do not keep their profession hidden form 'the public' and deals with excesses of exploitation in the industry. Sex-work is tolerated, meaning that it is neither legal nor illegal : sex-workers are not committing a crime when they practice privately and independently, but they cannot solicit legally in public. In theory sex-workers are left alone to carry on their work provided it is not within 200 meters of a public place. Like other informal sector – self-employed workers, they are not entitled to child care facilities, compensation or minimum wages.[27]

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24 Carolyn Sleighthome and Indrani Sinha, *Guilty Without Trial*, 52-53 (1996, 1st ed.)

25 Supra note 19

26 Subhash Chandra Singh, Conceptualisation of Prostitution as Labour, *Apex Court Expressions*, 51, Vol. 2, (2003).

27 Supra note 24 at 53.

India's legal approach towards prostitution has shifted since the nineteenth century from legalization to toleration. Socially, zones of tolerance known as red-light areas have always existed, but the legal status of the sex-workers has altered. The swings in the legal approach to sex-work reflect both the practical and moral pre-occupations of the state.

The dual perception of sex-workers as fulfilling a useful role in the society on the one hand and being a corruptive influence on the other results in a dilemma that is reflected in the confused legal approach. The law has to cater to a public demand for both condemnation and toleration. What has been consistent is that regulations and prohibitions have been concerned to a greater extent with maintaining a hypocritical public morality than with the protection of welfare of the sex-workers themselves. Just seventy years ago Calcutta had a special moral police force to supervise and control brothels and prostitutes.[28]

During the British period the first legislation on prostitution was passed. The Contagious Diseases Act, 1869, a British Act applied to all countries falling under British rule. Sex-workers were required to register with the police and they had to submit to regular medical examinations. Those suffering from sexually transmitted diseases (STDs) were confined to special 'lock' hospitals until they were cured. They were taken there forcibly if they refused to go, resulting in many women going underground or evading registration.[29]

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28 *Id.* at 54.
29 *Ibid.*

The interest in the health of sex-workers grew out of the concern for the health of British soldiers who were regular visitors to the brothels. The sex-workers were thus viewed in early legislation as disease carriers. This controversial Act was suspended in 1883 following campaign by elite women who found the involvement of the state in such 'immoral' activities abhorrent, and who advocated the suppression of prostitution. Various state Bills and Acts were then passed that attempted to abolish brothels, trafficking and soliciting, although success in the field was always elusive. The Indian Penal Code, 1860 continued to criminalize trafficking and clauses regarding public nuisance could be used against the sex-workers themselves.[30] As stated earlier the Suppression of Immoral Traffic Act was passed in 1956 as a result of the United Nations Convention of 1949 and it was later amended twice, in 1978 and then in 1986 whereby it got its new and current name i.e. the Immoral Traffic (Prevention) Act, 1956. Both intended to abolish organised prostitution gradually by criminalizing pimps, landlords, brothel-keepers and traffickers. Ironically the Immoral Traffic (Prevention) Act, 1956 allows for toleration of red-light areas by hitting at sex-workers who are visible in a 'public place', in effect confining them to areas where 'the public' are not offended and will not complain. Sex-workers can be prosecuted only if they solicit or practice in or within 200 meters of a public place or a notified areas (a notified areas is a place that is declared as prostitution free by the state government under the Immoral Traffic (Prevention) Act, 1956).[31] However, even if a woman does not solicit or practice in a public place, the law continues to stigmatize her,

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30 *Ibid.*

31 For a detailed perspective on Immoral Traffic (Prevention) Act, 1956 see Chapter III

for example, by criminalizing living with or being in the habitual company of a sex-worker Sec. 4.2(a) of the Immoral Traffic (Prevention) Act, 1956 and by giving power to a state government to remove a child who lives with a sex-worker or in a brothel from a red-light area. One who visits places used by sex-workers or associates with any person who lead an immoral, drunken or depraved life is also criminalized (sec. 15(2) of Juvenile Justice Act, 2000). Moreover sex-workers can be removed from any place at the instance of a Magistrate (Sec. 20, Immoral Traffic Act).[32]

The spirit and objectives of Suppression of Immoral Traffic Act were maintained in the 1986 Immoral Traffic (Prevention) Act & amendments and various technical changes were introduced. For example, the definition of prostitution was changed from "when a girl or woman offers here body for promiscuous intercourse for hire" to "the sexual exploitation or abuse of persons for commercial purposes".[33] Immoral Traffic (Prevention) Act also takes a more serious view of minors, and introduces the requirement that two female police officers must be present on brothel raids. Only woman police officers are now supposed to interrogate women and girls who have been removed from brothels.[34]

The legal status of prostitution in India not only has a significant impact on the lives of those involved in the sex-trade, but also reflects attitudes of the state and of mainstream society towards prostitution. The extent of women's involvement in illegal activities is significantly affected by whether or not prostitution is considered an offence. In India, among female offenders, the

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32 Supra note 24 at 55.
33 See, the Immoral Traffic (Prevention) Act, 1956, Sec. 2(f)
34 *Id.*, Sec. 15 (6A)

majority are involved in the sex-trade. In 1989 arrests under Immoral Traffic (Prevention) Act were only 0.4 percent of all crimes, yet the highest number of women arrested in this category of local and special laws was under this act. In the same year, the highest number of women arrested under the Indian Penal Code was for trafficking of women and girls.[35]

The highlights of Immoral Traffic (Prevention) Act, 1956 can be summarised in the following points:

(A) Sex-workers

Carrying on prostitution in or within 200 meters of a public place or within a notified area, and soliciting or seduction in public, or in sight or sound of a public place for the purpose of prostitution are offences under sections 7 and 8. Public place is defined as any place intended for use by, or accessible to, the public and includes any public conveyance. Working privately and independently as prostitute is not an offence. However, a sex-worker can be removed from any place at the request of a magistrate and a brothel containing two or more sex-workers can be closed down.[36]

(B) Clients

The client commits an offence if he carries on prostitution with a sex-worker in or within 200 meters of a public place or in a notified area (under the Indian Penal Code, if the sex-worker is below 16, the client can be charged with rape).[37]

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35 *Id.*, at 56
36 The Immoral Traffic (Prevention) Act, 1956, sections 7, 8.
37 *Id.*, sec. 7.

(C) Babus

Live-in-babus or lovers are committing an offence by living off the earnings of prostitution. If anybody who is proved to be living with a sex-worker is arrested under these charges, he is assumed to be living off her earnings unless he can prove otherwise.[38]

(D) Brothel keepers

A brothel is defined as any place 'used for sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes. Landlords, brothel-keepers and those who abet brothel-keeping can be punished under section 5 of the Act. Detaining a person for prostitution is also an offence. A magistrate can order the closure of a brothel that is within 200 meters of a public place. Hotels that are being used as brothels can have their licenses suspended or cancelled if any of the sex-workers are minors.[39]

(E) Landlords

Knowingly renting out property which is being used for prostitution is an offence under section 7.[40]

(F) Traffickers

Procuring, inducing, taking or detaining a person for prostitution are offences under section 5. If the person is a minor

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38 *Id.*, sec. 4.
39 *Id.*, sec. 3.
40 *Id.*, sec. 7.

or a child, or if a person is procured against her will, the sentence is more severe.[41]

(G) Pimps

Pimping and touting is an offence under section 4. It is assumed, unless proved otherwise, that a pimp is living wholly or partially on the earnings of a sex-worker.[42]

(H) Rescued Girls

The government is bound to provide rehabilitation in a protective institution, or under the supervision of a person appointed by the Magistrate, for women and girls received from prostitution.[43]

Under the Juvenile Justice Act, 2000 children of sex-workers and minors, classified as vulnerable because they associate with sex-workers, can be removed to a registered juvenile home (government or Non Governmental Organisation) until they come of age.

The Indian Penal Code includes separate offences that cover sex-workers, traffickers and clients who have sex with minor girls. The Indian Penal Code, 1860 or the Immoral Traffic (Prevention) Act, 1956 can be used for punishing the offenders. Although Indian Penal Code is more commonly used because of the reason that it is easier to prove in a court of law. Crimes under the Immoral Traffic (Prevention) Act, 1956 tend to be more specific and require stricter formalities to be observed on behalf of the police.

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41 *Id.* sec. 5
42 *Id.* sec. 4
43 *Id.* sec. 21

Sections under the Indian Penal Code, 1860 which are commonly used are: Committing public nuisance (section 290) or performing an obscene act in a public place (sec. 294).[44] Procuring and kidnapping women and girls {sections 361, 363, 366 (a) and 366 (b)}.[45] Rape of a minor or sex with a woman who believes the man is her husband (section 375).[46] Importing a woman under twenty one from another country for sexual purposes.[47]

Thus, the Indian policy approach at least in the statutes has been to try to achieve a mix of the different methods, with a careful balance between the views that sex-work is immoral, that the sex-trade is exploitative and that sex-workers' rights need to be protected. As the very name of the major legislation relating to trafficking and sex work in India – the Immoral Traffic (Prevention) Act, 1956 makes clear, social attitudes about sex-work as being immoral have influenced government policy towards sex-work. The various provincial Devdasi Acts that seek to prevent the entry of women into sex-work were, in part, the result of a backlash against what the mainstream society considered immoral practises. Moreover, the Immoral Traffic (Prevention) Act is severe on trafficking and brothel owners, and it supports rescue and rehabilitation schemes for sex workers.[48] The dichotomy as we have seen earlier is that this law is silent about the legality of sex-work itself, if not its outward manifestations such as 'soliciting' and 'public nuisance'. The law as such remains an engima. As such, our policy based on Immoral Traffic (Prevention) Act revolves

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44 See, the Indian Penal Code, 1860, Ss. 290, 294
45 *Id.* Ss. 361, 363, 366(a) and 366 (b)
46 *Id.* sec. 375
47 *Id.* sec. 366
48 Geetanjali Mishra, Protecting the Rights of Sex-Workers : The Indian Experience, *Health and Human Rights*, 94, Vol. 5, No. 1, (2000)

around two important thoughts, one of which says that morally sex-work is reprehensive and must be suppressed and the other which says that sex-work is a necessary evil which must be tolerated and rights of sex-workers should be protected. As to how successful this policy has been will be clear form the next few pages.

(IV) Critical Analysis of the Policy onSex-Work

A major feature of the Abolitionist (tolerationist) system worldwide has been that in its implementation it has been used mostly against the sex–workers themselves. By far the majority of arrests in India under the Immoral Traffic (Prevention) Act, 1956 have been of women charged under sections 7 and 8. In an extensive empirical study[49] conducted in Bombay into the implementation of laws of prostitution between the years 1980-87 found that 596 brothel keepers were arrested in the period 1980-84, while not a single pimp or landlord was arrested during those four years. Looking at the number of arrests under the Bombay Police Act sections dealing with 'indecent behaviour' it was found that 1,395 pimps were held as compared to 53,866 sex-workers between 1980-87.[50] This fact goes to show that the penalties imposed on sex-workers were far greater than the penalties imposed on brothel keepers or pimps. Thus, it is clear that the Act is enforced discriminatorily against the sex-workers.

This disproportionate enforcement of the Immoral Traffic (Prevention) Act against prostitute women can be attributed to various causes. Firstly, there is a strong nexus between politicians,

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49 Jean D'Cunha, *The Legalization of Prostitution : A Sociological Enquiry into the Laws Relating to Prostitution in India and the West*, 50, (1991, 11th ed.)

50 *Ibid.*

police and brothel keepers that prevents the law from being enforced stringently against brothel keepers. Corruption in the police rank and file is common. Also, there is a tendency for Indian politicians to view red-light areas as potential vote banks, and they require regular service of sex-workers during their political conventions. A second, recurrent problem with the enforcement of the Immoral Traffic (Prevention) Act, 1956 that has been confirmed from studies is the difficulty of gathering sufficient proof to sustain conviction against offenders.[51]

Although the intention of the Immoral Traffic (Prevention) Act, 1956 was to decriminalize sex-work and hit hardest at the traffickers, pimps and brothel keepers, in practice just the opposite has happened. The two clauses affecting the women have been widely used while the rest have been almost ineffective. Jean D' Cunha[52] cites a plethora of reasons why a higher number of sex-workers are arrested : mass arrests help to maintain the arrest quota – many members of the police force have openly said that they have to show a certain number of cases in their record regularly and so they arrest sex-workers who are easy targets; the police stand to gain financially; the arrests are often a form of harassment accompanying extortion and sex-favours; brothel keepers instigate arrest of those sex-workers whom they want to harass; the organizes of the sex-trade around the law lay exploiting loopholes, bribing and using muscle power, whereas the sex-workers themselves are not organised enough to do so.

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51 Preparing for civil disobedience : Indian Sex-workers and the Law, article by Prabha Koteeswaran, available at www.bc,edu/c-org/aup

52 Supra note15 at 61

Furthermore another problem with the enforcement of Immoral Traffic (Prevention) Act is that rehabilitation homes set-up under the Act are, on the whole a failure. The homes are ill equipped to deal with the number of women who are convicted under the Immoral Traffic (Prevention) Act, 1956. Moreover, women in the homes live in sub-human conditions with severe restrictions on their freedom. For example, they cannot wear certain kind of clothes and are prohibited from wearing any form of make-up or jewelry. In addition, the women are not allowed to talk to each other. Furthermore, in order to rid them of their supposed immorality, women are taught devotional songs and are offered vocational training. The failure of this training and the absence of any follow –up services, when combined with ostracism these women face, even from their families, make it a small wonder that these women leave the government homes only to return to prostitution. Women also commonly encounter physical and sexual abuse in these homes. At times, officials in charge of these homes coerce the women into prostitution themselves in return for favours for money.[53]

Sex-workers also face discrimination and exploitation in areas of special concern to them such as health care, earning for their services, and obtaining financial credit. This situation has only been exacerbated by the HIV/AIDS epidemic. For the general population, health care professionals recommend HIV tests whenever recurrent fever, symptoms of tuberculosis, diarrhea or a sexually transmitted disease is present.[54] For sex-workers, however, HIV tests are recommended even for a single episode of

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53 Supra note 52 at 62

54 For detailed insights, into STD's and AIDS in context of sex-workers see Chapter IV

illness, making them feel stigmatized, further marginalized and discriminated against on the basis of their health status. In a women's hospital frequented by sex-workers in Mumbai, health workers take a blood sample from every women seeking treatment without explaining to her the purpose and nature of the test, which can be seen as a violation of her right to information, to privacy and to security of person. There is no post-test counselling and the manner of revealing test results lacks discretion which can be seen as violation of the right to privacy. Doctors often tell women in sex work that they are 'scourge' of society.[55]

Sex-workers specially minors typically find their earnings from sex-work appropriated by brothel owners and traffickers and what is left over is further reduced as a result of extremely high rate of interest charged by money lenders. According to a report, women in some of Mumbai's brothels are forced to turn over half their incomes to brothel owners, a situation akin to that of slavery. In some cases the interest rate charged from sex-workers could exceed 100% per month. With little access to banks and other financial institutions itself, a consequence of lack of education, lack of information about available options and the social stigma attached with sex-work – this ensures that a large number of sex-workers find it almost impossible to get out of indebtedness during their working lives. A study in Sonagachi district of Calcutta found that nearly half cited actual poverty in their households as the reason for their entry into the sex-trade and 84% reported themselves to be illiterate.[56]

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55 Supra note 48 at 93-94.
56 *Ibid.*

Taken together, the poor financial conditions, the high levels of illiteracy, slavery type conditions of work (especially amongst child sex-workers) discriminatory practices of medical professionals and potential harassment by the law enforcement agencies all suggest that sex-workers use lower levels of health care, both preventive and curative, than the rest of the population. A direct consequence is lower levels of health. A particular striking example is the extremely high rates of HIV infection observed amongst Indian sex-workers, which has exceeded 50% in sentinal surveillance data in Mumbai, a much higher proportion than among the rest of the population.[57]

Jean D'Cunha succintly examines why the general implementation of the Immoral Traffic (Prevention Act is shoddy and ineffective, she observes:

> Racketeering offences are bailable and the offenders cannot be traced subsequently; sex-workers statements are inaccurately recorded so prosecutions are ineffective; clients are reluctant to act as witnesses and thus unreliable people are used to act as bogus clients and later these people also may not be available. Racketeers produce false age certificates so they cannot be charged with trafficking minors; women are intimidated into saying they are of age and are working independently; bribes are paid to drop cases. The sexist attitude of the magistrates, influence their interpretation of the law.[58]

It is clear from the facts examined above that the Indian government's approach has not been very successful in protecting the rights of sex-workers or in improving their lot. Yet ineffective policies of long standing, such as rehabilitation, and a legal

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57 *Id.* at 95
58 Supra note 49 at 61

framework that is ambiguous in its approach towards sex-work but seeks to restrict entry into it, continue to remain unpopular. This in the present context is highly unfortunate because it means that decision making with respect to sex-workers in India remains less than fully informed about competing intervention alternatives, particularly those that emphasize explicit social and legal recognition of sex-workers and an activist stance towards enforcing their human rights.

V. Sum-Up

The findings of the chapter thus makes it clear that essentially there are three major systems adopted worldwide to tackle the profession of sex-work. These systems are known by the names of suppression (prohibition), regulation (legalization) and the system of abolition (toleration). India follows the system of toleration to deal with sex-work. The system was adopted primarily because India was a signatory to 1949 U. N. Convention which asked the signatory nations to adopt such a system. The tolerationist policy adopted by our country to tackle with the profession of sex-work has been found wanting in many aspects. The policy with its manifestation in the form of Immoral Traffic (Prevention) Act, 1956 has failed to achieve the desired results. The only category that it has targeted is the sex-workers conveniently ignoring the ill elements like pimps, brothel keepers, traffickers, etc.

CHAPTER - 3

LEGISLATIVE AND JUDICIAL APPROACH TOWARDS SEX-WORK

I. Introduction

Sex workers have over a period of time acquired a negative image and an inferior status in the society. The condition of women in this profession started deteriorating after the advent of British in India. A profession which was once considered respectable now acquired a stigma to itself. Exploitation of women in this profession started after the arrival of British. Though the policy of British was to criminalize the activities associated with sex-work but in reality it were the British soldiers themselves who were the driving force behind the expansion of this profession during the British period. These double standards adopted by the British only lowered the already worsening image and condition of women involved in sex-work. By the time our country approached independence, the condition of women in general and of women in sex-work specifically had taken a beating. Trafficking of women from countries such as Nepal and Bangladesh just for the purpose of sex-work had resulted in further deterioration of status of women in this profession. The framers of our Constitution were aware of this scenario.

II. Constitutional Approach Towards Sex-Work

As said earlier, the founding fathers of our constitution were well aware of the weaker position of female sex-workers in the profession as well as in the society, therefore, certain provisions were included in the Constitution to improve their lot. Hence, it becomes all the more necessary to refer to the constitutional approach on the problem chosen.

The Constitution of India requires positive steps to be taken by policy-makers for the protection of weaker sections of the society. The Fundamental Rights enshrined in the Constitution also take care of the special position of women. The Directive Principles serve as a guiding star for various social welfare legislations passed in favour of women. They assert that all the citizens have the right to adequate means of livelihood. The philosophy underlying the Directive Principles of the State Policy is very progressive. It endeavours to prohibit every kind of exploitation of women and children in all walks of life.[1]

(A) Provisions of Constitution

Articles 14, 15(3), 19(1)(g), 21, 23, 39(e), 39(f) and 51(a) can be directly or indirectly involved in respect of women, prostitution of matters concerning them. Article 14 which guarantees the fundamental right to equality provides that the state shall not deny to any person equality before law or the equal protection of law within the territory of India.[2] Article 15(3) of the Constitution

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1 Shobha Saxena, *Crime Against women and Protective Laws*, 23, (2001, 1st ed.)

2 Article 14, The Constitution of India, 1950, runs as under :
"The State shall not deny to any person equality before the law or the equal protection of law within the territory of India."

empowers the state to make special provisions for women and children.[3]

Article 19(1)(g) is again a very important Article which provides the right to citizens of the country to practise any profession or to carry on any occupation, trade or business.[4] However, the right is not absolute but it is restricted and regulated by authority of law. It is Article 19(6) which imposes reasonable restrictions on the right guaranteed by Article 19(1)(g). Article 21 which is the pillar of strength of the Constitution of India says that no person shall be deprived of his life or personal liberty except according to the procedure established by law.[5]

The most important Article which directly touches upon the problem of trafficking in sex-work is Article 23. Article 23(1) of the Constitution says that, "Traffic in human beings and begar and other similar forms are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."[6] The main thrust of Article 23 is thus, to make trafficking in human beings a punishable offence. Moreover, Article 35 of the Constitution provides that law punishing Acts prohibited by this Article shall only be made by Parliament and extends protection to the existing laws.

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3 Article 15(3), The Constitution of India, 1950, runs as under:
"Nothing in this Article shall prevent the state from making any special provision for women and children."

4 Article 19(1)(g), The Constitution of India, 1950, runs as under:
"All citizens shall have the right to practice any profession or to carry on any occupation, trade or business."

5 Article 21, The Constitution of India, 1950, runs as under:
"No person shall be deprived of his life or personal liberty except according to the procedure established by law."

6 Article 23, The Constitution of India, 1950.

Apart from Article 23 there are certain other provisions in the Constitution which though not directly touching the problem of trafficking do provide for women welfare and upliftment. Article 39(e) and (f) in Part IV of the Constitution, touch the problems of women in general. Article 30(e) requires the state to protect the health and strength of its workers and especially children and to ensure that children do not enter into professions which are not suited to their age. Article 39(f) directs the state to protect the children and youth against moral and material abandonment.[7] Article 51(a) which contains fundamental duties also contains in it clause (e) which specifically aims at upliftment of women.[8] Thus the Constitution of India contains many important provisions meant for betterment and upliftment of women.

III. Legislative Approach Towards Sex-work

(A) Immoral Traffic (Prevention) Act, 1956

The special legislation which directly deals and touches with the profession of sex-work is the Immoral Traffic (Prevention) Act, 1956. The Act was originally named Suppression of Immoral Traffic in Women and Girls Act, 1956. The Act was amended twice firstly in 1978 and secondly in the year 1986. The amending Act of 1986

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7 Article 39(e) and (f), The Constitution of India, 1950, runs as under:
"The State shall in particular direct its policy towards securing:
(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation against moral and material abandonment . . ."

8 Article 51(a)(e), the Constitution of India, 1950, runs as under:
"It shall be the duty of every citizen of India to provide harmony and spirit of common brotherhood amongst all the people of India, transcending religious, linguistic or sectoral diversities, to renounce practices derogatory to the dignity of women."

changed the name of the Act to the present name i.e. Immoral Traffic (Prevention) Act, 1956. The Act uses the term 'prostitution' for sex worker and the same term would be used in this chapter as and when the particular term comes up. As far as the amendments in the above named central legislation are concerned, the first time it was amended in the year 1978 with a view to remove certain defects in its implementation. However, it was felt that despite the amendments, the Act was not effective. Therefore, the Act was again amended in 1986 and suggestions were made to enlarge the scope of the Act, to make penal provisions more stringent and to provide for certain minimum standards for correctional treatment and rehabilitation of the victims.[9]

(a) Objects of the Act

The purpose of the enactment was to inhibit or to abolish commercialized vice, namely, the traffic in women and girls for the purposes of prostitution as an organised means of living. The idea was not to render prostitution *per se* a criminal offence, or merely because she prostitutes herself. A careful scrutiny of Immoral Traffic (Prevention) Act, 1956 clearly reveals that the Act was aimed at the suppression of commercialised vice and not at the penalisation of the individual prostitute or prostitution itself.[10] As such the main purpose of the enactment is not to abolish the profession of sex-work but to prohibit it in being carried out in a commercial manner.

A perusal of the relevant provisions of the Act show that the purpose of the Act is not abolition of sex-work or sex-workers.

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9 N. V. Paranjpe, *Criminology and Penology,* 121 (2001, 11th ed.)
10 In re. **Ratanmala**, AIR 1962 Mad 31

There is no provision under the Act which makes sex-work *per-se* a criminal offence, or punishes a person for indulging in sex-work. What is punishable under the Act is sexual exploitation for commercial purpose or to earn living form sex-work thereby. According to the Act sex-work itself is not an offence except when it is committed in the vicinity of a public place or somebody seduces or solicits a person for the purpose of sex-work. It is section 7 of the Act which makes the practice of prostitution in or in the vicinity of certain public places such as places of public or religious worship, educational institutions, hospitals, etc. a penal offence. This provision, therefore, inhibits a woman from the practice of her profession in contravention of its terms and to that extent renders prostitution a penal offence.[11] Section 8 of the Act punishes a sex-worker for soliciting or seducing or soliciting in a public place.

(b) Main Features of the Act

The Immoral Traffic (Prevention) Act, 1956 though numbered from 1-25, in fact comprises of thirty sections. The scope of the Act has been widened by covering all persons whether male or female, exploited sexually for immoral purposes. The main provisions of the Act may be stated in the following manner.

Preamble of the Act discloses the legislative policy, viz., to provide for the prevention of immoral traffic in pursuance of the International Convention signed on 9.5.1950 at New York.[12] The Act has defined certain terms, such as child, major, minor, prostitution, brothel, corrective institution, etc. Under the Act,

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11 **Bai Shanta v. State of Gujarat**, AIR 1967 Guj 211

12 See, Immoral Traffic (Prevention) Act, 1956, Preamble.

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child means a person who has not completed the age of sixteen years, major means a person who has completed the age of eighteen years and minor means a person who has completed the age of sixteen years, but not the age of eighteen years.[13] It defines 'prostitution' as meaning the sexual exploitation or abuse of persons for commercial purposes whereas 'brothel' means any house, room, conveyance, place or any portion thereof used for the purpose of sexual exploitation or used for the gain of another person or for the mutual gain of two or more prostitutes.[14]

According to section 2(b), 'corrective institutions' means an institution established or licensed under section 21 in which person in need of correction may be detained and includes a shelter for keeping under trials.

Section 2(g) defines 'protective home' which means an institution established or licensed under section 21 for persons in need of care and protection but does not include shelter or corrective institutions. The term 'traffic police officer' means a police officer appointed by the Central Government under section 13(4),[15] who have been empowered to investigate offences of inter-state nature.

Section 3 provides punishment for keeping a brothel or allowing the use of premises as a brothel. According to section 3(1) any person keeping, managing, acting or assisting in keeping or managing a brothel shall be punished. The maximum punishment on first conviction may extend to two years and two thousand

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13 *Id.* Ss. 2(aa), (ca) and (cb)
14 *Id.* Ss. 2(f) and (a)
15 *Id.* sec. 2(f)

rupees fine and on repetition of the offence, punishment may extend to five years imprisonment and also fine.[16]

Section 4 provides punishment to a person over the age of eighteen years who lives on the earning of prostitution of another person. It provides punishment with imprisonment for a term extending to two years or with fine of one thousand rupees or both. Where such earnings relate to the prostitution of a child or a minor, the person shall be punishable with imprisonment between 7 to 10 years. Thus, it provides enhanced punishment in aggravated circumstances.[17]

Section 5 of the Act is an important section that is basically meant to deal with pimps and traffickers. It punishes acts like procuring, inducing or taking person for the purpose of prostitution. Section 5(1) says that:

Any person who:

(a) Procures or attempts to procure a person whether with or without his consent for the purpose of prostitution; or

(b) Induces a person to go from any place with the intent that he may for the purpose of prostitution become the inmate of, or frequent, a brothel;

(c) Takes or attempts to take a person or causes a person to be taken, from one place to another, with a view to his carrying on, or being brought up to carry on prostitution; or

(d) Causes or induces a person to carry on prostitution shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine

16 *Id.* sec. 3
17 *Id.* sec. 4

> which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years.[18]

Section 6 states that any person who detains any other person, whether with or without his consent in any brothel or such premises with the intention that such person may have sexual intercourse with a person who is not the spouse of such person shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine. For special reasons the court may impose a sentence of less than seven years.[19]

Section 7 punishes prostitution in the vicinity of public places. It says that any person who carries on prostitution in any premises which are within a distance of 200 meters of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified by the Commissioner of Police or Magistrate in the manner prescribed, shall be punished with imprisonment which may extend to three months.

According to section 7(1-A), if the offence is committed in respect of a child or minor, the maximum punishment for the offender lies between 7 years imprisonment and life or for a term which may extend to ten years and also fine. However, the court,

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18 *Id.* sec. 5
19 *Id.* sec. 6.

for special reason to be recorded may impose a sentence of imprisonment for a term of less than seven years.[20]

Next comes the all important section 8. This particular provision of the Act has been so often used against the sex-workers by the law enforcement agencies for extorting money from them and harassing them. This is one particular section which tends to criminalize the sex-worker for the profession that she is carrying on. It is a penal provision which tends to punish the sex-worker for seducing and soliciting. Section 8 of the Act runs as under:

Whoever, in any public place or within sight of and in such manner as to be seen or heard from any public place, whether from within any building or house or not -

(a) by words, gestures, wilful exposure of his person or otherwise tempts or endeavours to tempt, or attract the attention of any person for the purpose of prostitution.

(b) solicits or molests any person, or loiters or acts in such a manner as to cause obstruction or annoyance to persons residing nearby or passing by such public place or to offend against public decency, for the purpose of prostitution-

shall be punishable on first conviction to imprisonment of 6 months and Rs. 500 as fine and on subsequent conviction to imprisonment of one year and Rs. 500 fine. For seduction by man a lighter punishment of between 7 days to 3 months has been provided.[21]

Section 9 says that any person having the custody, charge or care of any person, or a position of authority over any person causes or aids or abets the seduction for prostitution of that

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20 *Id.* sec. 7
21 *Id.* sec. 8

person shall be punished. The maximum punishment lies between 7 years imprisonment and life or for a term which may extend to 10 years and shall also be liable to fine.[22]

Section 10-A provides for the detention in a corrective institution of a female offender under section 7 or 8. Sub-section 3 of this section provides for discharge of the female offender from the corrective institution after the expiration of six months if the court is satisfied that there is a reasonable probability that the offender will lead a useful and industrious life.[23]

Section 11 provides for the notification of address of previously convicted offenders. But if conviction is set aside by appeal then such order shall become void.[24]

Section 13 of the Act provides for the appointment of a Special Police Officer and an advisory body. It says that there shall be for each area to be specified by the State Government, special police officer appointed by the state government for dealing with offences under this Act in the area. This special police officer shall not be below the rank of n inspector of police. The section also provides for the appointment of a non-official advisory body consisting of not more than five leading social workers of that area to advise him on questions of general importance regarding the working of this Act. Sub-section 4 of this section also provides for the appointment of 'trafficking police officers' who shall exercise the same powers as the special police officers with the exception

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22 *Id.* sec. 9
23 *Id.* sec. 10-A
24 *Id.* sec. 11

that they shall exercise such powers in relation to the whole of India.[25]

R. K. Bag points out that prostitution itself is not an offence in India and the problem of sexual exploitation of women for commercial purposes cannot be tackled simply by criminal justice system. He observes:

> The problem is more social and more than legal. The preventive role of the police and the government may help to rehabilitate at least the girls of the prostitutes in the red light trap . . . [26]

Section 14 of the Act says that any offence punishable under the Act is a cognizable offence within the meaning of Code of Criminal Procedure, 1973. Arrest without warrant may be effected under this section only by a special police officer or under his direction. It also empowers a police officer not below the rank of a sub-inspector specially authorized by the special police officer may in certain cases arrest without his order. However, he is to inform the special police officer as soon as may be about the arrest and circumstances leading to the arrest.[27]

The Immoral Traffic (Prevention) Act, 1956 has a limited scope in its character. The inherent lacuna in the Act makes it almost impossible to establish the prosecution case against the offenders since it is based on evidence that is difficult to establish in the courts of law. The onus of proving the guilt of accused

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25 *Id.*, sec. 13

26 R. K. Bag, Domestic Violence and Crime Against Women, 30 *JILI* 372 (1997).

27 See, Immoral Traffic (Prevention) Act, 1956, sec. 14.

beyond all shadows of reasonable doubt by fool proof evidence is an uphill task for the prosecution in the lower magisterial courts.[28]

Section 15 of the Act provides for the provision of search without warrant by a special police officer or by the trafficking police officer as the case may be. It says that whenever a trafficking police officer has reasonable grounds for believing that an offence under this Act has been committed in respect of certain premises, and the search of such premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief enter and search such premises without a warrant. This section also provides that the trafficking police officer shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situated to attend and witness the search.[29]

There have been practical difficulties in the fulfilment of the formalities for the implementation of certain provisions of Immoral Traffic (Prevention) Act, 1956. Under section 15(2) of the Act, the insistence on the presence of two respectable persons of the locality is based on said public policy in order to prevent the harassment of innocent persons by the police. More often than not it is however not possible to manage two respectable persons willing to associate themselves with the proceedings in connection with activities of a dubious nature.[30]

Section 16 speaks about the rescue of a person. Section 16(1) says:

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28 Lawrence Gomes, ITPA, 1956, A Detailed Discussion, 2004 *CrLJ* 89 (J)
29 See, The Immoral Traffic (Prevention) Act, 1956, sec. 15
30 Ahmad Siddique, *Criminology, Problems and Perspectives*, 498 (1997, 4th ed.)

> Where a Magistrate has reason to believe from information received from the police or any other person authorised by the state government in this behalf or otherwise, that any person is living or is carrying on, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of sub-inspector to enter such brothel, and to remove therefrom such person, and produce before him.
>
> (2) The police officer, after removing the person, shall forthwith produce him, before the magistrate issuing the order.[31]

Once the girl is rescued she finds herself entangled in a long drawn legal process. She is questioned about her relationship with abductor, her background and the incident by the police. She is routinely sent to rescue home, except when the parents or relatives are very diligent in taking her back, form the court. The stereotyped image of the police is reflected in the report of a survey of 41 cases by Ram Ahuja. The police showed complete lack of sympathy, made derogatory remarks and did not take the complaint seriously in 39 percent cases, though the police action was appreciated as positive in 31.7 percent cases, mixed in 17.1 percent cases and indifferent in 12.2 percent cases.[32]

Section 17 says that when a special police officer removes a person under section 16, he shall forthwith produce him before the nearest Magistrate of any class, who shall pass such orders as he deems fit for his safe custody until he is produced before the appropriate magistrate.[33]

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31 See, The Immoral Traffic (Prevention) Act, 1956, sec. 16.
32 R. K. Bag, Domestic Violence and Crime, 39 *JILI*, 371 (1997)
33 See, The Immoral Traffic (Prevention) Act, 1956, sec. 17

Section 17-A contains conditions to be observed before placing persons rescued under section 16 to parent or guardians.[34]

Section 18 contains provisions with regard to closure of brothel and eviction of offenders from the premises. It says that a Magistrate may on receipt of information from the police or otherwise, that any house or room is being used as a brothel or is being used by prostitutes to carry on this trade, may issue notice to the owner to show cause within seven days why the same should not be attached for improper use and if after hearing the person the Magistrate is satisfied that the premises is being used as a brothel or for carrying on prostitution, he may pass orders directing the eviction of such occupier.[35]

Section 19 of the Act says that if a person carrying on prostitution makes an application to the Magistrate in whose jurisdiction he carried on prostitution, that he may be kept in a protective home or in a corrective institution, then such Magistrate may after making enquiry and satisfying himself, order that such a person may be kept in a protective home or in a corrective institution.[36] Section 20 talks about the removal of a prostitute from any place. Section 20(1) runs as under:

> A Magistrate on receiving information that any person residing in or frequenting a place within the local limits of his jurisdiction is a prostitute, may record the substance of the information received and issue a notice to such person requiring him to appear before the Magistrate and show cause why he should not be

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34 *Id.* sec. 17-A
35 *Id.* sec. 18
36 See, The Immoral Traffic (Prevention) Act, 1956, sec. 19.

required to remove himself from the place and be prohibited from re-entering it.[37]

(c) Miscellaneous

Section 21 of the Act provides for the provision of protective homes. It says that the State Government may in its discretion establish as many protective homes and corrective institutions as it deems fit. Sub-section (2) says that no authority other than the State Government shall establish any protective home except in accordance with the conditions of a license issued under this section by the state government. Sub-sec. (5) says that a license shall be renewable. Sub-section (8) says that where a license of a protective home has been revoked, such protective home shall cease to function from the date of such revocation. Sub-section (10) provides punishment to a person who established a protective home except in accordance with the provisions of this section. On the first offence the punishment is fine upto one thousand rupees and on a subsequent offence, imprisonment upto one year or fine upto two thousand rupees or both.[38]

Section 21 of the Act says that every authority which is licensed under section 21(3) to establish a corrective institution shall whenever required by the court, produce the records and other documents maintained by such institution.[39] The provision of corrective institutions is an inherently flawed line of thinking because to rehabilitate sex-workers whose number runs into millions is not only impractical but also impossible.

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37 *Id.* sec. 20
38 *Id.* sec. 21(3).
39 *Id.* sec. 21-A

Section 22 deals with trials. It says that no court inferior to that of Metropolitan Magistrate or the Judicial Magistrate of the first class shall try any offence under sections 3 to 8.[40] Section 22-A deals with the power to establish special courts. It states that if the state government is satisfied that it is necessary for providing speedy trial of offences under this Act in any area, it may after consultation with the High Court, establish one or more courts of Judicial Magistrate in such area.[41] Section 21-AA deals with the power of Central government to establish special courts.[42] Section 22-B says that the state government if it considers necessary to do so, may direct that the offence under this Act shall be tried in a summary way by a Magistrate.[43]

(B) Proposed Amendments to Immoral Traffic (Prevention) Act, 1956

In a move that could have far reaching implications for sex-workers and the profession as a whole, the Indian government as proposed significant amendments to Immoral Traffic (Prevention) Act, 1956. The Immoral Traffic (Prevention) Amendment Bill, 2006 introduced in Parliament on 22nd May 2006 was referred on 2nd June to Human Resource Development Parliament Standing Committee for examination and reporting back within three months.[44] The Parliamentary Panel has agreed in principle to the proposed amendments in the law against the flesh trade. The panel

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40 *Id.* sec. 22
41 *Id.* sec. 22-A
42 *Id.* sec. 22-AA
43 *Id.* sec. 22-B
44 See, *The Tribune*, July 10, 2006 (3)

recommended that the Bill may be passed after incorporating certain amendments or actions suggested by it.[45]

(a) Provisions sought to be amended and added

The proposed Bill intends to modify certain provisions and to repeal certain provisions. It also adds a few provisions. The whole scheme may be presented in the following manner:

(i) Modification of the definition of prostitution as contained in section 2(f) of Immoral Traffic (Prevention) Act, 1956.[46]

(ii) Deletion of section 8 of the Immoral traffic (Prevention) Act, 1956, which deals with punishing a prostitute if she is found seducing or soliciting.[47]

(iii) Withdrawing magisterial powers to remove prostitute i.e. deletion of section 20, Immoral Traffic (Prevention) Act, 1956.[48]

(iv) Amendment of section 7(1-A) which seeks to remove the existing child/minor categories because the current provision created confusion in action.[49]

(v) Amendment of section 13(2) whereby the rank of special police officer is to be brought down form Inspector to sub-inspector level.[50]

(vi) Insertion of new section 5(c) which punishes the clients of sex-workers.

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45 See, *The Times of India*, Nov. 27, 2006 (6)
46 See, The Immoral Traffic (Prevention) Act, 1956, Sec. 2(f)
47 *Id.*, sec. 8
48 *Id.*, sec. 20
49 *Id.*, sec. 7(1-A)
50 *Id.*, sec. 13(2)

(b) Effect of the Proposed Amendments

The proposed amendments in the form of Immoral Traffic (Prevention) Amendment Bill, 2006 is ostensibly being adopted in the hope of containing human trafficking. Yet in trying to achieve this result by directly targetting the right of women in the sex industry, the government is heading down a dangerous path. In an apparently feminist appearing, one of the amendments proposes the prosecution of clients who visit sex-workers. The amendment seems to be in response to the often voiced remark as to "why should the man go scot free." The amendments have been endorsed by the National Commission for Women. However, this apparently pro-woman proposal removing discrimination by prosecuting clients has been perceived as nothing less than an attack on their livelihood by the sex-workers. The amendments were of course, formulated and proposed with no consultation of the persons involved in sex work.[51]

The lack of consultation does not come as a surprise as even in a society with a large number of oppressed categories of people, sex-workers come almost at the bottom. Almost everyone takes the holier and high moral ground when it comes to sex work and combines it with a refusal to listen to the workers themselves on desirable changes in the law and working conditions.[52]

The new law regards sex work as per se exploitative and as stated before it enables police to charge clients who bargain with sex-workers for sexual services. Even if the client offers gifts or other consideration to the sex-worker, he can be charged under the

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51 Rakesh Shukla, Women with Multiple Sex Partner in Commercial Context, *Economic and Political Weekly*,18, (2007)

52 See, Rakesh Shukla, She is no Outlaw, *Times of India*, Dec. 19, 2005 (3).

broad terms of the new law. By implication, sex-workers would have to provide their services for free, in order to avoid the application of this provision.[53]

If the client has sex with a trafficked woman, then the client is automatically deemed to be a trafficker. The provision renders all clients liable to be charged until it is established that the sex-worker was not trafficked. Given that there is no definition of trafficking in the law, it is impossible to know how this fact is to be established. The Act also renders children and other members of a sex-workers family liable to be removed from the premises. It allows moving against members who are dependent on the earnings of a sex-worker.[54] All of these provisions operate to undermine the life and work of the woman as a parent. The amendments effectively ban sex-work by demanding circumstances that will make it impossible for the woman to function. The impact of these new provisions is a far cry from the original intention of law makers to amend the law for the purpose of controlling trafficking.[55]

The Health Ministry has opposed the proposal to amend the Immoral Traffic (Prevention) Act, 1956 to bring clients under its ambit, rendering them liable to imprisonment upto six months and a fine extending upto Rs, 50,000. The objections were raised by the Health Ministry in a Group of Ministers meeting chaired by the Home Minister. Health Ministry and National AIDS Control Organization officials argued that if the clients were punished, it

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53 See, Ratna Kapur, Sex Workers Need Legal Cover, *Times of India*, 17th Nov., 2007 (3).
54 *Ibid.*
55 *Ibid.*

would encourage underground sex-work and that would be a major stumbling block in checking AIDS.[56]

If there is one thing that the proposed amendments to Immoral Traffic (Prevention) Act, 1956 reflect, it is confusion. Trafficking has been confused with prostitution the result being, that the legislative framework does justice to neither. Although those who advocate the abolition of prostitution have always insisted that trafficking and prostitution are one and the same, the experience of sex-workers have shown that they are not. Sure, trafficking and prostitution are linked but while some areas might overlap, large areas do not. Both Immoral Traffic (Prevention) Act, 1956 and proposed amendments reflect a fundamental confusion about the role of law.[57]

(C) Earlier Legislations on Prostitution

Before the Immoral Traffic (Prevention) Act, 1956 which was a Central legislation dealing with the sex-work, there were several state Acts dealing with the subject. For example, the Bombay Prevention of Prostitution Act, 1923; the Calcutta Suppression of Immoral Traffic Act, 1923; the U. P. Suppression of Immoral Traffic Act, 1933; the Bihar Suppression of Immoral Traffic Act, 1948; the Punjab Suppression of Immoral Traffic Act, 1935.[58] After independence such legislations were enacted in Bihar (1948) and Madhya Pradesh (1953). Some special Acts were also enacted to protect certain girls made sex-workers forcibly under certain social customs. For example, the U. P. Naik Girls Protection Act, 1929,

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56 See, *Times of India*, 16th Nov., 2007 (4).

57 See, Bishaka Dutta, Sex Work is no Crime, *Times of India*, 12th Dec., 2007 (4).

58 B. R. Beotra, *The Suppression of Immoral Traffic in Women and Girls Act, 1956*, (1970, 2nd ed.)

the Bombay Devadasi protection Act, 1934, the Madras Devadasi (Prevention of Dedication) Act, 1947.[59] Later on all these Acts stood repealed when the central legislation i.e. the Suppression of Immoral Traffic Act, 1956 was passed in the year 1956. Section 25 of the Suppression of Immoral Traffic Act, 1956 resulted in the repealing of all state Acts on prostitution.

(D) Provisions under the Indian Penal Code, 1860

There are many provisions in Indian Penal Code, 1860 which deal with those situations where women are forced or pushed into sex-work against their will. Sections 366-A and 366-B were introduced in the Penal Code in the year 1923 to implement certain Articles of the International Convention for Suppression of Traffic in Women and Children. The sections came into effect in 1929 with the object to punish import or export of girls for prostitution.[60]

Section 366-A of the Indian Penal Code, 1860 deals with the procuration of minor girls. The section punishes any person who induces a minor girl under the age of 18 years to go from any place or to do an act with the intent that such girl is likely to be induced or forced to illicit intercourse with some other person.[61] In order to constitute an offence under this section, inducement with a particular object is necessary and when after such inducement the offender offers the girl to several persons, a fresh offence is not committed at every fresh offer for sale. Punishment under this section is ten years and also fine.

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59 G. R. Madaan, *Indian Social Problems : Social Disorganisation and Reconstruction*, 212, (1993, 5th ed.)

60 K. D. Gaur, *A Textbook on Penal Code*, 520 (1998, 2nd ed.)

61 See, The Indian Penal Code, 1860, Sec. 366-A

The provisions of section 366-A were meant to prevent immorality and this fact was clearly explained in **Bhagwati Prasad v. Emperor**.[62] In this case the appellant had taken a girl under the age of 18 years out of the custody of her husband to sell her. The accused was convicted by the trial court against which he had preferred an appeal in the High Court. Dismissing the appeal and directing the accused to serve the remaining sentence, Justice Dalal observed:

> The aim of section 366-A is to prevent immorality and the provisions are framed more with the desire of safeguarding the public interest of morality than the chastity of one particular woman. Often it may happen that a girl under 18 may desire to leave her husband to better her prospects elsewhere. Such a desire would not save her helper from a conviction under section 366-A. Any reason given by the appellants to move the girl from one place to another is sufficient for inducement.[63]

Section 366-B deals with the importation of girl from any foreign country. It punishes any person who imports into India any girl from any other country under the age of 21 years with the intent that such girl shall be forced or seduced to illicit intercourse with some other person.[64] Section 372 of the Penal Code deals with selling minor for the purposes of prostitution. It punishes any person selling, letting to hire or disposing of any person under 18 years of age with the intention that such a person shall be employed or used for the purpose of prostitution.[65]

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62 AIR 1929 All 709
63 *Id.* at 710
64 See, The Indian Penal Code, 1860, sec. 366-B.
65 *Id.* sec. 372.

The term illicit intercourse as used in section 372 was distinguished from prostitution in **Lal Singh v. State**.[66] In this case the accused along with others had kidnapped a minor girl and sold her to some other person with the intent to get her married. Justice J. C. Choudhary observed in this case that the expression 'illicit intercourse' has to be distinguished from prostitution. Sexual intercourse of a girl with a stranger on one occasion would only amount to illicit intercourse but not prostitution. He observed:

> Prostitution connotes promiscuous intercourse with men. If marriage is the intention with which the sale of a Hindu girl is effected, it cannot be said to be for the purpose of illicit intercourse, even if the marriage that subsequently takes place is found to be one not strictly in conformity with the tenets of Hindu Law.[67]

The difference between a woman with a paramour and one who sells her body for monetary consideration was explained in **Emperor v. Lalya Bapu Jadhav**.[68] The accused in this case had been convicted under section 372 for bringing a minor girl from some other place and selling her over to a brothel in Bombay. The accused challenged his conviction by the trial court in the High Court. Justice Mriza observed:

> The idea underlying prostitution is that a women should surrender her body for a monetary consideration to someone who is not in law entitled to have sexual intercourse with her. The position of mistress is not necessarily that of a prostitute. The relationship is of a more permanent nature than the casual relationship implied in prostitution. Having a

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66 AIR 1954 HP 43
67 *Id.* at 44
68 AIR 1929 Bom. 266

> stray paramour would not constitute a woman a prostitute.[69]

The accused was ordered to undergo his remaining sentence and his appeal was dismissed by the court.

In **Girdhari Lal v. Emperor**,[70] the accused was convicted under section 372 by the trial court against which he preferred an appeal to the High Court. The accused in this case had kept the prosecutrix by force in his house and he was apprehended by the police in a train when he was taking the prosecutrix to sell her off. Justice Benet said that to sell a married woman as a mistress comes within section 372 and it was not necessary that she should be taken as a prostitute. Accordingly, the appeal was dismissed.

Section 373, which deals with buying minor for the purpose of prostitution provides punishment for buyer, hirer or possessor of minor girl for the purpose of prostitution. The section says:

> Whoever buys, hires or otherwise obtains possession of any person under the age of 18 with intent that such person shall at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.[71]

Voluntary going of the girl with the accused does not amount to an offence under section 373. In **Emperor v. Gordhan Kalidas**,[72]the accused was charged under section 393 by the magistrate and also convicted later on. On appeal the High Court held that the girl in question had gone voluntarily with the

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69 *Ibid.*
70 AIR 1934 All 324.
71 See, The Indian Penal Code, 1860, sec. 373.
72 AIR 1942 Bom 23

accused. The accused had not exercised any control over her or prevented her from doing anything she liked. The accused as such did not obtain the possession of the girl within the meaning of section 373 and as such he could not be convicted under this section. The accused was set at liberty.

In **Emperor v. Vithabai,**[73] the accused had allowed a girl to visit his brothel for two to three hours in the night and to prostitute herself for money. He was tried and convicted by the Sessions Court then he preferred the appeal to the High Court. The Court said that the law did not specify the nature of the possession nor its direction nor intensity. It merely specified the object, namely, prostitution or illicit intercourse. Whether in each case the possession is such as to be consistent with the purpose or intention or knowledge of prostitution or illicit intercourse was the only test to judge possession. Appeal was dismissed.

IV. Judicial Approach

Having analysed legislative delineation of the subject, it becomes necessary to find out judicial approach on the chosen problem. Sex-work itself is not an offence but the many associated activities have been penalized under the Act. The constitutionality of the Act as well as many of its provisions has also been challenged in a number of cases. The Apex Court has more than once given landmark judgements which directly relate to the upliftment of sex-workers as well as their progeny. They will be taken up in this chapter. Under the Immoral Traffic (Prevention) Act, 1956 the issues which have come up before the courts mainly relate to prostitution, brothel, punishment, seducing, soliciting,

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73 AIR 1928 Bom 336

trap witness, investigation and search, jurisdiction, evidence and proof, etc. As the volume of cases decided by the courts is very high, a representative sample of important cases throwing light on vital aspects of the problem chosen has been made.

(A) Constitutional Validity of Suppression of Immoral Traffic in Women and Girls Act, 1956 now Immoral Traffic (Prevention) Act, 1956

The constitutional validity of the whole Act was for the first time challenged in the **Shama Bai v. State of U. P.**[74] All the penal sections of the Act were challenged as being unconstitutional as they were hit by Article 19(1)(g). Thus sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 20 were challenged.

In the present case the petitioner submitted that she was a prostitute and a singer. She was in her hereditary trade of prostitution which was her only means of livelihood. She complained that the Suppression of Immoral Traffic Act, 1956 was ultra vires of the Constitution as it illegally prohibited the petitioner from carrying on her trade and imposed unreasonable restrictions on it. She, therefore, prayed for a writ of mandamus or any other writ restraining the respondents from interfering with the petitioner's carrying on her trade of prostitution or from interfering with the visit of customers to her house. Justice J. Sahai observed:

> It is true that the profession or trade of prostitute has existed in all civilized countries from the earliest times though it has always been subject to regulation by law or custom. It is also true that the number of prostitutes in this country is very large and in most cases it would be impossible for them to get

74 AIR 1959 All 57

> themselves re-habilitated in society, if under the law they are stopped from carrying on their profession or the conditions for their existence are made so difficult that they have to leave it.[75]

Justice Sahai while delivering his judgement in this case observed that all the above mentioned penal sections of the Act were constitutionally valid except section 4(2) and section 20. He observed:

> A mere perusal of sections 3 to 10 and 18 of the Act shows that the acts made punishable under these sections are acts which result in trafficking in human beings. Therefore quite apart from all considerations of reasonable restrictions, these sections have been validly enacted by Parliament under Articles 23 and 35 of the Constitution of India. Even if it is assumed that the enactment of these provisions to some extent curtails the fundamental rights of prostitutes to carry on their trade or profession, these provisions would none the less be valid provisions because if there is conflict between a Fundamental Right guaranteed by Article 19 of the Constitution and what is prohibited under Article 23, the prohibition contained in the latter Article would prevail over the fundamental right conferred by the former Article.[76]

The learned Judge upheld the constitutional validity of section 3, 5, 6, 7, 8, 9, 10, 12 and 18. He however, held that section 4(2) and 20 were unconstitutional but he did not express any final opinion on these two sections. The court observed that a person could only file a writ petition if any of his rights had been infringed and in the present case no orders had been passed against the petitioner under the impugned Act. The challenge that was pressed in this case to the constitutional validity of the Act, completely failed.

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75 *Id.* at 59.
76 *Id.* at 62

The court also stated that the Act was passed to implement the International Convention signed at New York on 9th May, 1950. As long as it was not possible to abolish prostitution, it was to be retained as an evil necessity but subject to reasonable restrictions to mitigate the evil effects.[77] The petition was accordingly dismissed.

The constitutional validity of section 3 was again challenged in **Ulhas Nature Cure Centre v. State of Karnataka**.[78] The petitioners in this case were a registered partnership firm and were running a nature cure clinic at Bangalore. Their grievance was that the respondents were sending policemen regularly to the institute of the petitioner and the posting of the policemen at the institute was preventing the registered patients of the petitioner from taking treatments. By the illegal acts of surveillance their business was being affected and in course of time it would be detrimental to the business.

The petitioner challenged section 3 as being unconstitutional as it was hit by Articles 14, 19(1)(g) and 21 of the Constitution. On the other hand the respondents alleged that the petitioners were indulging in prostitution and the clinic was a brothel. The challenge posed by Article 21 failed as the court held that this Article protected only 'natural' persons and not legal or artificial persons. The words 'his life' and 'personal liberty' in Article 21 referred to the life and personal liberty of a living human beings. The petitioners being a firm or a company could not invoke Article 21. Challenge with respect to Article 19(1)(g) also failed, as the court observed that the dispute about nature of activity in

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77 *Id.* at 62
78 1987 CrLJ 1435 (Kar)

premises, which was a factual issue, was in serious dispute and moreover this issue was being dealt by lower courts in other cases on the petitioner. The factual foundation, which was necessary to invoke Article 19(1)(g) being in dispute, it was futile to contend that the right was being violated. As far as Article 14 was concerned, the Court came to the conclusion that the action of the authorities to maintain surveillance could not be justified as it was not in accordance with the law. Accordingly, a writ of mandamus was issued to respondents to stop surveillance forthwith.

The constitutional validity of section 4 of the Act was taken up for consideration in **Moinudin v. State of Andhra Pradesh.**[79] In this case, it was alleged that the petitioner was running a brothel in his house and on a certain day he invited certain pleasure seekers to his house. He then produced the other petitioners and offered them for sexual intercourse in consideration of money. At that time the A. C. P. raided the house of the petitioner and arrested all the petitioners. The constitutional validity of section 4 with reference to Article 14 was questioned on the ground that section 4 discriminated the petitioners as it spared the male partner in doing the evil act and punished the female. But the contention was rejected and section 4 was declared to be constitutional.

The constitutionality of section 8 of the Act was also attacked and it was contended that the male partner was spared. The court held that what was made punishable under section 8 was not the actual sexual act between the woman or the girl soliciting for the purpose of prostitution and the man who

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79 1986 CrLJ 1397 (AP)

responded to the words or gestures or exposure of the female partner. It was only where a women or a girl solicited for the purpose of prostitution she was made punishable. Section 8 therefore, did not suffer from the vice of discrimination prohibited under Article 14 and it was not unconstitutional as it did not violate Article 14 of the Constitution.

The constitutional validity of section 18 was challenged in **A. C. Agarwal, S. D. M., Delhi v. Mst. Ram Kali.**[80] Section 18 was challenged as being unconstitutional because it was hit by Article 14 of the Constitution. In this case, notices were issued to the respondents to show cause why the premises occupied by them should not be attached under section 18(1) of the Act.

The court held that sections 3 and 7 of the Act dealt with persons guilty of offences whereas section 18 dealt with the premises mentioned therein. The facts to be proved by prosecution under sections 3 or 7 and section 18 were not the same. In the former, the prosecution in order to succeed had to establish either the intention or knowledge but in the latter they were not necessary ingredients. Section 18 provided for two distinct classes of cases; (i) those coming either under sections 3, 7 and 8; or (ii) those coming only under section 18. They were two distinct classes of cases, a classification which had reasonable relationship with the object sought to be achieved and therefore the difference in two procedures prescribed did not amount to discrimination under Article 14. Section 18 was not therefore *ultra vires* of the Constitution.

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80 AIR 1968 SC 1

Section 20 of the Act was challenged as being unconstitutional in **State of U. P. v. Kaushalya**.[81] In this case the respondents were alleged to be prostitutes carrying on their trade in the city of Kanpur. On receiving information from Sub-Inspector of Police, the City Magistrate issued notices to the respondent under section 20(1) of the Act to show cause why they should not be required to remove themselves from the place they were residing and be prohibited from re-entering it. The respondents received the notices and filed objections claiming that the proceedings were not legally maintainable. The City Magistrate repelled the said objections. Against the order of Magistrate the respondent went in appeal to A. D. J. Kanpur but the same was dismissed. Then they went to High court in revision which allowed the revision petition. Matter went to the Supreme Court which enquired whether section 20 of the Act violated Article 14 of the Constitution. It said that Article 14 did not prohibit reasonable classification for the purpose of legislation and a law would not be held to infringe Article 14 if it fulfilled he nexus test. The difference between a woman who was a prostitute and who was not, certainly justified their being placed in different classes. Thus there was obvious difference between a prostitute who was a public nuisance and one who was not. The court observed:

> A prostitute who carries on her trade on the sly or in the unfrequented part of the town or in a town with a spared population may not be as dangerous to public health or morals as a prostitute who lives in a busy locality or in overcrowded town or in a place within the easy reach of public institutions like religious or educational institutions.[82]

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81 AIR 1964 SC 416
82 *Id.* at 421

The difference between these two classes of prostitutes had a rational relation to the object sought to be achieved by the Act. Section 20 in order to prevent moral decadence in a busy locality, sought to restrict the movement of the second category of prostitutes and to deport such of them as the peculiar methods of operation in the area may demand. As such, section 20 of the Immoral Traffic (Prevention) Act, 1956 was not *ultra vires* of the Constitution.

Thus, so far all the constitutional challenges posed to the Immoral Traffic (Prevention) Act, 1956 have not been successful and none of the provisions of the current or past Act have been struck off the statute books.

(B) Landmark Decisions of the Apex Court relating to Sex-work

Supreme Court of India has been proactive in dealing with the problems and atrocities being faced by sex-workers and their children. Landmark decisions of Supreme Court have been **Vishal Jeet v. Union of India**[83] and **Gaurav Jain v. Union of India.**[84] The first important decision of Apex Court came in **Vishal Jeet v. Union of India.**[85] This case was by way of a writ petition filed at the instance of an advocate of the Supreme Court. The petitioner in this case sought a C. B. I. enquiry against those police officers under whose jurisdiction the flesh trade was thriving. He also prayed for brining all the inmates of Red Light areas to state protective homes as also their children. Justice S. R. Pandiyan observed:

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83 AIR 1990 SC 1412
84 AIR 1997 SC 3021
85 AIR 1990 SC 1412

> In spite of the stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. It cannot be gain said that the remarkable degree of callousness or culpable indifference is manifested in uprooting this cancerous growth despite the fact that the day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. This malady is not a social but a socio-economic problem and therefore, the measures to be taken in that regard should be more preventive than punitive.[86]

The Court issued the following directions for the purpose:

(i) All the state governments and the government of Union territories were authorized to direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution.

(ii) The State Governments and governments of Union Territories were directed to set up a separate advisory committee within their respective zones consisting of Secretary Welfare Department, the Secretary of Law Department, social rights criminologists etc. and the main objects of the advisory committee were to evolve measures for eradication of prostitution.

(iii) All the State Governments and the Government of Union Territories would take steps in providing adequate rehabilitative homes manned by well qualified trained social workers, psychiatrists and doctors.

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86 *Id.* at 1416

(iv) The Union Government would set up a committee under direction number 2 and the main aim of the committee would be to evolve welfare programmes for the care, protection, rehabilitation, etc., of young fallen victims to be taken up at the national level.

(v) The Central Government and the Government of States would devise a machinery of their own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

(vi) The advisory committee was required to enquire into *Devadasi* system and *Jogin* tradition and give advice and suggestions for implementation by the government.

Issues relating to the sex-work again received attention of the Apex court in **Gaurav Jain v. Union of India.**[87] Justice Ranganath Mishra, speaking for the court observed that the problem of prostitution was of a serious nature and required attention. The court issued directions for the constitution of a committee to examine the problem and for segregation of the children of prostitutes from their mothers living in prostitute homes and to allow them to mingle with others and become part of the society. Accordingly, a committee was set up under the Chairmanship of Mr. V. C. Mahajan, Senior Advocate, to look into the matter and submit its report to the court. The committee called the Mahajan Committee submitted its report to the Apex Court by way of Public Interest Litigation titled as **Gaurav Jain v. Union of India**,[88] in the year 1997. By way of this petition, the petitioner

87 AIR 1990 SC 292
88 AIR 1997 SC 3021

prayed for improvement of plight of fallen women and their progeny. Justice K. Ramaswamy observed:

> Women found in flesh trade should be viewed more as victims of adverse socio-economic circumstances rather than as offenders in our society. The commercial exploitation of sex may be regarded as crime but those trapped in custom oriented prostitution should be viewed as victims of gender oriented vulnerability. That could be arrested not only by law enforcement agencies but by constant counseling and interaction by N.G.Os impressing upon them to shed off this path and start with a new lease of life.[89]

The court expressed concern for their rehabilitation. Justice Ramaswamy stated that housing, legal aid, free counseling, assistance and other similar aids and services were meaningful measures to ensure that unfortunate fallen women did not again fall into the trap of red light area. It was the duty of the state and N.G.Os and public spirited persons to save them from prostitution and rehabilitate them so that they may lead a normal life with dignity of person. The court issued following directions for the purpose:

(i) The rescue and rehabilitation of child prostitutes and children should be kept under the nodal department i.e. Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation.

(ii) In the light of directions already given by this court from time to time to Central and state Governments, adequate

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89 *Id.* at 3036

steps should be taken to rescue the prostitutes and the neglected juveniles.

(iii) The Court directed that measures should be taken to provide them adequate security, protection and rehabilitation in homes run by N.G.Os with the aid and financial assistance given by the Government of India or the State Government concerned.

(iv) A nodal committee with public spirited NGOs in particular women organisations/women members should be involved in the management.[90]

The Ministry of Welfare, Government of India would constitute a committee consisting of the Secretary in charge of the Department of Child Development as the chairperson and thereon four Secretaries from the concerned state governments.[91]

(C) Important Judicial Pronouncements on Provisions of Immoral Traffic (Prevention) Act, 1956

Various decisions have been given by our courts on various important aspects of Immoral Traffic (Prevention) Act, 1956. The important decisions are being discussed under various heads.

(a) Pronouncement relating to Brothels and Prostitutes

(i) Pronouncements relating to Brothels

The term 'brothel' has been defined in section 2(a) of the Act. Earlier in the definition, the word 'prostitution' was used which has been replaced by the expression 'sexual exploitation or abuse' in 1986. The question arises as to when a place is called a 'brothel' and when a person can be regarded as brothel keeper.

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90 *Ibid.*
91 *Ibid.*

A single instance of prostitution does not make a place a brothel. In **Susheela v. State,**[92] while defining the term 'brothel' the court observed:

> Brothel is a place which should be used for the purposes of prostitution for the gain of another person or for the mutual gain of two or more prostitutes. For the purposes of prostitution it would undoubtedly mean more than one instance of prostitution and solitary instance of prostitution in a place does not make a place a brothel.[93]

The learned Judge set aside the conviction of the petitioner for an offence under section 3(1) but convicted her for an offence under section 4(1) of the Act. She was imposed a fine of Rs. 300 and in default she was to suffer rigorous imprisonment for 3 months.

The residence of a single woman practicing prostitution for her livelihood does not amount to brothel. In re. **Ratanmala**[94] the court held that the last part of the definition of 'brothel' was significant. It implied that where a single woman practiced prostitution for her own livelihood, without another prostitute, or some other person being involved in the maintenance of such premises, her residence did not amount to brothel.

But such a broad proposition was negatived by the Supreme Court in **Krishnamurthy v. Public Prosecutor Madras.**[95] Justice Dayal speaking for the court observed that it may be true that a place used once for the purpose of prostitution may not be a brothel. However, it was a question of fact as to what conclusion

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92 1982 CrLJ 702
93 *Id.* at 706
94 AIR 1962 Mad 31
95 AIR 1967 SC 567

should be drawn about the use of a place about which information has been received that it was being used as a brothel freely and visited by persons asking for girls. The conclusion to be derived from these circumstances about the place and the person 'keeping it' would be that the place was being used as a brothel. It was not necessary that there should be evidence of repeated visits by persons to the place for the purpose of prostitution. A single instance coupled with surrounding circumstances was sufficient to establish both, that the place was being used as a brothel and that the person alleged was so keeping it. The appeal was dismissed.

In **John re.**,[96] the question of defining the term 'brothel' again came up for consideration before the Madras High Court. Justice Ramakrishnan speaking for the court observed:

> The definition of brothel implies that the premises must have been used for the purpose of prostitution for the gain of another person or for the mutual gain of two or more persons.[97]

The onus to prove that a particular premises is a brothel always lies on the prosecution. It was so held in **Bhulu Mia v. State**.[98] In this case the appellant was convicted by the trial court under sections 3(1), 3(2)(a), 3(2)(b), 7(2)(a) and 7(2)(b) of the Act as being the manager of a place which was being used as a brothel. Justice Das held that in order to prove that a particular premises was a brothel, prosecution must prove that it was used for the purposes of prostitution for gain of another person or for mutual gain of two or more prostitutes. The prosecution must prove that in such premise a female indulges in the act of offering her body for

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96 AIR 1966 Mad 167
97 *Id.* at 169
98 AIR 1969 Cal 416

promiscuous sexual intercourse for hire, whether in money or in kind. The onus entirely lay on the prosecution and not on the accused. The appeal was allowed and the conviction and sentence passed on the accused was set aside. Similarly, if the room of a hotel is being used for prostitution, it will be included within the definition of brothel.

(ii) Pronouncements relating to Prostitutes

In place of the term 'prostitute', the Act of 1956 which has been drastically amended in 1986, defined the term prostitution and this definition says that 'prostitute' shall be construed according to the meaning of prostitution. Beaumont C. J. while defining the term prostitute observed:

> A kept woman, who confers her favours exclusively to one man, even though he is not her husband, in not, in my opinion a prostitute. Of course a kept woman may also be a prostitute as may be a married woman. But I think that prostitution involves a more or less indiscriminate employment of the woman's body for hire. The definition of prostitute in the Oxford Dictionary is a woman who offers her body for indiscriminate sexual intercourse, especially for hire. I do not say that it is a universal definition and I do not suggest that a prostitute is bound to be entirely indiscriminate and to accept the first customer who offers her price like a cabman or a rank. But I certainly think that prostitution involves more than intercourse with one man.[99]

The term 'prostitute' was defined in **Emperor v. Lalya Bapu Jadhav**.[100] The appellant had been convicted by the trial court on the accusation of selling one girl to a brothel in Bombay. Justice Mirza held that the idea underlying prostitution was that a woman

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99 Bibibai, In re. Cr. Rev. No. 157 of 1932
100 AIR 1929 Bom 266

should surrender her body for a monetary consideration to someone not legally entitled to have sexual intercourse with her. The position of a mistress was not necessarily that of a prostitute. It involved a relationship of a more permanent nature than the casual relationship implied in prostitution. Having a stray paramour would also not make a woman a prostitute. The application of the accused was rejected and he was ordered to serve his remaining sentence.

The term public prostitute was defined in **Moti Jan v. Municipal Committee, Delhi**.[101] Justice Jai Lal explained so in the following words:

> A woman who is a prostitute by profession and whose trade is to let out her body on hire to all visitors of a specified class, is a public prostitute, but where she is the employee of one man or has been living with different lovers at different occasions but with one man at a time, she is not a public prostitute.[102]

Another question which arises is whether the profession of a singer or a dancer is covered under the term prostitution. The issue was raised in **Parbati Das v. Emperor**.[103] In this case the accused had been convicted by Chief Presidency Magistrate of Calcutta for an offence under section 8 of the Calcutta Suppression of Immoral Traffic Act, 1923. She had thus preferred the present appeal. Justice Costello said that it was perhaps unfortunate that any observation should be made to the effect that a female professional singer or dancer most necessarily and invariably be a person of loose moral character. It may not be said that the carrying on the profession of a singer or a dancer by a

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101 AIR 1926 Lah 460
102 *Id.* at 462
103 AIR 1934 Cal 198

woman meant that she was carrying on prostitution. The conviction and sentence of the accused was set aside and she was released.

Passing of some consideration between the prostitute and the client is necessary to constitute prostitution. This important point was emphasized in **State of Bihar v. Jagrup Singh.**[104] The accused were standing on their balconies exhibiting their persons in order to attract clients. The two male accused happened to be attracted and when they tried to reach to these females they were intercepted and arrested by the police on the way. All the accused had been acquitted by the court below and hence the state preferred the present appeal. Justice C. N. Prasad observed in this case that it was clear from the definition that in order to constitute prostitution, the act of the female must be an act of offering her body for promiscuous sexual intercourse. This must be for some consideration or hire, whether in money or in kind. Appeal of the state was dismissed.

In **Shanta v. State,**[105] the accused was convicted of an offence under section 7(1) of the Act by the lower court and she preferred the present appeal. She was accused of running a brothel near a girl's school. Justice Shelat held that though no doubt in order to hold that a woman carried on prostitution, plural and indiscriminate sexuality on her part was to be established but it did not necessarily require that the evidence of more than one customer of the prostitute should be admitted and it would be enough if the facts established entitled the court to raise an inference to hold that a woman carried on prostitution as

104 AIR 1963 Cal 381
105 AIR 1967 CrLJ 211

contemplated under section 7(1) of the Act. Justice Shelat observed:

> The Act does not aim at abolition of prostitution as such and make it per se a criminal offence or punish a woman because she prostitutes herself, but its purpose is to inhibit or abolish commercialized vice namely the traffic in women and girls for the purpose of prostitution as an organised means of living.[106]

Conviction of the accused was confirmed by the High Court.

The proposition that prostitution means the exploitation of women sexually for commercial purposes was re-affirmed in **Kalyasundram v. State of Madras.**[107] Justice Partap Singh held that the definition of prostitution would show that it meant sexual exploitation for commercial purposes. Thus it becomes more necessary to evolve a test for determining prostitute. One cannot go by the nomenclature but by the facts and circumstances in each case.

(iii) Keeping Brothel or Living on the Earnings of Prostitution

The Immoral Traffic (Prevention) Act, 1956 punishes those persons who keep a brothel or live on the earnings of prostitution. In the former case, if a person is convicted the punishment may vary from 1 to 5 years and in the case of living on the earnings of prostitution punishment may extend to 2 years imprisonment, which may also extend to 10 years if the earnings relate to a minor.

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106 *Id.* at 213
107 (1994) CrLJ 2487 (Mad)

(b) Pronouncements relating to other Provisions

(i) General

Emperor v. Vithabai,[108] was a case where the accused had been charged under section 373 of the Indian Penal Code along with section 6 of the Bombay Prevention of Prostitution Act, 1923. He was charged of obtaining possession of the girl for two to three hours daily in his brothel for a week and using her for prostitution. Justice Madgaukar held that the Act was passed for the prevention of prostitution and it was directed against attempts to seduce the virtue of a woman or a girl for the purpose of prostitution. He said that the brothel keeper facilitated the prostitution and completed it. The appeal was accordingly rejected.

A husband allowing his wife to be a prostitute and using his own house for that purpose would amount to a brothel or not was the point of determination in **Sonu Bachu Laxman v. State of Gujarat**.[109] The applicant had been convicted by the trial court under section 3(1) and 4(1) of the Act and his conviction had been upheld by the District Judge. Therefore, he preferred the present revision petition. The appellant had been arrested under the sections mentioned above because he was caught red-handed while running his house as a brothel and using his wife as a prostitute. Justice Raju held that when the husband allowed his own wife to be a prostitute, the presumption existed that would be sufficient to constitute the house of the applicant a brothel, as brothel included any house, room or place used for purpose of

108 AIR 1928 Bom 336
109 AIR 1960 Guj 37

prostitution for the gain of another person. The revision petition was dismissed.

In **re. John and others,**[110] the accused were three in number. The accused 'B' and 'C' were husband and wife. A pimp had bought 'A' as customer to their house and had taken Rs. 20 as commission from accused 'B', who then had sexual intercourse with 'C'. After some time the Assistant Commissioner of Police arrived at the scene and arrested everyone. The accused were convicted under section 3(1) of the Act for keeping a brothel by the Presidency Magistrate. They had preferred the present appeal against the convictions and sentences. Justice Venkatadiri held that the definition of 'brothel' implied that the premises must have been used for the purposes of prostitution for the gain of another person or for the mutual gain of two or more persons. If there was satisfactory evidence that accused C's prostitution was for the gain of accused 'B' her husband, there could be a finding that the premises in question was used as a brothel. Accused 'A' was convicted and accused 'C' was acquitted by the learned Judge. Accused 'B' was released on probation of good conduct, under section 10.[111]

In **re. Manika Achari,**[112] it was held by the Madras High Court that the prosecution must fully prove that the accused was knowingly living wholly or in part on earnings of prostitution. In the instant case 'Z' was walking on the road when he was called by accused 'A' who pointed towards accused 'B' and asked him whether he would like to have sexual intercourse with her. 'A' then

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110 AIR 1966 Mad 167
111 Section 10 has since been deleted by the amending Act of 1986
112 AIR 1970 Mad 491

went and brought police with him who took all of them to the police station. The accused 'A' and 'B' were convicted by the lower courts hence they preferred the present appeal. Justice Mudaliar held that the question that fell for consideration was whether the prosecution had proved the guilt against accused 'A' for an offence under section 4(1) of the Act. The court gave the benefit of doubt to the accused in the absence of any corroborative evidence and allowed the appeal of the accused.

The question as to who can be punished under section 3(1) of the Act was clearly answered in **State v. Gaya**.[113] This case was sent by the District Judge as a reference to the High Court wherein he had recommended that a charge under section 3 of the Act, framed against the accused should be quashed. The prosecution case was that the accused was running a brothel on the outskirts of the town. On information received by police it raided the house and arrested the accused along with others. Justice Kotwal held that section 3(1) penalized the keeper or manager or the persons who acted or assisted in the keeping or managing of a brothel. It was intended to hit at persons who acted or assisted in keeping or managing them. The reference was accepted by the learned judge.

(ii) Trap Witness

Trap witness basically means sending of a person by law enforcement machinery to expose commercialized sexual intercourse. In fact the probative value of such piece of evidence is not of much value. The evidentiary value deteriorates further if the trap witness himself is of doubtful character or does not have the understanding of the transaction.

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113 AIR 1960 Bom 289

The practice of using trap witness was highly criticized by the Supreme Court in the leading case of **Kamlabai Jethamal v. State of Maharashtra.**[114] In this case the appellant had been acquitted of charges under sections 3(2) and 4(1) of the Act by the trial court but on appeal at the instance of state she had been convicted by the High Court which had sentenced her to one year's rigorous imprisonment and also ordered her eviction from the premises. She as such preferred the present appeal. The facts of the case were that Superintendent of Police received information that certain premises were being used as a brothel and that the accused was supplying girls for the purpose of prostitution. He then laid a trap and sent two persons 'A' and 'B'. The former was to ask the girl for sexual favours for money and the latter was to be a witness of the fact. On being given the signal, police raided the premises and found the accused and 'A' in a compromising position. Dismissing the appeal Justice Kapur observed:

> What is reprehensible in the case and a matter of great concern is the sending of a young student who was reading for his matriculation. To use students in this manner should not be allowed by any government authority in a country like ours. It is no justification to say that in order to suppress traffic in women and to stop prostitution, somebody has to be used and the only class of persons that can be employed are like this young man who is willing to be employed by the police.[115]

Investigation with the help of trap witness or decoy witness has been criticized by the Bombay High Court in **State v. Gaya.**[116] According to the prosecution there was a house of prostitution on the outskirt of Akola. The police officer sent a customer into the

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114 AIR 1962 SC 1189
115 *Id.* at 199
116 AIR 1960 Bom 289

house with five currency notes of Re. 1 each in the presence of Panchas and ordered him to go to the brothel and have sexual intercourse with one of the girls of the brothel. The S. D. O. and the Panchas were hiding themselves in the darkness and raided the brothel when the decoy customer after having sexual intercourse came out of the brothel and lighted a cigarette, a pre-arranged signal. Criticizing the faulty investigation, Justice Kotwal observed:

> Nothing can be more reprehensible than the conduct of this investigation. Under the very auspices of the officer charged with the duty of suppressing immoral traffic in women and girls, Sh. Kasim had sexual intercourse with Saru. Rather than suppress such traffic, the investigation encouraged it. If investigators under this Act are to proceed in this manner, in conceivable cases it will be difficult to determine whether a person was committing an offence under the Act or carrying on an investigation. Such investigation will not have any salubrious effect upon the public mind and will not achieve the object for which the Act was passed.[117]

(iii) Seducing and Soliciting

Seducing and soliciting have been made a penal offence under section 8 of the Act. According to the section whoever in any public place tries to seduce any person by words or gestures or willful exposure of her person or solicits or molests any person for the purpose of prostitution shall be punished with six months imprisonment or Rs. 500 fine.

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117 *Id.* at 290

Prostitution per se is not a criminal offence. This was held in **Sangeeta v. State**.[118] There is no provision under the Act which makes prostitution per se a criminal offence or punishes a person for indulging in prostitution. The word 'seduction' is not used in the narrow sense of inducing a girl to part with her virtue for the first time but it includes subsequent seduction for further acts of illicit intercourse. The Supreme Court has made a clear distinction for the word seduce as used in the narrow sense as well as in the wider sense. It has been held that seduction implies surrender of her body by a woman who is otherwise reluctant or unwilling to submit herself to intercourse in consequence of persuasion, flattery, blandishment or importunity, whether such surrender is for the first time or is preceded by a similar surrender on earlier occasions.[119]

'Seducing' for the purpose of prostitution was defined in **re. Manika Achari**.[120] The accused had been convicted under sections 4(1) and 8 of the Act, hence they preferred the present appeal. Justice Mudaliar observed in this case that section 9 started with the heading 'seducing' or 'soliciting' for the purpose of prostitution. In section 8(a) and (b) the significant words 'for the purpose of prostitution' would predicate the state of affairs or a state of things anterior in point of time to the state of things embodied in section 4. Benefit was given to the accused and the appeal was allowed.

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118 1996, Cr. Rulings 129 (Delhi) quoted form B. R. Beotra, *Immoral Traffic (Prevention) Act, 1956*, 71 (1999, 5th ed.)

119 *Id.* at 71, 72

120 AIR 1970 Mad 491

The word 'seduced' was taken up for consideration in **Ramesh v. State of Maharashtra.**[121] The brief facts of the case were that accused 'B' was the daughter of accused 'A' who used to exploit her for the purposes of prostitution. Later, 'B' took 'A' to 'C' who was a known prostitute and at that time the police raided the house and arrested all of them. The accused had been convicted by the trial court and their conviction had been upheld by the High Court, hence they preferred the present appeal by special leave to appeal. Justice Shah while delivering his judgement and allowing the appeal of the accused held that the verb 'seduce' was used in two senses. It was used in its ordinary and narrow sense as inducing a woman to stray from the path of virtue for the first time, it was also used in the wider sense of inducing a woman to submit to illicit intercourse at any time or any occasion. It was in the later sense that the expression had been used in sections 366 and 366-A of the Indian Penal Code.

The word 'solicits' as used in section 8 came up for consideration before the Madras High Court in **re. Kamla.**[122] In the present case the Deputy Superintendent of Police had arrested the accused as he found her gaudily dressed, bedecked with flowers and behaving in an indecent manner as to offend against public decency by giggling and making gestures with her hands. Justice Aantanarayanan while allowing the revision petition held that the Act itself had not defined the word 'solicit'. Section 8(1) referred to the temptation of a person, or to attracting a person for the purpose of prostitution. Presumably, the word solicits conveyed

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121 AIR 1962 SC 1908
122 AIR 1966 Mad 312

something more and had the essential import of an oral entreaty or persuasion used to achieve the object of prostitution.

The question which came up for consideration in **State v. Premchand**[123] was whether section 8 applied only to a prostitute herself or whether it also applied to those others who solicited a person for the purpose of prostitution. In this case the accused asked two inspectors, who were in plain clothes, as to what he could do for them. Thereafter he said that he could arrange a girl for them for the night and it was at that point that the inspectors disclosed their identity and arrested the accused. He was acquitted by the Presidency Magistrate and hence feeling aggrieved the state preferred the present appeal Justice Chandrachud held that if the word 'solicit as stated in the dictionaries meant to urge or accost a man for immoral purposes, then section 8(b) which provided a penalty for soliciting a person for prostitution must be held to cover every case in which he urged or accosted another for the purpose of prostitution. It also included urging or accosting by the prostitute herself or by another person. He further stated that to hold otherwise would mean to add restrictive words to that clause which were not there and would amount to taking a view which was not warranted by the plain language of the clause. Appeal was allowed and respondent was ordered to undergo rigorous imprisonment for one month.

In order to prove an offence under section 8 passing of some consideration is essential. It was so held in **State of Bihar v. Jagrup Singh.**[124] Justice Prasad while dismissing the appeal of state held that under section 8(a) of the Act, accused's dirty

123 AIR 1964 Bom 155
124 AIR 1963 Pat 381

demeanour or willful exposure of their persons could only be incriminating if such act were proved to have been indulged in for the purpose of deriving some gain, whether in money or in kind, by offering their person for promiscuous sexual intercourse. The offence consisted of committing such act or acts for hire, whether in money or in kind.

(iv) Search

The provisions regarding search are embodied in section 15 of the Act. According to it, the Special Police Officer or the trafficking police officer, whenever he has reasonable grounds for believing that an offence punishable under this Act is being or has been committed in respect of a person living in any premises, he may after recording the grounds of his belief enter and search such premises without a warrant. The section also requires the presence of two respectable inhabitants of the place where search is to be made.

The grounds of belief of a police officer have to be recorded before making a search, was held in **Bai Radha v. State of Gujarat.**[125] It was held that the word used in section 16(1) of the Act that "such officer may after recording the ground of his belief" clearly showed that it was he who had to set out the reasons or the grounds which made him think or believe that the search of the premises with warrant could not be made without undue delay. It itself would show that the grounds were intended to be judged to the satisfaction of the court if such question arose for consideration. It may be that what satisfied him may not appear to be satisfactory in the eyes of another person, but at any rate that

125 AIR 1970 SC 1396

did not exonerate him from setting out the grounds which led him to a particular belief. Not having done so only justifies one to say that he had failed to carry out the pre-emptory provisions which led him to carry out the search of the premises without obtaining a warrant in that connection.

The question of recording the grounds of belief by special police officer before entering into search under section 15 also came up for consideration in **State v. Sardar Bahadur.**[126] The accused were charged under section 3 of the Act for keeping a brothel along with section 5 for procuring, inducing or taking women or girls for the sake of prostitution. The accused had been discharged under section 251-A of the Code of Criminal Procedure and the state had preferred the present appeal to challenge the discharge of the accused. Justice Mukherji stated that the failure on the part of the Special Police Officer to record the grounds of his belief that an offence punishable under the Act had been committed or was being committed prior to entry and search of the premises or his failure to call upon at least one woman of the locality to witness the search did not render the search illegal, but such infirmities may affect the weight of prosecution evidence. The discharge of the accused was set aside. Case was ordered to be tried by some other Magistrate.

A contrary view was taken with regard to recording the grounds of his belief by the Special Police Officer in **Soni Bachu Laxman v. State of Gujarat.**[127] In this case it was held that in cases falling under the Act, it was not necessary for the A. S. P. to depose that he had recorded the grounds for his belief while acting

126 AIR 1969 Guj 451
127 AIR 1960 Guj 37

under section 15 of the Act. When an official act was done under section 114 of the Evidence Act, it was presumed to have been done properly.

The question regarding the moral character of the witnesses who accompany the search party under section 15 came up for consideration in **Harnam Singh Asa Singh v. State**.[128] In this case 'Z' had information that he could indulge in promiscuous intercourse with 'A' on payment of Rs. 10. According to a pre-arranged plan he approached the accused 'B' who took the ten rupee note from him and made available 'A' to him for sexual intercourse. At that time the police raided the premises of the accused. Justice Bedi held that where the witnesses to the search were not residents of the locality but were shown to be morally depraved and also always at the beck and call of the police, their testimony could not be accepted. The accused was given benefit of doubt and acquitted.

The person who is taken by the police during their search as a witness has to be a respectable inhabitant of the locality. In **Inder Dutt v. Emperor**,[129] it was held by Justice Agha Haider that a dismissed constable could hardly be described as a respectable witness.

Respectability does not connote any particular status or wealth or anything of that kind. Any person is entitled to claim respectability provided he is not a thief or a criminal of some kind

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128 AIR 1964 Punj 436
129 AIR 1931 Lah 707

or a person of grossly immoral habits. Such view was expressed by Justice Alsop in **Ashfaq v. Emperor**.[130]

Sometimes the non-compliance of the requirement of one female witness for the search may prove to be fatal. It was held in **Laxmi Murthi Yelkeri v. State**.[131] The accused had uttered certain words in front of the panch witnesses and he was arrested for soliciting prostitution. He was convicted by the trial court, hence he preferred the present appeal. Justice Menezes held that during search the Special Police Officer was accompanied by two male panch witnesses and the requirement that at least one of the two witnesses should be a female from the locality was not complied with and the non-compliance with the essential requirement of law vitiated the entire proceedings. The appeal was allowed and the order of the trial court was set aside and the accused was acquitted.

Similar views were expressed by Kerala High Court in **T. Jacob v. State**.[132] In this case the A. S. P., on information received, raided a room in a hotel and arrested the accused. Charge was framed under section 251(A)(3) of Code of Criminal Procedure by the District Magistrate and against that order the accused preferred the present revision petition. Justice Modi held that there was no ground stated in the charge or anywhere else why the A.S.P. did not call at least one woman witness of the locality for conducting the search. It was a mandatory provision. Even apart from that the conduct of the police officer in proceeding into the bed room of the accused and entering through the back

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130 AIR 1936 All 707
131 1980 CrLJ 28 (Goa)
132 AIR 1971 Ker 166

door without any civility of a knock on the front door, which was locked from inside or warning the revision petitioner for the intrusion would be a misuse of his powers. The revision petition was allowed and the petitioner was discharged under section 251(A)(3) of the Code of Criminal Procedure.

But the Madras High Court took a different view in **Suseela v. State.**[133] Justice Moorthy held that the search and seizure in the instant case could not be said to be vitiated owing to non-compliance of the provision that two or more respectable inhabitants of the locality must be called upon to attend the search as such non-compliance had not in any way caused prejudice to the accused.

The court disagreed with the method adopted during the searches carried out under section 15 in **re. Ratanmala.**[134] In this case police had information that the two appellants and their mother were keeping and maintaining a brothel in the upper story of their house. Police arranged for a decoy and handed him certain numbered currency notes and set up a trap. The police raided the house after the decoy had sexual intercourse with the accused and arrested the accused. Justice Anantanaraynan held in this case that the powers of officers acting under section 15(6) of the Act could not be utilized to conduct a search in disregard of elementary decencies even if they were decencies relating to a prostitute. However, prostitution not being an offence, such conduct implied an outrage of the modesty of the girl. The female accused and her mother were acquitted but the male accused brother was convicted. The point that the court emphasized was

133 1982 CrLJ 702 (Mad)
134 AIR 1962 Mad 31

that the police could not use their powers in utter disregard of decencies.

(v) Miscellaneous

The power of the Magistrate as conferred under section 17 came up for consideration in **Prem v. District Magistrate Meerut.**[135] The present case was by way of a petition under Article 226 of the Constitution in the High Court where the petitioner had prayed for grant of writ of habeas corpus. The petitioner was a young woman of 29 years of age who was carrying on the profession of dancing and singing. Her house was raided by the police, she was arrested and sent to a woman's protective home. Her main contention was that her arrest was illegal because she had not been arrested by the Special Police Officer appointed under the provisions of the Act. Justice Mukherji while dismissing the petition held that the provisions of section 16(1) were not mandatory but directory. The Magistrate had power under the sub-section to direct the Special Police Officer to affect an arrest but it did not take away the power of the Magistrate to make the arrest himself, a power which was conferred on the Magistrate by virtue of section 65 of the Code of Criminal Procedure.

Section 18 of the Act is more preventive in nature. It was emphasized by Supreme Court in **A. C. Agarwal v. Ram Kali.**[136] The appellant in this case, i.e. the S. D. M. had issued notices to the respondents to show cause why the premises occupied by them should not be attached under section 18(1) of the Act. These notices had been issued on the basis of police reports that these

135 AIR 1959 All 206
136 AIR 1968 SC 1

premises were being used as brothels. The respondents had challenged the validity of section 18 and urged the S. D. M. to refer the question of validity to the High Court under section 432 of the Code of Criminal Procedure. As the Magistrate rejected their plea, they moved the High Court under Article 226 of the Constitution. The present appeal was against the order of the Punjab High Court whereby the High Court had quashed the notices issued against the respondents. Dismissing the appeals Justice Hegde held that a proceeding under section 18 was in no sense a prosecution. It was a preventive measure intended to minimize the chance of a brothel being run or prostitution being carried on in premises near the public places. Naturally, in the case of prosecution, a regular trial with a right to appeal was provided and the enquiry contemplated by section 17 was only summary in nature.

The expression 'on receiving information' as used in section 20 of the Act was the point of consideration in **State of U. P. v. Kaushalya.**[137] It was alleged that the respondents were prostitutes carrying on their trade in the city of Kanpur. On receiving information from the Sub-Inspector of Police who was not a special police officer, the city Magistrate, Kanpur issued notices to them under section 20(1) of the Act to show cause why they should not be required to remove themselves from the places where they were residing and be prohibited form re-entering it. The objections filed by the respondents were rejected by the Magistrate. The A.D.J. also dismissed the petitions but the High Court allowed the same and thus the state preferred the present appeal. Justice Subba Rao while dismissing the appeals and restoring the order of the A.D.J. held that the expression used in section 20, merely 'on receiving

137 AIR 1964 SC 416

information' was not expressly or by necessary implication limited to information received from a Special Police Officer. If the legislature intended to confine the expression 'information' only to that given by a Special Police Officer, it would have done so specifically. The omission was a clear indication that a particular source of information was not material so far as the applicability of the section was concerned.

The Immoral Traffic (Prevention) Act, 1956 is a piece of social legislation was so emphasized in **Shefali Banerji v. State.**[138] The landlord of the premises where the petitioner was residing had filed a petition in the Court of Chief Presidency Magistrate under section 20 of the Act on the ground that the petitioner was a prostitute and that she should be removed from the premises. The magistrate had allowed the petition of the landlord hence the petitioner preferred the present revision application. While allowing the petition, Justice Das held:

> A social legislation cannot have the object of throwing a woman on the street nor does the legislation contemplate that one Magistrate will throw her out form his jurisdiction to another Magistrate's jurisdiction to be similarly kicked out. A social legislation has double objective, both penal and ameliorative and the legislators not only wanted prostitution to stop but to provide for rehabilitation of prostitutes. The state government has to provide for protection before enforcing the penal provisions and no tinkering with the problem will serve the purpose.[139]

The word 'interest in general public' as used in section 20 are not in any manner vague. It was so asserted in **Begum**

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138 AIR 1969 Cal 544
139 *Id.* at 546

Husaainsaheb v. State.[140] The present case was in the form of revision application which had been referred to the High Court. In these cases the S. D. M. had directed the petitioners who were alleged to be prostitutes to remove themselves from his jurisdiction within three days. Justice Patel held that it was not possible to regard the words 'interest in the general public' to be in any manner vague. If it was found that a prostitute was carrying on her trade in such a manner as to affect the morals or hurt the susceptibilities of large number of even grown up persons having occasion to be in the locality, then it could be said that it was necessary in the interest of general public that such woman or girl should be required to remove herself there from. The order of the Magistrate was set aside and the case was sent back for dealing with it in accordance with law.

The maintainability of trial under section 366 of the Indian Penal Code in place of trial for offence under section 5(1)(c) of the Act came up for consideration in **Ramu v. State.**[141] The accused had falsely promised 'A', 'B' and 'C' of job opportunities in Kalyan near Bombay. But instead they were sold off to some brothel keeper for purposes of prostitution. These three women escaped from the brothel and made a complaint to the police on the basis of which these accused were arrested. They had been convicted by the trial court and the first appellate court hence they preferred the present revision. Justice D. K. Jain held that the plea raised by the petitioners, that the offence alleged against these petitioners under section 5(1)(c) of the Act, which was triable by a Magistrate. But without invoking the provisions of the Act the prosecution

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140 AIR 1971 Del 168
141 1995 CrLJ 2525 (Mad)

should not have filed this case against the petitioners under section 366 of the Indian Penal Code, which was triable by a Sessions Court and therefore, the whole proceedings were illegal and such a legal plea was not maintainable. The learned Judge held that these two provisions were different and section 366 of the Indian Penal Code fell under Chapter XVI of the Indian Penal Code dealing with the offences to the human body. Therefore, it could not be contended that the prosecution of these petitioners under section 366 of the Indian Penal Code was illegal. The petitions were dismissed.

The Supreme Court has showed its deepest concern on the pitiable conditions of the inmates of protective homes established under section 21 of the Act in **Dr. Upendra Baxi v. State of U.P.**[142] The present petition was by way of a letter which was treated as a writ petition by the Supreme Court. The petitioner had pointed out that the condition in which the girls were living in the government protective home at Agra were abominable and they were being denied their right to live with basic human dignity by the State of Uttar Pradesh which was running the protective home. Chief Justice Bhagwati held that the court had from time to time made various orders with a view to improving the living conditions of the girls in the protective home and ensuring a decent and healthy standard of living for them. The court also asked the District Judge to make periodic inspections of the protective home with a view to monitoring full and effective implementation of the various orders made by the court. In this connection Justice Bhagwati observed:

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142 AIR 1989 SC 191

> It is absolutely essential that the inmates in the protective homes should be provided a proper rehabilitation programme so that when they come out of the protective home they are in a position to look after themselves and they do no slide into prostitution on account of economic want. The inmates must be given vocational training and guidance by way of rehabilitation.[143]

V. Sum-Up

It can be concluded that the Constitution of India does provide some important provisions for the betterment and upliftment of Indian women in general and sex-workers in particular. The most important constitutional provision being Article 23 which prohibits trafficking in human beings. The special legislation which was enacted in the year 1956 to tackle with sex-workers profession was the Suppression of Immoral Traffic Act which repealed all the state legislations on the subject. The Act was enacted pursuant to the 1949 U. N. Convention of which India was a signatory with the avowed object of suppressing the commercialized vice, namely the trafficking in women and girls for the purposes of prostitution as an organized means of living. As such we find there is no provision in the Act which makes sex-work *per-se* a criminal offence. Rather what has been made punishable under the Act is sexual exploitation for commercial purposes. The legislation lacks vision and direction. Similar is the case with the proposed amendments. Instead of doing something beneficial for the sex-workers, what the proposed amendments will do is to push the whole profession underground. As far as our judiciary is concerned there has been some judicial dynamism shown by the court regarding improvement required in the plight

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143 *Ibid.*

of sex-workers. The Supreme Court in **Gaurav Jain v. Union of India**,[144] had pointed out that the rehabilitative aspect of the current law is weak and is not achieving the desired results. The Supreme Court in **Vishal Jeets case**[145] has shown dynamism by issuing various directions to the state for the improvement and betterment of the lot of sex-workers and their progeny. As a whole the judiciary has been quite active in dealing with the problems as well as other related aspects of sex-work.

144 AIR 1997 SC 3021
145 AIR 1990 SC 1412

CHAPTER - 4

FALLOUTS OF THE CURRENT POLICY ON SEX WORK

I. Introduction

As a result of flawed policy of the Indian government on prostitution the negative implications or fallouts have been severe and far reaching. The system to deal with sex-work is in a complete mess and it needs a massive overhauling for improving it. This chapter examines how this policy on sex-work has affected the overall health (STD's and HIV[1]/AIDS[2]) of sex-workers and their clients. The chapter is also devoted to peripheral issues of pimps and brothel keepers, nexus between police and pimps and traffickers, the problem of child sex-tourism, child prostitution, clandestine prostitution.

II. Fallouts of the Current Policy on Sex-work

A. Sex Workers and Sexually Transmitted Diseases

In India, the incidence of Sexually Transmitted Diseases (STDs) are alarmingly high and have been identified as one of the three most important categories of communicable diseases after malaria and tuberculosis. Data on STD prevalence is particularly troubling in the light of the rapid escalation of HIV infection in India. It has also been predicted that India may soon have the

1 Human Immunodeficiency Virus
2 Acquired Immuno Deficiency Syndrome

largest HIV infected population in the world. HIV infections amongst STD patients are on the rise.[3]

Before proceeding to the discourse on STDs and its prevalence amongst sex-workers it is important to have a brief understanding as to what are the major STDs. From study of patients attending STD, infertility antenatal and gynecology out patients clinics, it emerges that among women in particular, syphilis is the leading STI. Trichomoniasis and candidiasis also predominate and gonorrhea is present although presence is difficult to estimate. Lately Chlamydia, herpes and genital warts,the latter two being viral STDs are emerging as significant STDs, amongst women.[4] Some of the major sexually transmitted diseases are as follows:

(a) Syphilis

Syphilis is the most serious venereal disease,[5] though not the most common. About 1000 syphilis germs, called the 'treponena pallidum' may be passed during sexual intercourse with an infected person. About every thirty hours each germ divides into two. Thus by the time the first signs of the disease appears, billions of germs are already in the victim's body.[6]

Syphilis develops through four progressively serious stages. In the primary stage a sore appears on the sex organ; in females the sore may be at the external end of the vagina and may

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3 R. Jayasree and K. A. Parvathy, Sexual Behaviour of Commercial Sex Workers and Pimps in Reproductive Health, *The Indian Journal of Social Work*, 627-628, (2004)

4 Radhika Ramasubban, *Women's Reproductive Health*, 291 (1997)

5 Venereal Disease is a disease acquired by having sex with a person already infected.

6 Abraham Sion, *Prostitution and the Law*, 17 (1997, 1st ed.)

therefore pass unnoticed. The sore then heals, but the disease if untreated, invades every organ of the body. During the secondary stage a rash appears. In both primary and secondary stages syphilis is an infectious disease of the sex organs and sometimes also of the mouth. The rash then disappears and enters the latent stage. This is a dormant condition in which clinical examinations reveal no evidence of active disease and this stage may last from five to fifteen years. After this period some of those infected enter the fourth stage by which time the disease becomes chronic, crippling and even lethal. While treatment in the three earlier stages can completely and permanently cure the disease, in the fourth stage it is effective only in halting its damaging process, because of the tremendous injuries that have already been caused by its unchecked development. However, a follow up period of 2 years is required to ensure that the diseased person is cured.[7]

(b) Gonorrhoea

Gonorrhoea is one of the commonest and most infectious of the venereal disease. It is caused by a germ called 'gonococus' which chiefly attacks the linings of the genito-urinary organs. In men the disease manifests itself by causing inflammation of the urethra and by a discharge of greenish-yellow matter. The patient also experiences a burning sensation while passing urine. The patient has to get the disease cured otherwise it spreads upwards and sets up inflammation of the bladder and neighbouring internal organs, the outcome of which may lead to permanent sterility. Most infected women do not have symptoms in the early stages and are consequently not usually aware of this infection. These

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7 *Id.* at 17-18.

women are carriers of 'gonococcus germs' and form a large reservoir of infection which makes control of the disease difficult. This is one of the most important factors in the spread of gonorrhea today.[8]

In women the inflammation starts in the canal that runs through the neck of the womb and the germs tend to spread through the urethra and sometimes to the rectum as well. The disease often produces no symptoms in women it may spread unchecked and very severe complications may occur. The inflammation may spread to the fallopian tubes, as a result of which the patient may become sterile. In both sexes and particularly in women several tests may be required to establish the presence or the absence of the disease and in the weeks after treatment repeated examinations and tests are essential to ensure that cure is complete.[9]

(c) Trichomoniasis

Trichomoniasis is another disease which is transmitted mainly by sexual intercourse. It is caused by one cell animal called 'trichomenas vaginalis'. It is estimated that at any given time between 10 percent and 20 percent of all women in the most sexually active years of life harbour the germ, although not all have symptoms. Those who do have symptoms may notice an abnormal vaginal discharge. However, since vaginal discharge is a common symptom in women, many infected women may neglect treatment, assuming the discharge to be quite normal. This may often lead to an extensive inflammation of the vagina and consequently much

8 *Id.* at 18
9 *Ibid.*

discomfort, misery and anxiety. Yet most men infected with trichomenas have no symptoms and they are usually only carriers of the disease. Some men, however, do have a slight discharge and they may notice itching inside their urethra. In men, the disease is more difficult to detect than in women, and several tests are required before a diagnosis can be made. The disease may be cured but tests after treatment are essential to ensure permanent cure.[10]

(d) Non- specific Urethritis

Non-gonococal urethiritis produces a urethral discharge which is not caused by gonococci, non-specific urethritis is the most common type of this condition. In clinical appearance non-specific urethritis is very much like gonorrhoea. It is called non-specific because its true cause is unknown but it is now attributed to the germ chlamydia. The overt symptoms of the disease are confined to men and its incidence is steadily increasing. It is one of the commonest diseases acquired through sexual intercourse (twice as common as gonorrhoea). The disease causes inflammation of the genital tract which may spread along the urethra and invade the prostate glands and give rise to various complications. In about 3% of infected men the complications are severe. It may lead to arthritis and this is often associated with inflammation of eyes. The final result may be crippling deformities and damaged sight. Treatment of this disease is often difficult.

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10 *Id.* at 19

(e) Chlamydia

Chlamydia which barely figured in sexually transmitted infections profile of the 1980's is emerging as an infection to reckon with in the 1990s. Chlamydia is supposedly more difficult to transmit than gonorrhoea, however, the two often occur together. It is believed that as in the case of gonorrhoea and most other sexually transmitted infections, men tend to transmit chlamydia to women more easily than the reverse.[11]

In the light of wide spread prevalence of HIV/AIDS and sexually transmitted diseases (STD's) sex work has dangerous consequences. In India more than 90% of the HIV transmission is through the sexual route and sex workers, who have multiple sex-partners are at the risk of getting infected with HIV, which causes AIDS. Besides, heterosexual behaviour with sex workers is a risky activity when a man indulges in it for instant pleasure. This illicit or extramarital indulgence is an open invitation to STD's and AIDS or both, which would ruin him and his family physically and mentally. The number of people infected with HIV or afflicted with AIDS is on the rise in India. The trends in India show a rapid spread of the disease in most states in the country and prevalence of HIV among high risk behaviour groups is alarming.[12]

(B) The STD-HIV/AIDS link

Conclusive scientific evidence now exists that untreated sexually transmitted diseases in either partner increases the risk of HIV transmission during sex unprotected by condoms ten-fold. This happens partly by increasing inflammation and bleeding in

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11 Supra note 4 at 281
12 Supra note 3 at 617

the genital area and therefore, increasing the number of cells that can harbour HIV. There is also increased sheding of the HIV virus in the genital tract in the presence of pre-existing STD's. It is now also known with certainty that men are twice more effective as transmitters of STD's and HIV infection. By prolonging the duration of an STD, HIV infection could increase the incidence of STD's in the community, without directly facilitating its transmission through altered susceptibility or altered infectiousness in individuals. The clear cut and urgent inter-relationship between HIV and other STD's as established by scientific research has led to the recognition that identifying an effective means of contorlling STDs is one of the most readily modifable risk factors and must become a major priority.[13]

(a) Vulnerability of Sex-Workers towards Acquiring Sexually Transmitted Diseases

Sex-workers due to a plethora of factors tend to be the most vulnerable group to acquire STD's. The exploitative nature of brothel work, indifferent attitude of health workers, non-responsive clients all add to their miseries and to them acquiring STD's. As stated earlier, once they acquire STDs they become easy targets for transmission of the HIV virus.

The coercive power structure in the sex-trade in major urban centers leave commercial sex-workers with little autonomy to exercise choice in the number and type of clients, to insist on condom use or to seek health care for symptoms of infection. Their self-confidence and negotiation skills, therefore, remain actively constrained, despite the growth in their own knowledge about the protective role of condoms and their willingness to use them as a

13 Supra note 4 at 282

result of intervention projects.[14] When under the influence of alcohol, clients are often unable to use condoms. A number of sex workers are addicted to high levels of alcohol to help them cope with daily occupational hazards, which impairs their ability to ensure condom use. Equally, condoms amplify the hardship of the women since their use prolongs the duration of sexual encounters.[15]

The fact that sex-workers also exercise their own judgements regarding the 'disease-free' status of their clients shows that both the attitudes towards what one see as routine occupational hazards and the contexts within which sex-work takes place are complex social areas of negotiation and coercion. Sex-workers tend to accept STD's like syphilis, gonorrhea and genital trauma or inflammation, as part of their fate being in this line. Most often sufferers are asymptomatic, when they do experience symptoms, they may not be motivated or permitted to seek health care or to take time off from work for treatment. Where they do seek treatment, the stigma that they encounter in public facilities forces them to seek out dubious private practitioners who haphazardly dispense allopathic medicines. Some resort to self medication. In both cases, they remain inadequately or incorrectly treated.[16] The above discussion makes in amply clear that the position of sex-workers is highly vulnerable to being infected with STD's as a result of the prevailing situation. They remain a 'high risk' group and continue suffering even when they know that they are susceptible to STD's. It is a deplorable condition and unless changes are brought on a massive scale in the overall structure of

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14 *Id.* at 301
15 *Ibid.*
16 *Ibid.*

sex-work, sex workers will continue to remain vulnerable and will continue to suffer.[17]

(b) Vulnerability of Sex Workers towards acquiring AIDS

AIDS (Acquired Immune Deficiency Syndrome) the gift of modern age, is a deadly disease caused by a virus called HIV (Human Immunodeficiency Virus) that slowly damages the immune system of the body leaving the person increasingly defenceless against other infections and then destroys the brain cells.[18] The HIV virus infected person receives a diagnosis of AIDS after developing one of the CDC defined AIDS indicator illnesses. An HIV positive person who has not had any serious illness also can receive an AIDS diagnosis on the basis of certain blood tests.[19]

A positive HIV test result does not mean that a person has AIDS. A diagnosis of AIDS is made by a physician using certain clinical criteria. Infections with HIV can weaken the immune system to the point that it becomes difficult to fight certain infections. These types of infections are known as 'opportunistic' infections because they take the opportunity a weakened immune system gives to cause illness. Many of the infections that cause problems or may be life threatening for people with AIDS are usually controlled by a healthy immune system. The immune system of a person with AIDS is weakened to the point that

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17 For suggestions to improve condition of sex-workers vis-à-vis STD's see, Chapter VII

18 Arvind Kaur, Sexual Beahviour in Socio-Cultural-Context and AIDS in India with Special Reference to Protection : A Legal Perspective, *CMLJ*, 120, 1996.

19 Quoted from www.NACO.org

medical intervention may be necessary to prevent or treat serious illness.[20]

(c) Origin of HIV

Origin of HIV virus is still shrouded in mystery. Scientists have different theories about the origin of HIV but none have been proven. Chronologically speaking, the origin of HIV may be traced from the 1950's. At the end of World War II, only a handful of viruses were known. Hundreds more have been discovered since, partly as a result of advanced techniques for culturing them in the laboratory.[21] Viruses are parasites which infect almost every form of life from single cell bacteria up to humans. The simultaneous appearance of AIDS in the United States, Europe, Africa and Haiti prompted the question : Had AIDS been around for sometimes, unnoticed.[22]

After combing through medical histories of past patients, investigators found a small number of probable cases of AIDS going back over thirty years over three continents. The investigators found, AIDS like symptoms in patients as early as 1959. In fact the earliest known case of HIV was from a blood sample collected in the same year form a man in Kinshasa Democratic Republic of Congo.[23] In U.S.A. the virus was detected among some people as early in 1981. In 1979 a forty-four year old homosexual man died with Kaposi's Sarcoma in New York city. Kaposi's Sarcoma is a kind of cancer found very commonly among AIDS patients in the West. In 1977, a 27 year old Rawadan mother

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20 *Ibid.*
21 Gracious Thomas, *AIDS, Social Work and Law*, 26 (1997, 1st ed.)
22 *Ibid.*
23 Supra note 19.

developed the immunodeficiency symptoms and died. In the same year a 34 year old Zairean woman, who sought treatment in Belgium later died of opportunistic infection in Kinshasa in 1978. Similarly, a 47 year old Danish surgeon, who had worked in rural Zaire, died in Denmark after developing similar symptoms. In 1969, a 15 year old black boy died with Koposi's Sarcoma and opportunistic infections in St. Louis. Earlier in 1959 a British sailor with Koposi's Sarcoma and penumocytis died in Manchester.[24]

In few of these cases the retrospective diagnosis of AIDS are now being supported by positive blood tests for HIV. Most of them however, have been identified as early cases on AIDS on the basis of symptoms alone. The search goes on and it is possible that eventually earlier possible cases will be found somewhere.[25]

It is now known that the virus existed in the United States since at least the mid to late 70's. Form 1979-1981 rare type of pneumonia, cancer and other illnesses were being reported by doctors in Los Angeles and New York among a number of gay male patients. These were conditions not usually found in people with healthy immune systems. In 1982 public health officials in United States began to use the term "Acquired Immune Deficiency Syndrome" or AIDS to describe the occurrence of opportunistic infections, Kaposi's Sarcoma and Pneomocystis pneumonia in healthy men. Formal tracking (surveillance) began that year in the U.S.[26]

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24 Supra note 21 at 26
25 *Ibid.*
26 Supra note 19.

(d) Stages and Symptoms of AIDS

The five stages of AIDS and its symptoms during these stages are:

(i) Initial HIV infection

After HIV enters the body, the immune system Produces antibodies to HIV which do not succeed in overcoming the virus. Some people experience influenza or glandular life fever. This period usually continues for years in which no further symptoms appear, but during this period the person is capable of transmitting the virus to others.

(ii) Persistently enlarged lymph glands

The initial bout of illness is followed by enlarged lymph glands in the neck, armpit or groin, accompanied by fever, loss of weight, night sweating and a fungus infection inside the mouth.

(iii) AIDS related complexities

By this stage, the immune system is considerably damaged and many infections occur. The symptoms during this period are fatigue, unexplained diarrohoea, more loss of weight, night sweating, oral fungus or may be enlarged spleen.

(iv) Full blown AIDS

At this stage the immune system collapses and the body is invaded by major life threatening infections which vary from country to country. Pneumonia caused by the parasitic pneomocystis carinii, Karposi's Sarcoma a cancer affecting the skin, slim disease – wasting condition linked to persistent

diaorrohea are some of the deadly infections common in the United States and Africa. At this stage, the patient generally has evident symptoms such as gross fatigue and extreme weight loss and multiple infections like thrush, shingles and herpes.

(v) AIDS dementia

The majority of AIDS patients develop neurological symptoms in the advance stage of full blown AIDS because the AIDS virus once it passes the blood brain barrier, then it can destroy certain brain cells. The symptoms of this stage are confusion, memory loss, premature senility, deteriorating thought process, etc.[27]

(e) Modes of transmission of HIV

There are various modes of transmission of HIV virus such as transmission through blood and blood products, through intravenous drug use and mother to child transmission but the major and primary cause is sexual transmission which includes both the homosexual as well as heterosexual intercourse. Though the natural and popular pattern of sexual intercourse is vaginal sex between a man and woman but some unnatural sex behaviour anal patterns such as oral sex between a man and a woman and intercourse are also prevalent. These are common between homosexual as well as hetrosexuals. Any of these sex activities performed with an HIV infected person whether man or woman causes transmission of the virus. HIV is carried in seminal and vaginal fluids and in saliva and cervical secretions as well as in blood. Any exchange of fluids during intercourse can result in

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27 Supra note 18 at 120-121

transmission of the virus across the porous membranes of the vagina, penis or anal canal into the blood stream.[28] Forms of sex which involve bleeding such as bondage, sadomasochism or intercourse during menstruation etc., are high risk activities. The unprotected oral sex is considered to be less risky than unprotected anal or vaginal sex. The reason for this is that men experience sexual dissatisfaction while using condoms. It is not uncommon to hear men complaint that condoms decrease penile sensitivity. It is not surprising then that people who view condoms as unenjoyable are less likely to use them during high risk sex.[29]

Apart from unprotected sex or sexual intercourse the additional co-factors for spreading HIV are sexual contact with sexually transmitted disease (STD) affected persons and with drug users. STD collectively known as genital ulcer disease (GUD) provides an open door for HIV to pass from one sexual pattern to another and drug users are more at risk of contracting the virus through the use of infected needles. It not only increases the vulnerability in acquiring the virus but also the likelihood of infected person transmitting the virus. Therefore, the spread of AIDS epidemic lies to a great extent in the human sexual behaviour.[30] The body fluids which have been proven to spread HIV are blood, semen, vaginal fluid, breast milk and other body fluids containing blood. Other additional body fluids that may transmit the AIDS virus to health care workers who may come into contact are cerebrospinal fluid surrounding brain and spinal cord,

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28 *Ibid.*
29 *Id.* at 121-122
30 *Ibid.*

synovial fluid surrounding the bone joints and amniotic fluid surrounding the foetus.[31]

AIDS is considered serious as it affects people primarily when they are most productive and leads to premature death thereby severely affecting socio-economic structure of the whole families, communities and countries. Besides AIDS is not curable and since HIV is transmitted predominantly through sexual contact and with sexual practices being essentially a private domain, the issues are difficult to address.

C. AIDS and Indian scenario

According to National AIDS Control Organisation (NACO), 2006 estimates suggest national adult HIV prevalence in India is approximately 0.36 percent, amounting to between 2 and 3.1 million people. If an average figure is taken this comes to 2.5 million people living with HIV and AIDS. More men are HIV positive than women. Nationally, the prevalence rate for adult females is 0.29 percent, while for males it is 0.43 percent. This means that for every 100 people living with HIV and AIDS, 61 are men and 39 women. Prevalence is also high in 15-39 age group, it is as high as 8.71 percent, as such it threatens the cream of the society, those in the prime of their working life.[32]

While adult HIV prevalence among the general population is 0.36 percent, high risk groups, inevitably show high numbers. Among Injecting Drug Users (IDUs), it is as high as 8.71 percent, while it is 5.69 percent and 5.38 percent among men who have sex with men (MSM) and Female Sex Workers (FSW) respectively.

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31 Supra note 19
32 *Ibid.*

In fact, sex work emerged on the scene of the public debate only after the detection of the first Indian case of HIV infection in sex workers from Chennai in the year 1986. The AIDS epidemic and consequently the supposed vectors of the disease, i.e. prostitute women, suddenly captured the imagination of the press, researchers and NGO's. One does not have to scratch too deeply beneath the surface to realize that AIDs epidemic is the main and probably the sole reason, for this renewed interest in prostitution or sex work.

In fact, in India when people hear or talk about AIDS, the single group of people that come to their minds most commonly is that of Female Sex Workers. This public perception however, perhaps represents the reality. In India sex workers are extremely vulnerable to HIV/AIDS. According to United Nations, by the mid 1990's, a quarter or more of female workers in New Delhi, Hyderabad, Pune, Tripura and Vellore cities tested positive for HIV. In Mumbai, the prevalence of HIV among Female Sex Workers has reached 70 percent. It is true that HIV infection has by now spread amongst all sections of urban and rural population.

(a) Responsibility of clients of sex workers

As a single group, amongst all, it is perhaps the clients of female sex workers who may be blamed for spreading this disease. Many of them transmit the HIV virus to the sex workers and many on the other hand are infected from the sex workers, the primary reason being their reluctance to use condoms. They further transmit it to their wives and other female sex workers. There is

one in three chance that infected women, when pregnant, transmit the infection to their new born babies.[33]

It has been observed in many HIV/AIDS intervention projects in red light areas of India that it is not difficult to educate and motivate female sexual workers regarding use of condoms for protection but the prevalence of condom use among them does not increase adequately because their clients are reluctant and unwilling to do so. Clients usually argue that they do not get full pleasure in sexual intercourse, if condom is used. Sex workers are mostly powerless, economically and otherwise, to insist on the use of condoms by their clients.[34] Such an attitude of clients makes the sex worker as well as the family of the client highly vulnerable to the HIV virus. The flawed policy on sex-work is to be blamed largely for the current situation.

(b) Awareness Pattern Regarding HIV/AIDS amongst Sex Workers

Though the general level of awareness amongst sex workers regarding HIV/AIDS is high but then several myths and misconceptions normally aggravate the problem. According to one study, about one third of respondent sex workers stated that HIV transmission could be reduced by washing or douching vagina after sex. Over 90% of the sex workers mentioned they wash their vagina with water mixed with dettol or soda or turmeric after sex.[35] The survey also found that sex-workers who were HIV positive used condoms with their regular partners, but the others who are free of infections, use it only with their clients and not with their

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33 Moni Nag, Anthropological Perspectives on Prostitution and AIDS in India, *Economic and Political Weekly,* 4029 (2001)

34 *Ibid.*

35 Quoted from www.timesofindia.com

husband or lovers. Such myths and practices amongst the sex-workers have to be weeded and rooted out if the desired result of controlling the risk of AIDS/HIV in sex-workers is to be achieved.

(c) Targeted Interventions : A Critique

In situations where access to treatment services for the general population is itself difficult and sporadic, a service for vulnerable groups is an almost impossible dream. The problem of addressing HIV in marginalised populations like sex-workers is compounded by lacunae in overall management of the HIV/AIDS epidemic in the region. Programmes that view women in sex-work as a means to reaching the sexually active male population, rather than focusing on the sex-workers themselves are doomed from the start and in fact most South Asian governments resort to such targeted interventions.[36] Such interventions normally remain with the implementing agency rather than being owned and controlled by the affected community and that is why majority of such programmes never achieve the desired results. The most effective education on HIV transmission is done by those trusted by the community at risk. This means that sex-workers have the best chance of helping other sex workers protect themselves from HIV. But peer education is not getting a fair chance in India. The police apparently do not recognise the life saving work done by AIDS educators and these people face consistent abuse.[37]

Moreover, the health officials also have a callous and indifferent attitude towards the genuine health concerns of sex-workers. Medical and paramedical staff at government hospitals

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36 Quoted from www.infochangeindia.org
37 *Ibid.*

have biased and humiliating attitude. Irrelevant and embarrassing questions about sexual positions etc., are often asked. Forced free sex with medical staff and social workers is common place. Doctors often refuse treatment and admit women to hospitals claiming they are AIDS carriers. In many centres, doctors make peons and attendants conduct the physical examination and only then do they attend sex workers. Accessing health care is a major concern for women in sex work and such gross violations of their right to health care demands urgent remedial measures.

(d) Vulnerability of Trafficked Women towards acquiring HIV

Trafficked women in the profession of sex work pose major problems to those who are working towards improvement of health care conditions amongst sex-workers as also towards imparting knowledge as well as means to control the spread of HIV virus.[38] Undoubtedly, women who have been trafficked into the sex-trade are more vulnerable to the threat of HIV and more likely to be in a situation where they are unable to control and protect themselves from HIV transmission. As illegal migrants engaged in underground trade, they are very often subjected to sexual abuse at the hands of the authorities, including immigration and police officials, whose systematic involvement in the trade is no more a secret. Forcible detention, lack of access to redressal, police corruption and invisibility ensure that women can be violated, controlled and abused. Given the fact that HIV transmission is most efficient in situations of repression and abuse, women in trafficked situations are more vulnerable and at great risk of contracting HIV. It is also seen that most NGOs that work on

38 For a detailed discussion on trafficking see, Chapter V

issues of trafficking rarely include an HIV component in their programmes. In attempting HIV prevention with trafficked persons, NGO's find it difficult to build their confidence and trust. As hapless people without papers, trafficked persons prefer being invisible and underground. If they are women in sex work, even more so because sex-work in most countries is illegal and it is almost impossible to access women who are under the protection of criminal nexus and trafficking syndicates. Fears of the police and legal repression are also major reasons why women shy away from outreach workers. And while there are many groups that work with trafficked women and illegal migrants, there are very few that actually offer services for HIV/AIDS prevention, care and support.[39] Such a situation, in the current legal system, where trafficking is so rampant and the police is hand-in-gloves with brothel owners and traffickers is not a good sign and a complete overhauling of the system seems to be the only remedy for the better control and management of the AIDS epidemic.

(e) Diversion of funds to fake NGO's

A large amount of funding by various national and international agencies for HIV/AIDS control is being drained by many fake NGOs claiming to work for AIDS prevention. There are about 1800 NGOs in India claiming to work for AIDS prevention, out of which 80% are suspect, many are bogus and others are run by an individual or a family. The NGO culture spawned by HIV/AIDS has brought in its wake other social wars. In fact there are more people living off HIV than dying of it. Everybody from ministers and bureaucrats to small time drug peddlers have set up

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39 Supra note 36.

NGOs. There is no accountable mechanism to assess sustainability, genuine work and ownership and still funds are being allotted. There is no denying that there are excellent NGOs in the field doing a commendable job but there are still many others whose motives and intentions are doubtful. According to NACO's written agenda, NGOs should be credible, have a minimum 3 year experience in community work, financial transparency and an understanding of HIV/AIDS issues. If this criterion is followed then AIDS control programmes will be more vibrant, responsive and closer to ground reality. But the truth is that with no accountability, a host of dubious NGOs have mushroomed to cash in on the flush of funds, who openly flout NACO guidelines. Former Union Minister, Arun Jaitley said that there are more AIDS activists than patients now.[40]

(f) Black laws must be avoided

Such laws which tend to stigmatize or ostracise the sex-workers or citizens in general should be avoided. Force is not the way to deal with HIV/AIDS, segregation of HIV affected will only alienate them. Rather focus should be on mass awareness and community based schemes like Sonagachi project of Calcutta.[41] There were a few laws which aimed at forcible testing and segregation, some of which are as under:

(a) A bill called AIDS Prevention Bill was introduced in Rajya Sabha in August 1989 but because of strong opposition by activists groups, the proposal was finally dropped. It gave the government and health authorities sweeping

40 Alok Goswami, HIV/AIDS are we in the Right Direction? *Jonaki*, 17 (2003-04)

41 Sonagachi Project, discussed in detail in Chapter VII

powers to infringe upon the liberties of private citizens without any rational link to preventing the spread of HIV infection or treating the infected persons. For example one section of the bill allowed for forcible testing of the suspect to be at greater risk of being infected with HIV, that is, those belonging to 'high risk' groups for AIDS namely, female sexual workers, intravenous drug users and professional blood donors. Another section gave the health authorities sweeping powers to take such other precautionary steps to prevent the spread of HIV infection as it may deem necessary. The authorities could take such steps on the basis of information furnished by medical practitioners or from any other source. Thus an individual already suffering from social ostracism, was left with almost no recourse to justice if the provisions of the bill were misused against him/her.[42]

(b) The earlier suggestion of the D.G., ICMR for a central legislation banning sex between India and foreigners and visiting Non-Resident Indians (NRIs) was turned down in response to strong public opposition by the Law Ministry on the ground that it would violate the recognised privacy right of the individuals suspected to be HIV +ve. Then in August, 1989, D.G.ICMR, wrote to the Chief Ministers of Maharashtra and Tamil Nadu to ban extra marital sex between individuals suspected to be HIV +ve. The two states were told to enforce the ban immediately through an ordinance as the alleged high number of HIV +ve prostitutes were seen as posing the greatest risk for the

42 Moni Nag, Sexual Behaviour and AIDS in India, *Indian Journal of Social Work*, 522 (1994)

spread of AIDS in India. This fact was not taken into consideration by the concerned authorities that it is not feasible to make a policeman stand outside everybody's bedroom nor is it fair to club all foreigners and NRIs as HIV +ve.[43]

(c) A public interest litigation was filed in Supreme Court by Mr. Parmanand Katara seeking that no foreigner should be permitted to enter India unless he shows a quarantine certificate (HIV free medical certificate) to save the lives of Indians from this disease. The apex court rightly dismissed the petition.[44]

(d) The Maharashtra State Legislative Council was planning to come up with a Bill on AIDS patients arrest during its winter session in 1990. The Bill suggested arrest and segregation in detention camp of HIV+ve persons. Can HIV positivity be equated with criminality.[45]

(e) To legitimise the illegal detention of hundreds of allegedly HIV +ve prostitutes arrested in various welfare homes in Tamil Nadu, the state government at one stage was reported to be thinking of equipping itself with requisite powers.[46]

(f) The proposed amendments in the form of Immoral Traffic (Prevention) Amendment Bill, 2006 will be a big curse for all the HIV intervention programmes if the Bill acquires the shape of a concrete law. The most contentious aspect of the Bill i.e. addition of section 5-C which seeks to punish the clients of sex-workers will have a negative

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43 Shalini D'souza, Prostitution and AIDS, *Social Action*, 415 (1990)
44 *Ibid.*
45 *Ibid.*
46 *Ibid.*

impact on the sex-workers profession as it will drive the whole profession underground as has happened in Sweden which had introduced a law on similar lines in the year 1999. Though street based prostitution did decline in Sweden but consequently it drove the whole profession underground thereby making it virtually impossible for health officials to implement intervention projects amongst the sex-workers community.

Thus, the discussion on sex-workers and HIV/AIDS gives us a clear picture that the current situation on this front is not very pleasing. Figures of NACO clearly reveal that HIV amongst sex-workers and the general population as such is on the rise. There are so many loopholes in the current policy to deal with sex work and it is a result of these loopholes that there is not much progress in the HIV/AIDS prevention schemes amongst sex-workers. An alternate legal mechanism has to be evolved to achieve quicker, long lasting and better results.

D. Villains of trade : Pimps and brothel owners

The whole problem surrounding the profession of sex-work today is that it is not in the hands of sex-workers but in the hands of gamut of other functionaries such as pimps, brothel owners and traffickers. These third parties are the ones who are solely responsible for the current mess that the profession finds itself in today. These functionaries are like parasites which eat into the majority of the income that the sex-workers earn. They are to blame for the pathetic, exploitative and horrible condition of the sex-workers. They use muscle power and money power to force the sex-workers to submission. The current policy and the law i.e.

Immoral Traffic (Prevention) Act, 1956 was actually meant to target these functionaries but the only category it has targeted is the sex-workers itself. Figures[47] of past researches in the field clearly reveal that the police targets the sex-workers much more than it targets these third parties. The image of the profession which used to be respectable in the ancient and medieval times has taken a severe beating and dent as a result of pimps, brothel owners and madams and traffickers.

The Immoral Traffic (Prevention) Act, 1956 defines a brothel to include 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.[48] Thus any person who is in charge of a brothel and lives on the earnings of sex-workers is a brothel owner. In fact, the French word 'brothel' is said to have come from *'bord et eau'*, because houses of prostitution were first established in borders of rivers or close to baths.[49] As far as our own country is concerned, it were the British who laid the foundation of brothels. The British under their supervision established *'Chaklas'* for the sexual gratification of their own soldiers and women were drawn from the neigbouring areas to these *'chaklas'* and the woman in charge was known as a *maheldarni.*

The economic base of the industry is far greater than the gains to the sex-workers would suggest. As in most industries, smallest rewards go to the primary workers, and yet in this trade the financial exploitation of these workers is exacerbated, aided by

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47 See, Chapter II , note 49

48 See, The Immoral Traffic (Prevention) Act, 1956, sec. 2(a).

49 K. K. Rao, Prostitution, Society and Legal Curbs, *Andhra Law Times*, 14 (1988).

the ambiguous legal status of the sex industry.[50] In fact in today's scenario organised pandering has become one of the most lucrative forms of organised underworld activity. In fact the organization that dominates the world of professional crime has taken control of prostitution. It is managed on the national or regional basis. The approved proprietors of houses and the prostitutes themselves are carefully listed and rigorously supervised by the syndicate. The girls are frequently shifted from one city to another and even more from one locality in a municipality to another, partly to evade discovery and prosecution and partly to increase the novelty and appeal of the girls. They are kept under thorough control and discipline and are intimidated to prevent desertion and informing.[51] In a study of 24 red-light areas of Mumbai, it was found that these areas have close links with each other. From the statement of sex-workers of those areas, it was found that they are frequently sent from one red-light area to another and also to 'Dance Bars' by the unholy nexus of pimps, brothel owners and traffickers. They are even put to auction, where their prices for change of ownership are fixed, the girl's constitution, age and beauty bring the value criteria in this regard. They have no kind of security or protection.[52] In the current scenario which is very bleak for sex-workers, they have to live, linger and die in the demoralizing and nautiating environment of a brothel tortured by procurers, pimps, brothel keepers, madams, gangsters of the underworld and law enforcers.

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50 Carolyn Sleightholme and Indrani Sinha, *Guilty Without Trial*, 1216, (1996, 1st ed.)

51 R. L. Gupta, *Medico-Legal Aspects of Sexual Offences*, 312, (1984, 1st ed.)

52 Bela Bandopadhyay, Steps to Combat Trafficking in Women and Girl Children, *Jonaki*, 6, (2003-04).

Procurers, pimps, brothel keepers are the masters of the trade, each supporting and supplementing the other for a common cause i.e. deriving economic benefit and power out of the trade management. The brothel keepers are placed at the apex of the hierarchy of the brothel administration. They play the role of trainer, educator, settler of disputes, purveyor of justice, protectors, financiers, accountants, managers and security officers all at once, even though the ownership of the brothel may not always be with them. They may be of either sex. A female brothel keeper or madam in English is usually addressed as '*Mausi*' or '*Chaudhrian*'. Normally one can aspire to become a brothel keeper after being in the trade for a few years.[53]

The pimps, intermediaries and touts hold a pivotal position in the trade because they are instrumental in the business promotion and rendering necessary support. Some of the pimps are very close to the brothel life and dedicate their services to the women in the trade. Pimp, is essentially a person who arranges the sex worker for a client describing the physical appearance of the sex-workers to the client and arranging for the sex-worker, in a brothel or a hotel or any other place. These pimps also have occasional sexual relations with the victims. The touts and intermediaries are generally engaged in other occupations like running a *paan* shop, plying a vegetable/fruit trolley, working in a hotel, rickshaw pulling etc. Their association with the trade is from a distance and they are able to deliver the goods from their respective 'privileged' positions.[54]

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53 K. K. Mukherjee, *Flesh Trade : A Report*, 173 (1989, 1st ed.)
54 *Ibid.*

In a survey conducted by National Human Rights Commission[55] on 412 brothel owners, they were asked to speak on their links with the pimps and how these operate and sustain the brothels. Nearly ¼ of these respondents said that they deal with one or two pimps, 52.7 per cent had dealing with three to four pimps and 22.3 percent admitted to doing business with more than five pimps. Regarding the manner in which the 'pimps' help them in the trade, the respondents said that they are useful in showcasing the qualities of the sex-worker to the clients, providing information to the latter about the brothels and ensuring that the clients behave courteously. Pimps also double up as traffickers. Over 36 percent of the brothel owners said they bank upon pimps for the supply of women and girls. Among these 45 percent said that the pimps transfer girls from one brothel to another.[56]

If we analyse the working of the brothel system in vogue currently we will find that the trade management is controlled by or from two levels, by two different sets of persons. The first is a closely knit inner circle immediately connected with the management of the trade and comprises of the procurers, brothel keepers, pimps, intermediaries, touts, etc. The other circle functions from the peripheral level to provide protection to the trade. The latter includes police and government officials, politicians and other influential persons. It is the combined effort at all levels that ensures smooth running of the business and good returns.[57] The design of the whole process of trade management is such that it thrusts the victims into the forefront exposing them to both the world of clients and the merciless onslaught of the

55 NHRC Report on Trafficking in Women and Children in India, 125 (2002-03).
56 *Ibid.*
57 Supra note 53 at 173

protectors of law, while the actual beneficiaries of the trade manage to keep themselves in the background and reap their harvest. Procuring is an important component of the trade management, which necessarily implies trafficking.[58]

In the study conducted by the National Human Rights Commission it was found that brothel owners had strong links with traffickers, out of 412 brothel owners surveyed, among those who agreed to speak on this nexus, 10.2 percent stated that one to five traffickers were operating in their brothels, 7 percent said that six to ten traffickers were working with them and 17.5 percent admitted to collaborating with more than 10 traffickers. Significantly 65.3 percent of these respondents did not disclose the number of traffickers working with them. Based on the information provided by 143 brothel owners, the total number of traffickers in all the states covered under the study worked out to 1,170. However, paradoxically, the data from these states did not reflect anything to show that these traffickers had been brought to book.[59]

Over three fourth of the brothel owners had direct dealing with traffickers, the rest employed agents to reach them. The direct linkage of such a high percentage of the brothel owners with traffickers established their criminal nexus and posed a major challenge to law enforcement agencies. The respondents said that they dealt directly with the traffickers from 'business transactions' i.e. 'purchase', 'sale', 'hire' or 'transfer' of girls. These brothel owners seemed to prefer working with traffickers, as it avoided

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58 Supra note 56 at 125
59 *Ibid.*

complications that may arise from directly dealing with the trafficked persons.[60]

The brothel owners were asked about the regions from where the traffickers source women and girls. The largest number of respondents (18.9 percent) stated that they were sourced from Andhra Pradesh. This was followed by Karnataka (10.2 percent), Tamil Nadu (8.7 percent) and Uttar Pradesh (8.3 percent). Only 4.1 percent of the brothel owners stated that their source area was Nepal. Half of the respondents sourced women and girls form different parts of the country, which included rural areas in Kearla, Madhya Pradesh, West Bengal, Bihar, Meghalaya and Assam. As to how the traffickers were linked to these source areas, 29.1 percent of the interviewed brothel owners attributed it to the contacts that the traffickers had established in these areas. The majority (60.9 percent) said that it is the vulnerability of the victims that attracts the traffickers to the source areas. This suggested that traffickers were always on the prowl and they identified their targets based on an assessment of the scope for exploitation. According to 10 percent of the respondents, traffickers had links with the source areas where traditions and customs facilitate trafficking of girls. The practices prevalent in certain communities provided a convenient social veil under which the exploitation of girl children took place.[61]

In this study, the owner's share in the earnings of the women and girls in brothel was also analysed. While 15 percent said that they took less than 25 percent, to over half the respondents (56.6 percent) admitted that they cornered 25-50

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60 *Id.* at 126.
61 *Ibid.*

percent of the total income. It was revealed by 9.5 percent that they took the lion's share (50.80 percent) of the victim's income and 3.2 percent virtually loot them by taking 80-100 percent. Only 15.7 percent of the brothel owners said that they do not opt for any fixed share but decide on each occasion as to how much they should take. The version of the women in this count presented a different picture. They alleged that more often than not, they did not get any share whatsoever from the earnings. Figures reveal that brothel owners derived maximum benefits from girls below 18 years of age.[62]

The owners of the brothels also said that they make good money by sending girls outside the brothels. Their income depends on the type of place the girls are sent to and quantum of demand. The respondents who earn upto Rs. 10,000 per month by sending girls outside the brothels include 74 owners who send them to individuals, 49 owners who provide them to hotels and 32 who supply them to farmhouses. The respondents who earned upto Rs. 1,00,000 a month by sending girls outside brothels included 28 owners who sent the girls to individuals, 29 owners who sent them to hotels and 12 who sent them to farmhouses. The income generated by sending the trafficked victims for non-brothel based sex-work was much higher than their earnings from commercial sexual exploitation that takes place within the brothels. So, although trafficking is commercially carried out for commercial sexual exploitation in brothels, the traffickers and brothel owners made more money out of non-brothel based exploitation.[63]

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62 *Id.* at 130.
63 *Id.* at 131

As far as police raid on the brothels were concerned almost a fifth of the respondents stated that they faced one to two raids per year. 11.9 percent said that they had to contend with three to five raids per year, 8.5 percent mentioned six to fifteen raids in a year and 25.7 percent affirmed that there were more than fifteen raids per year. One third of the respondents stated that the police had not conducted any raids on their brothels during the past year. In the absence of any intervention by the law enforcement agencies, the owners continued to exploit the trafficked victims with impunity.[64]

As to the reasons behind these raids one third of the brothel owners stated that the police conducted these raids to rescue minor girls or to prevent commercial sexual exploitation, 19.3 percent said that raids were conducted only when there was a stoppage of regular payments by the brothels. According to 13.3 percent of the respondents, the police carried out raids only to fill up their records. In fact some police officers in various states had mentioned that such raids were carried out only because they were considered to be reflective of their proper functioning and efficiency. Therefore, they carried out these raids only to project their performance. In Mumbai, a large number of arrests are usually carried out under section 110 of the Bombay Police Act, wherein many people are rounded up from brothels, fined and let off thereafter.[65]

When it comes to tricky questions of how they maintained discipline amongst the inmates, majority (42.5 percent) of the brothel owners refused to answer. 17 percent said that they

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64 *Id.* at 132
65 *Id.* at 133.

handled the girls with affection and won them over to their side, so that they did not misbehave at all. In fact these were girls who were extremely tolerant and submissive. However, 19.2 percent of the owners stated they maintained discipline by scolding and abusing the undisciplined ones. For them, anybody who violated or disregarded the diktats of the brothel owner was undisciplined. 21.4 percent of the respondent were quite frank and admitted that they beat up the girls with the help of musclemen, who mostly hanged around the brothels and live as parasites. The punishments included beating, solitary confinement and several kinds of physical torture. When asked as to how they initiated women and girls into the commercial sexual exploitation 13.8 percent were candid enough to say they used force, 29.9 percent admitted they did so by deception and false promises.[66]

The picture which emerges clearly shows and highlights the exploitative ambience of the brothels. The current policy which was made to target themhas only targeted the sex workers instead. It has completely lacked direction and commitment. Brothels today are dens of ultimate violation of human rights. The owners represent the conspicuous face of the exploitation of trafficked women and children. More often than not, circumstances have made them what they are. Absence of livelihood options and alternative sources of income and the lack of skills, resources and awareness of rights are on top of the list of contributory factors. The fact that majority of the brothel owners have direct links with traffickers is important from the point of view of law enforcement. The owners abet, facilitate and conspire with other abusers to perpetuate the exploitation of the trafficked victims. The extent of

66 *Id.* at 134.

abuse unleashed on the victims by the brothel owners is no less in comparison to that heaped by other exploiters, such as traffickers and clients. It is this nexus between them that creates the demand, perpetuates trafficking and leads to the gross violation of the rights of women and children, more so, the girl child. Policies and strategies to prevent and combat the menace of trafficking can be effective only when it addresses these linkages in the chain of exploitation. Nothing is being done by the current legal system where all the perpetuators in chain of pimps, brothel owners, procurer, traffickers are going scot free and earning highly by exploiting the trafficked victim.

E. The nexus between police-brothel owners-traffickers

More often than not laws are directed against the wrong people, attempts to abolish prostitution have usually only worsened condition of prostitutes – the women are locked up or prosecuted and thus left to the mercy of the underworld, since they cannot really trust the police. The clients on the other hand are never arrested and if they do appear in courts, it is only as witnesses. The other offenders are those who profit from prostitution such as procurers, pimps, brothel keepers, politicians, landlords and last but not the least the police.[67]

Before discussing the nexus between police and pimps, traffickers and brothel owners it would be interesting to note how our police enforces the provisions of Immoral Traffic (Prevention) Act. It is not surprising that the country's prostitution and trafficking laws are imposed selectively by the police wherein

67 S. K. Ghosh, *The World of Prostitutes*, 769 (1996, 1st ed.)

clients and organisers of the sex-trade tend not to be penalised,[68] while prostitutes found soliciting or practising their trade are apprehended. Using Immoral Traffic (Prevention) Act provisions especially section 8 which prohibits seducing and soliciting police regularly make arrests of sex-workers, extort money from them, evict them and take their children from them. According to the report of a Calcutta based NGO, on an average, approximately 80-90 percent of the arrests made in the state of West Bengal in 1990's were of female sex-workers and only a small fraction of arrests involved the brothel owners and traffickers. Over the years, arrests and prosecutions under Immoral Traffic (Prevention) Act of traffickers have remained relatively static, while all indications suggest a growing level of trafficking into the country.[69]

As a matter of fact issues relating to trafficking in women and children have always remained a low priority for police officials. The National Human Rights Commission report substantiates this view. A total of 852 police officials were interviewed across the country and only 19.9 percent of them stated that they had given high or medium priority to trafficking, a staggering 80.1 percent admitted that these issues received no priority or low priority. These facts speak for themselves and make it abundantly clear that trafficking remains low priority and is not considered a serious issue by a majority of police officials. 682 respondents who spoke about low or nil priority were asked to give reasons and the largest number of respondents said that they were busy with other activities and therefore had no time for trafficking issues, whereas 14.8 percent stated that trafficking was not

68 Annupriyo Mullick, Trafficking in Persons, Facts and Facets, *Social Change,* 131 (2004).
69 *Ibid.*

perceived to be serious, unlike other grave crimes. It was also mentioned that in respect of trafficking priority remains low or nil because of the diktats of higher ups. All these responses adding upto 43.8 percent of the total show that crimes under Immoral Traffic (Prevention) Act, 1956 are not considered to be of any great consequence.[70]

Supreme Court in **Gurmit Singh v. State of Punjab**,[71] has held that rape is one of the gravest violations of human rights as it 'destroys the soul'. If a crime of rape is reported to the police, it is considered a 'grave crime' and acted upon accordingly. It is, therefore, ironical that a child who has been rescued from a brothel after having been subjected to multiple rapes every day, does not invite priority from law enforcement agencies. It is obvious that current situation of extreme exploitation and abuse in the brothels has not been recognised or appreciated by the police.

Undoubtedly the most shocking and depressing aspect of the sex-trade is the involvement of individuals who represent the state as police, politicians and the border police and other powerful vested interest groups, including influential people. Jean D'Cunha in her study of prostitutes of Bombay and implementation of Immoral Traffic (Prevention) Act laws has already shown the attitude of police.[72] She cites the main reasons for the tardy implementation as the economic and political linkages between the prostitution racketeers, the police and the local big wigs. On top of the regular bribe received by police officers in some areas, the discovery of new minors brought into the trade a lucrative

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70 NHRC Report on Trafficking in Women and Children in India, 265 (2002-03)
71 AIR 1992 SC 324
72 Jean D'Cunha, *Prostitution Laws – Ideological Dimensions of Enforcement Practices*, 50 (1991, 1st ed.)

business. In the well documented case of a Nepalese child, Tulasa, who was discovered by the Bombay police, the later demanded Rs. 700 to turn a blind eye. Their silence was bargained down to Rs. 500 by the brothel owner. D'Cunha estimated that the monthly income of the Vigilance Crime Branch, Bombay in 1988 from such sources was Rs. 1,00,000.

The police deliberately and knowingly recorded misinformation about a rescued girl even if she insists that she is younger than eighteen and perhaps police register minors as adults because it is easier to release adults, whom then fall straight back into the hands of the pimps and traffickers. The extent of police co-operation with brothel keepers and traffickers and their harassment of sex-workers is a reflection of the double standards of morality prevailing in the implementation of the law.[73] Agents of the law are ordinary people, mostly men who have been brought up in this society that creates and totally accepts sex-work, while being unable to accept the sex workers themselves. Just as the law itself is unable to resolve these contradictions, nor can the police officers, police chiefs or court functionaries. There are known cases of magistrates asking lawyers defending prostitutes in court to send the latter to them. There are also known cases of the police refusing to accept First Information Reports (FIRs) against traffickers. Even senior police officers regard sex-workers rather than traffickers or the sex-industry as a whole as the focus of legal intervention.[74]

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73 Carolyn Sleightholme and Indrani Sinha, *Guilty Without Trial*, 61 (1996, 1st ed.)

74 *Id.* at 62

The law offers endless opportunities for the policemen to make money. In a study conducted in Calcutta it was observed that it is common practice for the police to inform brothel keepers how to avoid arrest, by warning them before raids so that they can leave the building, while the sex-workers are advised to put vermilion in the parting of their hair and pose as wives of local men.[75] Raids on brothels have become a routine and stereotyped police activity reported in all newspapers. Here again the male clients and those in charge of the organisation of the brothels are rarely caught in the net but the women who are numerous rarely escape apprehension.[76] Of the many reasons why police raids prove abortive, some are : leakage of information about a prospective raid; decoy police witness i.e. bogus customer, whose presence is material to the successful outcome of the raid, not being allowed to enter the brothels. Muscle power is used to keep out strangers; difficulties inherent in proving the existence of a brothel in the face of previously planned arrangements to send the girls out with the clients to a hotel or in view of "loan in debt" agreements produced by institutions showing that the rooms have been booked in the names of certain women who have an outstanding loan to pay to the hotel and absence of a brothel keeper, who lives elsewhere leaving the women to inform the raiding party that they operate independently and that there is no racket involved. Here, again difficulties are placed in way of proving that the premises are used as a brothel.[77]

The study conducted in Calcutta has an interesting comment made by a policeman.

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75 *Ibid.*
76 S. K. Ghosh, *The World of Prostitutes*, 149 (1996, 1st ed.)
77 *Ibid.*

> We must not disturb each other. For the sake of law we are bound to do our duty, but at the same time we must think about them. That is why before a combing operation we inform them in advance, at least half an hour before. We have suggested some procedures to them so that they can escape the related laws. If they can run their business smoothly, only then can we get our *hafta*. Our principle is to live and let live so that both of us can live without disturbing each other. But for this, they must give us more, because, the new Act has come and this is why we are taking much trouble to protect them.[78]

Police harassment is a common feature of sex-workers working in red-light areas along with harassment from landlord, hoodlums and antisocial elements. In most red-light areas except where women are well organized, the police are known to visit regularly for extorting money. Mass arrests are often made, primarily of the sex-workers and sometimes of the clients as well and although very few charges are actually framed after these mass arrests, money surely changes hands. An NGO by the name of Bharat Patita Udhar Samiti had a long drawn out battle with the police over this issue (police extortions), in the country's capital. In 1986 due to the intervention of the Chief of Crime Brach in Delhi police, the entire police force in charge of a part of Delhi's red-light area in G. B. road was replaced with a new police force. Things improved for some time but revived again after some months.[79]

The situation on the police front is obviously not flowery and rosy but rather gloomy and dark. As is clear from the foregoing pages there are very deep links and a strong nexus between traffickers, brothel owners and police. All of them are bent on exploitation of the community of sex-workers. Like parasites, they

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78 Quoted from supra note 73
79 Supra note 67 at 156.

are drawing every drop of blood from sex-workers leaving them highly vulnerable and exploited. And the current situation or mess is largely due to the law which stigmatizes the sex-workers (Sec. 8, Immoral traffic (Prevention) Act). This, provision is continuously being used by the police against the community while keeping all the provisions that were meant for traffickers and brothel owners in cold storage. For the situation to improve policy perceptions will have to undergo a sea change.

F. Child Prostitution

Child has been defined in the Convention of the Rights of the Child, ratified by India, as a person below 18 years of age. The definition differs in various legislations in India from 12 years in the Indian Penal Code to 18 years for a female child in the Child Marriage Restraint Act. However in the Immoral traffic (Prevention) Act, 1956 the term child refers to a person who has not completed the age of 16 years. A minor means a person who has completed the age of 16 years but has not completed the age of 18 years. Both the child and the minor have been given special protection under section 6.2(a) of the Immoral traffic (Prevention) Act.

Children are the future of a nation and a nation's best human resource for the prospective years as such the importance of a child for the overall growth of a nation cannot be over-emphasized. Bhagwati, J., in **Lakshmi Kant Pandey v. Union of India,**[80] while emphasising the importance of child said:

> It is obvious that in a civilized society the importance of child welfare cannot be over emphasized because the welfare of the entire community, its growth,

80 (1984) 2 SCC 244

> development depend on the health and well being of its children. Children are a supremely important national asset and the future well being of a nation depends upon how its children grow and develop.

Children are in fact the greatest gift of humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in their innocence they relieve the fatigue and drudgery of their parents in their struggle of daily life. Parents regain peace and happiness in the company of their children. The children signify eternal optimism in the human being and always provide the potential for human development. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of the potential human resource for social progress, economic empowerment and peace and order, the social stability and good citizenry.[81] But in the 21st century, Indian children are being trafficked mainly for the purpose of prostitution in brothels and the childhood of so many poor trafficked children is at stake.

Reports from all over the world as well as South Asian region indicate that trafficking and commercial sexual exploitation of children is rising alarmingly. This is attributed to large scale marginalisation of people, their socio-economic uprootment, concentration of income and opportunity in fewer hands due to globalization and consequent extreme vulnerability of women and children. The age of the victims at the time of induction is fast going down and it is affirmed by many that this is due to the spread of HIV/AIDS where customers are demanding virgins in preference of senior victims. It is the way they have reinterpreted

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81 P. K. Rout, Anatomy of Prostitution, *Cuttack Law Times*, 7-8, (2001)

the message of 'safe sex'. In metropolises like Mumbai, the traditional red light areas and brothels within them are simply over-flooded with young girl children. The agents of the flesh trade do not allow the young victims to go out or away from the brothels.[82]

Already India enjoys the dubious distinction of having one of the largest number of child prostitutes in the world. The figure is almost touching 4,00,000 with as many as 50,000 girls being smuggled in each year from its impoverised neighbours, Nepal and Bangladesh. Reports on child prostitution such as from the International Abolitionist Federation emphasises the direct link between the growth of child prostitution and the increasing number of male paedophilic tourists from Western Europe, U.S.A., Switzerland, Australia, Canada and the Gulf countries who visit Asian countries every year. While the countries where this problem has been perceived as acute one the Philippines, Thailand, Taiwan and Sri Lanka, India is fast catching up with them.[83]

Initiation of children into commercial sexual exploitation or prostitution is through different routes. Firstly children are inducted forcibly through abduction, kidnapping and deceit. Secondly, there are children of women victims who are inducted into the racket by pimps/brothel keepers and sometimes even by the mother herself. Thirdly caste and tribal sanctions/practises of certain casts and tribes like *Nats/Rajnats*, who were traditional performers in Uttar Pradesh and Rajasthan. *Bedias* of Uttar Pradesh, Rajasthan and Madhya Pradesh, *Bharti* and *Habura* who were so called criminal communities in U. P., *Dehredar* of former

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82 A Socio-Legal Study of Trafficking, N.C.W., 15, (2001)
83 S. K. Ghosh, *The World of Prostitutes*, 155, (1996, 1st ed.)

singers and dancers of U. P., *Gadharvas* or Singers in U. P., *Kanjars* a wandering community in Madhya Pradesh, Rajasthan and Uttar Pradesh is another route. The loss of traditional means of livelihood due to spread of modern forms of entertainment has now forced many of these communities to allow the exploitation of their girls.[84]

As mentioned earlier the trafficking of children for the purposes of prostitution is an immense problem in most South Asian countries and India is the regional hub. Bangladesh and Nepal are the dominant source countries into India. Estimates vary, but a safe guess is that several thousand Bangladeshi girls and five to seven thousand Nepalese girls are trafficked out of their countries and into India each year. It is estimated that Nepalese children constitute 20% (40,000) of the estimated 2,00,000 Nepalese prostitutes in India. Girls as young as seven years are trafficked from economically depressed neighbourhoods in Nepal and Bangladesh to the major prostitution centres of Mumbai, Calcutta and Delhi. In Mumbai an estimated 90 percent of sex workers are under 18 years of age and half of them are from Nepal. A similar profile is believed to exist in Calcutta, though Bangladesh surpasses Nepal as the primary source of children for Calcutta.[85]

India is also a significant source and transit country. Many child prostitutes in the brothels of India's major cities come from rural villages and they are trafficked under the same guise as children from Nepal and Balgladesh. Indian female children are trafficked to the Middle East and Europe, often forced into sexual

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84 Excerpts from National Consultation Workshop on Prevention of Trafficking in Women and Children, 8, (2002).

85 *Id.* at 9

slavery. This is similar to Bangladesh and Nepalese children who pass through India en-route to Middle East and the West. The reasons leading to the occurrence and rise in trafficking are common to all the South Asian countries. Poverty, lack of education and the low status of females and children from lower socio-economic backgrounds are all contributory factors. Lured by promises of good jobs or marriage, trafficking victims are frequently forced into debt bondage outside the country. Traffickers living abroad often arrive in a village and convince a child's family to let her leave with him. For reasons of ignorance, abject poverty and a social perception of the girl child parents willingly send their children. Upon arrival at the destination location, children are sold to 'friends' or 'husbands' and driven into prostitution. Criminal gangs conduct much of the trafficking and the porous international borders in South Asia facilitate their activities.[86]

As already noted our law enforcement agencies have very low priority for trafficking and prostitution and in the process they forget that hundreds and thousands of children are being trafficked and put to severe exploitation in the prostitution world thereby risking their future. A lot has to be done to improve the current situation which is proving as a curse for lakhs of Indian as well as Nepalese and Bangladeshi children trafficked into India for prostitution.

G. Child Sex-Tourism

(a) Indian Scenario on child sex tourism

Tourism is today the world's largest industry contributing around 11.6 percent of the G.D.P. and employing approximately

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86 *Ibid.*

9.4 percent of the labour. Currently about 2.4 million international tourists arrive in India every year. This comprises 0.4 percent of the world's total tourist traffic (fiscal year 2000). According to one estimate, 40 million tourists, constituting 4 percent of world's tourism traffic, are expected to visit India by 2020. A study conducted by Centre for Monitoring the Indian economy (CMIE) shows that the number of tourists arriving in India rose from 20,26,743 in 1999-2000 to 21,52,848 during the period 2000-2001. Foreign exchange earnings from inbound tourists in the same period grew from US $ 2,443 million to US $ 2,717 million.[87] Though tourism is beneficial but at the same time it also provides anonymity and opportunity for various illegal activities. Of late, aggressive tourism promotion has placed greater emphasis on its leisure and recreational aspects. Many tourists have interpreted this as an opportunity to gratify their sexual proclivities. When a tourist is in foreign land, the cloak of anonymity relieves him from the social and legal constraints of his own country. A Japanese proverb goes, "the traveler knows no shame, away from the home he becomes less moral." The anonymity enforced by tourists, coupled with their craving for pleasure and excitement and the poverty and unemployment of the local people, contribute to the growth of sex tourism in areas frequented by tourists. Not all tourists are sex tourists but some of them definitely are.[88]

Before pondering upon to the recent phenomenon of child sex tourism it would be worthwhile to have an understanding of the concept of sex tourism. Otherwise known as tourism prostitution, sex tourism can be defined as tourism for which the

87 NHRC Report on Trafficking in Women and Children in India, 186, (2002-03).
88 *Ibid.*

main purpose or motivation is to consummate commercial sexual relations.[89] Tourism has been promoted extensively as a developmental strategy resulting particularly from Western developmental policies, the influence of multinational corporations and the economic impact of U. S. military presence abroad. Worldwide tourism is a $ 3.4 trillion industry.[90]

It is in this context that sex tourism has flourished in mainly the countries of South-East Asia. Sex tourism generally results in the development and expansion of industries providing sexual services and they cater primarily to Western and Japanese men who travel for business or leisure activities. Although prostitution and sex tourism are global phenomenon, the growth of sex tourism in recent decades has been particularly pronounced in Asia. Prostitution has a long history in the region but sex tourism is in part an outgrowth of U. S. military bases and 'rest and recreation' centres established there during the Vietnam war. The growth in international tourism, linked to production of leisure services, occurred simultaneously with the placement of American troops in the region. The infrastructures put in place were well suited to the expansion of the tourist industry when the soldiers withdrew.[91]

Western imperialism, colonial legacies and racialized notions of sexuality continue to shape the structure and operation of the sex-tourism industry. For instance, the promotion of tourism including packaged sex tours, advertises the sexual availability of young women and girls to tourists, highlighting the notion that Asian women are submissive, exotic and thus sexually desirable.

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89 Praveen Sethi, *Development and Implications of Sex-Tourism*, 3, (1999, 1st ed.)
90 Jody Miller and Dheeshan Jayasundra. *Prostitution, Sex Industry and Sex Tourism*, 470, (2004, 1st ed.)
91 *Ibid.*

Moreover, sex tourism is often termed as beneficial to both third world economies and individual sex workers and their families, thus assuaging possible guilt on the part of sex-tourists. In fact, sex tourism is well documented in a number of countries including Thailand, Philippines, China, Vietnam, Laos, Cambodia, Brazil and Dominican Republic.[92]

The evolution of sex tourism in South-East Asia has generally gone through four distinct stages. The first stage is that of indigenous prostitution, in which women are already subject to concubinage and bonded prostitution within a patriarchal society which regards such sexual relations as acceptable and normal. The second stage is that of economic colonialism and militarisation in which prostitution is a formalized mechanism of dominance and a means of meeting the sexual needs of occupation forces. For example, the American presence in Taiwan from the Korean war through the end of Vietnam war provided a major stimulus for tourism prostitution centred on Shuang Cheng Street in 'Taipei'. Similarly, until the closure of the bases, the 12,000 registered and 8,000 unregistered hostesses in Olongapi city provided the major source of sexual entertainment for the United States military personnel based at Subic Naval Base and Clark Air Force Base in the Philippines. The commoditization of sexual relations is marked in the third stage by the gradual substitution of overseas military forces by international tourists. The fourth and current stage, for most of the nations of South-East Asia is that of newly industralised nation status. Despite the increased material

92 *Ibid.*

standard of living for many areas, tourism prostitution or sex-tourism is still widespread.[93]

Thailand seems to be the leader globally as inflow of tourists especially male tourists for the purposes of sex-tourism has been highest in that country. A recent study conducted in Thailand suggested that prostitution is the largest underground industry in that country, generating between 10% to 14% of the country's GNP.[94] It seems likely that in no other country has tourist motivation been so explicitly linked to sex. Until the end of 1980's the Thai government placed great emphasis on sex tourism as a means to earn foreign exchange to the extent that ministers often openly advocated tourism prostitution as a means of job creation. But since 1990 onwards public statements have been emanating from the government to control sex-tourism, but the reasons for this probably lie more with concerns for AIDS and the image of the country overseas than in any intrinsic changes in social attitudes. Thai Deputy Public Health Minister once said:

> Thailand's profitable tourist industry has been an inhibiting factor in promoting AIDS awareness . . . more than two thirds of the overseas visitors entering Thailand are, single men and medical officials avoided publicing the appalling AIDS statistics for fear of damaging the country's healthy tourist business . . . but it is long past time for the government to change Thailand's image as a sexual paradise.[95]

Despite efforts made by the Thai government, it still remains one of the hottest destinations for sex tourism for the international tourists worldwide.

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93 Supra note 9 at 10-11.
94 *Ibid.*
95 Supra note 89 at 15-16.

(b) Children involved in sex tourism

One outgrowth of sex-tourism industry has been a rise in the involvement of children in these markets. Child sex-tourism in particular has grown in recent years as Western tourists who fear AIDS amongst adult prostitutes increasingly demand younger children. Child sex tourism is seen as an Asian phenomenon though it exists worldwide. According to recent estimate by the United Nations International Labour Organisation, nearly one million children in Asia are involved in sex tourism. Thailand, Sri Lanka, the Philippines, Cambodia and India are believed to be amongst the main centres of child sex-tourism.[96]

In India, the abuse by tourists of both male and female children has assumed serious dimensions. Unlike Sri Lanka and Thailand, the problem has not been seriously tackled or discussed openly and has remained more or less shrouded in secrecy. The likelihood of child abuser being caught and punished is also low. The silence of the community and its unwillingness to speak out and openly discuss the issue has further compounded the problem.[97] In our country the problem of child sex tourism has not caught the fancy of the general public. For a lot of people reports of child sex tourism appear fictional. Many feel that they are utterly shocking and still tend to believe that they must be exceptional. The state, the enforcement agency and the stakeholders in the tourism industry, reinforce the impression that these are indeed exceptional cases. As the number of cases of sex tourism that get exposed are exceptionally small, these elements tend to use the number to support their argument that the incidence is small,

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96 Supra note 90 at 491

97 NHRC Report on Trafficking of Women and Children in India, 186, (2002-93)

rather than treat that number as either an indicator or, as the tip of the iceberg, or a failure in reporting and detection.[98]

The following reasons are usually produced to explain the rising phenomenon of child sex tourism.

First, these tourists experience freedom from the social constraints of their home countries. They may see the children of third world countries as inferior. They may justify their behaviour by believing that there are no social taboos in that country regarding having sex with children. They may believe the misconception that children are less likely to contact STDs such as HIV. There is a distorted belief in some Asian countries that having sex with a virgin will cure HIV. These notions are unfounded and false. In fact the average rate for HIV amongst rescued children from brothels is 50 percent and some rates are as high as 90 percent. Lastly poor countries are often under strict economic pressure to develop tourism as a source of income. Sadly, sometimes those governments turn a blind eye towards this devastating problem in pursuit of that income.[99]

As far as the victims are concerned vast majority are exploited girls, these victims include a growing number of boys as well. They are most often children from poor families who come from urban and rural areas. The majority is between the ages of 8 to 18, although there are evidences that the fear of AIDS is causing a greater demand for even younger girls. These children are deceived, kidnapped or sold. They are also runaways or children who turn to prostitution on their own to survive to improve their

98 Study of Coastal Sex Tourism and Gender, NCW, 94, (2003)
99 *Ibid.*

standard of living, or to increase their access to the consumer goods. Those responsible for sexually exploiting these children represent a wide variety of behaviours, origins and motives. They constitute a wide range of customers, intermediaries, recruiters and other perpetrators who profit from the sexual exploitation of children. The vast majority of customers are locals, inhabitants for whom sex with a child may often be a question of availability rather than preference. During the last decade, however, international tourism for sexual purposes has grown and consequently, an increasing proportion of the exploiters are foreigners.[100]

(c) Role of myths in promoting child sex tourism

Several myths have been responsible for prevalence of child sex tourism. The sexual and procreative potentialities and abilities of the female sex have forever remained enigmatic and frightening to man from the primordial times. These potentialities have sometimes been equated with the fertile mother earth. This has given rise to equating the sexual act with that of ploughing a fertile land and sowing a seed in it. This was perhaps the most innocent way of looking at it. But myths did not stop there. The sexual and procreative abilities of the female sex, particularly that of the virgin, have also been attached with several other qualities, important among them are the ability to take away forces that debilitate masculinity, absorb germs that cause disease and offer elements that fortify masculinity. Other important gifts of sexual

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100 *Id.* at 95.

contact with a virgin was success and prosperity in trade and commerce.[101]

The hold of these myths on the minds of the oriental men was widespread and deep. Men fearing loss of potency and fear of sexual diseases sought sexual communion with virgins in order to overcome these problems. Among the important premises riding the myth were the elements of 'contact', 'absorption', and 'transfer' all of which made it necessary to have an uninterrupted contact. This myth could not come true if the contact was interrupted by anything including a membrane. Thus, minds ruled by this myth could not accept the idea of using a condom, which was obviously seen as an interrupting membrane.[102] In the history of progress of rational medicine, one factor has been seen most consistently than any other – the proliferation and continuity of irrational medicines in all those areas where rational medicine could not convincingly offer a remedy, be it common cold, jaundice, allergic reactions or lukoderma. HIV/AIDS recently joined the ranks of these incurable diseases where rational medicines prove helpless, mythical solutions override prominently. How correct was it to expect that people overridden with myths seeking protection or cure from a deadly infection would use a membrane which precisely blocked the benefits of the traditional mythical remedy? Sex exploiters conveniently interpreted 'safe sex' as 'sex with virgins and children', thus obliterating the need for condoms as a safety precaution. The demand for children as objects in the flesh market shot up phenomenally.[103]

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101 *Id.* at 95-96
102 *Ibid.*
103 *Ibid.*

The possibility that 'safe sex' could be interpreted in this manner was barely taken into consideration by the policy makers and head of international programmes against HIV. This interpretation pointed at a dangerous trend. Rejection of condoms while exploiting children as sex objects was not merely a result of ignorance or lack of access to condoms. It was perhaps a conscious decision to 'pass on' the sexually transmitted disease in order to get rid of the infection.[104]

(d) Paedophilia

The term 'Paedophilia' is a misnomer. Paedophile literally means a person who loves a child. Sometimes scholars exhibit insensitivity in using terms to describe and analyse certain phenomena, while journalists make misnomers popular. Usage of the term paedophile is one such serious error committed by media, scholars and child rights activists alike. The term paedophile offers dignity to the phenomena of child sexual exploitation, which consists of abominable acts and crimes against innocence. At times, this term allows scope for lenient consideration. Paedophilia is touted to be a personality disorder that needs psychiatric help or genetic disorder, which perhaps cannot be corrected and hence needs to be accommodated as first variant in human personality like many other diversities of human life. The lenience is then further stretched by interested elements to project paedophilia as a mere variant in sexual choices.[105]

Though the term paedophile has been misunderstood, for the purpose of present work the term 'paedophile' would signify a

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104 *Ibid.*
105 *Id.* at 99.

person who has sexual relations with a child, whether a boy or a girl, whether with the consent or without consent of the child, as consent in any case of a child is no consent. Many sex tourists are paedophiles who seek out children to satisfy their sexual urges. They can be of any nationality and come from different professional backgrounds. Though some of them are loners, paedophiles are usually members of highly organised networks. They are also very cautious in their operations.[106] Many of them make frequent changes of accommodations and communicate through coded messages. There are some who take the indulged view that paedophiles are pathological cases, in need of treatment. We become absorbed with their psychological makeup and neglect what should be our overriding concern, namely their behaviour and action. It is their behaviour and action that destroys children's lives and this is precisely the factor which should be the focus of law enforcement.[107]

(e) Modus Operandi

(i) Running an Orphanage

This is a typical modus operandi of many paedophiles. In a case in Tamil Nadu, a Swami of a religious sect running an orphanage in a sprawling campus was found to be a child abuser. A large number of children residing in the orphanage were exploited by the accused over a long period of time. The sordid happenings in the orphanage came to light when the police raided the place on the complaint of an escaped child and arrested the swami.

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106 Supra note 87 at 186-187
107 *Ibid.*

Times of India reported the case of a person accused of sexually abusing children of homes of destitutes in Vishakhapatnam. Parvi Raj alias Babul Hope, an Australian founder consultant of the Vishakhapatanam based voluntary organisation 'New Hope', jumped off Puri Tiripathi Express a little distance form Vizianagram station, Vishakapatanam. This paedophile had sexually abused about 50 children, some of them physically handicapped under the guise of running several homes for children in coastal Andhra Pradesh and Orissa.[108]

(ii) Good Samaritan

In another case, one William Heum, a Dutch national who posed as a good samaritan, set up an orphanage called 'Little Home' in Poojeri village, 3 kms, from Mahabalipuran in Kanchipuran district in Tamil Nadu. There were 42 school children in the age group of 10-20 years in the orphanage. Heum used to drug the children and subject them to sexual abuse. His crimes were exposed when one of the children escaped and filed a complaint with the police. During the police investigation it transpired that in the name of charity, Heum with the help of his wife, had been abusing the inmates of the orphanage for the past 8 years. Heum also entertained a large number of foreigners at his place and allowed them to sexually abuse the children.[109] Nobody can forget the sensational case of Freddy Peats, who used to run the infamous child abuse racket in Goa in the early 1990s. Soon after Freddy Peat's case, the case of Brinkman Helmut, a 57 year old German Paedophile was brought into the notice of Calangute

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108 See, Times of India, 26th August, 2001 (3)

109 NHRC Report on Trafficking in Women and Children in India, 187, (2002-03)

Police station in Panjim in 1999. Though he was convicted but he later managed to escape.

In fact tourism related paedophilia is not a new phenomenon in Goa. It has been noticed that the migration from Karnataka to Goa is a major contributory factor in this trade. Most of the children who are victims of sex tourism come from Bijapur, Sitapur, Karwar and Belgaum. With the promotion of newer and newer beach tourism destinations, communities and especially children have become vulnerable to sexual exploitation. Reports emanating from Goa suggest that tourists from Goa are moving form Goa to area of North Karnataka such as Pargana and Karwar, which are presently being developed for tourism. Foreign tourists have settled permanently in the Om and Kudle beaches, which have become hideout points and these are also the areas where tourists are sexually exploiting the children.[110]

(iii) Films and documentaries

Another paedophile modus operandi is to claim to be producer of films and documentaries. It came to light in the case of a Swiss couple arrested by police in Mumbai. A Mumbai based NGO called FACSE (Forum against Child Sexual Exploitation) learned of the couple's activities and informed the police. When the police raided the hotel room, they found the male accused sandwiched between two minor girls, all nude. The second accused, the wife of the first accused, was taking photographs. The man held a high position as a General Manager in a Pharmaceutical company and the woman was a trained nurse. At the time of arrest, the man was mainly concerned about his laptop

110 Study of Coastal Sex-Tourism and Gender, NCW, 3 (2003).

which had recorded and stored all the materials. It was seized and confiscated by the police, who found that the couple was involved in a child pornography and circulation racket. The materials indicated that the accused routinely visited other Asian countries as well. Police investigated the case, filed charge-sheet and the court convicted the accused persons. Court stressed the need for sensitivity in dealing with children involved in cases of paedophila and acknowledged the trauma of children who depose before the court in such cases.[111]

A major breakthrough was achieved in an international online paedophilia racket when the National Hi-tech crime unit of Europol cracked an internet paedophile ring known as Shadowz Brotherhood, News Online on 1st July, 2002. Paedophiles working online are generally weary and suspicious of newcomers into their social circle and like many criminal groups operating in cyberspace, they are skilled in counter surveillance.[112] His website was being run by a group of hardcore paedophiles called 'administrators' who operated a star-rating system. These administrators would vet new members who would then receive a 'one-star' rating allowing them to enter fairly tame newsgroups and bulletin boards. To gain further stars they had to upload images of child sex abuse for viewing and down-loading by other members. As the gained more stars they were allowed access to restricted sites and protected rooms containing the most perverted material. An administrator would be on duty 24 hours a day to access new images. Proxy servers were used to disguise where members were accessing the site from and it is believed that special software was

111 Supra note 109 at 187
112 Supra note 110 at 109

used to give those involved cyber anonymity. The police arrested 50 persons from all over Europe including 31 in Germany and six in Britain. Others were held in Belgium, Holland, Sweden, Italy and Spain, but the inquiry dubbed operation twins – also stretched across the U. S., Canada, Denmark, Romania and Switzerland. A substantial quantity of equipment was seized including computers and laptops containing images of child abuse, videos and C.Ds. Images were among the worst and most horrific that had been ever seen, some showing young children and even babies being abused.[113]

(f) Child Pornography

Child pornography and sex tourism are closely linked. Pornography deals with the consumption of a whole range of visual, audio or audio visual impressions created and encoded in physical or electronic forms which record human being, their persons or parts thereof in such manner as to lead to sexual arousal in a person who is exposed to it. The sole purpose of pornography is sexual arousal and allied psychological pay offs to the person exposed to it. Pornography as an activity also covers creation, transmission and dissemination of the pornographic material for financial purposes. Practically pornography covers whole or part of bodies of naked persons in sexual acts itself, etc.[114]

Pornography has been an integral part of the sex trade. Pornographic material used to be made primarily on young women. Over a period of time, a large number of individuals and situations

113 *Ibid.*
114 Supra note 110 at 113

have been made the objects of pornographic material. This has been directly in response to the mind boggling variety in the demands for kinky sex. In association with the trends in the general sex-trade, the demands in the pornographic industry also changed and the demand for children shot up. What is shocking is the trend of a combination of pornographic web sites that show beating, torture, burning and whipping etc. of children, synchronised with the screams of the victims. This trend supports the argument that commercial sex with children has a physically violent element inseparably attached to it.[115]

Pornographic material is damaging both to the victim as well as the viewer. The entire society in general pays the price of getting exposed to pornographic material. Pornographic material, especially that made on children, tries to normalise what is considered as the most heinous crime. It generates a demand where it does not exist. It guides the potential exploiters to work out his plans of exploiting an innocent unsuspecting child in the neighbourhood.[116]

Child pornography is produced, collected and used by paedophiles mainly for their own sexual arousal and gratification. Photographs, videotapes, films and magazines of children in sexual poses and sexual acts make up the multi-million dollar global world of child pornography. One of the most important tasks in a paedophile's life is his collection of pornography. The pornography collection of a paedophile is never complete and he must always add to it. To acquire their collection, paedophiles will exchange images amongst themselves. Unlike commercial adult obscenity

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115 *Id.* at 114
116 *Ibid.*

dealers, domestic child pornographers rarely, if ever, openly advertise or solicit new business. Their operations are underground and restricted. They mostly deal with paedophile customers. Paedophiles almost always operate like secret societies of predators. They often use the term 'prey' to refer to their victim. They follow elaborate paths and extremely cautious steps to lure unsuspecting, unsupervised children to interact with them and build on exclusive relationship of sharing same common secrets and ideas that fascinate young and teenaged children.[117] They build up rituals of maintaining secrecy about their relationship with the victim and also construct a protective cordon around their heinous plan with subtle threats woven with mysterious dangers that could befall the innocent victim. The pornographic records of children and young women have two purposes. Firstly, they are used to intimidate the victim into continuing to submit to the demands of the child sexual exploiter. Secondly, paedophiles also enjoy an abnormal sense of possession and control over the victim by having in possession and by having frozen the most secret and private moment of the victim in the picture. In this sense, pornographic material is a permanent record of crime and every time it is consumed, a fresh attack is made on the victim who is covered in the material.[118]

As stated earlier, sex tourism and child pornography are closely interconnected and are mutually reinforcing crimes. Sex tourists have been in the forefront in the production of pornographic material in the form of pictures, films, etc., depicting images of nude children and sex with children, mainly children

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117 *Id.* at 115
118 *Ibid.*

from developing countries, their safe destinations. They have also been instrumental in transferring the pornographic material. Their work has become amazingly easier and safer with the advent of internet technology. Indeed both these crimes are mutually linked and co-existent.[119]

There is growing evidence that the victims of child pornography are not just the children who are forced to appear in it. Research carried out in U. S. revealed that over 30 per cent of individual convicted of possessing child pornography also had sexually abused children in their neighbourhoods. That means that if you find someone in possession of child pornography there is a better than one in three chance that, that person is also a child abuser. So any child, that person is in contact with could be in danger.[120] A look at the Indian State of Goa which has become infamous as a paedophile destination becomes imperative.

(g) Indian position vis-à-vis child sex tourism with special reference to the state of Goa

In the small western coast state of Goa, which is a tourists paradise, has off late become a sex destination for many visiting national and international tourists. A small number of men who may be described as hardened sex tourists have identified Goa as a site in which they can accommodate their sexual interests. There is a growing fear that if steps are not taken to check tourism related paedophilia, it will be institutionalised. As stated earlier, sex tourism in Goa became known all over the country after the infamous case of Freddy Peats. Peats had been operating in Goa since 1980 without arousing suspicion. He was considered a

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119 *Id.* at 115
120 *Ibid.*

respectable man, a Good Samaritan, who provided shelter to young homeless boys and girls. He was in fact actually involved in luring young children into prostitution and subjecting them to sexual exploitation. The discovery of nearly 2,300 photographs of nude children, some of them engaged in sex, in some cases with Peats, illustrated the depths of his depravity. Investigation of the case by Central Bureau of Investigation (C.B.I.) also brought to light the involvement of paedophiles from Australia, Sweden, Thailand, France and Germany. Investigations by CBI revealed that a number of foreigners used to visit Freddy Peat's orphanage and take the boys out to have sex with them. Peats was convicted and sentence to long term imprisonment.[121]

A Swiss couple arrested and accused of child pornography in 2000 on Madh Island, a beach in Mumbai, is yet another case where besides having abnormal sex with a number of slum children by the side of the Mumbai beach in the rooms of a star hotel, the couple also made pornographic films on these children for sale and circulation in Europe and U.S. In fact several young children have grown up to be beach boys in Sri Lanka as a result of being initial victims of foreign tourists who sexually exploited them. In a raid in Stockholm, Sweden, 1996, Swedish police discovered blue films on the beach boys of Sri Lanka. The footage ran for over 300 hours.[122]

It would be worthwhile in the end to have a brief look at the international position as far as children involved in sex trade are concerned.

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121 Supra note 109 at 189
122 *Id.* at 188

(h) International Position vis-à-vis child sex toruism

(i) U.S.A. and Canada

The supply of children to the sex trade is linked with homelessness and family breakdown. Teenaged children, having been thrown out of home or having run away following physical, mental and or sexual abuse, neglect, parental drug or alcoholic addiction sell sex for survival. In Canada at Montreal alone, there are several thousand juveniles involved in the sex trade.[123]

(ii) Italy

Children aged 5 to 14 years have been found prostituted in Sicily, Italy.[124]

(iii) South Africa

Women and young girls from Thailand, Taiwan and Russia work in brothels in the suburbs of Johannesburg. Estimation of the number of child prostitutes in the country range from several thousand to several hundred thousand.[125]

(iv) Australia

Children are trafficked into Australia from several Asian countries. Local children are also involved. There is evidence of child prostitution.[126]

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123 Study of Costal Sex Tourism and Gender, NCW, 120 (2003)
124 *Ibid.*
125 *Ibid.*
126 *Ibid*

(v) Venezuela, Costa Rica

About more than 30,000 Americans and several thousand more Canadians have retired to Costa Rica. Many of them have chosen the country because of the easy access to the under aged prostitute children there.[127]

(vi) The Philippines

Between 60,000 to 1,00,000 children are involved in the sex industry. Child prostitution flourished during the 1970's and 1980's as a direct result of U.S. Navy presence, aggravated factors were mass scale tourism development and increased sex tourism as also poverty and dislocation.[128]

(vii) Indonesia

Indonesia seems to be attracting increasing number of sex-tourists. Boys are mainly involved in selling sex to the tourists, although teenage boys are among the transvestite group serving local men in major cities.[129]

(viii) China

Estimates range from 2,00,000 to 5,00,000 children. Girls from pastoral villages of the minority tribes in Yuan province in South Western China are being tricked by phoney offers of jobs and being sold into prostitution in Thailand.[130]

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127 *Ibid.*
128 *Ibid*
129 *Ibid.*
130 *Ibid.*

(ix) Vietnam

20% of Vietnam's growing commercial sex industry is comprised of children under 18 years of age. The development of tourism is one of the main causes of increased child prostitution. Many foreigners who come to Vietnam think that Vietnam will also provide cheap and safe tours and will present little danger of AIDS and other venereal disease, particularly in sexual intercourse with children. Many businessmen from Hong Kong, Singapore and Taiwan believe that buying a girls virginity will help them succeed in business and will give them strength and youth.[131]

(x) Thailand

Figures from Thailand range around 8,00,000 children involved in Thai sex industry.[132]

(xi) Taiwan

The estimated number of children in sex industry has been estimated to be around 1,00,000. Taiwanese aboriginal children are disproportionately represented among sexually exploited children, they make upto 20% of the total, although the aboriginal community constituted only 2% of the overall population.[133]

(xii) Sri Lanka

Child sexual exploitation in Sri Lanka is a recent phenomenon. It is linked with the rapid growth of tourism since the 1970's although a local demand also exists. Around 10,000 children aged 6-14 are virtually enslaved in brothels and a further

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131 *Ibid.*
132 *Id.* at 121.
133 *Ibid.*

5,000 aged between 10-18 are working independently in tourist resorts.[134]

(xiii) Bangladesh

In the past 10 years an estimated 2,00,000 girls have been trafficked, including girls as young as 9 years.[135]

(xiv) Nepal

An estimated 2,00,000 Nepali girls under 16 years of age are to be found in Indian brothels. About 5,000 to 7,000 girls are trafficked each year.[136]

(xv) Burma

Around 10,000 young Burmese girls are trafficked to Thai brothels every year.[137]

(xvi) Latin America

In 1990, there were nearly 60,000 children aged between 7 and 18 living on the streets of the Dominican republic. They are all targets of sexual abuse, prostitution and pornography.[138]

(xvii) Africa

In Africa, many countries are faced with the rising child prostitution problem, partly due to poverty, migration from rural

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134 *Ibid.*
135 *Ibid.*
136 *Ibid.*
137 *Ibid*
138 *Ibid*

areas to urban areas and due to advent of tourism. The linkage with tourism is exemplified by the situation in Senegal.[139]

(xviii) Eastern Europe

There is increasing evidence of children being commercially sexually exploited in Eastern European countries. There are reports of children from Russia, Romania, Poland and Czech Republic entering prostitution, being sexually exploited by foreign visitors and trafficked to brothels in Western Europe and of disappearance of children and production of child pornography.[140]

The current situation as seen from the foregoing pages is an ominous sign for things to come if appropriate measures are not taken immediately by our government as desperate situations require desperate measures. The noose will have to be tightened around those who are using children for satisfying their sexual urges and a clear message has to go to the world that India is not a paedophile destination and anybody coming to India with such intentions will have to pay for the consequences. A lot needs to be done from here onwards to improve our image internationally and that will only happen if strong and tough measures are taken and highlighted as well.

H. Call Girls and Escort Services

As the name itself suggests call girls are females involved in sex work who are available at a call and of course for a price to engage in sexual activity with the client who calls her. So the term call girls is typically applied to a female sexual worker who does

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139 *Ibid.*
140 *Ibid.*

not carry on her trade at the place where she lives but at a hotel or the residence of her client.[141]

The call girls are the elite of the contemporary sex-industry and are the highest paid amongst the sex-workers, catering to the richest clientele. Some women work independently from their own apartment houses, advertising through contacts or other agencies in return for a commission. Often they use telephone for fixing appointments, some of them are in the payroll of rich clients. They generally have smooth working except when the places where they work are raided by the police and closed down.[142] Usually call girls are more educated and attractive than female sexual workers living in brothels and are often engaged in some other profession. Their rates are on an average much higher and they have more choice regarding their clients than the sex-workers in brothels. Appointments with clients as stated earlier are made on telephone or internet either themselves or through their brokers or agents.[143]

Promila Kapur, in her study on call girls[144] made way back in 1978 states that as far as clients are concerned nearly 80 percent were married and held high positions in coveted professional fields. The earning of the call girls ranged from Rs. 50–500 per hour and Rs. 400 to 10,000 per night (1978), they tried to take good care of their health by visiting physicians, whenever necessary. Forty percent of them reported to having had STDs at any time and 35 percent had induced abortions. Many of them wanted their clients to use a condom to avoid STDs and pregnancy but most clients refused to do so. They were often entertained with

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141 Moni Nag, *Female Sex Workers and their Clients*, 63 (1996, 1st ed.)
142 S. K. Ghosh, *The World of Prostitutes*, 49 (1996, 1st ed.)
143 Supra note 142 at 63
144 Promila Kapur, *The Life and World of Call Girls in India*, 174, (1978, 1st ed.)

alcohol and meals by their clients.[145] In another study by the same author in 1993 on call girls in Delhi, she found that those belonging to the upper middle class became more conscious of AIDS and insisted about using condoms. They related instances of turning down clients who refused to use a condom. But the majority of them admitted that condom was not used in most of their sexual acts mainly because both themselves and their client were too intoxicated to either use it or insist on using it. In general the awareness about STDs increased amongst call girls, but the majority were unaware of the link between STDs and AIDS. The demand for oral sex by clients remained as high as before.[146]

The hallmark of a call girl is that she operates in secrecy. In majority of the cases she makes utmost effort and takes precautions to keep her identity as a call girl hidden. Outwardly she maintains a semblance of respectability in the social strata and very few people know that actually she is a call girl. Men with wealth and influence, nowadays, go in more and more for call girls due to the secrecy it involves. Consequently, the number of call girls is rising steadily and spreading amongst colleges and school girls, working unmarried women and even housewives. In fact most of the call girls have regular jobs and work as secretaries, receptionists, telephone operators, models, extra film actresses. Call girls are now being increasingly used in industry as manipulating means of influencing those in position for material benefits.

If we closely analyse the system of call girls based on prostitution we will realise that it is of a recent origin. Since it is of

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145 *Ibid.*
146 *Ibid.*

recent origin then obviously the current socio-economic factors must have contributed to its growth. What is worth noticing is that most of these girls involved in this system are not destitute poor women who are finding it difficult to survive, rather these girls are from well to do families, majority of them are already into good jobs. So, the pertinent question which arises is, that what is the motivational factor which pushes these girls into becoming call girls. The answers are not difficult to find. The culture of 70's, 80's, 90's and 21st century is a consumerist culture and these girls are a part of that consumerist culture and they resort to such casual sex work only to supplement their incomes so that they can keep pace with the requirements of this consumerist culture. Take for example a girl who as a receptionist earns Rs. 8,000 as pay. This much of money is sufficient for her to make both ends meet. But her colleague who is into call girl business tells her that she earns upto Rs. 50,000 a month by resorting to call girl prostitution. The girl gets tempted as she can by offering her sexual services earn almost five to ten times of her current salary.

In this type of sex work, she has double advantage, firstly, of course, that she is being highly paid for her sexual work and secondly because the nature of the work being highly secretive she is able to maintain her status as a good and morally decent lady. The modern technologies like the mobile and the internet have given a big fillip to this profession which is being witnessed in big towns with multi-cultured society and massive economic

prosperity. In fact the call girl culture is the indirect impact of the economic and technological development of our social structure.[147]

On the lines of the call girl system, there has arisen the escort services which again cater to the sexual demands of its clients. In big cities like Bombay, Delhi, Calcutta, Madras, Kanpur, Bangalore etc., these secret agencies or escort services have chopped up which when approached arrange all types of girls to suit different tastes. On demand they provide girls to hotels, guest houses and to other persons at their places. Several men procure charming and seductive girls from these agencies and send them to offices, big and small politicians and their henchmen and in return get contracts, permits and other such favours. Taxi drivers and autorikshaw wallas carry the girl from the agency to the place where she is wanted. The girl is accompanied by a young man to look like her husband to hood-wink the police check. The driver and the so called husband leave the girl with the customer/client after taking the price which may vary from Rs. 200 to Rs. 2000 for a little while or for the whole night as the case may be. At the appointed time, she is brought back and left at her house. In the whole process the chief gainer is the operator of the escort service who shares little money with the accompanying attendant, driver and the girl.[148]

The girls and women working with escort services who are more or less like call girls, face a lot of hardship in this kind of work. The first and foremost is that being at the client's place and that also all alone they are highly susceptible to physical abuse by

147 Shobha Saxena, *Crime against Women and Protective Laws*, 270 (2001] 1st ed.)

148 Puran Bataria, *Indian Attitude Towards Sex*, 79, (1992, 1st ed.)

the client. In fact many cases have come to light where the call girls have been severely beaten, sometimes even to the point of death. The greatest danger in this type of work is the constant threat to life of the girl involved. Being alone, being secluded, without backup she is totally at the mercy of her client.

An incident described by Jeannette Angell in her book Call Girl[149] explains the above point very clearly, she describes her encounter with a freak in the following words:

> I remember being terrified about having no control over what was happening, terrified that he wouldn't use a condom and I wouldn't be able to stop him. I remember the moment of relief when he put one on and the immediate fear again as he started to tie my wrists together with a pillowcase. I screamed then. I knew that once I was tied up, there would be no control at all and I struggled and flailed until he gave up. After that, he was even nastier in what he had to say. I didn't take my eyes off him and warned him 'if you hurt me peach will never send anyone to you again.[150]

The above mentioned incident highlights as to how susceptible call girls are to all kinds of physical and verbal abuses at the hands of their clients and it is primarily because of the heavily biased environment and surroundings that they work in, where they have no support to fall back to. Secondly, and very importantly the nature of the work of a call girl makes her highly susceptible to contracting all types of sexually transmitted diseases as well as AIDS. As already stated above oftenly the clients straightaway refuse to wear condoms as it decreases their pleasure in the sexual activity. The call girls being in a vulnerable position

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149 Jeannettle Angell, *Callgirl, A True Account*, 52 (2004, 1st ed.)
150 *Ibid.*

can not in any way impose her wishes on the client if he refuses to do so in the first instance. Moreover, most of times the client as well as the girl are intoxicated before the sexual activity actually takes place and in such state of intoxication it become next to impossible for the client to take any precaution.

Even health authorities find it very difficult to implement intervention projects amongst the call girls because of the highly secretive and underground nature of their work. As a matter of fact, the term sex workers would not aptly apply to call girls because they would refuse to be acknowledged as sex-workers. It is their double standards, so to say, that they feel ashamed of professing publicly what they practice or do and as such they would certainly be left out of the ambit of any beneficial legislation or project that is launched for the sex workers in the country.

III. Sum-Up

This chapter amply highlights that the gains to be had from the current policy on sex work are not only minimal but dismal as well. The incidence of sexually transmitted diseases is on the rise amongst the sex-workers of India. The chapter highlights that because of them being in a vulnerable position, they are highly prone to acquiring sexually transmitted diseases. Moreover, these women who acquire sexually transmitted diseases are then highly susceptible to acquiring the AIDS virus. The present coercive power structures in the sex-trade in the major urban centers leave commercial sex-workers with little autonomy to exercise choice in the number and type of clients, to insist on condom use or to seek health care for symptoms of infections. The figures of NACO reveal that the number of Indian citizens with AIDS virus is around 2-3

million. Sex-workers and their clients are believed to be the main careers and spreaders of this deadly virus. The chapter also points out that pimps, brothel owners, traffickers are thriving at the expense of the hapless and exploited sex-worker and the nexus between them and the police is getting stronger by the day. If all this was not enough as gifts of the present policy, there is also proof of child prostitution and clandestine prostitution being on the rise. Trafficking for the purpose of prostitution is also assuming dangerous proportions and has become one of the worst fallouts of the current system. A detailed perspective, as such, on trafficking has been provided in the next chapter.

CHAPTER - 5

THE MENACE OF TRAFFICKING

I. Introduction

Trafficking in women and children is the most abominable violation of human rights. Perhaps not many crimes are as ghastly as trading in human misery. Human rights guaranteed by the Indian Constitution are inalienable, non-negotiable and universal. Trafficking in women and children is a violation of several human rights including the very right to life, the right to liberty and human dignity and security of person, the right to freedom from torture or cruelty, inhuman or degrading treatment, the right to a home and a family, the right to education and proper employment, the right to health care and everything that makes for a life with dignity. In fact trading in human beings and their exploitation in varied forms by traffickers is one of the most despicable forms of human rights abuse.

In fact the problem of trafficking can be traced back to the time of Greek city states. Its history is full of attempts on the part of states to regulate, control and to limit certain sections of the society and certain kinds of activities like prostitution. The Greek states and following it others regulated prostitution but in spite of the best efforts of the state and other social agencies, prostitution

has retained itself in large towns since the last 2,500 years which just goes to prove how deep rooted it is in human social life.[1]

One of the fastest growing areas of international criminal activity is trafficking in persons which has become a serious concern for many countries, regardless of whether they are countries of origin, transit or destination. International criminal groups, whose activities often include other forms of illicit trade and smuggling such as drugs and arms, control trafficking in persons on a global scale. The crime represents a form of abuse of human rights, labour and migration laws, and is a problem of national and international security. It also involves frequent and serious violations of other laws, including laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud and extortion. Women, men and children are trafficked for various purposes, such as marriage, agricultural labour, working in various informal sector industries, domestic labour, participating in events such as camel racing, recruitment in armed conflict and for sex work.

The most critical element of trafficking is not necessarily the process through which a person is trafficked, nor the nature of the job or practices for which the person is trafficked, rather it is the outcome of that process that is instrumental in leaving the trafficked person with little or no option to leave the place or position in which they find themselves. Trafficked persons are recruited into various jobs, for which they can be made to work without the wages or minimum benefits that have to be provided to regular members of the labour force. If the entire employment

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1 Gunjan Kinnu, *From Bondage to Freedom : An Analysis of International Legal Regime on Human Trafficking,* 9 (2006, 1st ed.)

market in both formal and unorganised sectors could be regulated in adherence to national and international labour laws protecting the rights of the workers and if all workers were conscious of their labour rights, were organized, and had a role of regulating the workplace, the demand for trafficked labour would cease to exist.[2]

Trafficking is an activity which has long been outlawed by national legislations and international human rights treaties but despite this, the trafficking of women remains a multibillion dollar industry ranked by many governments as the third most serious illegal trade after drugs and arms. This form of violence against women and children is flourishing like a major industry controlled by well organised international crime syndicates.[3]

II. Definition of Trafficking

Simply stated, trafficking would imply buying and selling of women and children. Trafficking connotes commodification and consequent debasement of the victims, the deprivation of their basic human rights and as such is most inhuman.

Trafficking of humans involve moving men, women and children from one place to another and placing them as forced labour. The practice includes forced sex, domestic servitude, unsafe agricultural labour, construction or restaurant work and various forms of modern day slavery. This global violation of

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2 Samarjit Jana, A Tale of Two Cities : Shifting the Paradigm of Anti-Trafficking Programmes, *Gender and Development*, 70 (2002)

3 S. Sanyal, Measures to Prevent Trafficking of Women and Girls of South East Asia, *The Indian Journal of Criminology and Criminalistics*, 104 (2003)

human rights carries on within countries and across borders, regions ad continents.[4]

United Nations General Assembly in the year 1994 defined trafficking as:

> The illicit and clandestine crossing of persons across national borders, largely from developing countries with economies in turmoil with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situation of recruiters, traffickers and crime syndicates as well as other illegal activities related to trafficking such as labour, false marriages, clandestine employment and false adoption.[5]

In the dictionary meaning, the concept of trafficking denotes a trade in something that should not be traded in. Thus, there are terms like drug trafficking, arms trafficking and human trafficking. The concept of trafficking in people refers to the criminal practice of exploitation of human being where they are treated as commodities for profit and after being trafficked, are subjected to long term exploitation.

The United Nations protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, 2000 to which India is a signatory, defines trafficking as:

> The recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position or

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4 Quoted from www.yongaids.org/themes/trafficking.asp
5 *Ibid.*

> vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.[6]

Consent is considered irrelevant in the case of children. If any of the means as stated in the definition are used, consent become irrelevant in the case of adults also. The three elements clearly involved are: first an action with intention, secondly the means and lastly the purpose. Thus, whether a person is trafficked or not is indicated by whether he or she has been subjected to the means mentioned above.[7]

This definition has expanded the exploitative conditions that may result from trafficking, which were earlier confined only to prostitution. Thus, it is more inclusive. The positive aspects of the definition are elaboration of the means used, its clarity on the issues of consent and the different acts in the trafficking process that it encompasses.

As far as India is concerned, the Goa Children's Act, 2003 is the only Indian statute which gives a legal definition of trafficking. Though child specific, it nevertheless provides the following comprehensive definition in section 2(z):

> Child trafficking means the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders,

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6 U. N. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, 2000.

7 NHRC Report on Trafficking in Women and Children in India, 3 (2002-2003)

> by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.[8]

III. People Vulnerable to Trafficking

There are a certain section of people who are more vulnerable to trafficking than others. If we talk about personal characteristics, then people with low self esteem and lack of self control are more vulnerable. Low levels of literacy, awareness and information are also risk factors. A dysfunctional home environment, break-up of the family, marital discord, physical abuse, sexual abuse, drug abuse, family pressures, large families, families facing uncertain times, children in substitute care, gender discrimination within family, husband's deserting wives, husbands acquiring a second or third wife makes people vulnerable to trafficking. In fact most trafficked women are either unmarried, divorced, separated or widowed.

If we pay attention to structural factors then environment which lack livelihood options or economic opportunities (tough hilly terrains), with accompanying pressures to work and earn, make people's lives an ongoing battle for survival. Moreover, industrialisation and globalisation, economic policies like privatisation, liberalisation, promotion of sex tourism, withdrawal of subsidies and commercialisation of agriculture, the consequent erosion or subsistence agricultural practices, loss of traditional livelihood and inflation. Labour demands and policies also influence vulnerability. These days, in a global market, women and

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8 The Goa Children's Act, 2003, Section 2(z).

girls are increasingly being hired as service providers, which puts them at risk.

Political factors may also put certain groups at risk. Conflicts, disruption and instability, immigration policies, human rights violations and the gaps between rhetoric and practice. Poor governance, limited law enforcement or implementation of labour standards also create vulnerabilities. Environmental calamities and disruptions may also put people at risk. The quickening pace of urbanization and heightened mobility resulting from the development of road links are contributing factors. A culture of consumerism, materialism, commodification of individuals and similar traits propels individual desires. A mindset which judges children's worth by the amount of money they can earn, and how soon they are able to do so, has developed, justifying their exploitation by kin members. Discriminatory practices and social exclusion exacerbate the vulnerabilities of groups like scheduled tribes, scheduled castes, other backward castes, other minorities, tribal communities, undocumented migrant workers, stateless people or people in refugee camps.

IV. Magnitude of Trafficking

The scale and phenomenon of trafficking are very difficult to judge, the best it can be judged by is the estimates. The trade is secretive, the women are silenced, the traffickers are dangerous and not many agencies are counting its figures. U. N. estimates that 4 million people each year are traded against their will to work in some form of slavery, many of them children and in the last 30 years, trafficking in women and children for sexual exploitation alone has victimised more than 30 million people. A study by

Congressional Research Service for the U. S. Congress cites the following estimates of trafficked people worldwide : South-East Asia 225,000, South Asia 15,000; former Soviet Union 100,000; East Europe 75,000; Latin America 10,000; Africa 5,00,000. Recent International Labour Organization figures for children in the worst forms of labour worldwide are : trafficking (1.2 million), forced and bonded labour (55.7 million), armed conflict (0.3 million); prostitution and pornography(91.8 million), and illicit activities (0.6 million).[9]

(A) Indian Estimates

In India the children or minors in commercial sex work are generally classified as cases of trafficked victims. The population of women and children in sex work in India is believed to be between 70,000 to 1 million. Out of these 30 percent are below 20 years of age. A news item published in Statesmen[10] states that roughly 2 million children are abused and forced into prostitution each year. A rough estimate prepared by an NGO reveals that there are around 2 million prostitutes in India, 20 percent of them are minors. A study estimates that at any one time, 20,000 girls are being transported from one part of the country to another.[11]

Non Governmental Organisation estimates of trafficking are even higher. Report states that in 1997, approximately 200 girls and women in India entered prostitution on a daily basis and 80 percent were coerced into it. There are reportedly 3,00,000 to 5,00,000 children in prostitution in India. A UNICEF study on

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9 Quoted from www.americanlibrary.in.library.net
10 See, *The Statesmen*, 12 August, 2002 (4).
11 Quoted from supra note 6 at 21

Maharashtra states that at any given time, approximately 40 percent of the victims of commercial sexual exploitation and trafficking are found to be below 18 years. According to NCRB in 1999, there were 9,368 cases of trafficked women and children and this incidence has shown a steady increase since 1997.[12]

(B) Estimates of Women Trafficked from Nepal and Bangladesh

The combined estimates of people trafficked from Nepal and Bangladesh range from around 500 to 7,000 a year. U. N. D. P. estimates around 7,000 being annually trafficked to more than 2,00,000 over a period of seven years. The study by UNDP reveals that the average age of trafficked girls from Nepal to India fell from 14-16 years in the 1980's and 10-14 years in 1994. There are 1,00,000 to 1,60,000 Nepalese girls in Indian brothels with about 5,000 to 7,000 being sold every year. Other estimates put the figure at 2,00,000 Nepalese women in Indian brothels. According to Reuters 30,000 women in Kolkata brothels are from Bangladesh and another 10,000 are in Mumbai and Goa.[13] Another report suggests that every year 20,000 persons, mostly women and children from Nepal and Bangladesh are added to the flesh trade in India, especially in places like Mumbai and Kolkata.[14]

As far as the traffickers revenue are concerned, the U. N. figures are often the most quoted which estimates trafficking to be a US $ 5-7 billion operation annually. In fact profits from trafficking are a major source of income for crime rings. To increase profits, inflated prices for various services and documents

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12 *Ibid.*
13 *Id.* at 22
14 S. Sanyal, Measures to Prevent Trafficking of Women and Girls in South-East Asia, *Indian Journal of Criminology and Criminalistics*, 107 (2003).

are charged in cases of cross-border trafficking. The women are kept in poor, crowded conditions to cut costs. Some Thai traffickers who incarcerated Thai women and men in sweatshops are estimated to have made $ 8 million over six years. As far as India is concerned no exact figure is available, only figures for selling and purchasing of girls are available and according to one estimate, girls are sold to brothels for Rs. 15,000-40,000. Commercial sexual exploitation of children accounts for Rs. 11,000 crores of the Rs. 40,000 crores commercial sex industry in India.[15]

V. Traffickers and their Modus Operandi

Trafficking cannot be possible without the traffickers as such the trafficker is the key link in the supply chain comprising manifest and latent players, who straddle the vicious road from spotting to exploitation. The trafficking hierarchy consist of several tiers. Following levels exist:

(i) Master trafficker-cum-kingpin
(ii) Primary traffickers-cum-procures
(iii) Secondary, traffickers
(iv) Spotters or the grass root chain of intelligence gatherers.

The organised crime of trafficking revolves around the master trafficker. He or she is the kingpin of the entire trafficking operations. As prime mover, manipulator real beneficiary, chief profiteer and master criminal, he is at the apex of trafficking hierarchy. He manages, modulates and orients all the activities and transactions in such a way that he can remain unnoticed, even as he is able to profit the most. A typical traffickers is one

15 Supra note 6 at 22.

who extracts the maximum gains from the entire bargain. It is a purely commercial activity for him. The demand-supply trends decide the profit component. The trafficker ensures that there is maximum demand and corresponding supply of women and children. To ensure this, he has to establish a network which provides linkages with demand and supply areas, transit points and routes. He appoints persons to carry out various tasks at several places. They can be referred as primary traffickers. These persons at the ground level require intelligence to identify the supply sources as well as the demand areas. Given that intelligence has a very important role to play in this business, the master trafficker has his own network of intelligence gatherers.[16]

The primary traffickers form a nebulous group of all those who assist the kingpin in different activities involved in trafficking. The key functionaries are the field level purchasers, the transporters, the master operators, the procurers, the pimps and the entire network of crime syndicates involving the brothel owners, brothel managers etc. In short, primary traffickers are the basic merchants of human trade. The secondary traffickers are those who deliver human cargo to the primary traffickers. They operate at the grassroot level and mostly include the sellers and others who assist and facilitate the sale process involved in trafficking. Often this group includes relatives, friends and acquaintances of the victim, local goons and petty criminals. The intelligence gatherers are at the command and control of the master trafficker or the primary traffickers. They visit bazars, markets, villages, railway stations, bus stands and other places

16 NHRC Report on Trafficking in Women and Children in India, 139 (2002-03).

where they can collect intelligence about vulnerable people.[17] These spotters give their feedback to the primary traffickers and kingpin who, in turn deals with the secondary traffickers to carry out his trade.[18]

There are several other stakeholders who support the main trafficking structure mentioned before. These include (a) financiers who finance the transactions at various levels (b) the goondas who provide security at various levels, (c) the hoteliers who provide accomodation during transit, (d) the transporters who provide or arrange transport, (e) paramedical persons, may be even quacks, who attend to the illnesses of the trafficked victim during transits, (g) officials who provide several services, including immigration clearance and security and (g) the final exploiters and observers who may also be part of the network. They dictate the terms regarding supply and demand and modulate the trafficking process.[19] This trade in human beings as chattels and treatment of their bodies as commodities becomes possible because of the incremental link between body and money, the end objective of this process always being instrumentation for gains.

(A) Functioning of Traffickers

The traffickers adopt various methods of traffic in women and children. Usually the ingenuity of the trafficker coupled with the vulnerability of the victim, determines the modus operandi that is used. The following methods have been most commonly used or employed for trafficking in women and children in India. (a)

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17 As to who are vulnerable to trafficking, see supra p. 6.
18 Supra note 14 at 140.
19 *Ibid.*

offering them jobs as domestic servants, (b) promising jobs in the film world, (c) dangling before them jobs in factories, (d) offering money, (e) luring them with pleasure trips, (f) making false promises of marriage, (g) befriending them by giving goodies (girls who have run away from home or are street children are highly vulnerable to the traffickers), (h) offering to take them on pilgrimages, (i) making other kinds of false promises and (j) coercion etc.[20]

The vulnerable position in which the woman finds herself is a contributory factor in trafficking. The economic dependence of most women and their low social status leave them with a relatively narrow range of options forking out a livelihood. Women with no assets and hardly any alternatives have been easy targets for traffickers, they can be persuaded to commercial sexual exploitation in order to support themselves and their dependants. The more vulnerable the victim is the easier it is for the trafficker to either lure or deceive her. The accessibility of the trafficker to the prospective victim is an important factor in trafficking. The method adopted is usually influenced by the proximity or otherwise of the trafficker to the victim.

As far as places of recruitment are concerned people are generally recruited from cinema halls, bus stops, railway stations, airports, streets and their homes. Other places are cafes, restaurants, beauty contests and beauty parlours, state and national highways, quarry and construction work sites and areas where locals are displaced without proper rehabilitation may also be sites for potential victims. Recruiters take advantage of difficult

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20 *Id.*, at 145

periods, either before the harvesting season or during a draught, when many locals look elsewhere for income to survive. Traffickers also keep themselves informed about severely impoverished areas or those which have suffered climatic, economic or political disasters.[21]

A study of Calcutta based brothels gives a good insight into how the traffickers actually operate.[22] It says that there are three types of procurers, all acting closely together to traffic women and children. The first are those based in the villages or towns, close to the homes of the women and children. These procurers are usually women who look out for economically and socially vulnerable girls, talking to them and suggesting marriage or work in Calcutta. Then they put them in touch with middlemen who receive these girls. It is usually those middlemen who take these girls to the city, although sometimes the village based procurers themselves deliver the girls directly to the cities. In some cases young girls are even married in haste to unknown men as soon as they reach puberty. The grooms may or may not have had sex with their new wives before selling them off to buyers in red-light areas.[23]

The final link is the person based in the red-light area itself, who purchases the woman from middleman. In Calcutta, this is frequently a woman, known as the '*mashi*'. The '*mashi*' often a former sex-worker in need of income, will pay for a new woman or a minor girl, who will start to work as her maid. Later when post puberty, this girl will be initiated into the trade. Men also receive

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21 *Id.*, at 11.
22 Carloyn Sleightholme and Indrani Sinha, *Guilty without Trial*, 37 (1996, 1st ed.)
23 *Ibid.*

new women, especially in Sonagachhi and Kidderpore where they maintain the woman, bring in their clients and take all or part of their income in exchange.[24]

The middlemen are the essential link between the red-light areas and the villages. With help from local contacts they identify the girls who may be supplied to the sex-trade and match this with the demand coming from '*mashi*' and pimps. These middlemen are professional in the art of deception. They build up contacts in places where they know there is poverty and deprivation where parents cannot afford the upbringing of their children and girls are easily tempted or are desperate for work. They offer friendship, marriage, jobs or the opportunity where jobs are hard to get, and people are willing to migrate elsewhere, places hit by natural or political disasters which create refugees, homelessness and destroy people's livelihoods. They know the places where parents are not sufficiently protective, at least not of the girl child, where she is seen as a burden to be offloaded to someone else. The majority of sex-workers who come to Calcutta are not kidnapped, rather their trafficking takes place by luring, cajoling, coaxing with false promises on some offer of help out of a dead end or a crisis situation. The girls who enter the profession through this route are generally convinced by brothel owners into sex-work but those few girls who do not conform are eventually threatened with violence, denied food and as last resort brothel owners have to bring in hooligans who are used to intimidate the women or even inflict violence.[25]

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24 *Ibid.*
25 *Ibid.*

As to the recruiters profile, they could be neighbours, friends of families, relatives of friends, acquaintances returned from abroad, women who have migrated or who have been trafficked, women friends returned from abroad, husband, father, boyfriends or lovers. Some recruiters could be gay men in whom women repose trust as a result of their sexual orientations. They could be drug peddlers, head masons at construction sites, even band leaders in dancing/live bars, motor cycle pilots in Goa or labour contractors. Terms like dalal or dalali are used to refer to traffickers.[26] Traffickers are usually young men and middle-aged women who are significantly older than the young women/children they recruit. They are natives and agents who travel back and forth from home countries/regions to receiving regions and generally have links with the village to which the victims belong. Procurers are generally substance abusers or gamblers. Many of the traffickers are older women, who are either former prostitutes or are themselves in forced prostitution, trying to escape abuse and bondage by providing a substitute. Often these agents speak several languages. They may have multiple roles.[27]

Trafficking involves a range of players along the road from acquisition to exploitation. They are generally found in the contact of the organised trafficking rackets. Networks may involve the police, visa/passport officials, railway/bus authorities and employees, taxi/autorickshaw drivers. The various roles have been classified as financiers or investors, organisers, document forgers,

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26 Supra note 15 at 12
27 *Ibid.*

corrupt public officials or protectors, guides or travel companions and crew members.[28]

VI. Source, Transit and Demand Areas

Trafficking patterns and routes are often highly complex, ranging from trafficking within one country and cross-border flows between neighbouring countries to inter-continental and globalised trade. The general movement of trafficked people is from less developed areas to more developed regions. Thus, the flow of trafficked women and children moves from south to north or east to west, with the former being characterised by poverty and the latter by relative affluence or from rural to urban areas. The network between the source, transit and demand areas emerges as a major source of strength for the traffickers.

According to the NHRC Report of 2003 on Trafficking for India, the districts which are the source areas are Dindugal, Madurai, Trichy, Cheglpet all in Tamil Nadu, Trivandrum and Thisur in Kerala, Vijayawade, Rajamundhry, Anantapur, Hindupur, Kakinada, Vishakapatnam, Pedapuram, Telengana, East Godawari, West Godawari and Guntur in Andhra Pradesh, Dholpur, Bharatpr, Alwar and Tonk in Rajastan, Gaya, Muzzafarpur, Patna, Kishanganj, Katihar, Purnia, Araria and Madhubani in Bihar, Mangalore, Gulburga and Raichur in Karnataka, Solapur in Maharastra, Maharajganj in Uttar Pradesh, Murshidabad and 24 Parganas in West Bengal and many places in Orissa, Kashmir, Assam, Goa, Nepal and Bangladesh.[29]

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28 *Ibid.*

29 NHRC Report on Trafficking in Women and Children in India, 148, (2002-03).

Majority of the respondents (traffickers, in his case) said that their selection of the source area is determined by the vulnerability of the women and girls located there. One fourth of the traffickers said that poverty and unemployment were the determining factors, while 11.3 percent cited cultural sanctions as the criteria for selecting the target areas. Almost half the respondents, disclosed that their source area was exclusively rural as well as urban areas. While identifying their victims, the traffickers used yardsticks such as social deprivation, broken homes, lack of awareness, and other factors which place them in vulnerable position.[30]

As to the places where the trafficked girls are primarily supplied in India, NHRC report mentions that these demand areas include not only cities but also smaller towns. The places referred in the report are Bharatpr, Alwar, Jaipur and Jodhpur in Rajasthan; Tindivanam, Dindygal, Madurai and Salem in Tamil Nadu; Pondicherry, Goa, Hyderabad and Guntor in Andhra Pradesh; Gaya and Patna in Bihar; Bangalore and Mangalore in Karnataka; Pune, Mumbai and Thane in Maharashtra; Agra, Lucknow, Benaras and Gorakhpur in Uttar Pradesh; various places in West Bengal, Orissa, Punjab, Kashmir, Kerala, as well as places outside India such as Bangkok, Kenya, South Africa, Bahrain, Dubai and Muscat. The majority of the traffickers (58.1 percent) stated that the supply of the girls was linked to demand pattern. Greater the demand, more the supply. According to one fifth of the respondents, profit consideration prompted them to select the supply area. Some respondents were also concerned about the risks involved. Around 6 percent stated that they supply women and girls to those areas where they can remain anonymous

30 *Id.* at 148

and 15 percent of the traffickers said they supply to those areas where the enforcement is low.[31]

The place of transit is an important linkage, especially in long distance trafficking. The traffickers cited several cities and townships, between the demand and supply areas, as transit centres. Regarding the kinds of activities taking place in a transit area, half refused to answer, one fifth stated that they sexually exploited the victim, 40 percent stated that they become friendly, few stated they dragged the victim and few others stated they payed victims in advance.[32]

The mode of transport used to move the victim from one place to other depends on the trafficking route. The majority of the traffickers stated that they used buses, trucks or trains for this purpose. Only a small percentage stated that they used hired vehicles. Traffickers preferred to use public transport, as it provided anonymity to them and helped them to escape the attention of law enforcement agencies. Majority of the traffickers also stated that they had linkages with criminal gangs.[33]

VII. Trafficking in Neighbouring Countries and India

(A) Bangladesh

Bangladesh shares a 4,156 border with 30 districts on the Indian side. India has 20 official check points manned by the Border Security Force. Being few and widely dispersed, they are ineffective in maintaining strict vigil over movements across the

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31 *Id.* at 149
32 *Ibid.*
33 *Ibid.*

border. The poor economic condition of Bangladesh supports the anti-social elements to entice, or even abduct the disadvantaged women and children to the next door neighbour India, Pakistan and at times Burma. It has become a multi-million dollar business in this country. Most of these girls coming to India are trafficked to Kolkata and they belong to poor Muslim families having several wives and a large number of children. A worse condition is further seen in the ages of these victims, many of whom are minors in their early teens and are mothers of at least one or two children. Such mothers who have to support themselves as also their children are plauged under the economic pressure and they succumb to the pressure tactics of the traffickers.[34] Once the women enter India, they are kept in West Bengal and Orissa and after being 'sorted and graded' they may be sold to pimps or sent to Middle East, Delhi, Agra or Kolkata.[35]

(B) Nepal

The Indo-Nepalese border is a long and porous one with 14 legal entry points along the entire stretch, which facilitates illegal cross border movements. Under the 1950 treaty with India, citizens of each country are guaranteed equal treatment, including the same privileges in the matter of residence, participation in trade and commerce. This means that in practice there is no immigration control for Nepalese travelling or migrating to India and hence no records are maintained. It is estimated that roughly 1,00,000 to 1,60,000 Nepalese girls and women are working as sex-workers in India. Five thousand to seven thousand young Nepalese girls are said to be trafficked every year to various red-

34 Supra note 14 at 106
35 B. P. Rathod, Thwarting Trafficking in Women, *Third Concept*, 45 (2005).

light areas in India. Many of these Nepalese women who are brought to Calcutta, first have to come to Sonagachi or Kiddirpore and are later moved to other red-light areas.[36]

(C) Internal Dimensions of Trafficking

Trafficking from neighbouring countries accounts for only 10 percent of the coerced migration, with approximately 2.17 percent from Bangladesh and 2.6 percent from Nepal. The share of inter-state trafficking is estimated to be around 89 percent. The districts of India which are the destination points have already been seen, as far as the geographical belts of exploitation are concerned, main is the pink triangle between Agra, Jaipur and Delhi. Andhra Pradesh, Bihar, Karnataka, M. P., Rajasthan, West Bengal, Uttar Pradesh and Maharashtra appear to be the main states from where the trafficked persons are sourced. The metro cities are the most frequent destination points.

VIII. Attributes of Trafficked Persons

In the NHRC[37] study when the traffickers were asked to list the specific attributes of the trafficked persons which were sought by the clients, they gave the preference on good physical features and body shapes, virgins and those young in age, readiness to succumb to exploitation, and fair complexion. Around 21 percent of the respondents gave maximum weightage to the physical appearance of the trafficked persons. One fifth stated that virginity/youth and readiness of the victim to succumb to all kinds

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36 Carolyn Sleightholme and Indrani Sinha, *Guilty Without Trial*, 42 (1996, 1st ed.)

37 NHRC Report on Trafficking in Women and Children in India 151 (2002-03)

of exploitation and perverse acts as the main criterion. The remaining traffickers mentioned a combination of two or more of the above listed.[38] Of late there is a huge demand of girl children into trafficking and huge money is often paid by the brothel owners to buy such girls, the main reason being the wide prevalence of the myth that sleeping with a virgin cures HIV/AIDS.

IX. Traffickers and the Police

Trafficking is a cognizable offence under Immoral Traffic (Prevention) Act, wherein the police have powers to prosecute the offenders. In the NHRC study, majority of the respondents examined answered in the affirmative when they were asked about their relations with the police. All had links with police. On the question of payment in cash or in kind, 77.6 percent admitted to doing so, the rest said that they do not pay anything to the police. As to the method of payment, 71 percent said that they paid in cash and 17 percent said that they paid in kind. This included allowing 'free sex' with the trafficked victims.[39] As far as the modus operandi of fixing the amount to be payed to the police officials by brothel owners is concerned the latter have to pay the police for 'registering' the trafficked victim in the brothel. That is, once the trafficked victim is brought to the brothel, the police 'makes note' of this by taking a sum of money from the brothel keeper. If the person is a minor, the amount paid is higher. The brothel keeper in turn, 'debits' this amount from the account of the trafficked victim and thereby ensures servitude and debt bondage.

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38 *Ibid.*
39 *Id.* at 154.

X. Trafficker's Income

National Human Rights Commission gives very interesting facts about the traffickers incomes. As per Commission's report around 29 percent of the traffickers stated that they earned more than Rs. 1 lakh per year, from trafficking. A similar percentage stated that their annual expenditure on trafficking was only upto Rs. 25,000. The figures bolster the known view that trafficking is a highly profitable business, which generates a substantial surplus.[40]

Often described as merchants of human misery, traffickers are organised criminals who exploit and trade in helpless women and children. Their complex web of links with other exploiters allow their tentacles to reach far and wide. Normally, it is the victim of the traffickers who are usually punished, with the trafficker having the last laugh. Unless there is a paradigm shift whereby the traffickers are brought to book, made to compensate for the damage and harm done to the victims, and the illegal assets acquired are confiscated – there can be no justice for the victims and no real solution to the problem of trafficking.

XI. Impact of Trafficking

Trafficked persons are generally traumatised by their experiences. Depression and suicidal thoughts are also common. The mental[41] and emotional state of the survivors includes malevolence, helplessness and withdrawal, disassociation, self blame and identification with the aggressor, distraction, a

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40 *Id.* at 156

41 For a detailed account of psychological impact on survivors of trafficking, see, infra, p. 232

foreshortened view of time, normalisation and shaping, whereby the victims convince themselves that their experience had to happen instead of viewing them as traumatic. Some of the psychiatric disorders which are found amongst survivors of trafficking are post traumatic stress disorder, depressive disorder, dissociative disorder, psychotic disorders and eating disorders.[42] Girls, who are made to bear the responsibility of upholding the family honour through their sexual purity/chastity and if such girls are trafficked into sex-work, they face additional stress because of the prevalent morality.

The very fact that survivor are victims of trafficking means that they are, at least, witnesses to the crimes perpetrated on them and hence should never be treated as accused. However, the existing law enforcement scenario in most places is totally at odds with such a perspective. More often than not, rescue operations, usually termed as raids, are carried out on a large scale wherein the trafficked women and children are rounded up and accused of soliciting. So, rather than being their protector, law turns these helpless victims as accused and as such the whole process results in further victimisation of the victim.

Besides being stigmatized as outcastes and facing moral and legal isolation, trafficked people are vulnerable to HIV/AIDS infection, drug addiction, alcoholism, high risk abortions, teenage pregnancies and sexually transmitted diseases. A study by an NGO in Dhaka found that more than 20 percent of the street children prostitutes die before reaching adulthood. Almost 22 percent become physically invalid and are fit only for begging.

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42 *Id.* at 19.

Psychological trauma permeates all aspects of their lives. Since it usually remains un-addressed and unresolved, the abused turn into abusers.

Smarajit Sinha, in her article on trafficking[43] depicts the sad story of a trafficked victim who went on to acquire AIDS, she says "Sofia who had been evicted from the red-light area of Tanbaazar and later remanded at the same home, decided to opt out of the sex-trade. She took the help of an NGO to seek an alternative livelihood. The NGO put her in a shelter home. Immediately on her arrival, the NGO personnel took a sample of her blood and tested it for HIV without her knowledge or consent. She was found to be HIV positive. The NGO personnel informed her of this, and very quickly, all the staff members of the shelter home came to know her status. The rules of the shelter home were that no rescued women were allowed to meet and communicate with outsiders without prior permission from the official incharge of the shelter home, and that communication with outsiders could only take place at fixed hours in a month. This lack of communication meant that nobody outside of the home knew what was happening to Sofia. After a couple of weeks, Sofia had committed suicide. Her body was not even sent for a postmortem examination, a common practice internationally followed in any unnatural death."[44]

The National Human Rights Commission study of survivors also gave very distressing trends. When the rescued victims were asked whether they were suffering from any serious ailments, 32.3 percent of the respondents admitted that they had some health

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43 Smarajit Sinha, A Tale of Two Cities : Shifting the Paradigm of Anti-Trafficking Programme, *Gender and Development,* 31 (2002).

44 *Ibid.*

problems, rest of them said that they did not have any serious illness and when those with health problems were further questioned, 8.3 percent respondents confirmed that they were HIV +ve but nonetheless continuing in sex-work, and they were doing so because they had no other option. Around 30.4 percent said that they were suffering from STDs, 17.1 percent had serious gynecological problems and the rest had minor illnesses. On comparison of survivors with that of trafficked victims it was found that only .6 percent admitted to having contracted AIDS. This shows that the trafficked victims are under greater compulsion not to speak about their ailments. Even in the case of survivors, the fear of social stigma and pressure would certainly have weighed on them and prevented some of them from disclosing their HIV/AIDS status. One fifth of these respondents had been suffering from these diseases for more than 5 years, almost one third for a period of one to five years and the rest for a period of less than a year. These figures reveal that those who fall ill continue to remain so for want of proper medical care and attention. The rest receive no treatment at all.[45]

The victims of trafficking are compelled to lead illegal lives. Illegality taints every dimension of their lives, converting them into criminals. Their criminalisation as workers and persons severely stigmatizes them. It intensifies their victimization several folds and leave them with no recourse for redress.

(A) Impact on Society

The crime of trafficking involves the violation of a whole gamut of laws and human rights. It becomes a threat to society

45 *Id.*, at 95

because traffickers operate across borders with impunity, with the growing involvement of organised criminals and by generally undermining the rule of law. Trafficking threatens the very basic fibre or fabric of the society because it involves not only criminals but also law enforcers. It manifests and perpetuates patriarchal attitudes of behaviours, which undermine the efforts to promote gender equality and eradicate discrimination against women and children. The reports from Albania which illustrate this point which documented villages where nine in 10 girls over 14 stay away from school because they are afraid of being trafficked. Thus, this fear alters the choices that girls make about their future.[46]

A study by Asian Development Bank notes that the 'economic losses' to communities and governments are enormous if considered in terms of lost returns and human or social capital investments. The cost of countering criminal trafficking activities put additional strain on the already limited government resources for law enforcement. A vast amount of trafficked labour is lost in hidden sectors. Specific communities may become known as potential sources for people if following each other's examples, communities start a trend of sending their women and children out. International Labour Organization says:

> The loss of future productivity and earning power through low educational levels, ill health and potentially premature death is also felt at the country and regional level. Poor nations can ill afford to lose their young people, whose present and future productive capacity is essential to growth . . . the ravage of disease, including HIV/AIDS, is also an enormous burden on such countries and causes further imbalances between the young and middle

46 *Id.* at 20

aged potential workforce most likely to be dependent on them.[47]

XII. Destination Sector

The demand for trafficked persons comes from various sectors, such as:

(i) Prostitution
(ii) For any other sex-related work
(iii) Compulsory industrial/domestic labour
(iv) Begging/Maiming
(v) Adoption
(vi) For camel racing
(vii) For pornography.[48]

So trafficking in persons could be for any of the purposes mentioned above but for the purposes of the present study, the impact of trafficking would only be studied for the purposes of sex-work.

XIII. Culturally Sanctioned Practices and Trafficking

All over the world the institution of religion has come to play a predominant role in shaping societies. It is the foundation on which the normative structure of the society stands. It is this dependence on religion that it has emerged with the belief in a power superior to human beings, which directs their destiny and controls nature. It's practical dimension is expressed through a number of ways in any given culture of the society. It's perspective

47 *Ibid.*
48 P. M. Nair, Combating Trafficking in Women and Children, *CBI Bulletin*, 22 (2002)

and doctrinal aspects include moral and social theology, philosophy of religion and diagnosis. Hence, innumerable forms of ceremonies, worships, rites, moral teachings, mystical experiences and knowledge of supernatural power have come to exist since time immemorial, in addition to a number of aberrations, superstitions and exploitative customs/traditions in the name of religion. The cult of Devadasi, under which a girl is dedicated to a deity or object of worship or to a temple has also developed as a culturally sanctioned practice. Besides this, certain communities like Rajnat of Rajasthan, the Bedia of Madhya Pradesh and the Bachada of Rajastan-M. P. Border also have some socially sanctioned practices enabling trafficking.

The term *devdasi* is a sanskrit word denoting deva - God and dasi – female slave, which literally means 'female slave of the God'. Interestingly, this cult continues to exist even today throughout our country with some regional variations. However, it came to be known by different names at the local and regional level. For example in Goa, the term used is Bhavin. On the West coast, it is *Kudikar bogam* or *jogin* in Andhra Pradesh, thevardiyar in Tamil Nadu, *murali, jogoteen* and *aradhini* in Maharashtra, *Jogati* or *Basavi* in Karnataka, *ganika* in Orissa, *nati* in Assam and so on.[49]

The genesis of the *devadasi* cult and its regional variations is usually traced back to the custom of worshipping Mother Goddess, whereby young girls were voluntarily dedicated to the service of God by their families to ensure fertility of the soils as well as secure blessings for the community as a whole. It is believed that this custom of dedicating girls to the temples primarily developed

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49 NHRC Report on Trafficking in Women and Children in India, 194, (2002-03)

or emerged as a substitute to human sacrifice. Another theory regarding origin of the *devadasi* cult which is prevalent is related to the belief that offering something to the deity was rewarded bountifully. So, when the devotees came to the shrine with problems such as bad health, poverty, barrenness, etc., the priests often interpreted these as the wrath of the deity and suggested that they should offer one of their daughters to the service of the deity. Using this concept of divine desire, the priests thus started demanding girls, that too virgins from the devotees.

The custom of dedicating girls to the temples appears to have started about the third century A. D. and their presence was considered essential at the time of offering prayers. With the passage of time *devadasis* started receiving rewards in the form of land and cash allowance out of the rich endowments of the temples for their service, like fanning the deity, singing and dancing before it and cleaning and oiling the lamps. With the introduction of material benefits along with the immaterial and assured place in heaven after death, the institution of *devadasi* degenerated.[50] These girls dedicated by the parents or others for some gains could rarely imbibe the spirit of the original *devadasis*. They were deprived of normal life and denied fulfillment of natural urges and desires being totally dependent on the temples. Their helplessness was exploited by the temple priest and other associated with the temple.[51]

Being in the service of the deity, the *devadasi* was accorded both ritual sanctity and social eminence. Important social occasions and functions were not considered auspicious and

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50 K. K. Mukherjee, *Flesh Trade – A Report*, 3 (1989, 1st ed.)
51 *Ibid.*

complete without the presence of a *devadasi*. She was a welcome guest to every marriage *pandal* and it was the *devadasi* who prepared the *tali* (*mangalsutra*/marriage badge) for the bride. But as stated earlier, the system was abused and eventually in many temples, the *devadasis* degenerated into shamefully exploited victims of commercial sexual exploitation. In a sharp contrast, the city courtesans, who were usually highly accomplished women, were treated with deference. Courtesans had a certain freedom of movement and that they could defy social conventions to a greater degree than most other women.[52]

In South India *devadasis* were common feature in almost all Brahmanical temples, particularly the *Shaivite* ones, there were well defined regions in which the institution attained its maximum growth, e.g. it was more popular in Chingeleput, North Arcot, South Arcot, Thanjavour, Tirunelveli and Tiruchirapalli districts of modern Tamil Nadu; Krishna, Guntur and Nellore regions of Andhra Pradesh and Dharwar of Kolar in Karnataka. The result of this was that the number of devadasis went on increasing and in the course of time, they became so numerous and widespread in South India that they emerged as a separate sub-caste, with their own traditions, rules of behaviour and etiquette and their own panchayat, whose decisions were binding on all members.[53]

In Andhra Pradesh, reference to these culturally sanctioned practices are found in respect of dancing girls called by the name of bogam. These dancing girls were found both amongst Hindus and Mohammedans. For Hindu bogams the tiles 'Soni' or 'nayaka' were attached to their names, for Mohammedans 'jan' or 'nayakan'

52 Supra note 48 at 195
53 *Ibid.*

was attached. In Konkan and Goa, there are bhavins, who did similar jobs as the devadasis. Muratis in Maharashtra are girls dedicated to God Khandoba in their infancy or early childhood by their parents. Their deity is popularly believed to be an incarnation of God Shiva. Poor deluded women promise to sacrifice their own first born daughters believing that Khandoba will make them mothers of many children. When she becomes of marriageable age, she is formally married to Khandoba or dagger of Khandoba to become his nominal wife. Hence she is forbidden to become the wife of any man, and the result is that she usually lives a life of a prostitute being exploited by the temple priest and others. Interestingly, the high caste people who visit Jefuri, to pay their vows never give their own girls to Khandoba, but buy children from low-caste parents for a small sum of money, which is not a difficult thing to do and offer them instead of their own children.[54]

These bhavins and muratis are considered of a lower order than the devadasis or the nautch girls. Under whatever name these women may exist and customs among them may differ, the principle is the same in all i.e. exploitation under the garb of religion and custom. Culturally sanctioned practices, including the institution of devadasi, existed in Jagannath Puri, Orissa also. Many devadasis are attached to the temple even today. Along with these devadasis dedicated to Lord Jagannath, there were innumerable devadasis in Puri devoted to hundreds of minors shrines, who were having sexual relation and being exploited by priests, pilgrims and sadhus of this sacred complex. These practices such as the devadasi system grew in South India and other parts of the country, but they were not so widespread in

54 *Id.* at 197.

Northern India and the reason behind it was that the whole of North India was affected by fierce battles and alien rule, so much so that Hindu temples faced complete destruction right from the advent of Turkish and Afghan Sultans to that of the Mughal rule. So the existence of different kinds of culturally sanctioned practices in South India as compared to the North could be due to the fact that the faiths and beliefs of the people of South India was not affected by invasions or influences from outside.[55]

(A) Degeneration of Culturally Sanctioned Practices into Trafficking

There is no denial of the fact that culturally sanctioned practices, such as the devadasi custom, which developed as a purely religious institution, saw a gradual decline when degenerated practices began to be associated with it, especially sexual exploitation. However, despite its degeneration into an exploitative practice, these could not be done away with because of royal patronage. As the ruling class on the one hand and the priestly class on the other hand, depended on each other's support, the exploitation practices connected with some of these practices continued to grow in leaps and bounds. According to one estimate, girls dedicated as devadasis to Yellamma, Hanuman and Khandoba temples in the Maharashtra–Karnataka border area number around 2.5 lakhs and after initiation as devadasis, women migrated to either nearby towns or other far off cities to practice prostitution. The backward areas of Belgaum district were more prone to this cult and as such these areas became the source areas for traffickers. In fact in Belgaum district in Karnataka thousands of minor girls are initiated into the cult of Goddess

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55 *Ibid.*

Yellamma every year during Magh Purnima. These children are conditioned to believe that they are exclusively created for the pleasure of men and have to live in prostitution. In the year 1991, during Magh Purnima more than 3000 girls were inducted into the devdasi culture.[56]

Compared to other sex-workers, devadasis in the profession are safe against customers and law enforcing agencies. Their status as religious functionaries prevents. the police and the law courts to arrest and punish them. As a result, initiation of girls as devadasis has become a paying proposition, since the brothel keepers attach this eligibility tag before taking girls into their establishment. Further, those who are already commercial prostitutes buy their license to get immunity, thus increasing the number of devadasis in the society.[57]

In the case of brothels/houses run by senior devadasis, when they need new girls, they visit villages which are known to them. Since they regularly visit these villages every year and also during a particular season, their arrival is expected in the circles of families and castes which want to send their girls for prostitution. These procurers are usually elderly devadasis who have retired as victims of commercial sexual exploitation and have become owners of brothels. They are well fed, grandly dressed with expensive ornaments and they exhibit prosperity in all their activities by spending lavishly on friends and relatives. They do this to counter possible opposition from individuals or institutions to their stay and to garner support in their favour. After selecting the required

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56 Shobha Saxena, *Prostitution, Offences against Marriage and the Kaliedoscope of Multfarious Crimes against Women*, 269 (2001, 1st ed.)

57 Supra note 48 at 200.

number of girls the procurer make advance payments to the family to initiate the girl into devadasihood at the earliest possible opportunity. This advance amount paid, however, is adjusted against the earnings of the girl latter on. After this arrangement, the procurer visits the police, travel agencies and other concerned to make arrangements for their safe travel to their destination. Though the girls are brought back to the families only after the contract period is over i.e. when they become old and/or ill, their return to the family is nonetheless assured.[58]

Jogan Shankar in his study on Devadasis[59] mentions that tradition of devadasis is generally followed by women from the lower castes. He says recently, Devdasis have become commercial as they want to try their luck in urban brothels. Devadasis in villages also have started inviting clients on monetary considerations. The emergence of a new trend that pertains to deflowering of a devadasi who is destined for urban brothels through agents is now noticed. For the purpose of deflowering, a client is fixed by the concerned agent or gharwali. The girl, before commencing prostitution is deflowered by that client, who pays a huge amount as Bakshish (tip) to the agent or the gharwali. Shankar says that a gharwali in Yellampura village revealed that she operated her business at Kamatipura, 14th Lane, Bombay, she said that there is a lot of demand for virgin girls in Bombay. Some Sethjees (merchants) extend advance money to the gharwalis for such arrangements. To attract clients, and ensure frequent visits by regular clients, the gharwali has to ensure that there were new faces and fresh girls in her den. This trade compulsion forces her

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58 *Id.* at 200-201.
59 Jogan Shankar, *Devadasi Cult – A Sociological Analysis,* 24 (1994, 1st ed.)

to establish contacts with those areas where the cult is being practiced. These gharwalis advance money through agents to those families where a beautiful girl is dedicated and has not yet reached puberty.[60]

So it is clear that despite several measures taken by the state governments concerned, the institution of devadasi continues to flourish in some of the southern states and invariably acts as the source area of traffickers from wherein they take young virgin girls who have been dedicated, for the purposes of exploiting them in big city brothels like Kamathipura of Bombay or Mehboob-ki-Gali in Hyderabad. A lot needs to be done on this front if this exploitative practice has to end.

XIV. Psychological Impacts on the Mind of Survivor

Trafficking is a process of demolition of a person, not just a geographical relocation for exploitation. It takes some courage to stop, deconstruct and understand the reality faced by the survivor of trafficking, let alone live it. What identity does a survivor have or nurture? How do survivors describe themselves? What narratives of their lives do they remember? What are the moments they can remember and smile? How do they make sense of repetitive abusive experience and have a sense of dignity? How do they bring back the purpose in their life in the face of such enormous suffering? How do they join people and be part of society when all their experiences tell them, if you trust, you will be abused. These are questions for a non-trafficked victim and are very tough to answer. Only the survivor knows what turmoil she has gone

60 *Ibid.*

through and those experiences generally stay and haunt her for the rest of her life.

XV. Pre-trafficking Context

The pre-trafficking context of the young people in South Asia predisposes them to trafficking. The experiences within the family and the patterns in the community increase the vulnerability of the young person to be trafficked.

(A) Family as a predisposing factor

The survivors of trafficking commonly report physical and sexual abuse, neglect and psychological maltreatment in their families of origin. This gets coupled with a complete lack of options due to poverty and increases the risk of trafficking. Though the whole community may be forced with the economic optionlessness but it is only a few families who contribute to trafficking. Death of a parent, substance abuse by a parent are aggravating factors. The decision making in the family is more likely to be male dominated and discriminates against the girl child. At times, the child is given the paternal role of helping the family to survive. Trafficking of one child is justified by the family as a means of survival of other children.[61]

(B) Community as a Colluding Factor

Trafficking is maintained by the silence of the community. Trafficking persists as institutions and individuals look the other way. A young person does not live in a vacuum. He uses the

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61 NHRC Report on Trafficking in Women and Children in India, 219-220 (2002-03)

resources of the community and has contact with it. When a young person goes missing in a small community, it is unlikely that the fact will not be noticed by the neighbours or the community workers or service providers.[62]

(C) Stigmatization and Rejection by the Family and the Community

A significant number of survivors of trafficking are isolated and not accepted by the community on their return from the destination where they are trafficked. The family, the community and even the representatives of the police, judicial process and NGO's may blame the survivor for their traumatic experiences. This process of labelling starts the process of rejection of the survivors by the family and community.[63]

(D) High Risk Periods

There are some high risk periods for trafficking. There is an increased risk of trafficking in times of disasters like cyclones and earthquakes and also during negative life events like death of mother, failure in examination, pregnancy before marriage, etc. These period tend to increase the vulnerability of the young person and further decrease the social support and sanctions. Other events like marriage and festivals, which promote exposure of young people to migrants returning from the demand area, may further increase the probability of trafficking.[64]

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62 *Id.* at 220.
63 *Ibid.*
64 *Ibid.*

XVI. Mental Health Impact of Trafficking on a Person

The survivors of trafficking are disabled by the mental health impact of their experiences. A significant proportion of survivors require years to cope with this disability.

(A) Impact of trafficking on an adolescent

A person is normally trafficked at a developmentally vulnerable age in his life. In contrast to the young people, adolescents who have been trafficked are faced with fear and anger. They are faced with uncertainty. They fell helpless and the only future they see for themselves is a fantasy of rescue, which soon dies out. The development of their identity is suddenly abbreviated by the negative experience of trafficking. The process of trafficking and commercial sexual exploitation has a severe impact on the sexuality and selfhood of the person. She begins to question her normal sexual needs and her body's physiological responses to sexual stimuli generate guilt. How the survivors manage their relationships, how they feel about their bodies and how they perceive themselves are questions which one cannot probably answer.[65]

(B) Thoughts and feelings of a survivor

The thoughts and feelings of a survivor are permanently affected by her traumatic experiences. The general experiences of a survivor are:

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65 *Ibid.*

(a) Malevolence

The experience of trafficking and repetitive abuse leads to two key belief systems, that determine the survivors behaviour. These are 'you cannot trust anyone' and 'if you trust you will always be hurt'. The person may stop believing anyone and has difficulty in forming relationships. At the same time and sometimes paradoxically, the survivors unwillingly find themselves in relationships where they trust and idealise the person impulsively. This is done probably to test whether the people they trust will hurt them or not. Soon, they realize and recognise that the person is not what they thought him to be and feel rejected and hurt.[66]

(b) Helplessness and Withdrawal

In the trafficking experience the young person learns that they cannot change their circumstances regardless of anything they do. They give up trying and see themselves as helpless. They withdraw and isolate themselves and seem to be disconnected from the world. Nothing impacts them, they are neither happy nor sad. They develop a 'blunted' response to all the changes around them. Even when the context changes i.e. they are 'rescued' and placed in a protective home of rehabilitation facility, the helplessness and withdrawal persists.[67]

(c) Dissociation

After the initial shock is over, numbness and indifference set in. They give up actively thinking about the context. The link between negative feelings and the events of thoughts is not

66 *Id.* at 222
67 *Ibid.*

acknowledged. It is as if recognising the cause of these feelings will be more terrifying than the feelings themselves. This is a method of surviving, despite every situation and everything around them reminding them of the trauma they had experienced. As the survivors cannot do anything about their experiences, their minds delink the feeling from the happening. This is called dissociation. Such negative feelings do come back as unlinked overwhelming surges of emotions. It is as if the negative feelings they experience are stored away in memory without a label and then seem to surface automatically without any accompanying explanation. This is very confusing for the survivors, as they cannot understand why they feel the way they do. The survivors cannot recognise the reason for their feelings.[68]

(d) Normalisation and Shaping

'Normalisation' is another coping mechanism that may be used to survive the everyday impact of trauma. The person facing the trauma, per force, learns to see it as a normal or routine experience that he/she is facing. It is as if by seeing it as a thing that happens to everyone all the time, the survivor is almost telling herself that she should not be feeling bad about something ordinary. The experience is not seen as traumatic but as something that has to happen.

These reasons force the survivor not to see themselves as victims of traffickers. The survivor may survive the exploitation by rationalising their experience as a role they have adopted through choice. They may also magnify the immediate and short term benefits of being on the traffickers team and minimize the long-

68 *Ibid.*

term reality of being abused. They focus on what they get immediately i.e. money, food, safety from the police, kindness and they may minimise the health risks and the reality of being sexually and economically exploited.[69]

(e) Self blame and identification with aggressor

The young person begins to blame herself to make sense of her experiences of trafficking. It is perhaps easier to say, I must have provoked them to hurt me, then to understand, why? Why me? The aggressor is seen as 'right' and having the right to hurt and control.[70]

(f) Distraction

Another strategy for the survivor is to get involved in what is happening around them to distract themselves from the memory of traumatic experiences. Films, dressing up, fights, gossip and fantasies all form good distractions that survivors may resort to. Seeking sensation and taking risks becomes a part of the new identity. These include experimenting with drugs, alcohol and seeking short-term relationships.[71]

(g) Foreshortened view of time

The survivor may feel that her life is without a future. The long term does not exist for the survivor. The future is this

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69 *Id.* at 223.
70 *Ibid.*
71 *Ibid.*

moment. Thus, from the trafficked person's perspective, there may be no risk or consequences, or any possibilities of change.[72]

(C) Psychiatric disorders in survivors of trafficking

A significant proportion of people who are exposed to trafficking develop psychiatric disorders. In any given population of young people, the prevalence of psychiatric disorders is as high as 20 percent. In a much more vulnerable group of people, who have gone through a more traumatic experience of trafficking, there is likely to be a higher prevalence of psychiatric disorders. The disorders which are commonly found amongst the survivors of trafficking are as follows.[73]

(a) Post Traumatic Stress Disorder

Post Traumatic Stress Disorder is characterized by marked generalised anxiety that is triggered by any cue that reminds one of the traumatic stimuli in the past, numbing of sensations and reliving of past traumatic experiences. For example, if a survivor of trafficking was raped in a room which was red in colour, the mention of the colour would trigger flashbacks and she would remember the first rape. Thus, each time she would be asked to repeat her story, she would lapse into silence because of these flashbacks and anxiety and this would be interpreted by most people as her shielding the trafficker.[74]

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72 *Ibid.*
73 *Ibid.*
74 *Ibid.*

(b) Depressive Disorder

Depressive disorder may present itself as sadness, lack of ability to enjoy oneself, lack of interest in day-to-day activities and negative thoughts about oneself, negative thoughts about the future and negative thoughts about the way one is perceived by others. There could also be disturbance in sleep and appetite.[75]

(c) Dissociative Disorder

It may manifest as loss of consciousness or amnesia or multiple personality disorder or as 'possession state'.

(d) Psychotic Disorder

These may present themselves as delusions (false and unshakeable beliefs), hallucinations (perceiving things without stimuli) or behavioural difficulties. There is a lack of insight into one's condition and experiences. There could also be a gradual deterioration of personality.[76]

(e) Eating Disorder

These may manifest themselves as an altered body image, with starvation or binge eating.[77]

The foregoing analysis throws a light on the pre-trafficking scenario, i.e. conditions which make people vulnerable for trafficking and it also looks at the psychological impact on the victims of trafficking. As is clear from above, the victims of trafficking experience a multiple of psychiatric disorders which

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75 *Id.* at 224
76 *Ibid.*
77 *Ibid.*

affect them and their personality, not only in the short run but also in the future. In fact, some survivors carry these traumatic experiences of trafficking throughout their lives. In such situations it becomes extremely difficult for the survivor to trust anybody or to feel empowered, given the fact that she has been rejected and controlled for most of her life. It also becomes impossible for the survivor to hope for the future. In such a scenario, the mental health interventions which are targeted for the survivor should be a friendly process trying to bring back the confidence of the survivor and trying to relieve him of miseries of his past. Having said that it becomes imperative to develop such a policy where trafficking is eliminated from the scene and the best way to do that would be to involve the trafficked person (sex workers in this case) wholeheartedly in the process to end the menace of trafficking which affects hundreds and thousands of people not only in India or South Asia but throughout the world.

XVII. Migration and Trafficking

Migration, simply stated is a process of movement by people from one place to another, with an objective in mind. It is a shift in the place of residence for some length of time and is rooted in economic, socio-cultural, ecological and political realities of a society. The relationship between migration and trafficking are important and need to be explored because an understanding of migration trends and patterns, factors promoting migration and the process involved in migration will play an important role in combating trafficking.

(A) Exploited migrant and the trafficked person

It is the issue of consent in physical movement that brings to the fore the problem of distinguishing between an exploited migrant and a trafficked person. Trafficked people have the opportunity of informed consent with respect to the experience they undergo. Majority of trafficked people will be exploited migrants. The decisive factors in distinguishing between the two normally are, the nature of the consent, the intention of the agency (that is responsible for them being in that position) involved, and in addition, the difference between the information made available at the start of the journey as compared to the circumstances they find themselves to be in at the end of the journey.[78]

The circumstances and situations that influence migration are usually determinable in terms of push and pull factors. Push factors are associated with sending regions and pull, with receiving regions. These factors are inter-dependent and are classified as economic, political, socio-cultural or environmental in nature. The push factors include growing inequalities in wealth between and within countries, economic decline, lack of economic opportunities and underdevelopment of an area, characterised by poverty, under-employment, landlessness and impoverishment among rural populations, discrimination, population pressure, harsh economic policies, limited access to resources, lack of opportunities for local employment to explore opportunities for local employment that would allow women to explore better jobs, or acquire greater skills to obtain a more secure future and basic subsistence.[79] The pull

78 NHRC Report on Trafficking in Women and children in India, 173 (2002-03)

79 *Ibid.*

factors are listed as: real or perceived differences in wages; more and better employment opportunities in destination areas; a growing number of women and men in destination areas who relegate domestic work to hired help and the increasing acceptance of the practice of prostitution. A dynamic relationship between the two regions, involving the interplay of various factors results in migratory streams, patterns and flows. Some of these are more likely to provide contexts in which people become vulnerable to traffickers. Political instability, inequalities, natural disorders, discrimination and violence within the family are some of the other factors for the creation of push and pull factors encouraging population movement is the uneven development of the regions. Globalisation, the modern age phenomena is an important reason for uneven development of regions. It also leads to the development of improved communication systems, information and transport systems. These factors fuels people's desire to move and effect their decision to move, as they become aware of living standards in developed regions.[80]

(B) Vulnerability

Migration becomes a major source for recruits in trafficking since people in situations that are likely to propel them towards seeking better lives elsewhere are likely to be the same set of reasons, to fall prey to traffickers. The human rights perspective sees trafficking as a crime against migrants in which the women (migrants) desire to migrate is preyed upon. This group is one of the largest groups vulnerable to traffickers. Women and children are vulnerable to being coerced and deceived at the source of

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80 *Ibid.*

origin, during the journey while migrating or at sites or work after reaching the transit point or destination.[81]

(C) Economic Factors

Migrating labour ranges from people who move from personal and professional development, usually middle class professionals, to semi-skilled, unskilled or low-skilled workers, moving to areas offering higher wages for relatively low skills. While migration involves risk for all those who undertake it, whether highly skilled or less so, trafficking mainly involves people at the lower end, of the skill level scale. Women and children form the largest group of this unskilled paid labour. According to the 1991 census of India, large number of women migrants were agricultural labourers (44.1 percent) and cultivators (37.6 percent), only 33.2 percent were in the household industries and 15.1 percent were in other activities. These migrants are exposed to large uncertainties and are also more willing to take risks as such they are likely to get trapped more easily.[82]

(D) Political Factors

Although globalisation has rendered acceptable the movement of goods and capital, the movement of people is not easily accepted. Strict immigration laws are passed by the state in an attempt to continue to be in-charge of this flow of people. However, it seems as though authority of the state is in the process of being corroded by growing incidences of illegal migration and

81 *Id.* at 174
82 *Id.* at 174-175

trafficking for example the number of illegal Bangladeshi migrants in Delhi alone is estimated to be around 2 lakhs.

Most reports consistently state that restrictions on migration tend to encourage illegal migration, which in turn creates higher risks of people being trafficked. Migrants may fall prey to traffickers while looking for means to enter a country illegally. As illegal migrants, they will be at a higher risk of being trafficked, because of their fear and avoidance of authorities, which becomes one of the mechanisms of controlling them. The opposite situation i.e. when the immigration laws are too lax, as in the case of India and its border situation with Nepal, may also create problems. The porous nature of the border between these countries has allowed trafficking to flourish and the close cultural and historical ties make it very difficult to place restrictions.[83]

Another political aspect of the problem is that governments put women and children at risk of being trafficked by failing to provide opportunities for education, shelter, food, employment, relief, access to structures of formal state power and freedom from violence. Situations and contexts are thereby created, which compels them to seek alternatives elsewhere, leading to migration. The absence of appropriate social, security measures for women and children in situations of distress force them to move. These circumstances which usually remain invisible place them at risk of being trafficked.[84]

Moreover, refugees or internally displaced people because of political instability due to war, civil strife, state re-organisation,

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83 *Ibid.*
84 *Id.* at 176

conflict, race and ethnic conflicts, militarism, internal armed conflict, religious persecution and human rights violations, all generate migration. In extreme situations, people may be willing to go with traffickers in the hope of being rescued and then using the laws and safety nets of the host country to obtain legal migrants status, not knowing the extent of exploitation awaiting them.

(E) Socio-cultural factors

Social discrimination and disturbed families with problems of alcohol, drug, physical or sexual abuse fuel a desire to move away, especially in the case of girls/women and children who more easily fall for false promises. Women and children, in situations of instability trust agencies or people, who may use the opportunity to traffic them. Runaway girls/women are at a greater risk of being trafficked. Breakdown of traditional family structure and support system increases the responsibility of women to support families, by sending remittances. Women also tend to look for alternatives because of their expanding sense of economic and personal autonomy, greater levels of independence and mobility thus increasing the number who migrate. They tend to be at a greater risk as they are in a vulnerable position without their community's support.[85]

(F) Demand created by migrants

Another factor playing an important role in creating vulnerability is the preference for women of a certain race or ethnicity. They are considered exotic and sold as such by the sex industry, which puts migrant women of certain ethnicity and

85 *Ibid.*

culture at risk, as in the instance of women from Nepal being trafficked into India.

(G) Ecological migrants and trafficking

Ecological migrants are people who have been displaced because of environmental factors. Their normal means of livelihood get disrupted and they are unable to find subsistence from the land. It is usually the destitute and the indigenous people who are most affected. People move because of elemental disruptions, like cyclones or other natural disasters. The destablisation and displacement of populations increases their vulnerability to exploitation and abuse through trafficking and forced labour. Large scale migration and consequent trafficking of girls was witnessed after the cyclone disaster in Orissa and after the earthquake devastated Latur in Maharashtra. Development, urbanisation, biological disruptions, deforestation, land erosion and lack of access to man-made resources also lead to large scale displacement of local population and the migrants who move out due to these reasons are highly vulnerable to trafficking.[86]

In India, a high percentage of female migration is due to marriage. Traffickers often use promises of marriage or fake marriages as a means of shifting women from their families and communities. There was a case of a trafficker who married 30 Nepalese girls in one year, selling them one by one to Indian brothels and then returning to Nepal to marry again.[87] As to the international migration being carried out between India and

86 *Id.* at 177
87 Shalini, SCN and Lalitha, Women Soliciting Change, *Cuttack Law Times*, 40, (1996).

Bangladesh, marriage is often used as a tool to traffic women. Agents working on both sides of the border send a matchmaker, usually a female, who is an original resident of a nearby village, to find recruits. A secret marriage is conducted and they move across borders, illegally assisted by a smuggling agent. The girl is then sold to another. Even if she is not sold, she is taken to her husband's place, where she is kept in slave like conditions and made to work in the bangle factories in exploitative conditions. Another aspect of this is reflected in media reports, which speak about large-scale trafficking of girls from Orissa and Assam to Haryana and Punjab for marriage.

The migration process in general involves considerable risk during transit between place of origin and destination. The experience of migration is that of being uprooted and alienated. Migrants experience multiple ruptures from family, friends and community, leading to this displacement being a traumatic experience. At the destination point they face numerous challenges, like new languages, ignorance of cultural variations and vulnerability to exploitation by employers in workplaces, unregulated by safety, health, decent conditions and minimum wages protections. Trafficking, because it involves migration, includes all the above. In addition, trafficked people undergo the trauma of dealing with the criminal means employed to transfer them and the loss of control over their lives and bodies.

The trend of increasing number of women moving in the Asia Pacific region has led to a feminsation of migration which means that population movements in the region are being dominated by women. This in turn is because of the feminsation of poverty in the

region and world over, due to many complex factors. This trend could also be one of the causal factors, for the increase in trafficking of women in the region.[88]

So, the similarities that we see between migration and trafficking is that they both involve movement, usually have some kind of an agency or network involved in this movement, thrive in poverty, unstable conditions and disruptions created by different factors and follow similar directions in space. They are both influenced by factors like labour demand and supply, globalisation and state policy. The differences are that the intention of the agent in trafficking is always exploitation, it is non-consensual, always exploitative and unlike migration is totally demand driven. Even if there is consent, it is not informed willing consent obtained after apprising the person of the entire situation. Thus migration and trafficking directly influence each other in matters of direction, volume and the nature of the process. The relation is manipulative in terms of opportunities, recruits and exploiter. Exploitation is the hallmark of this relationship and trafficking occurs, subsumed under this ongoing movement of people, driven by its own demand for people and exploiting the migration process to achieve its agenda.

XVIII. Legal Framework

The trafficking of women and children is a matter of global concern as it involves the violation of fundamental human rights. Although numerous separate abuses are committed during the course of trafficking, which themselves contravene both national and international law, it is the combination of displacement from

88 Supra note 1 at p. 17.

the community and commercialised exploitation that makes trafficking a violation distinct from its component parts. There is a large body of existing international and national instruments in the form of declarations, conventions and resolutions prohibiting trafficking. The Constitution of India (Art. 23), Nepal (Art. 20) and Bangladesh (Art. 18) contains provisions prohibiting trafficking and forced labour. Undeniably, there is legal responsibility on the states to institute measures to combat trafficking and ensure their implementation. The national laws of the South Asian nations have been inspired by developments at the international level. International instruments have tremendous bearing on the states parties and their national laws. Upon ratification of a convention, a state party must suitably amend or frame laws so as to implement the treaty. In the event of a void in the domestic law the courts can look into the provisions of international law as long as they are consistent with the constitution or the laws of the land. Article 51 of the Constitution of India requires the state to foster respect for international law and treaty obligations.

(A) International framework of laws relating to trafficking

There have been many laws passed at international agreements since the beginning of the 20th century to deal with trafficking. A brief overview of those laws is given hereunder.

(a) International Agreement for Suppression of White Slave Traffic, 1904

The agreement was formulated with the intention of securing of women of full age who have suffered abuse or compulsion, as also under-age girls, effective protection against criminal traffic known as 'white-slave' traffic.

(b) International Convention for Suppression of White Slave Traffic, 1910

This particular Convention criminalised procurement, enticement or leading away of a woman or a girl under the age of 21, even with her consent for immoral purposes.

(c) International Convention for the Suppression of Traffic of Women and Children, 1921

The treaty prohibits the enticing or leading away of a woman or girl for immoral purposes, to be carried out in another country.

(d) Slavery Convention, 1926

State parties are enjoined to discourage all forms of forced labour and slavery. Slavery means control over another person with full informed consent, for the purpose of exploitation.

(e) International Labour Organisation Forced Labour Convention, 1930

Article 1 of this Convention calls for suppression of the use of forced or compulsory labour in all its forms within the shortest possible period.

(f) International Convention for Suppression of Traffic in Women of Full Age

This Convention imposed a duty on the signatory countries to prohibit, prevent, prosecute and/or punish those engaged in trafficking in women.

(g) Universal Declaration of Human Rights, 1948

Article 4 of the Declaration prohibits all forms of slavery and the slave trade. Article 13 recognised the right of persons to

freedom of movement and residence and Article 15 recognises the right to nationality.

(h) Convention for Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others, 1949

This Convention is a compilation of four previous international conventions (conventions of 1904, 1910, 1921 and 1933). This Convention made procurement, enticement, etc., for the purpose of prostitution punishable irrespective of the age of the person involved and his/her consent to the same (Article 1). The Convention provided for repatriation (Article 19) and rehabilitation (Article 20) measures. However, the 1949 Convention is limited to trafficking for prostitution and related activities.

(i) Supplementary Convention on the Abolition of Slavery, Slave Trade and Institution and Practices of Slavery, 1956 (Slavery Convention)

This Convention condemned a variety of slavery like practices including the debt, bondage and forced marriage. State parties undertook to establish a suitable minimum age of marriages and registration of marriages.

(j) Abolition of Forced Labour Convention, ILO, 1957

Under this Convention state parties undertook to suppress any form of forced or compulsory labour as a means of political coercion, economic development, labour discipline or racial, social, national or religious discrimination.

(k) International Covenant on Civil and Political Rights, 1966

Forced labour and slavery are prohibited by Article 8 of the ICCPR. Article 24 outlines the rights of children.

(l) International Convention on Economic, Social and Cultural Rights (ICESR), 1966

Article 10 of this Convention stipulates that states are responsible for protecting children from exploitation and must lay down the minimum age of their employment.

(m) Minimum Age Convention, 1973

The aim of this Convention was to prohibit and regulate child labour and restrict engagement of children in hazardous work.

(n) Convention on the Elimination of all forms of Discrimination against Women, 1979 (CEDAW)

Article 6 of the Convention on the Elimination of all forms of Discrimination against Women requires state parties to take all appropriate measures including legislation to suppress all forms of traffic in women.

(o) United Nations Convention against Torture and other Cruel, Inhuman or Degraded Treatment or Punishment, 1984

The Convention provides against any expulsion or return of a person to another state if there are substantial grounds for deeming her to be in danger of torture. Victim compensation measures are also stipulated in the Convention.

(p) Tourism Bill of Rights and the Tourist Code, 1985

Adopted by the WTO the code enjoins that the State should preclude any possibility of the use of tourism to exploit others for the purpose of prostitution.

(q) Convention on the Rights of the Child, 1989

Article 11 requires state parties to take measures to combat the illicit transfer and non-return of children abroad. Under Articles 34 and 35, state parties must take appropriate national, bilateral and multilateral steps to protect the child from all forms of sexual exploitation and sexual abuse and also to prevent the abduction, sale of or traffic in children.

(r) Convention on Protection of Rights of Migrant Workers, 1990

This Convention seeks to put an end to the illegal or clandestine recruitment and trafficking of migrant workers and lays down binding international standards for their treatment, welfare and human rights.

(s) The ILO Convention on the Worst Forms of Child Labour, 1998

Article 3 of this Convention defines the worst forms of child labour comprising all manifestations of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour etc.

(t) Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women, 1999

The protocol enables individuals or groups who have exhausted national remedies to directly approach the Committee under the protocol.

(u) U. N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

The U. N. Trafficking Protocol seeks to create a global language to define trafficking in persons, especially women and children, assist victims of trafficking and prevent trafficking in persons. It supplements the United Nations Convention against Transnational Organised Crime, 2000. Article 3(a) of the Protocol defines 'trafficking in persons'.[89] The victim friendly protocol provides for preventive measures (Art. 9), victim compensation and privacy protection (Art. 6), repatriation (Art. 8) and strengthened border control measures (Articles 11 and 12)

However, the Protocol does not provide protection from prostitution for the acts victims are forced to perform. Therefore, victims could be prosecuted for a crime they were coerced into committing such as prostitution, working without a permit, or having false identification documents and could be summarily deported for these violations. Also, most of the positive measures, especially victim assistance are discretionary.

(v) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

This process seeks to raise standards for the protection of children from all forms of sexual abuse and exploitation.

(w) Recommended Principles and Guidelines on Human Rights and Human Trafficking

These standards were developed by the U. N. High Commission for Human Rights so as to strengthen the human

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89 For definition of 'trafficking in persons' as per the U. N. Protocol of 2000, see, supra note 6

rights principles and perspective of the trafficking protocol. The document sets down 17 recommended principles and 11 recommended guidelines, which are meant to facilitate effective implementation of key provisions.[90]

(B) Other International Initiatives

(a) World Conference on Human Rights, 14 - 25 June, 1993, Vienna

This Conference took new steps to promote and protect the rights of women and children by supporting the creation of new mechanism and advocating the universal ratification of the Convention on the Rights of the Child by the year 1995.

(b) World Congress against the Commercial Sexual Exploitation of Children, 1996

The aims of the World Congress were to award high priority and adequate resources for action against the commercial sexual exploitation of children, promote stronger cooperation among all sectors and strengthen the role of families in protecting children, ensure the revision and enforcement of laws, and advocate the development and implementation of gender sensitive prevention and reintegration programmes.

(c) Amsterdam Conclusion and Oslo Conference, 1997

The conference affirmed that in order to eliminate the exploitation of children, poverty eradication and rehabilitation programmes must be developed, along with a sound mechanism to monitor their progress.

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90 NHRC Report on Trafficking in Women and Children in India, 235, (2002-03).

(d) Second World Congress against Commercial Sexual exploitation of Children, Yokohoma, 2001

The conference called upon the international community to promote action towards the eradication of commercial sexual exploitation of children and address the risk factors of poverty, inequality, discrimination, violence, armed conflict, HIV/AIDS, dysfunctional families and criminality.

(e) The Honolulu Declaration, 2002

This declaration recognised the need to address the structural causes of trafficking and the forms of exploitation and poverty and its roots. The mobilising of a broad coalition was envisaged, to bring together concerned agencies, organizations and individuals to combat trafficking at local, regional, national and international levels.

(f) Brussels Declaration on Preventing and Combating Trafficking in Human Beings, 2002

The Brussels Declaration aims at bringing about European and international cooperation, in developing concrete measures, standards, best practices and mechanisms for prevention, victim protection and assistance, and police and judicial cooperation to prevent and combat the trafficking of human beings.

(C) Regional Instruments

At the regional level, there have been several initiatives by the governments of South Asia and Asia Pacific regions. The Bangkok Accord and Plan of Action to Combat Trafficking in Women, 1998; Asian Regional Initiative against Trafficking in Persons especially Women and Children, 2000; the Asia Europe

Meeting Action Plan to Combat Trafficking in Persons especially Women and Children, 2000; the Bali Conference Co-Chair's statement on people smuggling, trafficking in persons and related transnational crime, 2002.

(a) SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002

The aim of this Convention was to promote cooperation amongst member states to effectively deal with various aspects of prevention, interdiction and suppression of trafficking in women and children; repatriation and rehabilitation of victims of trafficking and preventing the use of women and children in international prostitution networks, particularly where the SAARC member countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) are the countries of origin, transit and destination. The Convention is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from the Asian continent.

The SAARC Convention defined 'child', 'prostitution', 'trafficking', 'traffickers' and 'persons subjected to trafficking' under Article 1. It provides for aggravating circumstances which are factual circumstances that enhance the gravity of the offence (Art. 4). It also provides for protection of victims (Art. 5), mutual legal assistance (Art. 66), training and sensitisation of officials (Art. 8), rehabilitation of victims (Art. 9). Offences under the Convention are extraditable (Art. 7). Article 8(3) requires the state parties to establish a regional task force comprising officials from the member states, to facilitate implementation of the provisions of this Convention and to undertake periodic reviews. The main

criticism levied against SAARC Convention is its narrow definition of trafficking, which is limited to prostitution, and also that it makes no distinction between women and children. Trafficking has been defined to include the moving, selling or buying of a person, but does not include recruitment, labour, transfer or receipt that does not essentially constitute buying or selling.

(b) Convention of Regional Agreement for the Promotion of Child Welfare, 2002

This Convention seeks to create regional arrangements among SAARC countries in order to promote understanding and awareness of the rights, duties and responsibilities of children and to develop the full potential of South Asian Child.[91]

(D) Laws in India dealing with Trafficking

The Constitution of India under Article 23(1) prohibits trafficking in human beings and forced labour. This right is enforceable against the state and private citizens.

(a) The Indian Penal Code, 1860

Relevant provisions under the Indian Penal Code, 1860 are sections 293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, 366, 370, 371, 373, 375, 376, 496, 498, 506, 509, 511. Of much significance are section 366-A, which makes procuration of a minor girls (below 18 years) from one part of India to another as a punishable offence and section 366-B which makes importation of a girl below the age of twenty-one years punishable.

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91 Supra note 86 at 236.

Section 374 provides punishment for compelling any person to labour against the will of that person.[92]

(b) Suppression of Immoral Traffic in Women and Girls Act, 1956

It was enacted under Article 35 of the Constitution of India with the object of inhibiting or abolishing the immoral traffic in women and girls. The Act was enacted in pursuance of the trafficking convention, to which India was a signatory in the year 1950. The Act was amended twice, firstly in 1978 and then in 1986, which was the drastic amendment and it was renamed as the Immoral Traffic (Prevention) Act, 1956.

The Immoral Traffic (Prevention) Act, 1956 is a legislation that deals exclusively with the menace of trafficking. The act defines the term 'brothel', 'child', 'corrective institutions', 'prostitution', 'protective home', 'public place', 'special police officer', and 'trafficking officer'. The purpose of the Act was to inhibit or abolish commercialised vice, namely the traffic in women and girls for the purpose of prostitution as an organised means of living.

(c) State Measures to Prohibit the Devadasi System

State governments have taken some steps towards curbing the system, but they seem to be inadequate till date. The Karnataka Devadasi (Prohibition of Dedication) Act, 1982 declare unlawful, the very act of dedication, whether the dedication is done with or without the consent of the dedicated women. Under the Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989,

92 Legal framework on trafficking and prostitution dealt with in detail in chapter III

whosoever performs, promotes, attends or takes part in a dedication ceremony is liable to punishment with imprisonment of three years and fine.

(d) Goa Children's Act, 2003

The Government of Goa brought the Goa Children's Act in the year 2003. The Act addresses several child rights issues in an integrated manner. Under the new legislation, the owner and manager of a hotel or other establishment will be held solely responsible for the safety of the child on the premises as well as all adjoining beaches and parks. The owner and manager are also held accountable if any child is allowed to enter a room without registration. It provides for strong action against making children available for commercial exploitation including posing obscenity, selling or abetting sale of children even under the garb of adoption or addiction of a girl as a Devadasi. Some of the salient feature of the Act are:

(a) Trafficking has been given a legal definition for the first time in Indian legal history.

(b) The definition of sexual assault has been expanded to incorporate every type of sexual exploitation.

(c) Responsibility of ensuring safety of children in hotel premises has been assigned to the owner and manager of the establishment.

(d) Photo studios are required to periodically report to police that they have not shot any obscene photographs of children.

(e) Stringent control measures have been introduced to regulate access to pornographic materials.

So these are some of the international and national efforts that have been undertaken to curb the menace, though a lot has been done but a lot more remains to be done.

(E) U. N. Response towards trafficking

Over the years trafficking in human beings has become a global phenomenon. It has reached epidemic proportions leaving no country immune to it. The U. N. system has taken an important step forward in coordinating on international response to trafficking. U. N. and its relevant organs such as UNICEF, UNIFEM, UNESCO, ILO, UNDP have been operating in different parts of the world creating public awareness of the grave social and human problems mobilising support against trafficking worldwide. Special Rappoteurs from the U. N. are deputed to different countries to investigate into the problem arising out of trafficking and its allied issues.[93]

(a) ILO-IPEC

The International Labour Organisation (ILO) has for long been addressing child trafficking through its 'Forced Labour Convention' which aims to eradicate ". . . all work or service which is extracted from any person under the menace of any penalty and for which said person has not offered himself voluntarily." This powerful instrument confirms child trafficking as a practice similar to slavery and calls for countries to take immediate action to

93 S. K. Ghosh, *The World of Prostitutes*, 681, (1996, 1st ed.)

secure the prohibition and elimination of the worst forms of child labour.

Within the ILO, action against the trafficking of children has been undertaken by International Programme for the Elimination of Child Labour (IPEC) since 1992. Guided by the U. N. Convention on the Rights of the Child and ILO Convention 1982, IPEC works towards the effective elimination of trafficking by addressing its root causes.

(b) UNICEF

United Nations International Children's Educational Fund or UNICEF is guided by the Convention on Rights of Child (CRC), which has been ratified by most countries. Articles 9 and 10 of CRC state that a child must not be separated from his or her parents against their will, except where it is in the best interest of the child. Article 11 commits states to combat the illicit transfer of children abroad. Article 35 asks states to adopt appropriate national, bilateral and multilateral measures to prevent the abduction, sale or trafficking of children for any purpose in any form. The UNICEF strategy for addressing child trafficking focuses on 4 main areas:

(a) Raising awareness about the problem.
(b) Providing economic support to families
(c) Improving access to and quality of education; and
(d) Advocacy for the rights of the child.

UNICEF has also played an important role in the elimination of child labour in India by supporting government and NGO activities

in the area. It is also involved with NHRC to coordinate policy and advocacy work.

(c) UNODC

The U. N. Office on Drugs and Crimes (UNODC) is the U. N. office responsible for crime prevention, criminal justice and criminal law reforms. It pays special attention in combating transnational organised crime, corruption and illicit trafficking in human beings. Nine resolutions relating to UNODC were adopted by the General Assembly.

The Global Programme against Trafficking in Human Beings (GPAT) was designed by the UNODC in collaboration with the United Nations Inter-Regional Crime and Justice Research Institute (UNICJRI) and launched in March 1999. GPAT assists member states in their efforts to combat trafficking in human beings. It highlights the involvement of organised criminal groups in human trafficking and promotes the development of effective ways of cracking down on perpetrators.

(d) OHCHR

The office of the High Commissioner for Human Rights (OHCHR) has been actively involved in resolving the problem of trafficking in persons, focusing in particular on trafficking in women and children. OCHR's work is based on 2 fundamental principles

(a) Human rights must be at the core of any credible anti-trafficking strategy; and

(b) Such strategy must be developed and implemented from the perspective of those who most need to have their human rights protected and promoted.

(e) UNIFEM

The core agenda of the United Nations Development Fund for Women (UNIFEM) has been to promote women's human rights, political participation and economic security. It provides technical and financial assistance to innovative programmes and strategies. UNIFEM's regional anti-trafficking programme has been focusing on the following priority areas.

(a) Increasing political and community support at different levels in high risk (both source and demand) areas.

(b) Increasing use of reliable data and research findings in advocacy, protective and prosecution work.

(c) Improving monitoring and lobbying for implementation of conventions/laws etc.

(d) Bringing together different alliances and networking

(e) Enhancing the understanding and focus on trafficking.

(f) UNAIDS

UNAIDS is the global joint U. N. programme on HIV/AIDS. It brings together 7 U. N. agencies in a common effort to fight the epidemic viz. the UNDP, UNICEF, UNFPA, UNDCP, UNESCO, WHO and the ILO. UNAIDS leads, strengthens and supports an expanded response aimed at preventing the transmission of HIV,

providing care and support, reducing the vulnerability of individuals and communities to HIV/AIDS and alleviating the impact of the epidemic. UNAIDS has recognised trafficked person as a group which is highly vulnerable to HIV/AIDS exposure because they are often subjected to a multitude of physical and psychological health problems. Women are specifically vulnerable to reproductive and other gender-specific health problems in trafficking situations as they have little or no access to reproductive health care. Therefore, UNAIDS has integrated anti-trafficking in its HIV/AIDS programmes in an effort to prevent the spread of the epidemic across the region.

(F) Other International Agencies

International Police or INTERPOL helps member countries in offences which fall under the category of international crimes. They are pornography and trafficking in women. A very large scale investigation undertaken by the INTERPOL during 1962-63 resulted in the dismantling of an entire distributing network and prosecuting of about 500 people in 32 countries. INTERPOL has been working with the police in various countries to counter the international trafficking in women and children.

(a) USAID

The United States Agency for International Development (USAID) provides economic and humanitarian assistance in more than 100 countries. It has taken up trafficking in persons as an important area of concern. Pursuant to the Trafficking Victims Protection Act of 2000, President Bush established the President's Inter-Agency Task Force to monitor and combat trafficking in

persons. The State Department established an office to monitor and combat trafficking in persons in October 2001. In South Asia USAID has played an important role to combat trafficking under this programme, South Asia Regional Initiative – Women's and Children's Equity Programme. In India, the USAID/India trafficking initiative is being implemented in collaboration with UNIFEM. USAID provides grant support to the policy planning process within government agencies to implement the national plan of action, capacity building for NGO's, rehabilitation of children of sex workers through education, piloting of community based actions and media and advocacy.

(b) AUSAID

The Australian Agency for International Development (AUSAID) is the Australian Government's official overseas aid programme which aims to help developing countries reduce poverty and achieve substantial development. AUSAID is looking at trafficking in persons in India as the main area of concern and has begun many anti-trafficking programmes.

(c) Asia Foundation

The Asia Foundation believes that trafficking in women and girls is an urgent human rights problem in Asia. The Asia Foundation anti-trafficking initiatives across Asia have enabled partner organizations – both government and non-government to develop and test models and strategies and implement programmes to prevent trafficking, protect victims and help bring traffickers to justice. The Asia Foundation has been actively involved in South Asia and has launched various programmes in

Nepal, Pakistan, Bangladesh, Sri Lanka and India for the benefit of women.

(d) Plan International

This is an independent organisation dedicated to working with and for children. In Asia, Plan International works in twelve countries spanning diverse cultures and languages. In India, child trafficking is seen as an issue of grave concern by plan, which involves unscrupulous people tricking families into allowing children to move to another place, where they are put to work, more often than not, either in brothels or in slave-labour conditions. To increase awareness of this violation of human rights, plan has worked with local non-governmental organisations, organised community meetings and conducted orientation sessions for school children to make people aware of how trafficking takes place.

XIX. Sum-up

The chapter as such depicts that the worst fallout of the current policy and system to deal with sex-work is the scourge of trafficking. There has been witnessed a continuous increase in the magnitude and scale of trafficking over the last so many years and decades. Lakhs of people which include women and children have been trafficked from within and outside India for the purpose of prostitution. There are several factors which make certain people more vulnerable to trafficking than others. Majority of women in India are trafficked primarily from Nepal and Bangladesh. It has been witnessed in the chapter that the modus operandi adopted by the traffickers is systematic where they have a whole chain of

functionaries working from grass-root level upwards, wherein each category performs its own specific task. Traffickers are very clear in their minds as to what should be the attributes of the trafficked persons wherein good physical features, your age and virginity are the most sought after characteristics. It has also been seen how traumatizing the whole event of trafficking is for the trafficked persons. Culturally sanctioned practices like Devadasi have also contributed towards trafficking. The chapter also examines closely the relationship between an exploited migrant and trafficking. As far as the Indian legal framework is concerned, primarily the Constitutional provision is Article 23 which prohibits trafficking whereas the special legislation dealing with the problem is Immoral Traffic (Prevention) Act, 1956. Then again there is a whole gamut of international framework of laws which have been framed to effectively tackle trafficking. U. N. is also doing its bit through its various agencies to check this hydra headed monster. Sadly, our present policy and framework on trafficking are lacking in the energy and direction required to wipe out this menace and a lot has to be done on this front if we want the situation to improve in future.

CHAPTER – 6

INTERNATIONAL PERSPECTIVE

I. Introduction

Sex work and sex workers are not in any way an indigenous phenomenon. As stated earlier the profession of sex-work is a universal phenomenon to be found in all societies and all nations of the world. Different countries have adopted different models to handle this profession. Some countries follow the model of suppression wherein everything associated with sex-work along with the actual act of intercourse is declared illegal. The other model is the tolerationist model wherein some activities associated with sex-work are declared illegal while others including the actual sexual act itself is legal. Still other countries follow the regulatory model wherein the government regulates the profession mainly by way of licensing and laying down strict conditions to be followed, for carrying on or the profession off sex-work. In the present chapter the researcher intends to take up the legal framework of four countries and see as to what is the set-up in these countries to deal with sex-work. These four countries are Netherland and New Zealand on the one side and Thailand and Philippines on the other side. Netherland and New Zealand have been selected for study because these are the two major western countries which are following the regulatory model with some success. An in depth analysis of the working of the regulatory model in these countries would be helpful as it would highlight the advantages that can be

had by following such a model especially in our country. Thailand and Philippines have been selected as these are the two Asian nations wherein huge amount of sex-workers are found. In fact Bangkok, the capital of Thailand is known as the 'Prostitution capital' of the world. By studying the legal systems to tackle sex-work in these countries an idea can be had about the efficiency or otherwise of the methods that these countries are adopting to deal with sex work.

II. Examining the law to deal with sex-work in the four countries of Netherland, New Zealand, Philippines and Thailand

(A) Netherland

Prostitution had never been illegal in Netherlands. Brothels, however were illegal until the ban was lifted on 1st October, 2000. It is now legal to run a business where men and women over the age of consent are voluntarily employed as prostitutes. The person running the business must satisfy certain conditions and obtain a license from the local authorities. Sex clubs, brothels and escort services may therefore, operate as legal businesses. In fact the Netherlands is one of the first countries in the world to recognize voluntary adult prostitution as a normal occupation.[1]

Among the several objectives of this new legislation were – to have better ways and means to control the running of (legal) prostitution business, to improve the fight against the organization of involuntary prostitution (exploitation) and to protect minors from (commercial) sexual abuse. Organization of prostitution by consenting adults (someone of 18 years of age or more) is since

1 Dutch policy on prostitution available at www.minbuza.nl/english

then no longer punishable in the Netherlands. Prostitution itself never was and still is not punishable. Forced prostitution (trafficking) was already punishable (since 1911) and is still punishable (Article 250a Penal Code)[2]. Although trafficking has been fought actively since 1911 already, the lifting of the ban on brothels is considered to give an extra impetus to this fight.[3] The new legislation also aims to reduce prostitution by foreign nationals residing illegally in the Netherlands and to serve the links between prostitution and crime.

(a) Features of the Policy on Sex Work

Although the ban of brothels was lifted in 2000, no legislation governing prostitution was introduced. It has been left to local authorities to formulate and implement policies tailored to the circumstance prevailing in their areas. Hence, the local authorities lay down the rules for brothels operating within their jurisdiction. They are also responsible for issuing licenses. Brothels must be licensed and must therefore satisfy the conditions. The association of Netherlands municipalities has published guidelines for the regulation of brothels, sex-shops and streetwalkers. Policy on the establishment of brothels enables local authorities to exert influence on their location, ensuring that they do not disturb or intrude on the life of a neighbourhood. Their location must confirm to zoning of urban renewal plans and to local by-laws on the living and working environment.[4]

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2 *Ibid.*
3 *Ibid.*
4 *Ibid.*

Regulation on premises specify the minimum size of working areas and govern safety, fire precautions and hygiene. For instance every working area must be equipped with a panic button and hot and cold running water. Condoms must be provided. Regulation on the operation of brothels govern the position and status of prostitutes, protecting their mental and physical integrity and prohibiting forced prostitution, the employment of minors or people without a valid residence permit. They also include measures to prevent exercise nuisance in neighbourhoods where brothels are located.[5]

(b) Reasons for lifting the ban on brothels

To end abuses in the sex industry, the Netherlands decided to change the law to reflect everyday reality. It is now legal to employ prostitutes who are over the age of consent and do the work voluntarily but stricter measures have been introduced under the criminal law to prevent exploitation. The legalisation of brothels enables the government to exercise more control over the sex industry and counter abuses. The police conduct frequent control of brothels and are thus in a position to pick up signs of human trafficking. This approach is in the interest of prostitutes themselves and it facilitates action against sexual violence, abuse and human trafficking.[6] It would be worthwhile here to have a glance at section/Article 250a of the Penal Code of Netherlands commonly known as Dutch Penal Code. This Article holds the recruitment, abduction and transportation of persons across borders (in an active way by facilitating the transportation) for the

5 *Ibid.*
6 *Ibid.*

purpose of sexual exploitation as a punishable offence. Article 250a of Dutch Penal Code runs as under:

Section 1

Any person who

(1) by force or some other physical act, by threats of violence or of any other physical act, by misuse of authority arising from the actual state of affairs or by deception, induces another person to make him/herself available for the performance of sexual acts with or for a third party for remuneration or, under the said circumstances, takes any action which he or she knows or may reasonably be expected to know will result in that other person's making him/herself available for performing those acts;

(2) recruits, takes with him or her or abducts a person with a view to inducing that person to make him/herself available for performing sexual acts with or for a third party for remuneration in another country.

(3) involves another person to make him/herself available for performing sexual acts with or for a third party for remuneration or takes any action which he or she knows or may reasonably be expected to know will result in that other person making him/herself available for performing those acts when the other person is a minor.

(4) willfully profits from sexual acts of another person with or for a third party for remuneration, while he or she knows or must reasonably assume that other person is making him/herself

available for performing those acts under the circumstances referred to in para 1;

(5) willfully profits from sexual acts of another person with or for a third party for remuneration, if the other person is a minor;

(6) forces another person by violence or some other physical act or threats of violence or by misuse of authority arising from the actual state of affairs or by deception to benefit him or her or from the proceeds of his or her sexual acts with or for a third party:

Shall be guilty of trafficking in persons and as such liable to a term of imprisonment not exceeding six years and a fifth category fine (maximum $ 45,000) or either of these penalties.

Section 2

The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine or either of these penalties.

A. Trafficking in person by two or more persons acting in concert;
B. Trafficking in persons in respect of a person who is under the age of sixteen;
C. Trafficking in persons if force or some other physical act as referred to in para 1 result in serious physical injury.

Section 3

Trafficking in persons by two or more persons acting in concert under the circumstances referred to in section 2, para 2

and 3, shall be punishable by a term of imprisonment not exceeding 10 years and a fifth category fine, or either of these penalties.

(c) Benefits to sex-workers from this policy

The legalisation of brothels has several advantages for prostitutes. It means that local authorities can publish by laws governing safety, hygiene and working conditions in brothels. Brothels may be forbidden to force prostitutes to consume alcoholic drinks with clients or engage in unsafe sex or certain sexual acts. They may also be compelled to allow health services or interest groups unrestricted access to their premises.

Sex-work or prostitution is now considered a legitimate occupation. So sex-workers have the same rights and obligations as other professionals. Now the rights of sex-workers are more explicit as the industry now has to comply with labour laws. It has the same obligations as any other sector relating to tax and social insurances contributions. The government publishes booklets for sex-workers and their employers, containing information on social insurance and related matters. They examine the comparative advantages of employment and self-employment and their respective rights and obligations.

Brothels are continuously monitored so as to see that they satisfy the conditions of the license. It is upto the local authorities to decide who is responsible for doing so. In practice, it is usually the police prosecutor and the chief of the police. Brothels that fail

to observe the regulations are liable to administrative sanctions such as penalty payment, withdrawal of their license and closure.[7]

The Local authorities are responsible for ensuring that prostitutes have easy access to health care, with readily available services and no sanctions but health and working conditions are primarily the responsibility of the sex-workers themselves and their employers. As far as the employers of sex-workers are concerned their responsibilities include pursuing a safe sex policy, giving their workers the opportunity to benefit from information activities and encouraging them to have regular medical check-ups four times a year. General practitioners and specialists have been given special guidelines on STD screening amongst prostitutes. Medical check-ups are not compulsory. Obligatory check-ups reinforce the idea that prostitutes transmit infections. Moreover, clients use medical check-ups as an excuse to ask for unsafe sex. As a rule, sex-workers are asked to have medical check-ups four times a year. The majority considers them as useful precautions and are willing to comply. Clinics in the cities offer free and anonymous check-ups. Safe sex and good information are of paramount importance in protecting the sex-workers and their clients against transmissible diseases.[8]

(d) Effect of New legislation on labour relations, tax collection and sex-workers rights to social security

The lifting of ban on brothels means that private law which includes labour law, applies to relations between prostitutes and their employers. The most important points are that individuals can

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7 *Ibid.*
8 *Ibid.*

decide whether they wish to engage in prostitution and if so, how and that they themselves can also choose to terminate the business relationship. The Working Conditions Act and most other legislations that apply to the business sector in general apply to prostitution as well. The Labour Inspector publishes a booklet containing information on legislation governing safety, health and welfare. The booklet is intended for prostitutes and their employers and for safety, health and welfare services.[9]

Prostitutes and their employers are also required to pay tax. The Tax Department applies a target group approach which is uniform throughout the country. Both parties are responsible for paying tax, depending on the nature of their working relationship. Employers are obliged to contribute towards employee insurance schemes.[10]

As far as social security is concerned prostitutes who work for an employer and are obliged to stop working for reasons beyond their control are eligible for unemployment benefit. Like any other unemployed person, they must be available for work and take any jobs that are generally considered acceptable. Obviously no one can be obliged to take a job in the sex-industry, nor do employment offices offer such jobs. Prostitutes who chose to stop working, whether for an employer or as a self employed professional, are not eligible for unemployment benefit, because they have become unemployed voluntarily. Instead, they are entitled to social assistance. They may register as job-seekers. Prostitutes who are not self-employed but work for an employer,

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9 *Ibid.*
10 *Ibid.*

are eligible for invalidity benefit. They are entitled to benefits only if they are no longer able to do their own or any generally acceptable work.[11]

(e) Human Trafficking and the New Policy

An important spin-off of the policy is that it prevents human trafficking, which is characterized by exploitation, coercion and violence. The lifting of the ban on brothels makes prostitution a legitimate occupation and gives prostitutes the same rights and protection as other professionals. The labour laws offer the most effective protection against exploitation, violence and coercion. The policy is based on the conviction that strengthening the position of women is the best way to combat sexual violence. Moreover, abuses are easiest to detect when prostitutes operate publically and legally rather than in a clandestine subculture. The introduction of a municipal licensing system enables the police and other law enforcement agencies to conduct inspection of brothels subject to the mayor's consent. Through regular inspections it is ensured that brothels conform to the licensing conditions and the police are in a position to pick up signs of human trafficking. They obtain invaluable information that can be used immediately to trace and prosecute offenders in both the regulated and unregulated sectors.[12]

A special phone line has been opened so that members of the public can anonymously report suspicious activities. Article 250 a of the Criminal Code, which prohibits traffic in persons and exploitation of prostitutes, is strictly enforced. The law enforcement

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11 *Ibid.*
12 *Ibid.*

authorities in the Netherlands give priority to combating the traffic in persons, the exploitation of prostitutes and the employment of minors in prostitution. The Netherlands supports projects both at home and abroad aimed at preventing human trafficking. It is also tackling the problem in partnership with other members of the European Union. The European Union conducts information campaign in countries from which victims are recruited and in 2003 it set up an experts group on the subject. Europol supports operational and research projects in the member states and conducts studies to improve the policing methods. In the year 2000, the Netherlands commissioned an independent national rapporteur - one of the few positions of its kind in the European Union - to publish an annual report on human trafficking and make recommendations to the Dutch Government.[13]

Anyone who is in the Netherlands illegally and is a victim of human trafficking is entitled to assistance from the government. Anyone who files a complaint of trafficking is granted a temporary residence permit pending the outcome of legal proceedings. In some cases they may be eligible for a permanent residence permit on humanitarian grounds. At present, a residence permit of this kind does not entitle the holder to work, but this is expected to change in the near future. They are given three months to decide whether they wish to file a complaint. They are allowed to stay in the Netherlands legally during this period and may use all public facilities and services, such as counselling, medical care and financial and legal services.[14]

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13 *Ibid.*
14 *Ibid.*

Nationals of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxemburg, Malta, Norway, Portugal, Spain, Sweden and the United Kingdom may work as prostitutes in Netherlands either for themselves or for an employer. Strict measures are taken against prostitutes operating in the Netherlands without a valid residence permit and to unmask anyone marking under false pretences. Any person who is in the Dutch land illegally is asked to leave or may be deported by the authorities of Netherland.[15]

Thus, the Dutch government is now following a regulatory model in the field of prostitution wherein it has adopted a practical, result oriented approach towards sex-workers by recognising their profession, regulating it, giving them decent opportunities of living and rooting out evils from the system such as trafficking, minor prostitution and forced prostitution. Things have only improved since the introduction of this new law and the results are there for everyone to see.

(B) New Zealand

New Zealand, which is an island country located in Southern Hemisphere in the East of Australia has also recently revamped its laws relating to sex-work or prostitution. There was a long standing demand by the New Zealand prostitute's collectively for a new law on prostitution and majority of their demands were met by the Government of New Zealand when they passed the Prostitution Reform Act on 25th June, 2003. The collective had since long

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15 *Ibid.*

pushed for the new laws, and the laws were designed with input from a large number of sex-workers. The new Act is designed to:

(a) Safeguard the human rights of sex-workers and protect them from exploitation.
(b) Promote the welfare and occupational health and safety of sex-workers.
(c) Be conducive to public health.
(d) Prohibit the use of prostitution of persons under 18 years of age.
(e) Implement certain other related reforms.[16]

This Act in fact has replaced the old law under which the following activities associated with sex-work were illegal and punishable:

(a) Soliciting for the purpose of prostitution (upto £ 200 fine)
(b) Keeping a brothel (upto 15 years in prison)
(c) Living on the earning of prostitution (upto 15 years in prison)
(d) Procuring anyone for the purpose of prostitution (upto 7 years in prison)[17]

All these penal provisions of the old law which was based on the tolerationist model have now been done away with. The new law in the form of Prostitution Reform Act, 2003 is more practical, sex-worker friendly and reform oriented. In fact, Section 3 of the Act sets out the purpose of enacting this law. The language of section 3 runs as under:

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16 Comments on Prostitution Reforms Act, 2003 available at www.nzpc.org.nz.
17 *Ibid.*

The purpose of this Act is to de-criminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that -

(a) Safeguards the human rights of sex-workers and protects them from exploitation.
(b) Promotes the welfare and occupational health and safety of sex-workers.
(c) Is conducive to public health.
(d) Prohibits the use in prostitution of person under 18 years of age.
(e) Implements certain other related reforms.[18]

(a) Important Points of the Prostitution Reform Act, 2003

(a) A sex-worker has a right to refuse to have sex with a client for any reason or for no reason. No one including managers, receptionists, clients, other-workers, etc. can force the sex-worker to have sex with a client, even if he has paid. This, of course does not take away the right of the client to sue for damages for non-performance of the contract.[19] The relevant section which talks about this aspect is section 17 of the Prostitution Reform Act, 2003 (hereinafter referred to as the Act) which runs as under:

Section 17. Refusal to provide Commercial sexual service.

(i) Despite anything in a contract for the provision of commercial sexual services, a person may at any time,

18 Text of the Act available at www.justice.govt.nz
19 Supra note 16

refuse to provide or to continue to provide, a commercial sexual service to any person.

(ii) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if he or she does not consent, or withdraws his or her consent, to providing a commercial sexual service.

(iii) However, nothing in this section affects a right (if any) to rescind or cancel, or to recover damages for a contract for the provision of commercial sexual services that is not performed.[20]

(b) A person cannot be coerced (induced of compelled) into having sex by having money taken off from them (i.e. fined etc) or threatened in any way. The relevant provision in section 16 which runs as under:

Section 16 : Inducing or compelling persons to provide commercial sexual services or earnings from prostitution:

(i) No person may do anything described in sub-section (2) with the intent of inducing or compelling another person (person A) to provide or to continue to provide, commercial sexual services to any person or to (b) provide, or continue to provide, to any person any payment or other reward derived from commercial sexual services provided by person A.

(ii) The acts referred to in sub-section 1 are any explicit or implied threats or promise to any person (person B) will -

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20 Supra note 18

(a) improperly use, to the detriment of any person, any power or authority out of -

(1) any occupational or vocational position held by person B or

(2) Any relationship existing between persons A and B.

(b) Commit an offence that is punishable by imprisonment.

(c) Make an accusation or disclosure (whether true or false)

(1) of any offence committed by any person, or

(2) of any other misconduct that is likely to damage seriously he reputation of any person or

(3) that any person is unlawfully in New Zealand:

(d) supply or withhold supply, of any controlled drug within the meaning of Misuse of Drugs Act, 1975:

(iii) Every person who contravenes sub-section (i) commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years.[21]

(c) One does not have to register with the police, or even contact the police, if he/she wishes to be a sex-worker in New Zealand. Under the old laws, Massage Parlours were required to keep a register of names, with identifying details, which were to be given to the police for inspection upon request. In some areas, people

21 *Ibid.*

working privately had to register with the police before they could advertise in the local newspaper. This is no longer the case.[22]

(d) Operators, clients and sex-workers must all take reasonable steps to ensure a prophylactic sheath (condom) or other appropriate barrier is used if those services involve vaginal, and or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections. Failure to do so can mean a hefty fine. This essentially means that everyone should use a condom and/or dental dam for vaginal, and oral sex.[23] The relevant section which talks about this aspect is section 9 of the Act which runs as under:

Section 9 : Sex-workers and clients must adopt safer sex-practices-

(i) A person must not provide or receive commercial sexual services unless he or she has taken all reasonable steps to ensure a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, and, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections.

(ii) A person must not, for the purpose of providing or receiving commercial sexual services, state or imply that a medical examination of that person means that he or she is not infected, or likely to be infected, with a sexually transmissible infection.

(iii) A person who provides or receives commercial sexual service must take all other reasonable steps to minimise

22 Comments on sex work in New Zealand available at www.nzpc.org.nz.
23 *Ibid.*

the risk of acquiring or transmitting sexually transmitted infections.

(iv) Every person who contravenes sub-section (1) sub-section (2) or sub-section (3) commits an offence and is liable on summary conviction to a fine not exceeding $ 2,000.[24]

(e) A brothel is a place that is habitually used by just one sex worker or more for commercial sex activities with clients. All brothels must display health promotion messages. Section 4(a) defines brothel as any premises kept or habitually used for the purposes of prostitution but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.[25]

(f) Operators are required to have 'operator certificates'. An operator is any person who has any form of control over a sex-worker. This includes owners, directors of companies, managers and may include receptionists. Section 5 defines operator as:

Section 5 : Definition of Operator

(i) In this Act, 'operator' in relation to the business of prostitution means, a person who, whether alone or with others owns, operates, controls or manages the business and includes (without limitation) any person who -

(a) is a director of a company that is an operator, or
(b) determines -

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24 Supra note 18.
25 *Ibid.*

(1) when or where an individual sex-worker will work, or

(2) the conditions in which sex-workers in the business work, or

(3) the amount of money, or proportion of an amount of money, that a sex-worker receives as payment for prostitution or

(c) is a person who employs, supervises, or directs any person who does any of the things referred to in paragraph (b)

(ii) Despite anything in sub-section (i) a sex-worker who works at a small owner-operated brothel is not an operator of that business of prostitution and for the purposes of this Act, a small owner-operated brothel does not have an operator.[26]

Section 34 makes it clear that every operator of a business of prostitution (other than a company) must hold a certificate issued under section 35. Sub-section 2 of section 34 makes it a penal offence with a fine upto $ 10,000 for every person who is required by sub-section (1) of section 34 to hold a certificate, does not hold that certificate.[27]

(g) Up to four sex-workers can work together and do not need an operator's certificate, so long as no one is incharge of anyone else, or working as a boss. If there are more than four sex-workers

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26 Available at sexinz.co.nz
27 Supra note 18

working together, as equals, one will have to apply for an operator's certificate.[28]

(h) There are restrictions imposed by this Act on advertising by the operators or by the sex-workers themselves. Section 11 talks in detail about the said restrictions.

Section 11 : Advertising Restrictions.

(i) Advertisements for commercial sexual services may not be -

(a) broadcast on radio or television, or
(b) published in a newspaper or periodical, except in the classified section of the newspaper or periodical, or
(c) screened at a public cinema.

(ii) A person who does any of the things described in sub-section (1) or who authorises any of the things described in that sub-section to be done, commits an offence and is liable on summary conviction to -

(a) in the case of a body corporate, a fine not exceeding $ 50,000 and
(b) in any other case, a fine not exceeding $ 10,000.

(iii) In this section advertisement means any words, or any pictorial or other representation, used to notify the availability of or promote the sale of commercial sexual services, either generally or specifically.[29]

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28 Supra note 22
29 Supra note 18

(i) Councils have the right to make by-laws affecting the signage and location of brothels, but cannot ban brothels outright. Some councils have zoned brothels to certain areas. Some councils also have home based-occupation rules affecting anyone who works from home. Awareness of the by-laws in a particular area before thinking of establishing a brothel or practising prostitution in that area is a must.[30] It is sections 12, 13 and 14 of the Act which discuss the various aspects of making bye-laws regulating signage and location of brothel.

(j) Section 18 of the Act says that a person's benefit; or entitlement to benefit, under the Social Security Act, 1964 may not be cancelled or affected in any other way by his or her refusal to work, or to continue to work as a sex-worker. Sub-section (2) says that a person's entitlements under the Injury Prevention Rehabilitation and Compensation Act, 2001 may not be lost or affected in any other way by his or her being capable of working as a sex-worker, if he or she refused to do, or to continue to do, that kind of work. Sub-section (3) says that refusal under this section means a refusal to do this kind of work in general, rather than refusal for particular job or at a particular time.[31]

(k) Medical Officers of Health Department have been designated as Inspectors for the purposes of this Act. Section 24 of the Act says that the purpose inspection of an Inspector will be for determining whether or not a person is complying, or has complied, with section 8 or 9. Section 26 gives power to Inspectors

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30 Supra note 22
31 Supra note 18

to enter and inspect compliance with health and safety standards. It runs as under:

Section 26

(i) An Inspector may, at any reasonable time, enter premises for the purpose of carrying out an inspection if he or she has reasonable grounds to believe that a business of prostitution is being carried out in the premises.

(ii) For the purposes of the inspection, the Inspector may-

(a) conduct reasonable inspections.

(b) take photographs and measurements and make sketches.

(c) Require any of the following persons to provide information or assistance reasonably required by the Inspector :

(1) a person who operates the business of prostitution, or an employee or agent of that person

(2) a sex worker or client of the business of prostitution.

(d) take copies of the information referred to in paragraph (c).

(iii) An Inspector may seize and retain anything in premises entered under this section which the Inspector has reasonable grounds to believe will be evidence of the commission of an offence against section 8 and 9.

(iv) Nothing in this section limits or affects the privilege against self incrimination.

(v) An Inspector may take any person acting under the Inspector's direct supervision into the premises to assist him or her with the Inspection.[32]

(k) Only New Zealand citizens are entitled to choose the profession of sex-work or become sex-workers. If an outsider wants to come to New Zealand to work as a sex-worker; or to own, open or invest in a brothel or other business of prostitution, his/her visa can be refused. If he holds a temporary visa, or if his permanent residency carried a special condition, he/she can be deported if he owns a brothel or other business of prostitution, or if he/she is working in the sex-industry.[33]

(l) If a person is a brothel operator, or a client, he can be fined or imprisoned if he hires a sex-worker who is under 18. It is also illegal to receive money from a sex-worker under the age of 18. It is not illegal to be a sex-worker if a person is younger than eighteen. However, if a person hires a sex-worker under 18 to work in his brothel, or if a client hires a sex-worker under eighteen to provide sexual services to him, they are breaking the law. Relevant sections on the point are sections 20, 21, 22 and 23 of the Prostitution Reforms Act, 2003.[34]

This policy is definitely progressive and in tune with the modern times. The Government of New Zealand has made a comprehensive central legislation in the form of Prostitution Reform Act, 2003 and moved over from the antiquated tolerationist model to the regulatory model wherein right of sex-workers are of

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32 *Ibid.*
33 Supra note 22
34 *Ibid.*

paramount importance. The Act has certainly helped sex-workers to become a part of mainstream society with minimal chances of them being exploited. The Act has also made good provisions for health checkups and the Act is also strict on forced prostitution and prostitution being forced upon minors. The Act is certainly a positive step in the right direction and worthy of emulation by other countries around the world.

(C) The Philippines

Philippines is a South East Asian country comprising of a number of islands with its capital city of Manila. Prostitution or sex-work is a thriving industry in this country with one estimate suggesting that the number of women involved in this profession are equal to the whole labour force in Philippines. Philippines has been following the model of suppression wherein all the activities associated with sex-work are declared illegal. As such prostitution in the Philippines is illegal and is covered by Anti Trafficking in Persons Act of 2003. Though prostitution and related activities are illegal which attract penalty in the form of imprisonment and fine, still prostitution and related activities such as child prostitution, pornography, paedophilia, sex-tourism etc. are flourishing and running unabated in this country.

Philippino women are trafficked on a large scale out of the country to various countries of the world, with Japan being the largest recipient of Philippino women for the purposes of prostitution. In the last decade of the 20th century (i.e. 1990-2000 A.D.) these women became highly vulnerable to trafficking due to the prevalent Asian economic crisis during that period. According

to an estimate 150,000 Philippino women had been trafficked into Japan for prostitution till the year 1998.[35] In 1991 Philippino women were being sold in Japan for $ 2,400 to $ 18,000 each.[36]

Philippines suffers from the perennial scourge of child prostitution and sex-tourism. In fact Philippines is fourth amongst 9 nations with the most children in prostitution with 60,000-1,00,000. The top five areas for child prostitution and sex tourism are Manila, Angeles city, Puerto Galera, Davao and Cebu. Majority of these children aged 11 to 15 said that their relatives introduced them into prostitution or they were recruited by friends. The increase in the exploitation of prostituted children is attributed to the fear of HIV/AIDS. Some people believe, children have less risk of having the disease. The sex-trade in children is well established because of the influx of sex tourists and the existence of sex tours catering to Japanese, European and other Caucasian tourists.[37]

Philippines is also infamous the world over as being one of the most favoured destinations of paedophile sex tourists. Men from Australia and Great Britain are primary suspects as perpetrators of child prostitution in the Philippines.[38] Prostitution tourism and the existence of sex tours catering to Japanese, European and other Caucasian tourists help to keep prostitution children alive and is thriving in Philippines. Being an illegal activity has made little difference to prostitution prevailing and thriving in Philippines. Prostitution is sometimes available through brothels

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35 Daily Star, 2nd July, 1998, quoted from and available at www.uri.edu
36 CATW - Asia Pacific, Trafficking in Women and Prostitution in Asia Pacific available at www.uri.edu.
37 Philippines - Children : Scourge of Child Prostitution, available at www.uri.edu
38 Indian Express, 28 November, 1997 available are www.uri.edu

(also known as Casa), bars, Karaoke bars (also known as KTV's), Massage Parlours, street walkers and escort services.[39] Due to the great demand of Filipina cultural entertainers in Japan a new visa category called 'entertainer visa' was issued by the Philippines Government in 1981. As of January, 1992, Filipinas constituted 65.28% of foreign entertainers in Japan, 90% of all entertainers came only from three countries i.e. the Philippines, Taiwan and Thailand with the Philippines accounting for almost 70%. More Filipinas compared with other Asian nationals were also deported from 1986-89 indicating a large pool of illegal immigrants.[40]

(a) Philippines Policy on Prostitution

As stated earlier prostitution and allied activities have been declared illegal in Philippines and the Central Legislation which does so is the Anti Trafficking in Persons Act of 2003. It is section 2 of this Act which lays down the policy of the government in this field. It runs as under:

Section 2 : Declaration of Policy

It is hereby declared that the state values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall have highest priority to the enactment of measures and development of programmes that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons and mitigate pressures for involuntary migration and servitude of

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39 Prostitution in Philippines, available at www.wikepedia.org

40 Quoted from Jean D'Cunha, Prostitution and Sex Trafficking : A Review of Contemporary Feminist Perspective and Strategies, *Economic and Political Weekly,* 103 (1996)

persons, not only to support trafficked persons but more importantly to ensure their recovery, rehabilitation and reintegration into the mainstream of society.

It shall be a State policy to recognize the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration of Human Rights, United Nations Convention on the Rights of the Child, United Nations Convention on the Protection of Migrant Workers and their Families. United Nations Convention against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of all other relevant and universally accepted human rights instruments and other international Conventions to which the Philippines is a signatory.[41]

(b) Important Features of the Anti-Trafficking in Persons Act, 2003

(i) Important terms defined in the Act

The Act defines 'trafficking in persons' in section 3. It says trafficking in persons refers to recruitment, transportation, transfer or harboring or receipt of persons with or without the victims consent or knowledge, within or across the national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person or the giving or receiving of payments or benefits to achieve the consent of

41 Anti Trafficking in Persons Act, 2003 available at www.catw.op.org

a person having control over another person for the purpose of exploitation.[42]

Prostitution is referred to as any act, transaction, scheme or design involving the use of a person by another for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.[43]

Sex-tourism refers to a program organized by travel and tourism related establishments and individuals which consist of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.[44]

Sexual exploitation refers to participation by a person in prostitution or the production of pornographic materials as a result of being subjected to a threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of a victim's vulnerability.

Pornography refers to any representation through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes.[45] All these terms are described in the Act under section 3.

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42 *Ibid.*
43 *Ibid.*
44 *Ibid.*
45 *Ibid.*

(ii) Prostitution and Trafficking Declared Illegal

Section 4 of the Act declares both prostitution as well as trafficking as illegal acts. Section 4 runs as under:

Section 4 : Acts of trafficking in persons - It shall be unlawful for any person natural or juridical to commit any of the following acts:

(a) To recruit, transport, harbour, provide or receive a person by any means including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation forced labour, slavery, involuntary servitude or debt bondage.

(b) To introduce or match for money, profit or material, economic or other consideration, any person or any fillipino woman to a foreign national, for marriage, for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage.

(c) To offer or control marriage, real or simulated for the purpose of acquiring, buying, offering, selling or trading them to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage.

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for pornography or sexual exploitation.

(e) To maintain or hire a person to engage in prostitution or pornography

(f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage.

(g) To recruit , hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion or intimidation for the purpose of removal or sale of organs of the said person; and

(h) To recruit, transport or abduct a child to engage in armed activities in the Philippines or abroad.[46]

It is section 10 of the Act which provides for penalties and sanctions for any of the acts enumerated in section 4. It says that any person found guilty of committing any of the acts enumerated in section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than one million pesos (P 1,000,000.00) but not more than two million pesos (P 2,000,000.00).[47]

The situation as seen above, need a lot of improvement as currently Philippines is witnessing a situation wherein sex tourism, child prostitution, exploitation of prostitute is on the rise. In fact according to Sister Mryna Tacardon, a delegate from Philippines in her statement at the 29th International Congress: "The government of ousted President Marcos undertook an aggressive campaign to sell the women of his country to the tourists. Tourists were lured to come to see the fine beaches and

46 Supra note 41.
47 *Ibid.*

beautiful Filipino women. Travel agencies went beyond this and arranged so called 'sex tour' for foreigners which meant a package of services including hotel accommodation, sightseeing tours and escort services. In fact a number of tourists were paedophiles who came in search of teenage boys and girls for prostitution. women and children were photographed and filmed after engaging them in sexual acts and these pictures were sold to lure foreigners to come to Philippines."[48] The current law does not seem effective in Philippines and a lot needs to be done in this country to stem the rot.

(D) Thailand

Thailand is a country comprising of many big and small islands with its capital at Bangkok and the country is located in South-East Asia. Thailand is infamous the world over as being a Brothel Centre and Bangkok as the Brothel Capital of the world. Contrary to the common opinion that prostitution in Thailand is due to the informal handling of sexuality and has its roots in Buddhism, prostitution was imported by Chinese guest workers. At the beginning it were Chinese women who were in the course of time replaced by locals. In fact the degree of prostitution as it is observed in Thailand today is a direct consequence of the Vietnam war. The U. S. army in the 60's and 70's crated recreation centres so called 'Rest and Recreation Centres' where American soldiers should recover in between their war missions. As the 'demand' of female company was growing the number of women working in the sex-business increased (in smaller quantities men as well). The tourist industry which was developing right at that time took over

48 Quoted from S. K. Ghosh, *The World of Prostitutes*, 460 (1996, 1st ed.)

this service sector after the end of the war and the associated pullout of the U.S. soldiers.[49]

As far as figures go, studies estimate that between 70,000 to 2 million women are engaged in prostitution in Thailand. About 800,000 of these individuals are below the age of 18.[50] According to a report the Thai prostitution industry is a booming 2.7 billion dollars a year industry which is equivalent to about 14% G.D.P. of Thailand. Out of poverty children mainly from poor Northeast of Thailand and also from the neighbouring countries of Myanmar, Cambodia and Laos are often sold by their parents to people smugglers - mostly attracted by false promises. Mostly these minors end up in brothels for paedophiles or are offered to foreigners with such tendencies. According to the international help organization Medicines sans frontiers' in Thailand more than 2,00,000 children and adolescents are forced into prostitution.

Sex-tourism is a phenomenon which has taken its roots in the last decade or so. Since the early 80's the concept of sex-tourism started growing in Thailand. In the mean time downright sex-tourism centres were formed with the prime location being at the internationally famous tourist resort of Pattaya. The situation worsened in the 90's as Thailand acquired an image internationally as a paradise for paedophiles.[51]

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49 Prostitution in Thailand available at www.kochangur.com/thailandprostitution/sextourism.htm
50 Supra note 39 at 103
51 Supra note 47

(a) Thai Legal Policy and Framework on Prostitution

Thailand first addressed the problem of trafficking of women into Thailand in 1928 by passing the Trafficking in Women and Girls Act. Section 7 of the Act states that women and girls who have been trafficked into Thailand will be exempted from imprisonment and or fines. But they had to be sent to a state reform institution for at least thirty days. At this time prostitution was still legal in Thailand. Thailand criminalized prostitution in 1960 with the passage of Suppression of Prostitution Act, 1960.[52] This Act intended to eliminate prostitution (defined as 'an act promiscuously rendering sexual services for remuneration) by making it an illegal activity. The Act stipulated that convicted prostitutes should be reformed through medical treatment. Then came the Entertainment Places Act of 1966, which was designed to pave the way for brothels to be legalized in the guise of massage parlours, bars, nightclubs, beach-houses, etc. The Act defines various kind of entertainment places and allows such places to operate only under a license to be obtained from the local police station and sets 18 years as a minimum age for women to work in such establishments.[53] Under the Penal Code of 1956, prostitution is not illegal but procurement for the same is illegal. This Act stipulates harsh punishment for abuses against girls forced into prostitution. The nature and severity of the punishment is in direct relation to the age of victim.

Thus, by 1990, Thailand had four separate legal regimes, addressing different but sometimes overlapping elements of both

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52 Thail Legal Context available at www.hrw.org.
53 NHRC Report on Trafficking in Women and Children, 2002, 242

trafficking and prostitution. The resulting inconsistencies, while not insurmountable, have undermined the development of clear legal sanctions on forced prostitution and trafficking. But the Thai government's failure to combat forced prostitution and trafficking results primarily from its unwillingness to enforce even the most straight forward provisions, such as the prohibition against trafficking in women and girls. Worse still, not only has the Thai government failed to protect trafficking victims, but its agents are directly complicit in many of the human rights violations against Burmese women and girls. Thai law enforcement officials routinely profit from non-enforcement of the law by extorting protection fees from brothel owners and subject trafficking victims to discriminatory and abusive treatment.[54]

The Thai Immigration Act, 1979 prohibits entry into the kingdom of Thailand, of foreigners who are deemed, on reasonable grounds, to be motivated to enter the kingdom for the purposes of engaging in prostitution or in trafficking of women and children and ordains the withdrawal of permits where the individual is suspected of indulging in such acts. The latest Act on prostitution i.e. the Prevention and Suppression of Prostitution Act, 1996 continues to maintain prostitution as illegal but considerably reduces the penalties for the prostitute. In addition, if prostitution is forced, then the prostitute is not deemed to have committed an offence. Sex with children under 18 years of age is a crime and the client may face a very heavy fine.[55]

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54 Supra note 52
55 Supra note 53 at 242

The measures in Prevention and Suppression of Trafficking in Women and Children Act, 1997 extends coverage of both boys and girls under 18 years of age. It defines as a crime, the conspiracy to commit an offence involving the trafficking in women and children. The Penal Code Amendment Act, 1997 covers those who procure, lure or traffic, both, boys and girls, adult males and females for the sexual gratification of another person. The nationality and locality of the offender is irrelevant in such a case.[56]

(b) Important Features of Prevention and Suppression of Prostitution Act, 1996

This Act repealed the old Suppression of Prostitution Act of 1960. 'Prostitution' as defined in section 4 of the Act meant sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for earning or any other benefit, irrespective of whether the person who accepts the act and person who commits the act are of the same sex or not.[57]

Section 5 of the Act punishes a person for soliciting or inducing a person in a public place. It says that any person who for the purpose of prostitution, solicits, induces, introduces herself or himself to follow or importunes a person in a street, public place or any other place, which is committed openly and shamelessly or causes nuisance to the public, shall be liable to a fine not exceeding one thousand Baht.[58]

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56 *Ibid.*
57 Act of 1996 on Prostitution available at www.phuket-realestate-law.com/law.index.htm
58 *Ibid.*

Section 6 is a penal section which punishes a person who is associated with another person in a prostitution establishment for the purpose of prostitution of oneself or another person shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand Baht or to both.

If the offence under the above mentioned paragraph is committed on account of compulsion or under an influence which cannot be avoided or resisted the offender is not guilty.[59] Section 11 is again a penal section which punishes the manager of a prostitution house. It says that any person who is the owner, supervisor or manager of a prostitution business or a prostitution establishment shall be liable to imprisonment for a term of three to fifteen years and to a fine of sixty thousand or three hundred thousand Baht.[60]

As seen above the Prevention and Suppression of Prostitution Act, 1996 makes prostitution and allied activities as illegal and punishes anyone found prostituting either himself/herself or managing or running a prostitution house. As seen from the Act the Thai government follows a policy of suppression wherein prostitution and all the allied activities are not tolerated but declared illegal. Be that as it may this policy has totally and completely failed in Thailand. It has only led to exploitation of sex-workers by pimps, brothel owners, traffickers etc. and projection of Thailand as a hot sexual destination has only led to sex tourism and child prostitution to flourish and prosper. Though legalizing and regulation of the profession was thought

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59 *Ibid.*
60 *Ibid.*

over by the Thai government in the year 2003 but the proposal never materialized. If the regulatory system would have been adopted in the year 2003 then as seen with New Zealand and Netherlands, things could have been a lot better in Thailand also.

III. Sum-up

After analysing the policy and the legal system prevailing in the four countries i.e. Netherland, New Zealand, Thailand and Philippines the clear picture that emerges is that the nations which have adopted a regulatory system i.e. New Zealand and Netherlands they have done better at all fronts. By following this system these countries have adopted a practical outlook wherein they have realized that adult commercial consensual sex should be legally permissible within reasonable controls imposed by the State. Such a system helps improve the lot of sex-workers to a great extent, it brings them into the mainstream of the society, prevents their exploitation and more successfully tackles problems such as child prostitution and forced sexual work. On the other hand those countries which have followed the model of suppression i.e. Philippines and Thailand have failed on all fronts. Sex-workers in these countries are the worst exploited by pimps, brothel owners and also the state law enforcement agencies. By not recognising the legitimate demands of sex-workers, these countries have only made the condition of the sex-workers pitiable who ironically are the ones who are giving billions of dollars in foreign exchange to these countries.

CHAPTER - 7

A REGULATORY MECHANISM TO SEEK SOLUTIONS AND FIND A WAY FORWARD

I. Introduction

The sex-workers profession as we all know is called the 'oldest' profession of mankind. As such, this profession has flourished since the beginning of mankind and will keep thriving as long as humans exist. Prostitution or sex-work has thrived and will keep thriving because it satisfies the inherent biological need of humans. A profession like this which has continued since time immemorial, it has neither been given its due in society nor legal recognition. The society and its respected persons have sustained this trade for the satisfaction of their sexual urges, without any legal recognition or protection to those who are engaged in sex trade. In the absence of legal protection, women in the sex industry are in vulnerable position, subject to serious abuses and exploitation. People want it but condemn it, use it but damn it, need it but pretend otherwise. It cannot be wished away and it has been present on earth and will continue to exist in some form or other.

The first thing that is to be kept in mind while trying to find out a way of the current mess in the profession of sex-work is that we have to leave apart and aside all our moralistic views as to what is good and what is bad. We cannot find newer paths if we keep

hanging on to the old notion that prostitution is morally incorrect and a sinful activity. This approach will take us nowhere and rather than attempting to find any solutions, we will remain stuck in the present quagmire.

Our solution finding approach, as such has got to be practical and in tune with the realities of the age that we are living in. What we have to realize is that we want improvement in the overall living and working conditions of sex-workers, as such our approach has got to be sex-worker oriented. We have to seek solutions with sex-workers in our mind. If we empower the sex-workers who are the mainstay of the profession of sex-work, it will definitely lead to an overall improvement in the current situation. We need to challenge the age old notions of sin and blame and try to reconstruct the identity of the sex-workers. We should now stop viewing sex workers as fallen women who need rehabilitation. We have to realize now that sex-work is an occupation and not a moral condition.

It is a known and well accepted fact that sex work provides livelihood to thousands of women who otherwise would have been bereft of any source of income, given the low levels of literacy and income generating skills in women in India, particularly in rural areas. The following lines of a sex-worker portray the ground reality in a very effective way.

"I am proud that I am self-sufficient. If I choose to sell my body to make a living, society has no right to question me. For a moment I want people to reflect on the role we play in society. Sexual urges are very powerful. What if a man who is either not married, or is away from his wife did not have access to a sex

worker when he need to fulfill those urges? Will women around him then not become vulnerable? Will there not be increased threat to their security? Are we not in denial when we think otherwise? Most of us in this profession are here not out of coercion, but rather out of compulsion. Instead of making it more and more difficult for us to work, the government should find ways to let us work without hindrance, or find alternative ways for each of us to earn a living."[1]

Given the situation it becomes necessary to provide a legal environment that can give the sex trade an unambiguous professional identity. It is imperative to give the individual woman in sex-work an opportunity to claim her fundamental rights to freedom, dignity and livelihood as guaranteed to all Indian citizens. It is worth quoting at length here from the 'Sex Workers Manifesto (1997), produced at the First National Conference of Sex Workers in Calcutta.

"Like many other occupations, sex work is also an occupation . . . . we systematically find ourselves to be targets of moralizing impulses of dominant social groups, through missions of cleaning and sanitizing, both materially and symbolically. If and when we figure in political or developmental agendas, we are enmeshed in discursive practices and practical projects which aim to rescue, rehabilitate, improve, discipline, control or police us. Charity organizations are prone to rescue us and put us in 'safe' homes, developmental organizations are likely to rehabilitate' us through meager income generation activities and the police seem bent upon to regularly raid our quarters in the name of controlling

1 Quoted from Bharati Ghanshyam, Amendments to ITPA, 18 (2008)

'immoral trafficking.' Even when we are inscribed less negatively or even sympathetically within dominant discourses we are not exempted from stigmatization or social exclusion. As powerless, abused victims with no resources, we are seen as objects of pity."[2]

The kind of oppression that can be meted out to a sex worker can never be perpetuated against any other regular worker. The usual justification given is that sex work is not real work, it s morally sinful. As the whole structure and mechanisms of the sex-industry are kept hidden behind the façade of sexual morality and social order, unlike other professions there is no transparency legitimacy or scope for any discussion about the demands and needs of the workers of the sex industry. Rather than wasting energy in rescue and rehabilitation, all the concerned people should think of improving the life of sex-workers in the profession itself and the same view has been expressed in the Sex-Worker's Manifesto as well which are worth quoting.

"People who are interested in our welfare, and we acknowledge many are genuinely concerned, often cannot think beyond rehabilitating us or abolishing prostitution altogether. However, we know that in reality it is perhaps impossible to rehabilitate a sex-worker because the society never allows to erase our identity as prostitutes, as morally violated and threatening. Then, is rehabilitation a feasible or desirable option for us? In a country where unemployment is of such gigantic proportions, where does the compulsion of displacing millions of women who are already engaged in an income earning occupation which

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2 Excerpts from Sex Workers' Manifesto, theme paper of the first National Conference of Sex Workers, organized by DMSC at Calcutta.

supports themselves and their extended families come from? If other workers in similarly exploitative occupations can work within the structures of their profession to improve their working conditions why cannot we, sex-workers, remain in the sex-industry and demand a better deal in our work and life.[3]

As seen in the previous chapters, the current legislation in the form of Immoral Traffic (Prevention) Act, 1956 has totally failed on all fronts. It has not delivered the results which it was expected to deliver. This law has neither benefitted the sex-workers nor the society as a whole. In fact the law is inherently flawed. The researcher suggests a new law in the form of Sex Workers Empowerment Bill, 2008. The Bill would contain the following provisions.

II. Sex Workers Empowerment Bill, 2008

(1) Short title, extent and commencement :

(i) The Bill may be called the Sex Workers Empowerment Bill, 2008.

(ii) It extends to the whole of India.

(2) Purpose of the Bill

The purpose of this Bill is to remove criminal sanction from sex work and to create a framework that:

(a) Safeguards the human rights of sex-workers and protects them from exploitation.

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3 *Ibid.*

(b) Promotes the welfare and occupational health and safety of sex-workers.

(c) Is conducive to public health

(d) Prohibits the use in sex work of persons under 18 years of age.

(e) Implements certain other related reforms.

(3) Definitions

In this Bill, unless the context otherwise requires:-

(a) 'Brothel' includes any house, room, conveyance or place which is used for the purpose of sex-work.

(b) 'Child' means any person who has not completed the age of 18 years.

(c) 'Client' means any person who receives, or seek to receive commercial sexual services.

(d) 'Commercial sexual services' means sexual services that –

(i) Involves physical participation by a person in sexual acts with and for the gratification, of another person, and

(ii) Are provided for payment or other reward irrespective of whether the reward is given to the person providing the services or another person.

(e) 'Major' means a person who has completed the age of 18 years.

(f) 'Sex work' means the business of providing or arranging the provision of commercial sexual services.

(g) 'Sex worker' means any person carrying on the profession of sex-work.

(h) 'Self Regulatory Boards' means the Boards primarily comprising of the sex-workers alongwith local authorities established under this Act to manage and regulate the sex-workers in a given area.

Zoning

(4) Zoning in all cities and towns to specifically provide for sex-work.

(i) It would be the task of local authorities to specifically earmark certain areas in a town or city (preferably, in the outer limits of the town or city) and the profession of sex-work would be legally allowed to be carried on in these ear-marked areas of the town or city only.

(ii) Those areas which have been earmarked for carrying on the profession of sex-work would be regulated and controlled by the self-regulatory boards and these boards would be responsible for effectively managing and regulating the sex-work in that area.

(iii) Anyone found to be engaged in providing commercial sexual services outside the zoned area would be subject to Rs.5000/- fine on the first occasion. On the second occasion he/she would be liable to punishment which could extend upto 6 months or Rs.10,000 fine or both.

Self Regulatory Boards

Sec. 5 : Self Regulatory Board : For the regulation and management of the earmarked areas as mentioned in section 4 there shall be constituted self-regulatory boards.

(i) Each zoned area or areas in a city or town shall have its self-regulatory board to effectively regulate and manage the whole profession of sex-work in the zoned or earmarked areas.

(ii) The self-regulatory board shall comprise of 7 members out of which 5 shall be from the community of sex-workers who will elect these members and send them as their representatives to these self-regulatory boards. The remaining two members shall be representatives of the society as well as the government.

(iii) The members of the self-regulatory boards shall hold office for a period of 2 years after which they shall be replaced by new members. The local government shall send replacement of its two members whereas the sex-workers shall again elect among themselves five members who shall represent them for the next two years.

Issuing of Licenses

(6) Issuing of licenses to brothel keepers and sex-workers:

(i) It shall be the responsibility of the self-regulatory boards to issue licenses to brothel owners as well as sex-workers to carry on the profession of a sex-worker in the zoned areas.

(ii) License will be issued by the Board in case of a brothel keeper only to a female who has been involved in the profession for at least five years or more.

(iii) The Board would reserve the right to cancel the license of a brothel keeper thus depriving her any right to carry on the trade in that zone if the brothel keeper is found to have violated any of the conditions of the issue of the license. As to what would be the conditions of issuance of the license would be the discretion of the Board.

(iv) The Broad framework for issuance of license would cover areas such as hygiene in the brothel, adequate safety, medical practices, adequate remuneration to be provided to the sex-worker, responsibility for keeping the sex-workers of that brothel disease free, not employing trafficked victims, minor etc.

(v) The Board would also issue licenses to the sex-workers who are desirous of carrying on this avocation in that particular ear-marked zone.

(vi) The Board would issue a license to a woman after completely ensuring that she is not a victim of trafficking, nor a minor, nor a woman who is being forced or compelled by a third party to enter this profession against her choice. The Board would also reserve the right to cancel the license of a sex-worker to carry on her profession in a zoned area under certain circumstances which would be determined by the board.

(vii) Anybody found operating a brothel or carrying on the profession of a sex-worker without a valid license issued by the board would be evicted from the area and fined Rs. 5,000/- on the

first attempt. On the repetition of the offence, the person would be liable to punishment which would include imprisonment for a term which may extend to 6 months or to fine of Rs.10,000 or both.

Other functions of Self-Regulatory Boards

(7) Other duties of self-regulatory boards

(i) It shall be the primary responsibility of the self-regulatory boards to see that there is no exploitation of sex-workers within their areas and also to ensure human rights of sex-workers within their area of operation.

(ii) It would also be the responsibility of the self-regulatory boards to initiate comprehensive development programmes for the sex-workers community and to ensure the community's rights to self determination.

(iii) The boards would ensure that there is no violence meted out to any sex-worker and also establish channels of information within their respective areas through which the board members would monitor whether any children are being trafficked into sex-work or whether anyone is being made to work against their will.

(iv) The Boards would identify those who have been trafficked and encourage them to seek the help of the members, board would also provide trauma counseling of those recovered.

(v) The Board would also provide health services to victims of trafficking, if required and would ensure repatriation of those who are recovered with representatives of the boards accompanying them.

(vi) The Boards would also ensure that regular medical camps are made available to sex-workers within their zones so that they remain disease free. It would also be the responsibility of the Boards to ensure that a sex-worker suffering from any disease is cured by providing free medical aid to her.

(vii) The Board would endeavour to carry on all such activities which are beneficial, advantageous to sex-workers within the zoned areas.

Sec.8 : Advertising Restrictions

(i) Advertisements for commercial sexual services may not be -

(a) Broadcast on radio or television or

(b) Published in a newspaper or a magazine

(c) Screened in a public cinema

(ii) A person who does any of the things described in sub-section (i) or who authorizes any of the things described in that sub-section to be done, commits an offence and is liable for punishment for a term not exceeding one month or a fine of Rs, 5,000/- or both.

(iii) In this section, the term 'advertisement' means any words or any pictorial or of their representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.

Protection to sex-workers

Sec. 9 Inducing or compelling persons to provide commercial sexual services.

(i) No person shall force any female to provide commercial sexual services against her will. Any person found doing so either by the boards or by law enforcement agencies shall be punishable with imprisonment that may extend to 7 years or with fine upto Rs. 50,000 or both.

(ii) A licensed sex-workers shall have the right to say 'no' to any clients without assigning any reason. Any remuneration which has already been taken shall be returned by the sex-worker or the brothel keeper as the case may be.

Section 10 : Forcing minors to provide commercial services

(i) Any person found forcing a minor to provide for commercial sexual services in a brothel shall be punishable with imprisonment for a term which may extend to 14 years and shall also be liable to a fine upto Rs. 50,000/- or both.

(ii) Any person whether indigenous or from any foreign country who has sexual relation with a child for monetary consideration or otherwise whether with or without the consent of that child shall be punishable with imprisonment for a term which may extend upto 14 years and shall also be liable to fine upto Rs. 50,000/- or both.

Section 11 : Trafficking for providing commercial sexual services

(i) Any person found compelling a victim of trafficking for the purpose of providing commercial sexual services shall be punishable with imprisonment which may extend to 14 years or with fine upto Rs.50,000 or both.

(ii) Any victim of trafficking may voluntarily report the same to the self-regulatory board which in turn will initiate the police action and also provide for repatriation of the trafficked victim.

Section 12 : All other forms of providing commercial sexual services shall be prohibited

(i) It is only the brothel based licensed sex-work in a zoned area that will be permissible. All other forms of commercial sexual services like street-walking, call girl services, escort services etc. shall be prohibited.

(ii) Anybody found practicing any other form of providing commercial sexual service, as mentioned in sub-section (i) shall be punishable for a term which may extend to six months or a fine upto 5,000 or both.

Section 13 : Brothel based sexual services in a non-zoned area to be punishable.

(i) Anybody found providing commercial sexual services in a brothel in a non-zoned area shall be punishable with imprisonment which may extend to six months and shall also be liable to fine upto Rs. 25,000/- or both.

(ii) Any client found availing of brothel based commercial sexual service in a non-zoned area shall be liable to be punished with

imprisonment for a term extending upto 6 months or with fine which may extend to Rs. 25,000/- or both.

Section 14 : Punishment for Traffickers

(i) Any person found to have trafficked any other person whether a minor or major into a zoned or a non-zoned area for the purpose of compelling that person to provide commercial sexual services shall be punishable with imprisonment which may extend to 7 years or fine which may extend upto Rs. 50,000 or both.

(ii) Any brothel owner found to be availing illegally the services of a victim of trafficking for the purpose of providing commercial sexual services to his clients shall be punishable with imprisonment which may extend upto 7 years or with fine which may extend upto Rs. 50,000/- or both and his license to run a brothel in a zoned area shall also liable to be cancelled by self-regulatory board.

Section 15 : Punishment for perpetuating violence on sex workers

(i) Any brothel owner, if found perpetuating violence on sex-worker in his premises, whether on complaint of the sex-worker to the self-regulatory board or otherwise, shall be punishable with imprisonment which may extend to three months or fine which may extend to Rs. 10,000/- or both and his license shall also be liable to be cancelled by the self-regulatory board.

Section 16 : Right of inspection of the members of the self-regulatory board

(i) A committee of the members (not less than 3) of the self-regulatory board of the area shall have the right to inspect any brothel within that jurisdiction to oversee that minimum standards of hygiene and health precautions are being undertaken by the brothel owners as well as the sex-workers.

(ii) A warning may be issued by the committee of the self-regulatory board to any sex-worker or brothel owner if they are found not to be maintaining the minimum acceptable standards of hygiene and health precautions and on subsequent visit if there is found no improvement, the committee would reserve the right to cancel the license of the offending brothel owner as well as the offending sex-worker.

Section 17 : Local authorities empowered to make laws

(i) Within the broad framework as provided by this Act, the local authorities of the zoned area where the profession is being legally carried out will be empowered to make such rules as would enable them to efficiently manage and regulate the profession of sex-work in their area.

Section 18 : No mandatory testing for HIV or STD's

(i) There will be no forced or mandatory testing on behalf of members of the self-regulatory boards or representatives of the state government on the sex-workers within zoned area to check whether they are infected with HIV or STD's.

(ii) It shall be the responsibility of the members of the self-regulatory boards to continuously and constantly encourage the members of the sex-workers community within their area of operation to get themselves medically examined at the permanent and makeshift medical camps, which shall from time to time be set up by the boards in these zoned areas with the assistance of the state government.

Section 19 : Punishment for pimps and procurers

(i) Any person who is caught illegally selling a girl whether trafficked or non-trafficked to a brothel in a zoned area shall be punishable with imprisonment which may extend to 7 years or fine which may extend upto Rs. 50,000/- or both.

(ii) Any person who attempts to act as an intermediary between a client and a sex-worker whether for monetary or other gains for the purpose of arranging the services of the sex-worker to that client shall be punishable with imprisonment which may extend to 3 months or fine which may extend to Rs, 5,000/- or both.

Section 20 : To legalise and regulate consensual brothel based commercial sex between adults and prohibit all other forms of consensual commercial sex between adults.

(i) All forms of commercial consensual adult sex between a client and sex-worker in a zoned area within a brothel will be permissible and legal subject to the restrictions contained in the Act.

(ii) All other forms of commercial adult sex which is not brothel based is prohibited and anyone caught doing or practicing it, whether a client or a sex-worker shall be punishable with

imprisonment for a term which may extend to 3 months or Rs. 5,000/- fine or both.

Section 21 : Repeal Clause

(i) As from the date of coming into force of this Act all previous legislations dealing with prevention of immoral traffic shall stand repealed.

III. Framework and Working of the Proposed Regulatory System

As discussed earlier, the current Indian policy and legal framework to deal with the profession of sex-work is in a complete mess. The profession today has become a synonym for exploited and helpless girls and women. They are being exploited and are suffering from the worst form of human rights at the hands of pimps, procurers and brothel owners. Minor girls are being trafficked from within and outside the country by an organized ring of traffickers and these trafficked girls and women are being denied even the most basic human rights. On the other side of the fence are the protectors of law i.e. the police. Detecting trafficking remains a low priority area for them and their nexus with cross border traffickers is an open secret. Moreover, police raids are often a means of harassing sex-workers rather than targeting the real culprits.

Today majority of sex-workers live in slave like conditions and are afflicted with either AIDS or one or the other sexually transmitted diseases. They are in no position to negotiate safe sex-practices because of the simple reason that they are hapless, unorganised and disempowered. The AIDS virus is spreading its

tentacles quick and fast amongst the sex-workers community which in turn is affecting the overall health of not only the sex-workers but the society as a whole. The current policy and framework on sex-work, as seen before is following a totally confused and moralistic approach. Sex-work per se is not an offence but seducing and soliciting and associated activities of sex-work have been declared illegal. Sex-workers are treated as deviants and morally depraved persons who need reformation by sending them to protective homes. This flawed policy is just adding to the woes of an already suffering community. Neither is it benefitting the society in any way nor is it improving the lot of sex-workers. As such this flawed policy can change only when we repeal the present Act on trafficking and sex-work i.e. the Immoral Traffic (Prevention) Act, 1956 and formulate a new Act in its place which would contain in it the realities of the present day, a practical outlook, a non-moralistic approach, fresh thoughts and fresh ideas. The traditional system of regulation/legalisation involves a state tolerance of sex-work through government regulatory schemes. The system is correctly based on the premise that 'prostitution' has existed at all times and will continue to exist in the future also. So, for a phenomenon which has a perpetual continuity, there is no point trying to suppress or prohibit it.[4]

The research scholar in this chapter proposes a regulatory system which is slightly different in approach and outlook from the traditional regulatory system. Though some of the basic features in the proposed system would remain the same but in a major way the proposed system would deviate from the traditionally treaded path and would seek to propose such a system wherein the sex-

4 For details on the traditional regulatory system, see infra Ch. 2.

workers community get strengthened, empowered and united to fight exploitation against themselves and look towards a brighter future. The proposed system would contain such mechanisms which would change the whole outlook of the profession ensuring that sex-workers lead a life free of exploitation with worth and dignity.

The purpose of this regulatory mechanism is to empower and strengthen the sex workers. As stated earlier this regulatory mechanism is going to imbibe some of features of the traditional regulatory system and some of the features are going to be new and novel which will be practical in outlook, non-moralistic in approach and suit the requirements of the present day.

A. Zoned Areas

The very first and important feature of this system is that there shall be zones with substantial population or earmarked areas in towns, cities and villages which will be used and utilized for carrying on the sex workers' trade. It will be the responsibility of the local authorities, to decide as to where these zones would be situated in the town, city or village, as the case may be. While deciding the areas to be selected as the 'zone' for the sex-work the local authorities would keep in mind certain factors. These factors would be that the area should be a little away from the populated part, there should be no school or hospital or place of worship situated in close proximity and if there is already an area in the city or town where sex-work is being carried on then this area could be designated as the zoned area provided it takes care of the factors mentioned above. It would be the responsibility of the brothel owner, sex-worker, local regulatory board as well as the

local authorities collectively to keep the area clean which would ensure proper hygiene and health for the sex-workers themselves as well as their clients.

The utility and benefit of having zoned area in cities, towns and villages would be that the clients would have a specific area in the city where they can easily go to satisfy their biological urges. As the commercial sexual activity would be legalised in such 'zones' the clients now need not to worry about being caught by the police neither they need to worry about brothel owners or pimps or procurers abusing them or threatening them. Moreover, as health and hygiene is going to be a top-priority in these zoned areas (courtesy regulatory boards efforts combined with the efforts of sex-workers themselves) the clients need not worry about contracting any STD and AIDS virus from the sex-workers or vice-versa. The mandatory use of condom is also going to be beneficial in this aspect as it would ensure protection from contractable diseases which may be transmitted from the client to the sex-worker or from the sex-worker to the client.

This arrangement of having 'zoned areas' for sex-workers will benefit the sex-workers also to a great extent because they would now be working within a legal framework which would allow them to carry on their profession without fear of any arrest or harassment from the law enforcement agencies. Exploitation at the hands of brothel owners would also be a thing of past as now they would be having a redressal mechanism in the form of regulatory boards to whom they can complain and the board could after enquiry even cancel the license of the brothel owner. Moreover, the sex-workers could also resort to criminal action against the brothel

owner by reporting him to the police for victimization, exploitation and harassment. These zoned areas will provide a sense of security to the sex-workers as all these notorious elements who were synonyms for exploitation like procurers, pimps, traffickers, etc. would be conspicuous by their absence in these areas.

The concept of carrying on the sex-work in a zoned area will augur well for the general public as well. Now, adult consensual commercial sex would be legally permissible in these areas only, as such, all other forms of sex-work will by itself become illegal. As such streetwalkers, who are a constant source of nuisance would go off the roads thereby making the roads and other public places nuisance free. Moreover, all other forms of commercial sex-work like Escort service and clandestine sex-work would also become illegal thereby reducing several incidents of crime which generally take place in such type of sex-work where the individual girl is absolutely at the mercy of the client with no support and backup. Making such services illegal would also help to reduce the incidence of transmitting STD's and AIDS as the sex-worker are more often than not forced in such a situation against their will to have unsafe sex with the client which is a major cause for spreading of sexually transmitted diseases and AIDS.

B. Licensing of brothels as well as sex-workers

Under this system, licenses shall be issued by the self-regulatory boards to brothel keepers as well as sex-workers to carry on the profession of sex-workers within the zoned areas. Thus, no person would be able to work either as a brothel keeper or as a sex-worker until and unless he or she as the case may be is issued a license from the regulatory board. The board would issue

a license to a brothel keeper who has no criminal record and who has previously never employed any minors or trafficked girls for the purpose of providing commercial sexual services to his clients. The Board would only issue the license on the basis of certain conditions. This will be known as 'conditional issue of license'. If at any time in the future, it is found by the board that the brothel keeper has violated any of the conditions of the issuance of the license, his license shall be liable to be cancelled. And any such person whose license has been cancelled will never again be issued a license for the purpose of running a brothel in a zoned area. As to what would be the conditions of issuance of the license would be the discretion of the board. The broad framework for issuance of license would cover areas such as hygiene in the brothel, adequate and safe medical practices, adequate remuneration to be provided to the sex-worker, responsibility for keeping the sex-workers of that brothel disease free, not employing trafficked victims, minors, etc. The board would also issue licenses to sex-workers who are desirous of carrying on this avocation in that particular 'zone'. The board would issue a license to a woman after completely ensuring that she is not a victim of trafficking, nor a woman who is being forced or compelled by a third party to enter this profession against her choice. The board would also reserve the right to cancel the license of a sex-worker to carry on her profession in a zoned area under certain circumstances which would be determined by the board. Carrying on the profession for a sex-worker or a brothel keeper in a zoned area without a valid license issued by the self-regulatory board would be a punishable offence.

This system of issuance of license by the self-regulatory boards would be an integral part of the proposed regulatory system

as it would not only help regulate and streamline the profession but would prove beneficial to the society as a whole. Issuance of license at a condition or the conditional issue of license to the brothel keeper would ensure that she maintains clean and hygienic conditions in her brothel. It would also ensure that she adequately pays the sex-worker for the services that she provides. Revocation of license would also be on the minds of the brothel keeper and this fear of revocation would ensure that she lives upto the conditions on which the license had been issued to her by the regulatory board. In the same way a sex-worker would also ensure that she comes up to the level that is expected from her, especially taking care of her sexual health and ensuring that she never contracts STDs and AIDS virus from her clients. It will be her responsibility to ensure that she always practices safe sex and never has sex with a client without a condom even if the client pressurizes her not to use it. The sex worker will also always have in mind that she could be deprived of her right to work in that particular area as a result of the cancellation of the license issued to her, and this in turn would prompt her to abide by all the conditions on which the license was issued. The society would also benefit an immense deal from this system of licensing as it would ensure that only those brothel keepers and sex-workers are allowed who are ready to abide by the conditions laid down for the issuance of the license. This would ensure a safer and cleaner environment in the zoned area as well as the brothels.

C. Self-Regulatory Boards

Each zoned area in a city or town shall have its self-regulatory board to effectively regulate and manage the whole

profession of sex-work in these zoned areas. These self-regulatory boards shall be the instrument through which the lives of sex-workers will change for better as these boards will strengthen them, empower them and propel them towards a better life where there is no more exploitation of them by third parties and they are totally in the control of themselves and their lives. The composition of the board would be that it shall comprise of a total of seven members in which 5 shall be from the community of sex-workers who will elect their members and send them as their representatives to the self-regulatory boards. The remaining two members shall be representatives of the society as well the government. The members of the self-regulatory boards shall hold office for a period of 2 years after which they shall be replaced by new members. The local government shall send replacement of its two members whereas the sex-workers shall again elect amongst themselves five members who shall represent them for the next two years. Certain statutory powers shall be vested on the board to make it an autonomous body with powers which will help it to strongly and effectively regulate, manage, improve the working of the zoned areas under their supervision.

As far as the functions of the board are concerned the primary and most important function of these boards would be to issue license for brothel owners as well as sex-workers to carry on the profession of a brothel keeper and sex-worker in the zoned area. It would be the sole prerogative of these boards to issue licenses to the above mentioned. There would be conditional issue of license by the board to both brothel owners as well as sex-workers and if any of the condition of issuance of license is found

to have been violated, the board would exclusively reserve the right to cancel the license so issued and not to issue a fresh license.

Besides issuing licenses and having the power to revoke any license issued, the regulatory board shall be exercising various other functions which would essentially be aimed at empowering the sex-workers through various means to lead a better and improved life. The self-regulatory board would have a major responsibility of ensuring that the sex-workers lead a violence free life and there is no exploitation of them at the hands of any third party. In case the violence is meted out to them by brothel owners, he can be reprimanded by the regulatory board and even his license to carry on the brothel could be cancelled. If violence is meted out by anyone else like pimp or procurer then the board members could have him arrested and criminal charges could be framed against him by the police. It would be the task of regulatory board to motivate the sex-workers to remain united as a community and not take any form of exploitation lying down. The spirit of common sisterhood should be inculcated in the sex-workers so that they themselves, without fear, take on the exploitative elements in the profession and wipe them out in unison for once and for ever.

In fact this concept of self-regulatory board had been mooted by Darbar Mahila Samanwaya Committee (DMSC), a unique organization of female sex-workers in Sonagachi area of Calcutta. This concept was first mooted on the occasion of DMSC organized First West Bengal State Conference of Sex-workers held at University Institute, Kolkata in March, 1996. The paper brought about in this conference by DMSC, they articulated the sex-

workers demand for their right to regulate their own lives, both within the profession and outside it. With this objective, it proposed to form local boards comprising representatives of sex-workers as well as non-sex workers that would deal with issues related to sex-workers in various localities. The formal term used for such a board in the paper is self-regulatory board. The major function of the boards would be to make rules and regulations for the sex-trade and restrict the entry of minor girls into the trade.[5]

With the aim of formalising such self regulatory efforts, the DMSC set up in 1999, three local self-regulatory boards at Sethbagan, Tollygung and Rambagan in Kolkata and also a state level steering committee of West Bengal Self Regulatory Boards. The boards at the local level are comprised currently of representatives of sex-workers, women's rights group and government of West Bengal. The DMSC's political objective is to fight for a more secure legal status of sex-workers and for their self determination in all walks of life.

Another important function of the self-regulatory boards would be to encourage, teach and educate the female sex-workers in their zones on matters pertaining to safe sex, the hazards of unprotected sex and consequences thereof. In this process the board would intensively involve and train the sex-workers (a selected few) who would make it a point to personally spread the awareness among other sex-workers. In this context it would be highly relevant to point to the success of STD/HIV intervention project (SHIP), commonly known as Sonagachi project which was

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5 Moni Nag, Empowering Female Sex-Workers for AIDS prevention and far Beyond, Sonagachi Shows the Way, The Indian Journal of Social Work, 485.

launched in some areas of Songachi, which is the biggest red light area of Kolkata.[6]

(a) SHIP/Songachi Project

This project was launched in the year 1992 in the red light area of Kolkata, comprising mainly of 5 contiguous colonies of brothels, namely Songachi, Rambagan, Sethbagan, Jorbagan and Rabindra Sarani. The area has around 370 brothels having around 4,000 to 5,000 workers. It also accommodates a further 1,500 floating female sexual workers daily who rent rooms in the brothel on an hourly basis, when they bring in clients picked up from streets, parks and other places. The project was initially funded by World Health Organization and administered by the All India Institute of Hygiene and Public Health. The Norwegian agency for development funded all components of the project for about two years and has been funding a few developmental activities like the literacy programme for female sex-workers and vocational training of the children of female sexual workers in boarding schools. Since October 1994, the project is being funded mainly by the Department of International Development, formerly known as Overseas Development Agency of United Kingdom.[7]

The Sonagachi project has attained an international reputation for its unusual success in reducing the prevalence of STD's and increasing the prevalence of use of condoms amongst the sex-workers. For example, the prevalence rate of syphilis as determined by VDRL test declined from 25.4 percent in 1992 to 11.9 percent in 1998. The prevalence of using condom 'always'

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6 *Id.*, at 486.
7 *Id.*, at 474

increased from 1.1 percent in 1992 to 50.4 percent in 1998. A few clinics set up in the project area for treating STD's and other minor illness of sex-workers provide assistance free of any charge. The prevalence of HIV infection though has not shown any sign of decline in Sonagachi, but has always remained much lower than in other large Indian cities. For example, HIV prevalence among the sex-workers in a Mumbai red-light area was over 70 percent in 1997 as compared to 5.5 percent amongst sex-workers in Sonagachi in 1998. The Government of India's National AIDS Control Organisation (NACO) considers the Sonagachi project as the most successful HIV/AIDS intervention projects amongst female sex-workers in India (NACO, 2001).[8]

The remarkable success of Sonagachi project can be attributed to a great extent to the active participation of female sexual workers in all its phases. It was decided at the initial stage of the project to recruit a few sex-workers who would be the primary channel of communication between the project staff and the community of FSWs. They were called the Peer Educators (PE) who later took on the initiative in the formation, in 1995 of an organisation of female sex-workers called the DMSC. Subsequently a few other organised bodies of female sex workers grew out of the DMSC. All these bodies contributed significantly to the project's success.[9]

The basic approach of Sonagachi project is expressed in the terms of three R's : 'Respect of female sex-workers, recognition of their profession and rights and reliance on their capacity and understanding. This was translated into action by making efforts

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8 *Ibid.*
9 *Ibid.*

to actively involve female sex-workers in all components of the project and to build a relationship of trust and partnership between the project staff members of female sex-workers in the project area. The project staff realised at an early stage that the project's main activity of educating female sex-workers regarding STD/HIV/AIDS and motivating them to use condoms can be performed best by their own peers if the latter are adequately trained for the purpose. Initially 12 female sex workers were selected to work as Peer Educators from the community on the basis of their interest in the project, capacity for grasping and leadership quality. They would be paid a nominal salary from the project to work for it in the morning hours and were allowed to ply their profession at other times.[10]

The six week training module for Peer Educators consisted of classroom teaching as well as field based orientation. In addition to the nature, modes of transmission and symptoms of STD/HIV/AIDS, the subject matter of teaching included how to prevent these diseases with special emphasis on the use of condoms. The Peer Educators were taught how to demonstrate to female sex-workers the correct use of condoms and how to negotiate with their clients effectively regarding condom use. They were also encouraged to explore with the female sex-workers in the community the ways by which the project could fulfill its objectives more effectively.[11]

The Peer Educators were required to visit a specific number of female sex-workers daily, talk to them about STD/HIV/AIDS, inquire about their problems regarding use of condoms, supply

10 *Ibid.*
11 *Id.*, at 475

condoms as needed and encourage them to go to the clinics set up by the project, particularly if they felt sick. Personal communication between Peer Educators and the community female sex-workers, based on mutual trust was a source of project's strength. The blue uniform jacket with a printed red-cross symbol on it, worn by a peer educator while on duty, gave her a sense of pride and was a source of prestige to her and her children and to others in the red light area. The peer educator had regular meetings with the project's supervisors (mostly women college graduates) and physicians. The experience of working together with the latter for the welfare of female sex-workers in the community enhanced a peer educator's self confidence and instilled in her a sense of identity other than being a mere sex-object.[12]

In the course of this work, the peer educator's soon realized that advocating and motivating female sex-workers to have safe sex was not of much use unless their clients cooperated with them in using condoms. Despite wide publicity through mass media regarding the danger of AIDS and the need to use condoms for preventing it, most clients were reluctant to use them on the ground that condoms reduced the pleasure of sexual intercourse. Most clients strongly resisted all attempts of female sex-workers to use condoms. At the initial stage of the project, until female sex-workers mobilized themselves to some extent, if any female sex-workers turned down a client for his refusal to use condom, he would not have difficulty at all in finding a female sex-worker in

12 *Ibid.*

the neighbourhood, who would be willing to entertain him sexually without the use of condom, but most probably at a higher price.[13]

The peer educators as well as the project staff became increasingly convinced that, unless female sex-workers belonging to a community could unittedly demand the use of condoms for the clients visiting the community, it would be very difficult for any individual female sex-worker to persuade a client to use a condom. It was also realized that if they could mobilize themselves to form an association of their own, they could use it to fight against many injustices, perpetrated against them and try to gain some control over their lives. But a great obstacle in the effort to moblise the female sex-workers of Sonagachi, who were extremely poor and powerless against their clients, was that they themselves were in severe competition with each other for attracting clients. They could hardly be expected to unite themselves without some external guidance and concrete help. Fortunately, the Sonagachi project with its highly dedicated and sympathetic staff, provided the needed guidance and help. There was already a sense of solidarity among the sex-workers, who became peer educators through their regular group meetings in which they shared their problems and tried to find solutions jointly. They took the initiative to form an association of female sex-workers, which would deal with not only the problems they faced with their clients but also with those they were confronted in their daily lives. After a considerable amount of deliberations by peer educator and project staff an association was formed and it was called Durbar Mahila Samanwaya Committee (DMSC).[14]

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13 *Ibid.*
14 *Ibid.*

This project thus clearly demonstrates the importance as well as need to involve the community of sex-workers in those projects which aim at fighting the menace of AIDS as well as sexually transmitted diseases in the sex-workers profession. By providing an enabling environment to sex-workers we can achieve our target of minimizing the incidence of AIDS in the vulnerable group of sex-workers who are at great risk of acquiring the dreaded disease from mobile groups such as truck drivers. In fact Union Health Minister also vociferously gave a call at the Global AIDS summit in Mexico on 8th of August, 2008 for ending discrimination against vulnerable sectors especially sex-workers to strengthen the fight against AIDS at a time when the HIV count is stabilizing in India. To quote the Union Health Minister of what he said at Mexico, "Structural discrimination against those who are vulnerable to HIV such as sex-workers and men having sex with men must be removed if our prevention care and treatment programmes are to succeed. The key to overcoming the HIV epidemic is to take HIV services to those on the margins, of the society and we can only do that in an enabling environment."[15]

The statement of the Union Health Minster reflects the current sentiment amongst most people in the society that our fight against AIDS in the context of the sex-workers can only achieve the desired results if we make them partners in our campaign against AIDS.As demonstrated by the Sonagachi project, excellent results can be achieved by motivating, training and educating the sex-workers through active participation in the fight against AIDS. All those projects which aim at compulsory and forcible testing of sex-workers for AIDS and forcibly putting anti

15 See, The Times of India, August 9, 2008.

AIDS measures down their throat are doomed from the inception. Such projects can never succeed in the Indian context nor anywhere else because forcible measures can never achieve the desired long term result, of course, what they can achieve is short sighted and short term results, which obviously should not be the ultimate aim of these projects.

Further, the self regulatory board should work towards an overall development of the zoned area under it and undertake all such steps and schemes which lead to empowerment of sex-workers and improvement in the quality of the life they lead. One such step could be to form cooperative societies of sex-workers in that area which could lead towards improvement in their meager source of income and they could use such savings to fall back in times of need and crisis. The DMSC has been operating such a cooperative society very successfully in the Sonagachi and other areas of Kolkata which are inhabited by sex-workers. A look at the working of one such cooperative society would reveal how successful it has been in the improving the quality of life of sex-workers.

(b) Usha Multi-Purpose Cooperative Society Limited (UMCSL)

This cooperative society was started by the DMSC shortly after its formation and it was registered with the West Bengal Government in August, 1995. The UMCSL emphasizes that its objective is not economic rehabilitation of sex-workers and it is designed to provide a financial resource for the sex-workers to fall back in a crisis situation and to minimize their economic desperation. As a cooperative society catering exclusively to sex-workers, it is the first of its kind in Asia. The DMSC had to fight a

long battle with the concerned government authorities who initially maintained that sex workers could not have a cooperative society on moral grounds. They pointed out the government regulations regarding cooperatives, which states that its members should be bearing good moral character and held that sex-workers cannot be regarded as bearing good moral character. Moreover, there was strong opposition from the private money lenders of the project area, who derived high benefits and profits by lending money to sex-workers with interest rates as high as 4 percent per day, amounting to 1,500 percent per year. The DMSC fought back resolutely. Finally the State Minister of Cooperatives acknowledged the right of sex-workers to form the cooperative and have it registered with the government.[16]

Within a span of five years, the UMCSL enhanced its membership from the initial 13 to about 500 by the year 2000. Its registration with the government has made it advantageous for the DMSC to reframe the definition and meaning of prostitution. Its members use it as a leverage in their campaign for championing the rights of sex workers and for self-determination.[17] The major activities of the cooperative are mentioned below:

(i) Saving scheme and micro-credit

The UMCSL encourages the habit of saving among sex-workers and accepts savings from its members with interest rates ranging from 5.5 percent to 7.5 percent per year – considerably

16 Moni Nag, Empowering Female Sex Workers for AIDS Prevention and Far Beyond : Sonagachi shows the way, The Indian Journal of Social Work, 480, (2002).
17 *Ibid.*

lower than the usual rates offered by banks. The members have easy access to loans upto Rs. 5,000/- for 36 months at 16 percent.

(ii) Social Marketing of Condoms by Basanti Sena

By September 1998, 50 percent of the female sex-workers in the project area were already using condoms and another 32 percent were using it often. Upto that time, most of the condoms were distributed to them free of any charge. Some were purchased either by female sex-workers themselves or by their clients at the market price. In order to promote safe sexual practice and also to add to its sources of income the UMCSL started social marketing of condoms among sex workers as extensively as possible. It selected groups of sex-workers in red-light areas of West Bengal and trained them in the effective use of condoms and also on rudimentary strategies of marketing. The group was called the Basanti Sena (or the Spring Brigade). By the end of 2000 about 60 Basanti Sena members were selling condoms in 75 red light areas in various district of West Bengal at rates considerably lower than the market rates. These members also functioned as agents of DMSC outside Kolkata for networking among the 40,000 or so DMSC members in West Bengal and for encouraging non-member sex-workers to join the DMSC. The social marketing of condoms and the relevant counseling by Basanti Sena members have been so successful in raising the demand for condoms among sex-workers that from August 1999, the SHIP has discontinued from distribution of condoms in all its operation areas.[18]

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18 *Id.* at 482.

(iii) Production of Handicrafts and Supply of General Orders

From its very beginning, the UMCSL started producing various handicrafts like jute and cloth bags, bedcovers, doormats and other materials. These are usually sold in DMSC stalls set up in various types of fairs and conference. The cooperative also makes some money by supplying office consumable articles, medicines, condoms and so on, to various non-government organisations (NGO's).

(iv) Evening Crèches

In collaboration with the Mahila Sangha, the cooperative also runs a few evening crèches for the children of female sex-workers in red-light areas during their working hours. These are source of employment for out-of-work female sex workers. The cooperative has plan for increasing the number of crèches.[19]

The successful working of this multi-purpose cooperative society in the Sonagachi area again highlights the fact that when we involve the sex-workers actively in any programme which is meant to be implemented on them, then, the results of such an approach are there for everyone to see. The DMSC also has a cultural wing of its own through which their members express themselves. It's working in the Sonagachi area can be summarized as follows:

(c) Komal Gandhar : Cultural Wing of DMSC

Due to the deep rooted prejudice against prostitution, sex-workers in all societies are kept as much isolated and silent as

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19 *Ibid.*

possible. Members of DMSC felt it crucial to carve out a positive identity for themselves and reclaim their rightful place in public spheres. They realised that one of the best ways to achieve such an identity was to establish a forum that would be a vehicle for expressing themselves through music, dance, drama and other performing arts. Staff members of the project, endowed with the relevant talents, have been contributing immensely to this endeavour. A few reputed professional artists of Kolkata have also been generous in devoting their time voluntarily for helping sex-workers to stage several dramas.[20]

A few members of the Komal Gandhar with guidance and help from some project staff composed a play based on the realities of the lives of female sex-workers and depicting their movement for self-determination. After public staging of this play in a few halls in Kolkata, Komal Gandhar staged this play in a drama competition in New Delhi in 1996. Sex-workers from other Indian cities also performed in that competition, where Komal Gandhar won the first prize. It also won the first prize at a National Cultural Competition for sex-workers held in Varanasi in 1997.[21]

When DMSC was preparing for the First National Conference of Sex-Workers in 1997, an established theatre group of Kolkata conducted a theater workshop with members of Komal Gandhar. The workshop gave rise to a play that was staged at the conference and subsequently at public theatre festivals across West Bengal. Since then the Komal Gandhar has received favourable reviews in the Indian media, not just as sex-workers performance but as quality performance. Komal Gandhar attained an international

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20 *Id.*, at pp.482-483.
21 *Ibid.*

reputation for its performance of a dance drama called 'PEACE' at the 12th World AIDS Conference held in Geneva in June 1998. Two male sex-workers working as Peer Educators in the Sonagachi project participated in it. The picturesque costumes and exquisite dance poses of the performers drew wide applause of the international audience and attracted wide media attention. Among stiff competition from teams of sex-workers representing many countries 'PEACE' was selected as the only one for performing at the inaugural session of the conference.[22]

Komal Gandhar has been very fortunate in getting encouragement and guidance from some eminent actors and directors of Kolkata in the field of drama. They included Rudra Prasad Sengupta, Badal Sircar, Usha Ganguly and Shobha Sen. A few reputed dance and musical institutions of Kolkata have offered their services for training sex-workers and their children in music and dance. The fact that some of the very famous musicians, dancers and actors of Kolkata, during the first half of the twentieth century had their origins in the red-light areas of Kolkata is a great source of inspiration for the performers of Komal Gandhar. Komal Gandhar has created an opportunity for sex-workers coming from diverse cultural backgrounds to exchange their own cultural traditions across linguistic, religious and regional barriers. Messages of health promotion and prevention of diseases conveyed through familiar cultural norms have proved to have an enormous impact in terms of comprehension of complicated diseases and the action needed to prevent them. Komal Gandhar is being used as a forum for propagating the dangers of STD/HIV infection and ways for preventing it among the wider community of sex-workers as

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22 *Ibid.*

well as among the general public. Moreover the opportunity provided to sex-workers and their children to express their creativity through Komal Gandhar helps them a great deal in neutralizing the many terrible experiences they go through in their daily life. Komal Gandhar is also contributing towards the DMSC's attempts to forge a common identity among sex-workers and has become a political tool for claiming their rights to enjoyment through cultural means.[23]

Besides providing cultural means to sex-workers to express themselves, the self-regulatory boards can also combine together to organize state level or national level conferences of sex-workers. These conferences would be the venues where the sex-workers of different parts of the nation can sit and debate and discuss and chalk out solutions to their problems and evolve future strategies. It can be a source of empowerment of sex-workers. Through these conferences they can attract maximum media and public attention which will in turn enable them to spread their message to the maximum people. The DMSC has during the last decade organised 3 major conferences of sex-workers and these conferences have had a lasting impact in terms of the Sonagachi project as well as the empowerment of female sexual workers living not only in the project area but also in other places in India. The fact that all the three conferences were allowed to be held in West Bengal government owned salt lake sport stadium, can be considered as a recognition of the democratic rights of sex-workers as citizens by the State Government untenable until a decade ago in West Bengal and perhaps still unthinkable in many other Indian States.

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23 *Ibid.*

(d) First National Conference of Sex-workers

In November, 1997 the DMSC organised a three-day conference, which was attended by over 1,000 female sex-workers from various Indian States and by over 3,000 from West Bengal most of whom were daytime visitors. Some female sex-workers came from Nepal and Bangladesh as well as also from the United States of America, Australia and England as visitors. This was the first time in the history of prostitution that so many female sex-workers most of whom were poor, illiterate and living in pitiable conditions, rallied together in a conference to speak about their rights and to inscribe their self-defined identity on the public sphere. The delegates of female sex-workers from various Indian states shared their experiences and planned strategies for their struggle against the condition of their material deprivation and social stigmatization against them. Representatives from the government of West Bengal, the Indian Government, the WHO, UNAIDS, women organisation and local trade unions participated in panel discussion of the Conference.[24]

The rallying slogan of the conference was 'sex work is a legitimate work'. We want worker's rights. The DMSC members realized that in order to improve the material conditions and working conditions, they had to gain recognition as legitimate workers. They shared a common premise that prostitution is not a moral condition, but an occupation and as sex-workers, they are engaged like many other workers engaged in marginal, exploitative and lower status jobs with high risk of occupational hazards. The

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24 Moni Nag, Empowering Female Sex Workers for AIDS Prevention and far Beyond : Sonagachi Shows the Way, Indian Journal of Social Work, 489 (2005).

text of a widely distributed large-sized banner at the conference was 'Gatar Khatiye Khai/Sramiker Adhikar Chai (we survive by physical labour/we demand labourer's rights). Indrajit Gupta, who was then the Home Minister in the Central Government joined a session on the rights of sex-workers to form a trade union. He said that, under the current Indian law, sex-workers were not eligible to form a trade union, because they do not have employers and because their work was not considered productive. But contrary to the general expectations and as a message of great hope for the assembled sex-workers, he expressed clearly his personal sympathy with their demand and said that it was reasonable enough for serious consideration by the Government.[25]

The Conference was widely publicized in the national and international media both print and electronic. The detailed reports in the national newspapers, accompanied by photographs like that of sex-workers leaders seated with the country's Home Minister on the same dais, obviously had an impact on the public psyche and was sure to have given a boost to the sex-workers' morale. Many people started thinking anew about their perception on prostitution, while some expressed their moral outrage at the demands made at the conference.[26]

(i) Follow up phase of the First National Conference

In March 1998, the DMSC organised another conference in Kolkata as a follow-up of the 1997 Conference. About 2,000 sex-workers attended it from 48 red-light areas all over India. The major demands put forth in this Conference were:-

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25 *Id.*, at 490.
26 *Ibid.*

(a) Recognition of sex-work as a profession

(b) Repealing of the Immoral Traffic (Prevention) Act, 1998

(c) Right of sex-workers to have control over their bodies so that they could insist on safe-sex with their clients.

(d) Formation of a self-regulatory board.[27]

The participants of the conference agreed that as long as there was a demand for sexual services and poverty existed among women, a section of them would be in the sex-trade, voluntarily or involuntarily. A decision was taken to form a national Network of sex-workers with four regional offices run by a sex-worker's organisation in each region : the DMSC (East), (ii) Sonagram HIV/AIDs Prevention Centre (West), (iii) Jan Shakti Bahini (North) and (iv) Chitter Mahila AIDS Control Society (South).[28]

(e) Millenium Milan Mela

As part of DMSC's on-going agenda to put sex-workers rights on the global agenda in the new millenium, it organised a large gathering, in Kolkata from March 3-6, 2001. It was called a Mela (Carnival) rather than a conference because it was intended to inscribe sex-worker's identity on the public arena more through music, drama and other performing arts than through panel discussions and debates. Over 1,000 female sex workers from all over India and a few Asia-Pacific countries came to attend the mela and about 1,000 sex-workers from Kolkata and its neighbouring places visited the mela every day. The foreign countries

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27 *Id.* at 490.
28 *Id.* at 49.

represented at the mela were Australia, Bangladesh, Cambodia, Hong Kong, Indonesia, Malaysia and Norway. The largest foreign delegation was from Bangladesh, which included representatives of Sanghoti, an association of 86 NGO's supporting sex-workers rights in that country.[29]

The mela started amidst a controversy raised by a few well known women's rights groups in Delhi and Kolkata. These groups had expressed their strong opposition in the past several years to the DMSC's demands like de-criminalisation of the sex-trade and rights of sex-workers to form trade unions. As they did on the occasion of First National Conference of Sex-workers in 1997. They started lobbying with the government against holding of the mellenium mela. A few days prior to the inauguration of the mela, they also sent a petition to the Governor of West Bengal to prevent the event from taking place. A delegation met the Governor and Health Minister of west Bengal for the same purpose. But the West Bengal Government allowed the mela to be held as planned earlier. The Health Minister also came to the mela one day and addressed the sex-workers. Like other conferences of the sex-workers, the mela also got wide exposure in the media and contributed towards the sex-workers march for empowerment.

The general mood of the mela was quite festive with visitors enjoying various musical and dramatic performances in the evenings. During the day panel discussion went on at the four pavilions constituted at the mela ground. The panel discussions addressed serious issues like legality of prostitution, right of sex-workers to form trade unions, morality-immorality of prostitution.

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29 *Ibid.*

Distinguished intellectuals, writers, poets, dramatists, feminists, journalists, politicians and activist participated in the panel discussion, which were mostly initiated by articulated representatives of sex-workers. The music, dance and dramatic performances in the evening were mostly by professional baijis or nautch women, well versed in classical music/dance, from Uttar Pradesh and Bihar these were the most popular attractions among the sex-workers and were daily evening features.[30]

As seen from the working of Komal Gandhar i.e. the Cultural Wing of DMSC, if the sex-workers are given an opportunity to express themselves through creative activities by way of cultural activities, they can channelize their creative energies in a very positive way which would help them in a better way to evolve their personality. The self-regulatory boards could also establish in their offices a helpline i.e. telephone number on which any distressed sex-worker could call any time and get prompt relief. This helpline could also render valuable aid and services to patients who are or have just been detected to be HIV positive. Such a helpline has been in operation since 1998 in the Sonagachi area and is being operated and manned by DMSC.

(f) Positive Hotline

A telephone counseling and ancillary service for the prevention of HIV/AIDS and for promoting a positive attitude towards care for people living with HIV/AIDS was opened by DMSC in November 1998. The initiative of opening the telephone services called the Positive Hotline was taken by a few peer educators when they came to know about the extremely miserable situation of HIV

30 *Ibid.*

infected poor woman who had no one to take care of her. The first positive hotline was installed at a Sonagachi SHIP field office and was staffed by trained sex-workers under the guidance of a staff physician. A few adult children of female sex-workers with a few years of school education were trained so that they could answer the telephone calls at night when their mothers were at work. The wide publicity given to the positive hotline in newspapers, as well as in radio and television broadcasts, resulted in a rapid increase of the number of telephone calls to such an extent that another positive hotline was opened within an year in another SHIP office located in the Chetla red-light area of Kolkata.[31]

When an HIV positive person contacts any Positive Hotline, a DMSC team including a physician visits him/her to extend moral and material support as much as possible and tries to sensitize his/her family and the local community. The DMSC opened an HIV/AIDS counselling centre in 2000 and named it the city counseling centre. It has another positive hotline and is operated by a team which includes a physician and a senior peer-educator as counselor. The DMSC is in a process of building up a network of HIV positive people that will provide mutual support to each other and will do advocacy for their own rights. The positive hotline services provided by the DMSC members to the general public has contributed to the recognition of the DMSC by the public and to the lessening of social stigma against sex-workers. Another important outcome of these services has been the recent formation of an HIV positive people's network.[32]

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31 *Id.* at 494.
32 *Ibid.*

Another important task which could be undertaken by the self-regulatory boards is to carry out literacy programmes extensively in the zone(s) under their jurisdiction. It is a stark fact that a large majority of sex-workers in our country are illiterate. Making them literate would go a long way in improving the quality of their life and would place them in a better bargaining power vis-à-vis their clients as well as brothel owners. One such literacy programme is being conducted effectively in the Sonagachi area by the SHIP.

(g) Literacy Programme

A few months after the Sonagachi project was initiated, the peer educators approached the project staff with a proposal for running a literacy programme for sex-workers in the project area. A baseline survey conducted among sex-workers in the area, prior to the beginning of the project found that over 84 percent of them were illiterate. The peer educators sought literacy because they believed it would help the sex-workers to become more effective in their job as well as to overcome the many handicaps they suffer from in their daily lives. They also saw education as a means for possible improvement in their bargaining power with their clients. The project staff too realised the importance of running a literacy programme, but it took them some time to work out the best possible educational model for sex-workers and the logistics needed for running a programme in the context of sex-workers lives. The standard educational format accepted by society is imbibed with the sexual moral discourse, which deny the existence of sex-workers, let alone acknowledge their demand for a better quality of life with basic human rights. The challenge was to devise

an educational model which would enable sex-workers to claim a space for themselves and would also guard against the teacher's tendency to impose their own values on the learners. The daily work schedule of the peer educators, who would be initial learners, would not allow them the luxury of retaining what they learn in the class. If they attended the class in the afternoons, carried out their duties in the project during the morning hours and worked for their livelihood from early evening to late night, they would hardly have any time for recollecting what they learnt in the class.[33]

A few supervisors showed interest in the literacy programme started by the end of 1992, meeting for a few hours in the afternoon at an open space in front of the clinic set up by the project in Sonagachi. It soon became apparent that illiterate sex-workers with their special life experience would learn better if their literacy lessons grew out of their own discourse. So instead of concentrating on routine reading, writing and arithmetic during the first few weeks, the trainers initiated dialogues on topics familiar with the learners so that the former could explore the latter's area of interest and inhibitions. The learners appreciated that the literacy primer to be designed for them would relate to their own experiences, but they also made it clear that they would not like their lessons to be confined to their world only. That reaction is a reflection of a sex-worker's dilemma between two conflicting mental states. On the one hand, she wants to get out of a situation which makes her a fallen women in the eyes of the society, and on the other, she gets stuck with it and her thoughts processes revolve around her professional world. After a long period of interaction between the trainers and the learners and

33 *Id.*, at 494, 95.

also after a considerable amount of experimenting with various alternative contents and style of teaching, a primer in Bengali including some appropriate illustrations was prepared and published in 1996 with the title Aamader Aaw Aa Kaw Khaw (our ABCD).[34] As a result of this literacy programme, an increasing number of sex-workers are now literate.

IV. The ways in which the proposed system will tackle the ills infesting the current system

After having analysed the model form and working of the proposed regulatory mechanism to deal with sex-work, it becomes all the more necessary to examine how this system will be able to tackle and rectify the ills and shortcomings of the current mechanism to deal with sex-work. The ways in which the proposed system will tackle these shortcomings is being discussed hereunder.

A. Proposed System and STDs and HIV

As stated earlier,[35] the incidence of sexually transmitted diseases (STDs) in India is alarmingly high and it has been identified as one of the three most important categories of communicable diseases after malaria and tuberculosis. The current system to deal with sex-work has proved totally ineffective in checking the growth of these deadly cluster of diseases amongst the sex-workers who are mostly infected by the mobile population of drivers and after being infected these sex-workers unknowingly further transmit them to their clients. The exploitative nature of brothel work in the current system, indifferent attitude of health

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34 *Ibid.*

35 For a detailed perspective on STDs, see chapter 3, p 1.

workers, non-responsive clients all add to their miseries and to them acquiring AIDS. Once these sex-workers acquire STDs they become easy targets for transmission of HIV virus. And as far as AIDS is concerned the figures are a stark reminder of the epidemic like proportions in India. Around 2 to 3.1 million people in India are infected with HIV and AIDS. The prevalence of this dreaded disease is particularly high in the 15-49 age group as such it threatens the cream of the society, those in the prime of their working life.

The proposed regulatory model will address and take care of all the issues connected with STD/AIDS and sex-workers. Discussed below one by one are the various measures that the proposed system will adopt to minimize the spread of STDs and AIDS amongst sex-workers and their clients.

(i) The proposed system, as already stated if implemented will result in settling up of zones in each city, town or village where sex work shall be legally carried out and it shall be responsibility of the self-regulatory boards (set up for smoothly administering such zones) to ensure the welfare of the sex-workers and the clients visiting the sex-workers in such 'zones'.

(ii) At the very initial stage of its formation, it shall be the duty of the members of the self-regulatory board to form a 'core team' from amongst sex-workers and themselves and to impart intensive education to this core team regarding prevalence of STD/HIV amongst sex-workers, ways to prevent such spread and to contact the designated persons in case they suspect any sex-worker of being infected with either STD or HIV. The members of this core team will then be under the main responsibility of visiting each

and every brothel and sex-workers working in that brothel and informing and inspiring them to take all preventive measures against the spread of HIV/AIDS.

(iii) Moreover, there will be a telephone number which will act as a hotline, set up by regulatory board, any sex-worker will be at liberty to call up the number at any time and acquire any information regarding STD or HIV which she is desirous of having.

(iv) Using of condoms by the sex-workers is going to be a mandatory feature of the sex-workers working in the brothels in these zoned areas. No client will now be in a position to force his wishes of not using a condom on a sex-worker. As it will be a mandatory feature, he will not be in a position to get the same from any other sex-worker also, thus the sex-workers would not have to worry about clients leaving them for any other sex-worker if they refused to accede to their demand of not using condoms.

(v) Mandatory use of condoms would in itself ensure that the spread of HIV/AIDs is controlled in that zoned area and the results would be there for everyone to see within a span of few months or years.

(vi) If any sex-worker or brothel owner is found entertaining a client or clients whether regularly or occasionally and allowing him to have sex without the use of condom, then the license of such a brothel owner and the sex-workers is liable to be cancelled by the self-regulatory board. Cancellation would mean no-entry for that brothel owner and sex-worker ever again in that zoned area. So, the threat of cancellation would in itself ensure that all brothel owners and sex-workers make the mandatory use of condoms, a

routine which would ultimately be beneficial to themselves, their clients and the society as a whole.

(vii) Though there will be no concept of mandatory medical checkups yet self regulatory boards will ensure that regular medical camps are held on a monthly or bi-monthly basis in the zoned areas and it will be the responsibility of the core team to motivate all sex-workers to get themselves regularly checked up whenever these camps are organised in that zoned area. This would ensure that the sex-workers are given the best medical treatment and the negative implications/fallouts of mandatory HIV testing are avoided.

(viii) Distribution of condoms will be done at a very nominal cost to ensure that every sex-worker has the means to buy condoms and her health and that of her client is thereby protected and as such neither she nor her client contracts any of the sexually transmitted disease or AIDS. As such the risks associated with non-use of condoms by the clients and the sex-workers will be avoided.

(ix) A joint meeting of the members of core team and regulatory board and physicians and sex-workers would be held every month wherein they would discuss their medical problems with the physicians and other general problems with the team members and board members and solutions and answers could be chalked out in every such monthly meeting.

(x) The member of the core team would be given a unique official dress which would be a source of pride and prestige for

every member of such team and would also be a motivating factor for other sex workers to become a member of the team.

So, by following these unique steps, it is hoped that the self regulatory board would be able to usher in a sea change in the attitude and habits of sex-workers and their clients which would ultimately help in controlling and drastically bringing down the number of sex-workers and clients afflicted with STDs and AIDS.

B. Proposed system and pimps and brothel owners

Pimps and brothel owners are the two main functionaries who are responsible for the present mess. They are primarily to be blamed for the pitiable, horrible and extremely exploitative condition that the sex-workers are currently in. In the proposed system the pimps would have no role to play as their existence would be eliminated in this system. The section 19 of the proposed Act specifically punishes a person who attempts to act as an intermediary between a client and a sex-worker whether for monetary or other gains this punishment may be in the form of imprisonment which could extend to three months or fine which may extend to Rs. 50,000/- or both. As such, the existence of the intermediary called the pimp would not only become illegal but it would also become impossible for him to function in such a system. As it is, the client who seeks sexual favours would not engage an intermediary as in the new system a client would without any fear of arrest or detention be able to enter a zoned area and take the services of any sex-worker. The law enforcement agencies, the self-regulatory board members and the sex-workers themselves would also have to ensure that no pimp operates or is able to operate in the zoned area.

As far as the other exploitative elements of the current system such as the brothel keeper are concerned they will undergo a sea change in the proposed system. This position cannot be done away within the current system because a functionary is required at the bottommost level in a zoned area to supervise the affairs of the sex-work. The brothel keeper in the zoned area would effectively be a woman rather than a man. Every brothel keeper in a zoned area would be required to obtain a license from the self regulatory board and anybody (brothel-keeper) in that zoned area found operating without a license would be liable to eviction from the area and a fine of Rs. 50,000/- in the first attempt. On the repetition of the offence, the person/accused would be liable to punishment which would include imprisonment for a term which may extend to 6 months or to a fine of Rs.10,000/- or both.

It would be the duty of the brothel keeper to abide by the conditions laid down at the time of issue of the license. It would be her duty to see that hygiene is maintained in the brothel at all cost. She would ensure that safe sexual practices are carried on in her brothel. She would also have to provide adequate remuneration to the sex-workers who are desirous of working in her brothel. It would also be her responsibility for keeping the sex-workers of that brothel disease free and also of ensuring that no victim of trafficking or a minor is employed in her brothel. If all these factors are not adhered to by the brothel keeper then the license issued to her by the self-regulatory board may be cancelled. This cancellation of license would prove as a deterrent and the brothel keeper would thus be forced to keep her brothel clean and hygienic and ensure that the sex-workers practicing the profession in her brothel are not minors or victims of trafficking but adults who have

chosen the profession themselves and also they are paid adequately and she would also ensure that sex-workers working in her brothel are disease free. Thus in the proposed system we will witness the brothel keepers image will change wherein she will not be an exploitative element of her past but will be a person whose nature of job and image would have changed drastically and for her survival in the proposed system she would have to adopt and change as per the requirements of the system.

C. Proposed system and nexus between police-pimps and traffickers

As seen earlier there is a strong nexus in the present system between law enforcers, pimps and the traffickers. All the three are more often found hand in glove and the only category which suffers as a result of this combination is the sex-workers. Moreover, police harassment is a common feature of sex-workers working in red light areas along with harassment from landlords, and anti-social elements. In most red-light areas except where women are well organised, police are known regularly for extorting money. Moreover issues relating to trafficking and minors being pushed in the profession always remain low on the agenda of police. These are low priority areas for the police. Raids to rescue minors or victims of trafficking are rarely conducted and more often than not the news of an impending raid is leaked out by the police itself and as such these raids prove abortive and serve little purpose. Tricks to brothel keepers are taught by the police on how to avoid arrest. If there is any one category in the profession who is bearing the brunt of police excesses it is the sex-workers as they are the main targets of police and arrests in the red light area are more often

than not of sex-workers only rather than of pimps or brothel keepers or traffickers.

But in the proposed system this nexus between police, pimps and traffickers will itself pale away in to insignificance. In the proposed system, the sex-work will be legalized and regulated so the sex-workers will no more be fugitives of law on whom the police personnel will no more be able to lay their hands. They will now not be arrested and charged by the police under section 8 of the Immoral Traffic (Prevention) Act as the Act itself would stand repealed. The extortions by the police from sex-workers would also come to an end because the profession would now have acquired a legal status as there will be nothing covert or illegal about it. Raids by the police would be a thing of the past. Pimps would not be able to function in the zoned areas as such their existence will come to an end, so would the case with traffickers. There would be harsh and stringent laws against trafficking and there will be no scope of trafficked victims finding their way in the zoned areas. So neither the pimps nor the traffickers are going to have existence in the proposed system. The nexus will no longer exist as the two main parties to this unholy nexus viz., pimps and traffickers would soon after the implementation of the proposed system become irrelevant and non-existent. Hence the nexus between these three categories for the detriment of the sex-workers will not be an issue to deal within the proposed system while dealing with sex-workers.

D. Proposed system and child prostitution and child sex tourism

Article I of United Nations Convention on the Right of Child lays down that a child means every human being below the age of

18 years. Unless under a law applicable to child, majority is attained earlier. There are approximately 2 million child commercial sex-workers between the age of 5 to 15 years and about 3.3. million between 15 to 18 years. They form 40% of the total population of commercial sex-workers in India, and nearly 500,000 children are forced into this trade every year.[36]

Children are the primary assets of a nation. They are the future of a nation and a nation's best human resource for the prospective years as such the importance of a child for the overall growth of a nation cannot be over emphasized. In the present system to deal with sex-work or prostitution children are being trafficked and exploited mainly for the purposes of prostitution in brothels and the childhood of so many poor trafficked children is at stake. The age of victims of trafficking at the time of induction is fast going down and it is affirmed by many that this is due to the spread of HIV/AIDS where customers are demanding virgins in preference to adults. Already India enjoys the dubious distinction of having one of the largest number of child prostitutes in the world. Alongside child prostitution, the problem of child sex-tourism also is a cause of major concern for our law enforcement agencies. The phenomenon has particularly grown in recent years as western tourists who fear AIDS amongst adult prostitutes increasingly demand young children. The present system has not effectively dealt with this serious problem. In our country the abuse by tourists of both male and female children, has assumed serious dimensions. The silence of the society as a whole and its

36 Child Rights, Yojana, Vol. 52, Nov., 2008, p. 2 (Ministry of Information and Broadcasting, New Delhi)

unwillingness to speak out and openly discuss the issue has further compounded the problem.

The proposed system to deal with sex-work will effectively tackle the problem of child prostitution and child sex-tourism. In both the scenarios, i.e. child prostitution and child sex-tourism it is the child who is subjected to sexual exploitation, in the first instance by the indigenous people and in the latter instance by the foreign tourists. In the proposed law, it is section 10 which would be heavily penalising any person/brothel keeper who forces a minor to provide sexual services to a client. Such a person may be punished with upto 14 years imprisonment or fine upto Rs. 50,000/- or both. Similarly section 10(2) would punish any foreigner or an indigenous person who is found having sexual relations for monetary gains or otherwise with any child. As such, maximum possible punishments have been provided by the proposed law i.e. Sex Workers Empowerment Bill, 2008 for any person who either forces any minor within a brothel or outside a brothel to have sexual relations with some client or with himself whether that person be an indigenous or a foreign tourist. Such a strict penal provision is bound to have a deterrent effect on any prospective foreign tourist of not even thinking about child sex-tourism when he is in India. Similarly, it would also deter people of our own country who are providing or even thinking of providing sexual services of a child to any client. Moreover, no brothel keeper would ever think of keeping minors in his brothel in a zoned area because, if he is caught, besides the penal provision of punishment and fine, he would also lose his license as a brothel keeper in that zone and would be debarred from obtaining that license again in future. It would not be possible, as it is, for a brothel keeper to

employ the services of a minor for providing sexual services because a complaint could be made by any of the other adult sex-workers or by any client visiting that brothel or by the minor himself/herself to the members of the self-regulatory board. This complaint could be made by any of the above mentioned persons or it could also be made on the hotline of the self-regulatory board. Moreover, the board members would also carry out routine checks to ensure that no minor is being employed by any brothel keeper for providing sexual services to any of his client.

E. Proposed System and Call Girls and Escort Services

The call girls and escort services are a new phenomenon in the arena of prostitution. They are the invention of modern era and materialistic culture. The term call girl is typically applied to a female who does not carry on her trade at the place where she lives but at a hotel or the residence of her client. These girls are the elite of the contemporary sex-industry and are highest paid amongst the sex-workers, catering to the richest clientele. The inherent point of distinction between a call girl and a traditional red-light area sex-worker is that while the former is carrying on this work to supplement her income for meeting her materialistic needs whereas the latter is in the profession to eke out a living or for basic and bare survival. Moreover, whereas a call girl goes about her task in a covert and secretive manner the traditional sex-worker does it openly. Similar to call girl system are the escort services which again cater to the sexual demands of its clients. These secret sexual services providing agencies or escort services as they are called have cropped in big cities like Mumbai, Delhi, Kanpur, Bangalore etc. which when approached by a client, either

telephonically or through internet or through some other mode arrange all types of girls to suit different tastes. These call girls and girls working for escort services are highly prone to physical abuse at the hands of their clients because the environment and surroundings are heavily biased against them. Secondly, the nature of work of these girls makes them highly susceptible to contracting all types of sexually transmitted diseases as well as AIDS. Even health authorities find it very difficult to implement intervention projects amongst the call girls because of the highly secretive and underground nature of their work.

The proposed system to deal with sex-work clearly mentions in the law i.e. Sex Workers' Empowerment Bill, 2008 in section 12(i) that it is only the brothel based licensed sex-work in a zoned area that will be permissible. All other forms of providing commercial sexual services like street walking, call girl services, escort services etc. shall be prohibited. Moreover, section 13 of the same Act provides that anybody found providing commercial sexual services in a brothel in a non-zoned area shall be punishable with imprisonment which may extend to six months and shall also be liable to fine. Sub-section (ii) of section 13 says that any client found availing of brothel based commercial sexual services in a non-zoned area shall be liable to be punished with imprisonment for a term extending to six months or with fine which may extend to Rs, 25,000/- or both. As such, the proposed system clearly prohibits any form of providing commercial sexual service except for brothel based sex in a zoned area being governed by the self-regulatory based. There are several potent reasons why the proposed system intends to prohibit all other forms of

providing commercial sexual services except for brothel based sex in a zoned area.

(i) The concept of following a regulatory system would itself be negated if non-brothel based commercial sex outside of zoned areas was permitted. The concept of regulation definitely needs certain zones in cities or town wherein the profession of sex-work can be regulated and controlled for the betterment of the sex-worker and the society as a whole.

(ii) If non-brothel based commercial sex in a non-zoned area was permitted then it would become impossible to regulate and oversee such commercial sexual activity. Moreover because such activities are carried out clandestinely and secretly, they remain outside the purview of any health intervention projects or other projects aimed at upliftment of sex-workers generally.

(ii) The possibility of exploitation of the call girls always remains high in such type of commercial sexual activity and she is always at risk. As such, it is for the betterment of all that such types of activities are prohibited.

(iii) Moreover the females involved in these type of sexual commercial activities are doing it not for need but out of greed and if such activities are prohibited, what will be eliminated is only greed and not need.

(iv) The fear of contracting STDs and AIDS in these type of commercial sexual activities also remain very high due to the unsafe surrounding for the call girls. She is not in a position to negotiate for safe sex. As such she puts herself and all prospective clients at the risk of contracting STDs or AIDS. This is also one of

the reason that such commercial sexual activities should remain prohibited and outside the purview of regulation.

These are some of the reasons why it will be impractical and non-feasible to include these types of non-brothel zone based commercial sexual activities into or within the ambit of the regulatory system and it is precisely due to these reasons that these activities such as call girls, escort services, street-walking etc., have been kept out of the purview of the system of regulation.

F. Proposed System and Trafficking

Trafficking of human beings, both for commercial sexual exploitation and for non-sex based exploitation, provides a transnational and complex challenge as it is an organized criminal activity, an extreme form of human rights violation as well as an issue of economic empowerment and social justice. The United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 to which India is a signatory defined trafficking as:

"The recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude

or the removal of organs." Human trafficking has been internationally accepted as a gross violation of human rights. Trafficking connotes commodification and consequent debasement of the victim, the deprivation of their basic human rights and therefore, is most unhuman. It is a problem which affects virtually every country in the world. Generally the flow of trafficking is from less developed countries to industrialized nations. It is reported that the largest number of victims trafficked internationally still come from Asia. India suffers heavily from the scourge of trafficking. Lakhs of girls and children are trafficked annually into India from neighbouring countries like Bangladesh and Nepal mainly for the purposes of the commercial sexual exploitation. The present Indian law to deal with sex-work has failed miserably on the front of trafficking in the same manner as it has failed on all other fronts. Under the regime of this law, rather than any downward trend being witnessed, trafficking cases have been on the rise year after year.

The proposed system to tackle the sex-work envisages the strictest possible punishment for any brothel keeper or any other person who is found compelling a victim of trafficking for the purpose of providing commercial sexual services. It entails an imprisonment for a term which may extend to 14 years or with fine upto Rs. 50,000/- or both. Any victim of trafficking may voluntarily report the same to the self-regulatory board which in turn will initiate the police action and will also provide for repatriation of the trafficked victim. Trafficking or bringing trafficked persons for the purpose of forcing them to provide commercial sexual services to a client shall be a strict no in a zoned areas under the supervision of self-regulatory boards and the member of the core team shall

ensure that in the zoned area under the supervision of that self-regulatory boards there is no person who is a victim of trafficking. If any brothel keeper is found in the zoned area who has in his brothel an unlicensed girl who is a victim of trafficking then the license of such a brothel keeper shall be cancelled besides the criminal action that will be initiated against him. Any sex-worker working in that zoned area may also report any suspicious activity to the self-regulatory board and on the basis of the information received the members of the self-regulatory board may raid the premises of the brothel keeper. If any victim of trafficking is found illegally in that brothel she may be taken into custody by the self-regulatory board members and then all efforts would be made by the board to repatriate that girl back to the place where she came from. Thus, unlike the present system wherein there are lakhs and lakhs of victims of trafficking holed up in brothels across the country working in inhuman and highly exploitative environment, the proposed system will make all possible efforts to see that there is no place for victims of trafficking inside the zoned areas. It is sincerely hoped that once such a strategy starts working, it would become unprofitable for traffickers to traffic girls from other countries and within the country as they would not be able to sell these girls to brothel keepers which in turn would lead to a drastic reduction in trafficking of girls at least for the purposes of commercial sexual exploitation.

V. Sum-up

The present chapter thus summarises as to what is going to be the model of the proposed regulatory system which the researcher proposes for effectively handling and dealing with the

profession of sex-work. This model is going to be a complete departure from the existing model which has proved to be a total failure. The researcher has proposed a new Bill in the form of Sex Workers Empowerment Bill, 2008 with various provisions to effectively tackle the profession of sex-work. The proposed law and system talks about the establishment of zoned areas to be managed by self-regulatory boards. These areas and these boards will work for the empowerment of sex-workers through various ways and will also ensure the health and hygiene of sex-workers and the clients. Sex-workers will be educated, empowered and united under this system. There exploitation will now be a thing of past. The researcher has shown the successful working of the SHIP or Sonagachi projects and the project has been successful because of the active participation of sex-workers in all phases of the project. The proposed system will also effectively tackle the ills prevalent in the current system such as child sex tourism, call girls, STDs/HIV, nexus between pimps, brothel owners and police as well as trafficking. The current law has been tried and tested and it has been seen clearly that the system is dysfunctional and directionless. As such, we have to undertake some far reaching changes in the present system which will be provided by the proposed regulatory system and it is hoped that it will lease a fresh life and hope and betterment for the sex-workers, their clients and the society as a whole.

CHAPTER – 8

CONCLUSION AND SUGGESTIONS

We are living in the twenty first century. This is an era which was supposed to have brought equality between sexes, dignity and respect for women. But this proposition still remains a dream. Being the weaker sex, women continue to be exploited in all spheres and walks of life. The profession of sex-work is one such profession wherein the level of respect, dignity and self-worth for a woman is at the lowest level whereas harassment, injustice and exploitation at the hands of various unscrupulous elements is the highest. This is a profession which is often called the oldest profession of mankind which has continued since time immemorial and which will continue till humanity exists. Despite this stark fact, the women working in this profession have neither been given their due in society nor they have been treated with respect. Women in this profession continue to suffer endlessly. The tolerationist approach that India had adopted as a result of the 1949 U. N. Convention has failed to help these hapless women. For a woman working in this profession in India, the law which was supposed to have been in her favour has only targeted her and as a result she continues to suffer at the hands of pimps, brothel keepers, traffickers and the police.

It is pertinent to mention here that the profession of prostitution or sex-work was in existence in all ancient civilizations, be it the Greeks or the Mesopotanians or the Chinese.

In a country like India it is evident that during the ancient period not only was the profession of prostitution prevalent, rather it was flourishing and thriving and it commanded a certain degree of respectability. In fact this was an era wherein the prostitutes enjoyed respect, dignity and a place of importance in the society. The Hindu religious scriptures like the Vedas, Puranas or even the epics such as Ramayana or Mahabharata are replete with references to the prostitutes. As a matter of fact these ladies were referred to as Ganikas during the time of Chandragupta Maurya. Kautilya's Arthashastra informs us that the prostitutes were treated like the government servants and even tax was levied on their earnings. This period was the golden period for the followers of this profession.

As the ancient period withered and the Mughals took control of India, with it started withering and fading the respect that the prostitutes had earlier enjoyed. The Mughals did not look up at this profession with respect. In fact prostitutes were confined to a place outside the city limits and the place was known by the name of 'Shaitanpura' or devils quarters. The name is suggestive of the level of respect and dignity that the prostitutes enjoyed during this period. Whatever little respect they had during this period took a further beating when the last of the Mughal kings Aurangzeb ordered all the prostitutes as well as singers and dancers to leave the empire or get married. This period witnessed gradual deterioration in the overall condition of prostitutes.

From the research it becomes clear that the trend which started with the ancient period had almost reversed during the British period. The ancient period which stood testimony to the fact that there was regulation on the profession as well as respect

bestowed on it had completely changed during the colonial rule. This period witnessed large scale mushrooming of the prostitute population who were mainly catering to the demands of the British soldiers. Chaklas were being maintained by British army to meet the sexual needs of their soldiers. Controversial legislations such as the Contagious Diseases Act which further degraded the prostitutes were passed during this period. Laws reflecting a tolerationist approach that criminalizes all acts leading to prostitution but excepting the sexual act itself had already taken root.

Chapter II lays down that India follows the tolerationist approach for dealing with the profession of sex-work. The intent behind this approach is to criminalise the organizers of the sex trade but not the sex-workers themselves. The genesis behind this policy can be traced to the colonial period. However, it was the United Nations Convention of 1949 (Suppression of traffic in persons and of the exploitation of the prostitution of others, 1949), of which India was a signatory which firmly promoted the tolerationist approach in our country.

The policy of prostitution in India is reflected in its legal approach towards prostitution. The first central legislation for this profession was enacted in the year 1956 which was known as the Suppression of Immoral Traffic in Women and Girls Act, 1956. This legislation imbibed the findings and conclusions of the 1949 U. N. Convention. This law provides that sex work *per se* is not an offence and practising sex-work privately and independently is not a crime. As per this policy which is reflected in the law, a sex-worker can carry on her activities privately and independently within the confines of her home but public solicitation as well as

living on the earnings of prostitution of somebody else were made punishable. The Act of 1956 was amended twice, firstly in the year 1978 and then in the year 1986 and its name was also changed to Immoral Traffic (Prevention) Act, 1956. This amended Act also follows the same line of thinking. As such our policy based on Immoral Traffic (Prevention) Act revolves around two important thoughts, firstly, that morally sex-work is reprehensive and must be suppressed and secondly that sex-work is a necessary evil which must be tolerated.

It is imminently clear that the present policy on sex-work which is reflected in our legal framework lacks a clear vision and sense of direction. The tolerationist approach followed by us has not yielded the desired results. A legal framework which was meant to have targeted the perpetrators or organisers of the sex-trade such as pimps, brothel keepers and traffickers has totally failed to tackle them, rather this legal approach has targeted only the hapless community of sex-workers. The provisions of this Act have more often than not been used to arrest and harass the sex-workers themselves. Arrests, if any of the culpable categories such as pimps or traffickers have been negligible.

Chapter III makes it amply clear that the Constitution framers were aware of the weak position of women in society. The overall condition of women in general and of women in sex-trade specifically had deteriorated to a great extent. With this background well entrenched in their minds, our Constitution framers included several provisions in the Constitution for betterment of women generally as well for women in the profession of sex-work. In the beginning, the Preamble of our Constitution makes it amply clear that the Constitution intends to provide

justice to all sections of the society and it aims to uplift the downtrodden. There are several provisions in our Constitution like Article 14, 15(3), 19(1)(a), 21, 23, 39(e), 39(f) and 51(a) which are directly or indirectly deals with the matters concerning women and prostitution. But the most important of all these Articles is Article 23. Article 23 has a direct impact or bearing on the profession of sex-work as it prohibits trafficking in human beings for the purpose of prostitution.

If we talk about the special legislation which our legislature has made to effectively tackle the profession of sex-work, it was in the year 1956 that the Suppression of Immoral Traffic in Women and Girls Act, 1956 was enacted as a result of India being a signatory to the 1949 U. N. Convention which asked all the signatory nations to enact such a law. The law was amended in 1978 and subsequently in 1986 and its name was changed to Immoral Traffic (Prevention) Act, 1956. This law repealed all the earlier state legislations on prostitution. The Preamble of the Act disclosed the legislative policy viz., to provide for the prevention of immoral traffic. It is a short legislation consisting of 25 sections. Though per-se sex work has not been made an offence yet section 8 of the Act criminalizes the sex-worker for the profession that she is carrying on. It punishes a sex-worker for seducing or soliciting a client. Section 21 provides for the provision of protective homes which is a rather hopeless provision because protective homes and rescue centres for the sex-workers is the incorrect line of thinking. With the number of sex-workers going in millions, it would be impossible to rehabilitate all of them, rather, more practical thinking should have been to improve their condition in their profession itself.

Since all these efforts were not enough, the government has recently proposed some changes in the current Act in the form of Immoral Traffic (Prevention) Amendment Bill, 2006. The changes have been proposed as a result of mounting pressure from the feminist organisations whereas the community for which these amendments are targeted i.e. sex-workers community have been totally ignored while framing these amendments. Though the new Bill seeks to delete section 8 of the present Act which punishes a female sex-worker for seducing and soliciting but on the other hand it inserts a highly controversial section i.e. section 5-C which punishes the clients of the sex-workers. So, the law has now decided not to target the sex-worker, but to punish her client. The result of this newly enacted law will be that it will drive the whole profession underground as has happened in Sweden which follows the same type of law. This will be disastrous for the profession because the moment it goes underground all the intervention projects targeting the sex-workers will fail. All these flawed policies are a result of the reluctance of the government whether willingly or unwillingly to involve the sex-workers in this whole exercise because if the same had been done we would have seen some good laws which would have benefitted the sex-workers and the society as a whole.

It is important to note here that our judiciary especially our Apex Court has been proactive and has shown dynamism to improve the plight of sex-workers and their progeny. Supreme Court gave two landmark decisions in the celebrated cases of Vishal Jeet v. Union of India (AIR 1990 SC 1412) and Gaurav Jain v. Union of India (AIR 1997 SC 3021). The former case was filed by way of writ under Article 32 in the Supreme Court. The Court gave

a number of directions in the case and emphasized that all law enforcement agencies should take appropriate and speedy action under the existing laws in eradicating child prostitution. The latter case was by way of Public Interest Litigation filed under Article 32 of the Constitution in the Supreme Court. The court was concerned with the rehabilitation and rescue of child prostitutes. The court directed that measures should be taken to provide them adequate security, protection and rehabilitation.

It may further be noted that besides these two landmark judgements made by the Apex Court, there have been several important judicial pronouncements made on the various provisions of Immoral Traffic (Prevention) Act, 1956. These pronouncements have been made on the various terms used in the Act such as 'brothel', 'prostitutes', etc. In an important judgement of Kamlabai Jethamal v. State of Maharashtra, (AIR 1962 SC 1189), Supreme Court went at length to criticize the practice of sending trap witness by the prosecution. In another important case i.e. Sangeeta v. State, {1996 Cr. Rulings 129 (Delhi)} the Delhi High Court re-emphasized the fact that there is no provision under the Act which makes prostitution per se a criminal offence or punishes a person for indulging in prostitution. The provisions of Immoral Traffic (Prevention) Act, 1956 have been challenged several times as being constitutionally invalid in many cases. But every time any such challenge has arrived, it has been defeated and as of now none of the provisions of this legislation has been declared unconstitutional. Some important cases where such a challenge was posed are Shama Bai v. State of Uttar Pradesh (AIR 1959 All 57), Ulhas Nature Cure Centre v. State of Karnataka (1987 CrLJ 1435 Kar), Moinudin v. State of Andhra Pradesh (1986 CrLJ 1435

Kar) etc. Supreme Court showed its deepest concern on the pitiable conditions of the inmates of protective homes established under section 21 of the Act in Dr. Upendra Baxi v. State of U. P. (AIR 1989 SC 191).

It is a matter of great concern that a large percentage of Indian judicial officers still hold sexist views regarding sex-workers. They show little sympathy and respect towards them either in the court or while delivering their judgements. What they do not realise is that these women are in the profession because of adverse socio-economic conditions and are not criminals. Most of them are voluntarily in the profession to sustain themselves and their families. The judiciary while disposing of these cases must remember the golden words used by Justice Ramaswamy in Gaurav Jain v. Union of India (AIR 1997 SC 3021) when he said that woman found in the flesh trade should be viewed more as victims of socio-economic circumstances rather than as offenders in our society.

Chapter IV reflects on the negative implications of the current policy on prostitution. The present policy has not benefitted the community of the sex-workers at all, rather the elements which it was supposed to have targeted are actually the ones who are benefitting the most from it. In India, especially amongst the sex-workers the incidence of sexually transmitted diseases (infections) like Syphilis, trichomoniosis, gonorrohea etc. are on the rise. The exploitative nature of brothel work and indifferent attitude of health workers, non-responsive clients all these add to their miseries and acquiring STDs. The current prevailing situation makes them a high risk group for acquiring

STDs and in majority of the cases they continue suffering even when they know that they are susceptible to STDs.

Moreover, once a sex-worker acquires a sexually transmitted disease and if that STD remains untreated, in such a case it increases the risk of HIV transmission during sex unprotected by condoms upto ten folds. Contrary to the prior belief it is now also settled that men are twice more effective as transmitters of STDs and HIV infection rather than women. National Aids Control Organisation gives us the staggering figure of HIV infected people in our country which is anywhere between two to three million. In fact the profession of sex-work emerged on the scene of public debate only after the detection of the first Indian case of HIV infection in a sex-worker from Chennai in the year 1986. Since then sex-workers have been considered a high risk group i.e. carriers and transmitters of this deadly virus, of which, as of now no cure has been found by the modern or the traditional medicine. It is astonishing to find that it is actually the clients of sex-workers who are similarly responsible for transmitting the AIDS virus to the sex-workers as well as their wives. Sheer reluctance on the part of the clients to use condoms always puts the sex-workers at a very high risk of contracting HIV virus and then ultimately AIDS. Though the awareness amongst sex-workers regarding AIDS/HIV is high, yet myths and misconceptions generally aggravate the problem. Another compounding factor is that the targeted or interventional programmes never achieve the desired results. Researcher also finds that the women who have been trafficked into the sex-workers profession are more vulnerable to the threat of HIV and more likely to be in a situation where they are unable to control and protect themselves from HIV transmission. Legislature

has to avoid making such laws which tend to stigmatize or ostracise the sex-workers as compulsion is not the way to deal with HIV/AIDS. Segregation of HIV affected will only alienate them, so focus should be on mass awareness and community based schemes.

It is not only HIV and STDs which worries the community of sex-workers but they also have to face the greedy and blood sucking functionaries of their profession known by the name of pimps and brothel keepers. The strictly business like organisation which dominates the world of professional crime has taken control of prostitution. Figures reveal that in the preceding decade arrests and convictions of these unscrupulous functionaries, whom the ITPA had intended to target have been minimal, whereas the detention, harassment, arrests and in some cases conviction of the sex-workers has been maximum. These procurers, pimps, brothel owners are the master of the trade, each supporting and supplementing the other for a common cause, i.e. deriving economic benefit and power out of the trade while performing their respective roles and assignments into the trade management.

It has also been observed that there is a strong nexus prevalent between police-brothel owners and traffickers. In fact, it has been observed that the country's prostitution and trafficking laws are imposed selectively by the police wherein clients and organisors of the sex trade tend not to be penalised while sex-workers found soliciting or carrying on their trade are regularly apprehended. Over the years, arrests and prosecutions under ITPA of traffickers have remained relatively static while all indications suggest a growing level of trafficking into the country. NHRC report on trafficking substantiates the view that trafficking in women and

children have always remained a low priority for police officials. Police are known to extort money and harass sex-workers in red-light areas except in those areas where women are well organized. Current provisions of the law, in fact provide ample opportunity to the police to extort money by threatening arrest of sex-workers.

A very depressing fact which nonetheless is a reality in modern times is the rampant prevalence and increase in the incidence of child prostitution. Reports from all over the world and especially South East Asia region, indicate that trafficking and commercial sexual exploitation of children is alarmingly rising. India enjoys the dubious distinction of having one of the largest number of child prostitutes in the world. A phenomena of recent origin intrinsically connected with child prostitution is child sex tourism. Studies reveal that more than a million children in Asia are involved in sex-tourism and countries such as Thailand, Sri Lanka, Philippines, Cambodia and India are believed to be amongst the prime destinations for sex-tourists. One particular myth and misconception that has given a big fillip to this phenomena is that AIDS is cured by having sex with a virgin girl and that virgin girl in most the cases would be a child. Paedophiles or persons with sexual inclinations for a child are always on the prowl especially in India's coastal state of Goa. Their modus operandi includes techniques such as running an orphanage, good samaritan, producers of films and documentaries, etc. It has also been observed that along with child sex-tourism, child pornography is also on the rise. Child pornography is produced, collected and used by paedophiles mainly for their own sexual arousal and gratification. Goa in India has become

infamous for child sex-tourism due to the primary reason of heavy influx of foreign tourists.

In the present study it has also been observed that a relatively recent phenomena is the rise of call girls and escort services. These are categories of clandestine prostitutes who do not work in a confined area but generally accompany their clients to either their houses or at hotels. The call girls, it has been observed are generally from middle class or well to do families who have taken or selected this path to make easy and fast money. Her hallmark is that she operates in secrecy. She leads a dual life of hypocrisy, whereby she is a respectable lady in the day and a prostitute in the night. In fact the call girl culture is the indirect impact of the economic and technological development of our social structure. Somewhat similar to Call Girls are the Escort Services who also provide girls to clients at their homes on demand. Both these categories of prostitutes are highly susceptible to physical and verbal abuse at the hands of their clients, moreover they are also susceptible to acquiring HIV and STDs. This happens because they work in a hostile environment which is usually the house of their client and as such they are totally at the mercy of their clients and have no support to fall back in times of crisis. Health intervention projects are also very difficult to be implemented on these categories because of the highly secretive and underground nature of their work.

Chapter V depicts in detail how the scourge of trafficking has become an alarming problem not only for India but for the global community. Trafficking has infact become one of the fastest growing areas of international criminal activity which has become a matter of grave and serious concern for many countries,

regardless of whether they are countries of origin, transit or destination. The researcher has laid emphasis on trafficking for the purpose of prostitution in this chapter. Several definitions have been given of 'trafficking' by the international organizations and agencies like the U. N. General Assembly but as far as India is concerned the only statute which defines trafficking is the Goa Children's Act of 2003.

It has also been observed during research that certain sections of people are more vulnerable to trafficking such as people with low self esteem, those who lack self control, people with dysfunctional homes, children in substitute care etc. Structural factors like globalization, industrialization, loss of traditional livelihood, inflation, etc. also influence vulnerability. Political factors like conflicts, disruption, instability also play a vital role.

It is pertinent to mention here that the magnitude of trafficking is colossal. According to conservative U. N. estimates more than 4 million people are traded against their will each year and in the last 30 years trafficking in women and children for sexual exploitation alone has victimised more than 30 million people. There is no exact figure available for India but certainly trafficking of women and girls for sex-work is going on at a massive scale in India. It has been noticed that our neighbouring countries of Nepal and Bangladesh are huge source areas for traffickers. Figures, reveal that over 7,00,000 girls have been trafficked from these two countries in the last seven years or so. It is established that trafficking generates US$ 5-7 billion annually in revenues worldwide.

Trafficking is being carried on by traffickers in a very systematic manner. There are several levels in the supply chain consisting of manifest and latent players. At the topmost is the master-trafficker or kingpin and at the lowest level are the spotters or the gassroot chain of intelligence gatherers. It has been noticed that amongst the several methods adopted by the traffickers for luring gullible people the most common factor is offering them jobs in big cities, offering them money, making false promises of marriage, etc. These traffickers then take their victims to cities to be sold off in red-light areas. As to the income of traffickers a study revealed that they earned more than Rs. one lakh per annum.

The impact of trafficking on the survivors is generally traumatic. Depression and suicidal thoughts amongst the survivors are common. The mental and emotional state of survivors includes malevolence, helplessness, withdrawal etc. Besides being stigmatized as outcastes and facing moral and legal isolation, trafficked people are vulnerable to HIV/AIDS infection, drug addiction, alcoholism, high risk abortions, teen pregnancies and sexually transmitted diseases. It has been noticed that survivors of trafficking are disabled by the mental health impact of their experiences. The thoughts and feelings of a survivor are permanently affected by her traumatic experiences. The general experiences of a survivor include helplessness, dissociation, normalisation and shaping, self-blame and identification with aggressor, distraction etc. Moreover, majority of the survivors also suffer from psychiatric disorders such as post traumatic stress disorder, depressive disorder, dissociative disorder, psychotic disorder, eating disorder etc.

It is further observed in this chapter that several culturally sanctioned practices such as Devadasi cult have also contributed their bit to trafficking of women and girls for sex-work. The genesis of the devadasi cult can be traced back to the custom of worshipping mother Goddess, whereby young girls were voluntarily dedicated to the service of God by their families to ensure fertility of soils as well as secure blessings for the community. Gradually these culturally sanctioned practices which developed as a purely religious institution saw a gradual decline especially when degenerated practices began to be associated with it, especially sexual exploitation. The backward areas of South India which were more prone to this cult became the source area for traffickers.

Another dimension which has been explored in this chapter is the intrinsic link between migration and trafficking. It has been found that majority of trafficked people are migrants. Migration becomes a major source for recruits in trafficking since people in situations that are likely to propel them towards seeking better lives elsewhere are likely to be the same set of reasons, to fall prey to traffickers. It has been observed that restrictions on migration tend to encourage illegal migration, which in turn creates higher risk of people being trafficked. In fact migrants may fall prey to traffickers while looking for means to enter a country illegally. On the other hand when the immigration laws are too lax as in the case of India and its border with Nepal, it may also create problems. Both migration and trafficking are influenced by factors like labour demand and supply, globalisation and state policy.

The Constitution of India under Article 23 provides that trafficking is prohibited and India also has the Immoral Traffic (Prevention) Act, 1956 as the special legislation dealing with the

problem of trafficking. In fact there are a gamut of international framework of laws relating to trafficking such as the Slavery Convention, 1926, International Convention for Suppression of Traffic in Women of full age, Universal Declaration of Human Rights, etc. There are several regional documents also working in this field such as SMRC Convention against Trafficking, 2002, Convention of Regional Agreement for the Promotion of Child Welfare, 2002 etc. Several bodies of U. N. like UNICEF, UNIFEM, UNAIDS etc are also doing their bit to fight against this menace. As far as India is concerned our present policy has been found lacking and wanting to deal with this problem which has acquired gigantic proportions. Brighter ideas and pragmatic wisdom is the need of the hour to tackle this menace.

Chapter VI examines at length the policy and laws of some foreign countries on sex-work in order to analyse how successful these countries have been in tackling the ticklish issues related to the profession of sex-work. A total of four countries have been selected by the researcher for the same. These four countries are the Netherlands, New Zealand, Thailand and the Philippines. The criterion for selection of the above mentioned countries is that two out of these countries i.e. Netherland and New Zealand have been following the regulatory model, so a study of the regulatory model in these countries would reveal how much this system has been successful there. The other two countries which have been selected are Thailand and Philippines, these are the two Asian nations having a huge population of sex-workers and it becomes imperative to have an idea as to how these two countries are tackling or handling this profession.

A study of Netherland's system on sex-work reveals that actually prostitution was never illegal in that country though brothels were illegal. However, this ban on brothels was also lifted in the year 2000 A.D. and now it has become legal to run a business where men and women over the age of consent are voluntarily employed as prostitutes. The person running the business must satisfy certain conditions and obtain a license from the local authorities. Though a ban on brothels was lifted in the year 2000, no legislation governing prostitution was introduced. It has been left to local authorities to formulate and implement policies tailored towards circumstances prevailing in that area. It has been observed that the ban was actually lifted to end abuses in the sex industry and change the existing law to reflect everyday reality. The legalisation of brothels enables the government to exercise more control over the sex-industry and counter abuses. It also keeps a check on human trafficking. The approach, it has been found is in the interests of the sex-workers also as it facilitates action against sexual violence, abuse and trafficking. As such, this law has made sex-work a legitimate occupation. Now the sex-workers have the same rights and obligations as other professionals. This policy has had positive effects on issues such as social security, medical check-ups, human trafficking (which has been curtailed to a large extent).

New Zealand reformed its law on sex-work when it passed the Prostitution Reform Act on 25th June, 2003. All the penal provisions of the old law based on the tolerationist model have now been done away with. The new legal provisions safeguard the human rights of sex-workers and protect them from exploitation. It also promotes the welfare and occupational health and safety of

sex-workers and protects them from exploitation. It is conducive to public health and prohibits the use of prostitution of persons under 18 years of age. The Act is practical, sex-worker friendly and reform oriented. The policy adopted is definitely progressive and in tune with the modern times. It has been found that the Act has certainly helped sex-workers become part of the mainstream society with minimal chances of them being exploited. Act is foresighted as it looks towards the future wherein the sex-workers and the society both will be benefitted from its provisions.

Philippines is an Asian country wherein sex-work is a thriving industry and an estimate suggests that the number of women involved in this profession equals the whole labour force in Philippines. This country follows the model of suppression wherein all the activities associated with sex-work are declared illegal. The legislation imbibing this policy is known by the name of Anti-Trafficking in Persons Act, 2003. Provisions of this Act (Sec. 4), clearly declare that to maintain or hire a person to engage in prostitution is unlawful and a penal offence. This policy has neither helped the sex-workers nor the society. Child prostitution and sex-tourism are rampant. In fact Philippines is fourth amongst nine nations with the most children in prostitution. Similarly, this country is the most favoured destination for paedophiles and sex-tourists. As such, the law has failed completely. This country is witnessing a situation wherein sex tourism, child prostitution and exploitation of prostitutes is on the rise.

Thailand is a South-East Asian nation with its capital in Bangkok which is infamous the world over as the brothel capital of the world. Prostitution as witnessed in this country today is a direct fallout of the Vietnam War. It was in the 60's and in 70's

that the U. S. army created rest and recreation centres in this country and as a result of demand of sex by the U.S. soldiers, sex-business started flourishing. Thailand criminalized prostitution in the year 1960 with the passage of Suppression of Prostitution Act, 1960. This Act intended to eliminate prostitution by declaring it as an illegal activity. The Act stipulated that convicted prostitutes should be reformed through medical treatment. In fact, by 1990 Thailand had four separate legal regimes addressing different but sometimes overlapping elements of both trafficking and prostitution. It has been observed that the inconsistencies resulting from multitude legislations were many and still despite so many laws there had been no clear legal sanctions on forced prostitution.

In Thailand a new Act in the form of Prevention and Suppression of Trafficking in Women and Children Act, 1997, was enacted which repealed the old Act on prostitution. This Act also follows on the lines of the old Act and makes prostitution and allied activities illegal. Thus the Thai government follows a policy of suppression wherein prostitution and allied activities are not allowed and have been declared illegal. The policy has not yielded any positive results. It has only led to exploitation of sex-workers by pimps, traffickers, etc. and projection of Thailand as a hot sexual destination has only led to sex-tourism and child prostitution.

In Chapter VII of the present study the researcher proposes a new regulatory model to effectively deal with the profession of sex-work. It has been emphasized in this chapter that we have to abandon our old approach which looks at sex-work as something which is sinful and morally incorrect. The new approach has got to

be practical and in tune with the modern times. Solutions have to be found to come out of the present mess relating to sex-workers. The emphasis has to be on the improvement of the living conditions of sex-workers and their empowerment.

For this, the researcher in this chapter suggests repealing of the current law i.e. Immoral Traffic (Prevention) Act, 1956 as it has completely failed in all aspects and on all fronts. A new law in the form of and by the name of Sex Workers Empowerment Bill, 2008 has been suggested to replace the existing law. The proposed law suggests a regulatory mechanism with certain important variations and deviations to effectively tackle the profession of sex-work and to cleanse the system of the unwanted elements presently infesting the system.

The proposed law is a small but effective Bill which contains 21 sections in all. The purpose of the Bill is to remove criminal sanctions form sex-work and essentially to create a framework that safeguards the human rights of sex-workers and protects them from exploitation, promotes the welfare and occupational health and safety of sex-workers and is conducive to public health. One of the most essential features of the law is that it provides for the zoning in all cities and towns for specifically providing for sex work. Under this system the local authorities would specifically earmark certain areas in a town or city and the profession of sex-work would be legally allowed to be carried on in the earmarked areas of the town or city only. Another important provision is the establishment of self-regulatory boards. Each zoned area in a city or town shall have its self-regulatory board. The board will consist of certain members from the community of sex-workers and some from the government. The board shall effectively regulate and

manage the whole profession of sex-work in the zoned or earmarked area under its jurisdiction. An important provision is in the form of section 6 wherein licenses would be issued to brothel keepers and sex-workers by the self-regulatory boards to carry on the profession of a sex-worker in the zoned areas.

The proposed law also provides that only brothel based licensed sex-work in a zoned area will be permissible. All other forms of commercial sexual services like street-walking, call girl services, escort services etc., shall be prohibited. Moreover brothel based commercial sexual services in a non-zoned areas shall also be punishable. Section 14 provides heavy punishment for traffickers whereas section 15 provides punishment for anyone perpetuating violence on sex-workers. Under the new law mandatory testing of sex-workers for the HIV and STDs has been completely prohibited as it leads to alienation of the sex-workers community.

In the course of the current chapter the researcher has highlighted how the STD/HIV intervention project (SHIP) also known as Sonagachi project is running successfully in the red-light area of Sonagachi in West Bengal. This project has attained an international reputation for its unusual success in reducing the prevalence of STDs and HIV and in increasing the prevalence of use of condoms amongst the sex-workers in its area of operation. The project has been highly successful and NACO says that it is the most successful HIV/AIDS intervention projects amongst female sex-workers in all its phases. The project is running various schemes for empowering sex-workers such as Usha Multi Purpose Cooperative Society Limited, saving scheme and micro-credit scheme, social marketing of condoms, production of handicrafts,

evening creches, cultural wing, national conference, millennium mela, positive hotline, literacy programmes, etc.

Finally the researcher points out in this chapter how the proposed system will effectively deal with all the ills that are currently prevailing in the profession as a result of the current law. The proposed system will effectively tackle the problem of STDs and HIV, how the proposed system will deal with pimps and brothel owners, how it will break the nexus between police, pimps and traffickers, how it will tackle child prostitution and child sex-tourism and finally how it will deal with call girl services and escort services.

Suggestions

The foregoing study reveals that the current policy on sex-work in form of Immoral Traffic Prevention Act, 1956 suffers from serious shortcomings and drawbacks. The plight of sex-workers under the current legal regime is pitiable as well as deplorable. As such the current policy and the law need to be drastically amended and altered. Elaborate suggestions on a new law and how it will tackle the ills infesting the current system have been already discussed at length by the researcher in the last chapter. Herein the researcher proposes certain general suggestions which will go a long way in improving the living and working conditions of sex-workers. These suggestions may be summarised as follows:

A. Empowerment of Sex-workers

For an effective empowerment of sex workers, the researcher makes the following suggestions:

(i) Extensive literacy programmes should be carried out amongst the sex-workers as there is no better way to empower the sex-workers. It should be made compulsory to provide basic education to every sex-worker. Efforts on this front have to be made not only by the governmental agencies but also by non-governmental organizations, self-help groups and by all the members of the society.

(ii) The sex-workers should organise themselves and national and State level networks of sex-workers should be formed by them so that they are in a strong bargaining position for their due and legitimate rights vis-à-vis the state and the central government.

(iii) National and state level conferences of sex-workers should be organised wherein members of sex-workers, intellegentia, governmental agencies, National Commission for Women, State Women Commission, NGO's etc. participate and wherein they try to thrash out ways and means to further improve the living conditions of sex-workers.

(iv) Cultural events should be organised in different cities throughout the country wherein sex-workers from different parts of the country participate and get an opportunity to express their feelings and display their talent. Such events should be given wide and positive coverage by both print and electronic media so that the message travels loud and clear in the society that the sex-workers are also part and parcel of the mainstream of the society and not an untouchable class.

(v) Banks and other financial institutions should also lend financial support to the sex-workers by lending them at very nominal rate of interest and also encourage in them the habit of

saving and depositing their saving in banks or other financial institutions so that they become financially stable and independent over a period of time.

(vi) Our judiciary needs to be sensitized over matters pertaining to sex-workers. Our judges need to have a humane attitude towards the sex-workers while disposing of cases pertaining to offences alleged to have been committed by them. The judiciary should not have a biased attitude while disposing of such cases.

B. Suggestions to prevent the spread of HIV/AIDS and STDs

With a view to prevent the spread of HIV/AIDS and STDs, the following suggestions are made:

(i) By way of advertisements generally in the print and electronic media the government should highlight the effectiveness of using a condom for the prevention of AIDS and STDs. National AIDS Control Organisation or NACO could take a lead in this direction assisted in its efforts by Union Ministry of Health.

(ii) Condoms should be distributed free of cost or at a very nominal rate to the general public and especially to truck drivers along the important state and national highways by the state governments with the assistance of Non-Governmental Organisations.

(iii) The government has to ensure that the attitude of its health staff in the government run hospitals and dispensaries changes towards the sex-workers. Such medical staff should be more sympathetic and positive towards sex-workers in their medical problems. The medical staff should extend a helping hand to them

with a smile and treat them not as a second class but as ordinary citizens of this country.

(iv) Government has to ensure that most of the funding by the national as well as international agencies is actually reaching the genuine Non-Governmental Organizations who are actually and truly working towards STD/AIDS prevention amongst the sex-workers community. Strict guidelines by the government and NACO should be laid down for receiving of funds by such NGOs and only those NGOs who comply with those guidelines should be allotted funds. A portion of such funding should also reach the self regulatory boards.

(v) Laws which provide for forcible testing of sex-workers for HIV/AIDS must be avoided at all costs by the Union and State governments. These laws would only stigmatize and ostracize the sex-workers as well as citizens. In fact forcible testing is not the way to deal with HIV/AIDS as segregation of HIV affected sex-workers will only alienate them. Focus should be on mass awareness programmes and community based schemes wherein the sex-workers themselves feel motivated to get themselves regularly examined.

(vi) Regular medical camps must be organized in the sex-workers areas and they should be motivated to go in for regular medical check-ups.

(vii) Those sex-workers or members of the general population who are already suffering from HIV/AIDS should not be isolated or segregated from the mainstream, rather all possible support in the form of medicines and other financial assistance must be provided to the HIV positive patients.

(viii) Intensive counselling should be provided by government run hospitals as well as by NGOs to any sex-worker who is found HIV positive.

C. Suggestions to prevent child prostitution and child sex tourism

In order to prevent and to control child prostitution and child sex tourism, the researcher makes the following suggestions:

(i) Law enforcement agencies, especially the police have to be very vigilant, careful and alert. Police of states where the influx of tourists is high like Goa and Kerala have to be extra vigilant in ensuring that children are not sexually exploited by the foreign tourists. Any such case which is detected should be thoroughly investigated and then pursued in the criminal courts by the police, so that the foreign tourists (offender) get the maximum possible punishment for the heinous crime. In fact a special police task force to cover broad range of sexual crimes against children should be set-up which should also cover trafficking and sex-tourism.

(ii) Sex offenders' register should be introduced to give force to the right to information and right to protection against probable dangers in one's environment. There should be time bound special representative Committees at state and central levels to tackle the sex-tourism crime and monitor the situation and progress of anti-sex tourism measures and programmes.

(iii) No person under the age of eighteen years should be allowed to be employed at any time during the night for whatever part thereof in a public, private, industrial undertaking, market place, trade, fair, place of trade and commerce or places of entertainment.

(iv) Strong messages against sex-tourism may be displayed at important places like airports, beaches, hotels, etc. mentioning the legal and penal provisions, cautioning the potential victims and deterring the potential sex-tourists. Public places and T. V. channels must be reserved in terms of space and timeslots in order to make provisions for social messages.

(v) Private radio channels, private T. V. channels, etc. also must be roped in to spread anti-sex- tourism messages.

(vi) No occupant of a hotel should be allowed to keep a child with him of whom he/she is not a legal custodian or who has not been authorized by a parent/legal guardian. Every hotel should display prominently and appropriately legal and penal provisions against sex-tourism next to the reception counter in a visible manner. Tampering, removing or making it invisible or unintelligble or disfiguring it should be an offence.

(vii) It should be the responsibility of External Affairs Ministry to ensure that in the international travel by air and waterways adequate and prominent publicity is given to legal and penal provisions against child sex tourism.

(viii) As far as criminal trials are concerned the prosecutors must recognize that children are particularly vulnerable and therefore, they must ensure that child witnesses or victims are treated in a caring and sensitive manner throughout the prosecution process, taking into account age and level of maturity, and ensure that they are effectively protected. The prosecutors must ensure that the rights of child victims or witnesses are respected at all stages of prosecution.

(ix) The state should institute state and national level awards for voluntary organizations working against child prostitution and child sex-tourism.

(x) The state should set-up helplines in all urban areas and districts to help the actual and potential victims of child prostitution and child sex-tourism.

(xi) The Government of India should send out a strong message at international conventions and conferences that India is not a destination for sex-tourism generally and child sex-tourism specifically.

(D) Suggestions to weed out trafficking

To effectively tackle and weed out the menace of trafficking the researcher makes the following suggestions:

(i) Prevention is better than cure, therefore, preventive strategies must be designed in such a manner as to minimize the vulnerability of the high risk groups to trafficking. This can be done in many ways. Prominent among them are strategies for spreading education, gender equality, awareness about rights especially that of women, children and ethnic minorities, increasing employment opportunities, development and poverty alleviation.

(ii) Prevention strategies need to be addressed along the trafficking routes and at the transit points also. Intervention at these places, where trafficking becomes more or less visible, can be an effective tool.

(iii) Gender discrimination and the patriarchal mindset are important constituents and catalyst in the vulnerability of women and girl children. This manifests itself in several serious violations of women's rights as seen in high incidence of female foeticide and female infanticide and the discrimination of women in health care, education, employment, empowerment, etc. Since these are vulnerability factors which trigger trafficking, prevention strategies need to be oriented accordingly.[1]

(iv) There is a need to set up a task force at a national level with sweeping powers which can effectively take up investigation of crimes of such nature.

(v) Trafficking in women and children is a crime which is committed without any restrictions of boundaries. However, the government agencies are restricted in their response by boundaries of police station, district, state, country, etc. These geographical restrictions coupled with the prevalent mindset are serious impediments in preventing trafficking in women and children. Therefore, trafficking offences have to be made a federal crime as in the case of narcotic offences over which state police, CBI and Narcotics Bureau have contiguous jurisdiction.

(vi) Redressal of grievances of the victims should be the topmost agenda of law enforcement and justice delivery. Victim assistance programmes, covering all human right principles have to be incorporated in law and practice.

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1 NHRC Report on Trafficking in Women and Children in India, p. 334 (2002, 03)

(vii) Knowledge is power. The lack of opportunities for education formal and informal, not only pushes children and women into seeking better livelihood through other means but also makes them easy prey for traffickers. Basic education and information campaigns on trafficking would fortify the vulnerable groups against trafficking. In the preventive education programmes, support from survivors of trafficking could be taken, whose personal testimonies would enlighten communities about the operation of the trafficking agents.[2]

(viii) The fight against organised criminal groups demands a broad, multi-agency and flexible cooperative approach both nationally and internationally. The training programmes must address this concern. Personnel from different agencies must be mixed during training in a manner so as to improve mutual respect and training.

(ix) Fixing accountability of the government officials whose duty is to ensure prevention of crime is another aspect that needs to be stressed. On the one hand this requires appropriate and timely action against negligent officials to hold them accountable for their omissions and commissions. On the other hand accountability could be utilized as a positive tool in improving the morals and efficiency of the officials concerned especially for promoting, facilitating, advertising and rewarding the good work done by anybody in combating and preventing trafficking.

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2 Gurjan Kinnu, From Bondage to Freedom : An Analysis on International Legal Regime on Human Trafficking, 10 (2006, 1st ed.)

(x) A Criminal Injuries Compensation Board be set up to provide assistance to rescued victims. Considering the fact that most of the trafficked victims, after rescue are penniless, it is essential that they are provided with minimum resources to sustain themselves. The Tamil Nadu Government has already set up a social defence fund for giving financial assistance to the rescued victims. Andhra Pradesh Government has a scheme for extending financial help to all victims immediately after rescue. These could be considered as a model for other states also.

(xi) The NGOs, the International Organizations and the concerned officials and individuals should be sensitized along with mass media personnel by way of disseminating information on trafficking. This may include illustration of the cases showcasing the plight of victims and provide insight into trafficking realities and their impact. Public forum, seminars, focus group discussion etc., could also be organised to help improve the understanding on trafficking to change attitude towards victims.

(xii) Immigration officials working at the borders need to be sensitized so that they can work in cooperation with the police as well as the NGOs working on the prevention of trafficking.

(xiii) Indias missions abroad, especially in those countries which are either source area or demand areas, need to co-ordinate with the concerned agencies in order to make a strong impact in the prevention of trafficking.

(xiv) Since several cultural practices provide the substratum for trafficking and commercial sexual exploitation of women and

children, it is essential to initiate efforts to address these issues in places where such practices exist.

(xv) Natural calamities and man-made riotous disturbances do exaggerate the vulnerability situation. Therefore, relief and after care programmes need to have specific components focused on the rights of women and children.

(xvi) On the issue of repatriation, the U. N. High Commission for Human Rights has expressed the view precisely that "safe and as far as possible voluntary return must be at the core of any credible protection strategy for trafficked persons."[3]

Finally, it can be said that in the twenty first century, where we are striving to provide basic human rights to all, efforts must be made to provide humane conditions to the sex-workers within their profession. All the members of the society today must strive to end slavery like practices and exploitation, in whatever form they exist. The profession of sex-work can be ridden from the clutches of unscrupulous elements only when we change our mind set and our perceptions about sex-work. We must always keep in mind that a sex-worker working in a red light area is not doing so for accumulation of wealth or for instant riches but for basic survival, it is a means for her to feed herself and her extended family who are in a majority of cases totally dependent on her income. If the suggestions made by the researcher in the form of introduction of a new law and in the form of general suggestions are looked into then things as they stand today for sex-workers can certainly

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3 Supra note 1 at 334

improve in the near future. Such an environment can be created wherein the sex-workers can lead a life of self-respect and dignity which benefits them and the society as a whole. But for this to materialise efforts have to begin at the grassroots level from today.

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