

# Legalisation Of Prostitution In India Through The Lens Of Sdg's: An Empirical Study

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## Abstract

Commercialization of the body of women for the purpose of self-sustenance or other economic and social reasons is called as prostitution which is an age old phenomenon of the human history. Being one of the indelible stains of contemporary society, it still continues to be a taboo and is seen with much furore. Some of the sex worker demanded legalization of prostitution and regulation thereto while others have been against the legalization of prostitution and any legal regulation in relation to the profession. This paper is to showcase all the challenges and problems faced by the prostitutes in India from the olden days. The researchers analyzed that how regularization of prostitution is dignifying the industry in the field of prostitution business and not serving the interest of sex workers in India? The researchers analyzed how the sustainable development goals and prostitution don't go hand in hand and presented the interplay between the two through this paper. The paper further presents the unheard side of sex workers who are not favouring the legalization of prostitution and presents their idea of improving the condition of women in sex work in general. The paper is in the form of the plea against the legalization of prostitution detected through the views shared by sex workers themselves who were the part of the empirical study for this paper. The paper also analyzed the legal framework available with the help of doctrinal and non-doctrinal research methodology.

**Keywords:** Sex Work, Regulations, Demeaning, Marginalization, Commercialization, Illegal, Prostitution Industry, Sustainable Development Goals.

## 1. Introduction

Prostitution is the utilization of woman's body either for varied purposes like self-sustenance that has been in existence in human civilization for centuries together. The word, 'prostitute' is of Latin origin ('prostibula' or 'proseada') (Gathia & Labour, 1999)<sup>1</sup> In the ancient Greece, the houses of prostitutes or harlots were made accessible in such a way so as not to keep young men away from their exercise. These prostitutes stood before the *lupanaria* (brothels) to lure the customers for their bodies (N. Devi, 2016).<sup>2</sup> In the present century, however, women are not the only ones indulged in this profession. Both transgender persons

<sup>1</sup> Gathia, J. A., & Labour, C. O. C. F. C. (1999). *Child Prostitution in India*. Concept Publishing Company.

<sup>2</sup> Devi, N. (2016). *Sexual Offences Against Children In India: On The Higher Side*. Retrieved March 11, 2023, from <https://www.recentscientific.com/sites/default/files/6089.pdf>

as well as men are also involved in prostitution, however the percentage for involvement in such type of activity or work is less.

Prostitution is defined as "*the act or practise of indulging in sexual activity for monetary gain* (RANSOM HOUSE DICTIONARY, 1981)"<sup>3</sup>. According to Americana, prostitution is "*the act or practise of engaging in promiscuous sexual relationships, especially for monetary gain.*" (ENCYCLOPEDIA AMERICANA, 1965)<sup>4</sup> Prostitution is defined in the Prevention of Immoral Traffic (Prevention) Act of 1956 as "*sexual abuse or exploitation of individuals for commercial reasons or for deliberation in wealth or some other sort, and the word prostitute shall be construed accordingly* (Gautam, 2014)." <sup>5</sup> All of the definitions centre on the commercial viability of one offering bodily pleasures to another in exchange for money.

It is among advanced society's indelible blemishes. The advancement of the contemporary society has also increased the dimensions of this age long practice and tradition which increases the anxiety and concerns of the state. The problem is not new and has been in existence in the societies of across the world from the times immemorial.<sup>6</sup>

The problem of prostitution is not new to India as well and commercialization of their physique by women in exchange of money is an age old institution (Nag, 1996).<sup>7</sup> J. K. Ramaswamy in *Gaurav Jain v. Union of India*<sup>8</sup> has observed, "*Prostitution in community is not a new phenomenon.... The survivors of the clutches are poor, uneducated, and uninformed members of society who are the intended audience for the sexual slavery; rich societies exploit them and profit from their misery....*"<sup>9</sup>

There is an annual investment of Rs. 40,000 crore in this sinful business. It is unfortunate to not that 30% of the prostitutes are children who earn an astonishing sum of Rs. 11,000 from their exploiters (Goyal, 1999).<sup>10</sup> There is an estimated population of 3 million of prostitutes alone in India and majority of those are found in Mumbai (approximately 1,00,000) which makes it the most humongous sex industry of Asia (Freidman, 2013).<sup>11</sup> 80% of the total child prostitutes i.e. 2.4-4 lakhs are found operation in major cities like Bangalore (INDIAN WOMEN WELFARE FOUNDATION. (n.d.)).<sup>12</sup> According to the report of NHRC on Missing Children about 200 females of varied age groups enter into the business of prostitution everyday of which 20% are under the age of 15 years (*NHRC Report on Missing Children* (n.d.)).<sup>13</sup> The very important question that comes up in relation to prostitution is that whether it should be legalized or not and whether the legalisation of prostitution is for the better or for the worst.

<sup>3</sup> RANSOM HOUSE DICTIONARY (Ed.). (1981). RANSOM HOUSE DICTIONARY 1063 (22nd ed., Vol. 1063) [English]. RANSOM HOUSE DICTIONARY.

<sup>4</sup> ENCYCLOPEDIA AMERICANA (Ed.) (1965) (1st ed. Vol. 675) [English]

<sup>5</sup> Immoral Traffic (Prevention) Act, No. 104 of 1956, INDIA CODE § 2-f (1993).

<sup>6</sup> Gautam, S. S. (2014). The Courtesan and the Birth of Ars Erotica in the Kāmasūtra: A History of Erotics in the Wake of Foucault. *Journal of the History of Sexuality*, 23(1), 1–20. <https://doi.org/10.7560/jhs23101>

<sup>7</sup> Nag, M. (1996). *Sexual Behaviour and AIDS in India*.

<sup>8</sup> (1997) 8 SCC 114 (India).

<sup>9</sup> *Id.* 2

<sup>10</sup> Goyal, S. (1999). Sridevi Goyel, Girl Child Prostitution: Society's Responsibility-Indian Scenario, 7 CBI BULLETIN 14 (1999). *CBI BULLETIN*, 14, 7

<sup>11</sup> Freidman, R. I. (2013). India's Shame: Sexual Slavery and Political Corruption Leading to an AIDS Catastrophe. *THE NATION*

<sup>12</sup> INDIAN WOMEN WELFARE FOUNDATION. (n.d.). *Trafficking in Women*. [http://www.womenwelfare.org/Trafficking\\_Prostitution.html](http://www.womenwelfare.org/Trafficking_Prostitution.html)

<sup>13</sup> *NHRC Report on Missing Children*. (n.d.). [https://nhrc.nic.in/sites/default/files/misc\\_MCRReport.pdf](https://nhrc.nic.in/sites/default/files/misc_MCRReport.pdf)

## 2. Historical Background

Prostitution has been practised since the time of the Vedas (Gautam, 2014)<sup>14</sup> and British rule (Gautam, 2014).<sup>15</sup> There are disclosures in the Rig-Veda that indicate the presence of sex trafficking at the time (Edward, 1988)<sup>16</sup> According to the Rig-Veda, there were women who have been shared by several men (Nag, 1996).<sup>17</sup> There are references in Vatsyayana's Kamasutra to eunuchs and courtesans who used to provide sexual pleasure to males in society in order to earn a living.<sup>18</sup>

The practise of having Nagarvadus, which means "town brides," was also very popular in ancient times (Makwana, M. (n.d.)).<sup>19</sup> The Kautilya Arthshastra also informs us about the prevalent prostitution known as Ganikas during in the era of King Chandragupta Maurya. There is an entire section in the Arthshastra titled 'Superintendent of Prostitutes' that outlines the duties and obligations of prostitutes (Bedi, 1992).<sup>20</sup>

During the Muslim era prostitution was uniformly prevalent in society, though it was not regarded a source of revenue for the government. During Akbar's reign, a separate quarter was designated for prostitutes known as "*shaitanpura*." (Bataria, 1992).<sup>21</sup> Under royal patronage, prostitution thrived. The young boys were sent to the '*shaitanpura*' for the purpose to learn the art of enjoyable sex, as well as the comprehension and mannerism of advanced high society (Bataria, 1992).<sup>22</sup>

Nothing much changed with the arrival of the British, and prostitution remained prevalent in society, particularly with the assistance of Nawabs, Rajas, Zamindars, and others.<sup>23</sup> As Europeans arrived in India, the sex industry began to migrate to port areas, which supplied new customers for women's flesh, resulting in an increase of prostitutes in the coastal region and, as a result, the substantial percentage of brothels in those areas. To satisfy British soldiers' sexual desires, '*lal-bazars*' or '*red-light areas*' were built into temporary military living quarters. On festive occasions, prostitutes have been frequently asked to perform '*mujras*' and to entertain visiting customers.<sup>24</sup>

## 3. Literature Review

The data available on the aspect of prostitution is numerous and the researchers have tried to put forth the most important ones. The foremost information source is the **Prevention of Immoral Traffic Act, 1956**<sup>25</sup> which gives us the comprehensive definition of prostitution<sup>26</sup> and lays down various circumstances under which prostitution can be practiced

<sup>14</sup> Gautam, S. S. (2014b). The Courtesan and the Birth of Ars Erotica in the Kāmasūtra: A History of Erotics in the Wake of Foucault. *Journal of the History of Sexuality*, 23(1), 1–20. <https://doi.org/10.7560/jhs23101>

<sup>15</sup> *Id.*

<sup>16</sup> S. M. EDWARDS, CRIMES IN INDIA 71 (1st ed. 1988).

<sup>17</sup> Nag, M. (1996). *Sexual Behaviour and AIDS in India*..

<sup>18</sup> *Supra* note 15

<sup>19</sup> Makwana, M. (n.d.). The Story of Buddha and Amrapali. *SPEAKING TREE: MASTER BLOGS*. <https://www.speakingtree.in/blog/the-story-of-buddha-and-amrapali>

<sup>20</sup> M. S. BEDI, PROTECTION OF WOMAN IN MORAL DANGER 15 (1st ed. 1992).

<sup>21</sup> PRAN BATARIA, SEX AND CRIME IN INDIA 86 (1st ed. 1992).

<sup>22</sup> *Ibid.*

<sup>23</sup> Gautam, S. S. (2014b). The Courtesan and the Birth of Ars Erotica in the Kāmasūtra: A History of Erotics in the Wake of Foucault. *Journal of the History of Sexuality*, 23(1), 1–20. <https://doi.org/10.7560/jhs23101>

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> [Sec 2(f) "prostitution" means the sexual exploitation or abuse of persons for commercial purpose, and the expression "prostitute" shall be construed accordingly]

and punishments for any contravention to the act have also been laid down. The researchers have majorly depended on this Act to understand the status of prostitution in India.

In the state of Bengal the Act named **Bengal Suppression of Immoral Traffic Act, 1933**<sup>27</sup> restricts the prostitution. **Contagious Diseases Act, 1868**<sup>28</sup> (repealed in 1886) was an act of Colonial Era which regulated prostitution to hinder the spread of STD's within British army and navy.

The book **'DESIGNING PROSTITUTION POLICY: INTENTION AND REALITY IN REGULATING THE SEX TRADE'** (Wagenaar et al 2017)<sup>29</sup> analyses the paradoxes, stigma, and the challenges the come in way of framing comprehensive legislative policies to regulate prostitution at both national and state level. The policies implemented in Netherlands as well as Austria have been examined which will help the present research in implementing the pros of the policies in the country India while avoiding the cons thereof.

In the article titled as **'FOR DEBATE: SHOULD PROSTITUTION BE LEGALIZED AND REGULATED?'** (*The BMJ: Leading Medical Research, News, Education, Opinion*, 2021)<sup>30</sup>, the writer has dealt with the aspect of legalisation of prostitution and associated health concerns. The spread of diseases like AIDS by prostitutes has been analysed which forms the core of this paper.

In another article titled as **"PROTECTION OF SEX WORKERS"**<sup>31</sup> the author analyzed the abuse and exploitation of sex workers in the non-existence of adequate laws. UK in particular is subjected to study in this particular article. The ill effects of punishing the offence in relation to prostitution are very well enforceable in Indian society, especially from the perspective of the spread of AIDS etc.

In **HUMAN RIGHTS OF SEX WORKERS IN INDIA THE WAY FORWARD"** by **Shreyas Gupta (2013)**" The function of non-governmental organisations in trying to bridge the gap among general society and sex workers has been examined by the author. Their nonjudgmental and unbiased approach, as well as their credibility, enable them to provide prostitutes with improved access to education and medical care, as well as details and other technical support. Human rights education and awareness would go a long way toward making sure of good medical facilities for sex workers. Sonagachi has established a self-regulation body comprised of district members and authorities from the BCI (Bar Council of India) and the NHRC (National Human Rights Commission). Other regions of India should consider establishing similar organisations.

In **"PROTECTING THE RIGHTS OF SEX WORKERS** by **Geetanjali Misra, Ajay Mahal, and Rima Shah (2014)** the authors have again emphasized on the role of NGOs in supporting emerging prostitution industry which is also suggested by both DMSC and SANGRAM. They are very effective in bridging the gap between the sex workers and the mainstream society. As they are non-judgmental in their approach, they are in a better position to access groups of sex workers and provide them with technical support and information. As institutions of trust, they are supported by significant social as well as legal institutions such as the officers, the judges, the political classes, and academic institutions. It

<sup>27</sup> Bengal Suppression of Immoral Traffic Act, 1933, No. 6, Acts of Bengal State Legislature, 1933 (India).

<sup>28</sup> The Contagious Diseases act was by the British administration in colonial India.

<sup>29</sup> Wagenaar, H., Amesberger, H., & Altink, S. (2017). *Designing Prostitution Policy: Intention and Reality in Regulating the Sex Trade*. Policy Press.

<sup>30</sup> *The BMJ: Leading Medical Research, News, Education, Opinion*. (2021, November 2). <https://www.bmj.com/>

is most important to remember that evidence suggests that in an Indian context, the legislature on its own is usually ineffective safeguard the human rights of sex workers. It would necessitate a shift in the attitude of society toward prostituted women.

***Joint Stakeholders Submission (2017)- "Joint Stakeholders Submission"***

Prostitutes are very well shielded under Article 21 of the Constitution of India, according to the Supreme Court of India, and they must be provided the same safeguards as every other citizen of India. Article 21 of the Indian Constitution directs the State to make suggestions on "*rehabilitation of prostitution who desire to leave the sex industry of their own free will and to provide favourable conditions for prostitutes who want to continue operating as sex workers.*" In the year 2015, the panel of the Apex Court ruled that many provisions of the Immoral Traffic Prevention Act (ITPA) should be considered when adult people consent to sexual encounters.

**A COMPREHENSIVE REVIEW OF VIOLENCE AGAINST PROSTITUTES CORRELATES** by Kathleen N. Deering, Avni Amin, Jean Shoveller, Ariel Nesbitt, Elena Argento, Claudia Garciamoreno, Putu Duff, And Kate Shannon (2014) The authors presented evidence of abuse against prostitutes from around the world. The findings support the immediate need for structural study and interventions to effectively document the factors that contribute to violence against prostitutes. These would have included structural legal reforms (e.g., decriminalisation, policing practises) as well as changes to the social work environment. The most important requirement for this to happen is collaboration between state agents and sex workers.

In "**LITERATURE REVIEW ON SEX WORKERS AS WELL AS SOCIAL ALIENATION**" by Reuben Balfour with Jessica Allen (2014), the authors have highlighted many reasons as to why people resort to prostitution as a means to sustenance and have highlighted lack of support in housing, finance, drug addiction etc as some of the major causes for the same. Many resort to prostitution to secure themselves a means of income and others enter into this business just to secure themselves a place to sleep. The research states that if the needs of sex workers are addressed, their lives would take a better turn for which a joint action is required than an individual isolated attempt. The research further suggests that the exclusion from the society that is experienced by sex-workers negatively has impacted not only their physical health but also their mental well being. Higher rates of illness caused by intravenous drug use and child mortality, combined with low rates of GP registration and attendance of health care services, such as antenatal care, are a few health related issues which are negative and are identified in the literature relating to sex work.

In "**A STUDY OF FEMALE SEX WORKERS' LIFE SATISFACTION**" by **S.Lidia Susan Dr. Rm. Sam Deva Asir (2014)**, the authors have stated that the very essence of criminalized prostitution is the legal marginalization of sex workers by the system. The study shows that the prostitutes face blatant physical and psychological harassment not only by pimps but also by the customers of their bodies. The only way to help them out is the alternative means of sustenance which might re-instate the long lost self esteem in prostitutes. The study also reveals that most of the prostitutes were concerned about the future of their children. There is an urgent need to have more homes, educational institutions and also nutritional food available to prostitutes to raise their children in a better and safer environment. The researchers have recommended setting up of drug de-addiction centre's because majority of them relieve their pain by restoring to drugs and alcohol. More attention

towards mental health of sex-workers must be paid because they deal with exploitation and trauma almost every day.

#### **4. Statement Of Research Problem**

Most of the debates are centered on the aspect of prostitution being legalized and the consequent benefits of the same. However, fewer discussions are focused on how any such legalisation could lead to exploitation of sex workers. The researchers have therefore tried to establish how the legalisation of prostitution could negatively impact the sex work that could be forced to live a demeaning life. The researchers have also tried to analyze how any legalisation of prostitution will be beneficial to the industry only and not to the sex workers who may be subjected to more exploitation and marginalization. In addition to this, researchers have also tried to present an interplay between SDG's and prostitution and their consequent effects on health and decent working conditions.

#### **5. Objectives Of The Study**

The present research involves a descriptive and prescriptive approach. Hence, the following are the objectives of the study:

- To trace the prostitution status in India and analyse the real scenario.
- To trace the legal framework of prostitution in our country India.
- To analyze the legalisation of prostitution in the light of Sustainable development goals.
- To collect data and analyze standard of living women involve in this business in the country India.
- To examine the impact of legalisation relating to sex workers.
- To propose rules and legislation concerning prostitution in India.

#### **6. Research Questions**

The questions which were asked within the present paper are as follows: -

- What is the status of prostitution in India?
- Whether prostitution should be legalized or not?
- What are the potential effects of legalisation of prostitution and its consequent impacts on sex workers and at society at large?
- Whether legalisation of prostitution will serve the interest of prostitutes/sex workers or not?
- What are the problems associated with legalisation of prostitution in India?
- Whether the prostitution legalisation is in conformity with the sustainable development goals?

#### **7. Research Methodology**

Empirical and doctrinal research methodologies were used to examine the topic and give a deeper understanding of the legalisation of prostitution. This study relies on both primary and secondary data.

Snowball sampling was used to conduct the survey of the public at large and 15 sex workers in Jalandhar, Punjab. The information gathered was analysed to provide a picture of the reality on the ground of prostitution in India.

The research also included qualitative data analysis from judgments, websites, books, law journals, as well as articles. These were gathered from various e-databases as well as e-sources, including SCC Online, JSTOR, and Hein Online. Doctrinal research encompasses the evaluation and interpretation of prior or already existing data.

## 8. Research Gap

There have been many studies on why prostitution should be legalized in India, however, very less debate has been around the fact that why it should NOT be legal in India. Therefore the researcher intends to analyze the various demeaning consequences that any legalisation of prostitution would have on society. In general, all states in India are covered, and the recommendations offered are likewise broad in scope.

## 9. Hypothesis

- a. The condition of prostitutes in India is not good.
- b. Legalisation of prostitution will not serve the interest of sex workers and society at large.
- c. Legalisation of prostitution negatively impacts India's commitment to Sustainable Development Goals.

## 10. Causes Of Prostitution

- ***Psychology Of Men***

There are a number of reasons that can be termed as the cause of prostitution. Many a times, psychology of men and other social causes play utmost role in thriving prostitution, even though the number is less. The upbringing of the society and the social system as a whole are one of the basic causes of coercing a female to indulge into the business of prostitution.

- ***Economic Factors***

Another major factor of prostitution is the individual's struggling economy. Because to poverty, women are often compelled to sell their bodies, and this compulsion generally comes from the male members of their family like parents and husband who drag their daughters and wives to be a part of this practice. The Committee on the Elimination of Discrimination Against Women has also pointed out lack of financial support and economic strength as compelling reasons that drag women into prostitution especially when they are in a vulnerable position and subjected to violence by their male counterparts.<sup>32</sup>

- ***Generational Prostitution***

Former sex workers also indulge their children in such types of practices, thereby, causing generational prostitution. The driving force behind this is the perseverance of the

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<sup>32</sup> United Nations Convention on the Elimination of All Forms of Discrimination Against Women, 11th Sess., Jan. 20-30, 1992, 1249 U.N.T.S. 13, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

thought that it is the only way to avoid poverty and sustain a means of livelihood (Wright, E.).<sup>33</sup>

- ***Increase In Sexual Relationships Outside Marriage***

Psychological fatigue of men from having sexual relationship with one partner and thereby indulging into illegitimate sexual relationships outside their marriage etc to a large fold explains the increasing number of women indulging in this business in the society. The biology of men is built as such that they possess insistent and strained sexual urges which is again a important cause of prostitution (Sion, 1977).<sup>34</sup>

- ***Disadvantageous Position Of Women***

The residents of Nat Purwa village are hit by constant poverty (Gaedtke & Parameswaran, 2013)<sup>35</sup> and they consider prostitution as a generational way of securing a livelihood. With generations of families involved in the sex trade, the presence of males is considered as critical in making prostitution the sole source of income for the family. This puts women into much disadvantageous position in communities where they are already vulnerable to violence and exploitation by the male members of their family (Gaedtke & Parameswaran, 2013).<sup>36</sup>

- ***Emergence Of Prostitution As Business***

Many women are involved in the business of prostitution to have access to easy and quick money. There are loathsome disclosures of appalling facts put forth by Delhi Police with their experience of several raids (Abhi, A.)<sup>37</sup> One of the twenties girls on being asked for reasons her participation in prostitution stated, *"It does not effect me at all since the money is good, it's fun as well as very lucrative."* To sum up, some women indulge in prostitution for fun, quick money, a lavish life etc.<sup>38</sup>

- ***Drug Abuse And Addiction***

Another cause for prostitution is drug abuse and addiction that gets men and women irrespective of their entangled in the web of prostitution. These people lack financial backing to satisfy their thirst for drugs which drags them to sell their bodies (Dixon, n.d.).<sup>39</sup> Sometimes, in the abusive households where guardians are drug addicts and alcoholics, they might force their women to sell their bodies to have financial backing to have access to drugs etc (Dixon, n.d.).<sup>40</sup>

## 11. Legal Framework

In India, there are three major legislations that deal with the aspect of prostitution which are<sup>41</sup>:

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<sup>33</sup> Wright, E. (n.d.). How Poverty Encourages Generational Prostitution in India. *THE BORGAN PROJECT: THE BLOG*. <https://borgenproject.org/prostitution-in-india/>.

<sup>34</sup> Sion, A. (1977). *Prostitution and the Law*. London: Faber

<sup>35</sup> Gaedtke, F., & Parameswaran, G. (2013). Nat Purwa: Where prostitution is a tradition. *ALJAZEERA*. Retrieved August 25, 2022, from <https://www.aljazeera.com/indepth/features/2013/01/20131161032441697.html>.

<sup>36</sup> *Ibid.*

<sup>37</sup> Abhi, A. (n.d.). Elites Entering Into Prostitution For Quick Money In India. *MERINEWS: POWER TO PEOPLE*. Retrieved August 26, 2022, from <http://www.merineews.com/article/elites-entering-into-prostitutionfor-quick-money-in-india/15798160.shtml&cp>.

<sup>38</sup> *Ibid.*

<sup>39</sup> Dixon, L. (n.d.). Prostitution and drug misuse: breaking the vicious circle. *OPENDEMOCRACY*. Retrieved August 27, 2022, from <https://www.opendemocracy.net/5050/lucy-dixon/prostitution-and-drug-misuse-breakingvicious-circle>.

<sup>40</sup> *Ibid.*

<sup>41</sup> The Constitution of India, 1950; The Indian Penal Code, 1860; The Immoral Traffic (Prevention) Act, 1956.



### ***11.1. The Constitution Of India***

Aside from the legislation<sup>42</sup> for equality and freedom of association<sup>43</sup>, the right to life, and personal liberty<sup>44</sup>, the Constitution provides the prohibition of human trafficking and forced labour.<sup>45</sup> Part IV of the DPSPs (Directive Principles of State Policy) states that the state shall to direct its policies toward ensuring, among other things, that both women and men have an equal right to a reasonable means of livelihood,<sup>46</sup> that strength and health of the workers are not exploited, and that citizens are not prompted by requirements to enter avocations considered to be inferior to their age and strength<sup>47</sup>, advancement of the economic as well as educational benefits or interests of the weaker sections of the society, and guaranteeing their protection from systemic inequality and exploitation (emphasis supplied),<sup>48</sup> the necessity of facilitating regard for international norms and treaty obligations<sup>49</sup>, the state's obligation to enhance living standards<sup>50</sup>, and citizens' renunciation of practises that are derogatory to women's self-respect.<sup>51</sup> The Andhra Pradesh High Court has also confirmed that the state bears the combined duties and citizens, including sex workers, bear corresponding rights.<sup>52</sup>

### ***11.2. Indian Penal Code***

There are about 20 provisions in IPC that make human trafficking a punishable offence majority of which deal with wrongful confinement post-abduction, abduction for illicit intercourse, so on and so forth.<sup>53 54 55</sup>

### ***11.3. The Immoral Traffic (Prevention) Act, 1956***

This Act hereafter called ITPA is the most important piece of legislation that deals with sex work and related issues. The Act makes running brothels or pimping illegal, among other things, making prostitution a commercial transactions that exploits the human body.<sup>56</sup>

The Act does not outright restrict prostitution, but it does restrict making it a company of flesh trade (Wad & Yadav 2008).<sup>57</sup> For the purpose of proving the offence of prostitution, it is required that a girl or a woman has decided to offer her body for promiscuous sexual activity for hire, and that sexual activity is not required (Wad & Yadav 2008).<sup>58</sup>

Section 3 of the ITPA penalises anyone incharge of a property who uses or enables someone else to use it as a brothel. A single event of prostitution with mitigating factors is

<sup>42</sup> The equality provisions are Articles 14 and 15 in Part III dealing with Fundamental Rights of the Constitution of India, 1950. Article 14 provides for equality before the law and equal protection of the laws; Article 15 prohibits the state from discriminating on the grounds of religion, race, caste, sex or place of birth, though it can make special provisions for women, children, "socially and educationally backward" classes, scheduled castes and scheduled tribes.

<sup>43</sup> Article 19(1), Constitution of India, 1950.

<sup>44</sup> Article 21, Constitution of India, 1950.

<sup>45</sup> Article 23, Constitution of India, 1950.

<sup>46</sup> Article 39 (a), Constitution of India, 1950.

<sup>47</sup> Article 39 (e), Constitution of India, 1950.

<sup>48</sup> Article 46, Constitution of India, 1950.

<sup>49</sup> Article 51, Constitution of India, 1950.

<sup>50</sup> Article 47, Constitution of India, 1950.

<sup>51</sup> Article 51 A (e), Constitution of India, 1950.

<sup>52</sup> *P.N.Swamy, Labour Liberation Front, Mahaboobnagar v. Station House Officer, Hyderabad* 1998 (1) ALD 755.

<sup>53</sup> §293, 294, 317, 339, 340, 341, 342, 354, 359, 361, 362, 363, 365, and 366. 370, 371, 372, 373, 375, 376, 496, 498, 506, 509, 511, Indian Penal Code, 1860

<sup>54</sup> §366B, Indian Penal Code, 1860.

<sup>55</sup> §368, Indian Penal Code, 1860.

<sup>56</sup> §368, Indian Penal Code, 1860.

<sup>57</sup> Wad, M., & Yadav, S. (2008). *The legal framework of prostitution in India, Prostitution and beyond: An Analysis of Sex Work in India.* SAGE, 212.

<sup>58</sup> *Id.*

sufficient to demonstrate that the crime of keeping a brothel has been committed under this provision.<sup>59</sup>

The offences under the ITPA are dealt with in Sections 3 to 9 of the Act.<sup>60</sup> It has been repeatedly ruled that the act does not intend to repeal prostitution or end up making it a serious crime for a woman desirous of prostituting herself, but rather to prohibit the commercialization of a woman's body.<sup>61</sup>

There was a renowned case in which the Hon'ble Court held that prostitution is not an sufficient means of livelihood and therefore, to recognize it as such would give an open invitation for women and young girls to be trafficked and exploited.<sup>62</sup> It has been also held that the right to prostitution is not a fundamental right and therefore can be curbed and regulated.<sup>63</sup> The restrictions imposed by the virtue of Section 7 of the ITPA were held to be reasonable and not discriminatory.<sup>64</sup> In the above-mentioned case, it was determined that prostitution is not a sufficient means of livelihood and that recognising it as such would open the door to women and young girls being trafficked and exploited. It has also been held that the right to prostitution does not constitute a fundamental right and can thus be curtailed and regulated.<sup>65</sup> The limitations imposed by Section 7 of the ITPA were deemed reasonable and non-discriminatory.<sup>66</sup>

In the interest of the general public, a Magistrate has been given the authority to order the withdrawal of any prostitute from any location.<sup>67</sup> The Act also allows for the reformation of prostitutes through detention in established corrective institutions,<sup>68</sup> for which Special Police Officers can be assigned. It is worth noting, however, that the customer faces no punishment at all (Kotishwaran, 2001).<sup>69</sup>

Section 8 of the original Act is deleted in the 2006 Bill<sup>70</sup>, expelling the offence of seducing or soliciting for the prostitution purpose. Furthermore, it omits Section 20 of the Act, which deals with the removal of the prostitute from any location. Although, the bill increased the severity of penalties for both traffickers and clients. Section 5(c) penalises anyone who visits a brothel for the purpose of sexual exploitation of another person. These proposals, however, have been criticised because such an increase in penalty for clients would stifle workers' livelihoods (Medhini, 2022).<sup>71</sup>

#### **11.4. Role Of Judiciary**

In 2022, a three-judge Supreme Court bench issued a landmark decision that recognised sex work as an occupation and stated that sex workers have the right to integrity and equal protection from the law. The Supreme Court also ruled that 'voluntary' sex work is not illegal or prohibited, and issued commendable guidelines directing police to take

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<sup>59</sup> Gaurav Jain, *Supra* note 9 at ¶ 16.

<sup>60</sup> *Ibid.*

<sup>61</sup> In Re: Ratnamala and Another v. Respondent AIR 1962 Madras 31 ¶ 5; Bai Shanta v. State of Gujarat AIR 1967 Gujarat 211 ¶ 8.

<sup>62</sup> Sahyog Mahila Mandal v. State of Gujarat (2004) 2 GLR 1764.

<sup>63</sup> *Ibid.*

<sup>64</sup> Id at ¶ 9.5.

<sup>65</sup> Sahyog Mahila Mandal v. State of Gujarat (2004) 2 GLR 1764

<sup>66</sup> Id at ¶ 9.5.

<sup>67</sup> §20, ITPA, 1956.

<sup>68</sup> §10A, ITPA, 1956.

<sup>69</sup> Kotishwaran, P. (2001). Preparing for Civil Disobedience: Indian Sex Workers and the Law. *BOSTON COLLEGE THIRD WORLD JOURNAL*, 21(2), 161, 170

<sup>70</sup> The Immoral Traffic (Prevention) Bill, 2006.

<sup>71</sup> Medhini, L. (2022, November 22). Indian Sex Workers Rally Over Law. *BCC Nws*. Retrieved September 6, 2023, from [http://news.bbc.co.uk/2/hi/south\\_asia/4787580.stm](http://news.bbc.co.uk/2/hi/south_asia/4787580.stm).

significant action when a complaint of any offence is lodged by sex workers, and to act in accordance with the law. It also stated that sex workers should not be arrested when brothels are raided, and their children should not be kept separate from their mothers solely because she is a sex worker. The Supreme Court also stated that police should treat sex workers with integrity and not abuse them. The Supreme Court has also issued other commendable directives (Rajagopal, 2022).<sup>72</sup>

The Supreme Court of India won't rule that prostitution can be authorised as a lawful income source, thereby offering legal assistance for women trafficking.<sup>73</sup> The Gujarat High Court also held that the privilege to prostitution is not a fundamental right for both women and girls.<sup>74</sup>

The Apex Court of India stated in the case of *Olga Tellis*,<sup>75</sup> "Under the constitution, no individual has tried to claim the right to ability to make a living by order to pursue of an opprobrious profession of a nefarious trade or business, such as living or gambling on the improvements of prostitution."

There was a case in which the Supreme Court ordered all states and union territory government agencies to introduce laws and successfully implement and less time-consuming laws.<sup>76</sup> In the case *Gourav Jain v. Union of India*,<sup>77</sup> it was held that there was a requirement for and recognition of academic institutions for the children of prostitutes. It was argued that the concrete evidence in the act of prostitution is the offering of a girl's or body of women for lascivious sexual activity for rental, rather than the sexual activity itself.

The decision was later overturned in the case of *Gaurav Jain & SC Bar Association v. Union of India*. In the recent case of *Budhadev Karmaskar v. State of West Bengal*,<sup>78</sup> the Supreme Court directed, "Secretaries, Social Welfare Departments of the Union as well as the State Government to satisfy the bench comprised by whenever the Chairman of the Panel so desires to discuss how proper schemes in the spirit of the Constitution can be developed."<sup>79</sup>

## 12. Loop Holes In Indian Legal Framework

- ***Corruption-Riddled System***

The foremost loophole doesn't lie in the ITPA itself, but it lies in its corruption riddled implementation.<sup>80</sup> The laws intended to safeguard the abuse of prostitutes but it goes against them and gives free hand to the customers of prostitutes who are not penalized (Barde, 2008).<sup>81</sup> This is the reason for poor impact and outreach of this legalisation. Also, the attitude of police as well as judiciary is indifferent towards sex workers (Saxena, 2002).<sup>82</sup>

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<sup>72</sup> Rajagopal, K. (2022, May 26). Supreme Court recognises sex work as a 'profession.' *The Hindu*. Retrieved September 7, 2023, from <https://www.thehindu.com/news/national/supreme-court-recognises-sex-work-as-a-profession/article65461331.ece>

<sup>73</sup> Smt. Kaushaliya v. State, AIR 1963 All 71 (India).

<sup>74</sup> Sahyog Mahila Mandal v. State of Gujarat, (2004) 2 GLR 1764 (India).

<sup>75</sup> *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545 (India).

<sup>76</sup> Vishal Jeet v. Union of India AIR 1990 SC 1412 (India).

<sup>77</sup> AIR 1997 SC 3021 (India).

<sup>78</sup> AIR 2011 SC 2636 (India).

<sup>79</sup> *Ibid.*

<sup>80</sup> Harshad Barde, (Mis)Reading through the lines, Prostitution and beyond: an Analysis of Sex Work in India (New Delhi: SAGE Publishers, 2008) 227.

<sup>81</sup> Barde, H. (2008). (Mis)Reading through the lines, Prostitution and beyond: an Analysis of Sex Work in India. *SAGE PUBLISHERS*, 227.

<sup>82</sup> Saxena, P. (2002). Immoral Traffic in Women and Girls: Need for Tougher Laws and Sincere Implementation. *JILI*, 504, 523.

This consequently gets police to abuse sex workers through their so called raids, and gives a free hand to pimps, procurers and brothel owners who go scot-free (Saxena, 2002).<sup>83</sup>

- ***Improper Enforcement***

The primary cause for the improper and uneven enforcement of ITPA can be attributed to strong links between elected representatives, law enforcement agencies like police and the brother keeper which not only hinders the stringent implementation of the act but also helps it proliferate it dragging many other women into the act of prostitution. This collusion between the agencies of government needs to be busted and decimated. Corruption in these agencies must be kept under check and sensitization of police of their role as protectors of law and order in society must be there which might bring about a more desirous effect.<sup>84</sup>

- ***Reporting Of Crimes***

The persistent issue with the implementation and enforcement of ITPA that has not been covered during the field study was the non-reporting of crimes.<sup>85</sup> On interaction with some police officers it was revealed that there is a huge space between the number of committed crimes and the number of cases actually registered. The respondents further added that around 60% of the cases go unregistered even if they record as many cases as possible. They added that most of the cases are not even reported.<sup>86</sup>

- ***Inadequate Rehabilitation Homes***

Another issue is the lack of adequate of the reparative and rehabilitative centres established under the Act. The rehabilitation centres are overburdened with a large number of convicted ITPA sex workers.<sup>87</sup> Mandatory literacy as well as vocation training relying on a woman's aptitude must be provided in protective homes. Counseling that assists inmates in redefining themselves as having survived humans must be given subsidised hostels as well as care homes should be established to house inmates who have been released from institutions. As Justice Ramaswamy stated in the case of *Gaurav Jain v. Union of India and others*, "Women found in the sex trade must be considered as victims of socioeconomic circumstances rather than as offenders of the society; several police authorities have also already established a process of hypersensitivity toward sex workers but also their treatment." (Police IGP Circular, n.d.).<sup>88</sup>

## 13. Prostitution Vis-À-Vis Sustainable Development Goals

### (A) *Gender Equality (Sdg 5)*

So long as the prostitution exists, we cannot achieve gender equality; therefore, prostitution and gender equality don't go hand in hand with the sustainable development goal 5 which deals with gender equality and violates the spirit if the same. Infact, sustainable development goal 5.2 precisely deals with sexual exploitation (Sustainable Development

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<sup>83</sup> *Ibid.*

<sup>84</sup> NHRC-UNIFEM-ISS Project, Supra note 47 at 249; Jean D'Cunha, Prostitution in a Patriarchal Society: A Critical Review of the SIT Act, 22 (45) ECONOMIC AND POLITICAL WEEKLY 1919, 1921 (1987); The ground realities of the legal framework have also been discussed in: Anil Awachat, Prostitution in Pune and Bombay: A Report, 21 (12) ECONOMIC AND POLITICAL WEEKLY 478 (1986) and Puja Yadav, Ground realities of the legal framework, Prostitution and beyond: an Analysis of Sex Work in India (New Delhi: SAGE Publishers, 2008) 229.

<sup>85</sup> *Ibid.*

<sup>86</sup> NHRC-UNIFEM-ISS Project

<sup>87</sup> *Ibid.*

<sup>88</sup> Police IGP Circular (Bangalore, Mysore, Dharwad in Karnataka) under the ITPA, 1956, November 22, 2005. <http://altlawforum.org/Resources/sexwork/DG%20and%20IG%20Karnataka.pdf>.

Goals, n.d.)<sup>89</sup> Prostitution not only perpetuates gender inequality but also deepens it as most of the victims are vulnerable groups like women. It further marginalizes them by perpetuating the degrading stereotypes associated with it.

Thriving prostitution means thriving harassment and exploitation of women as well. The abuses against them become more prevalent. Prostitution is not the right way for address the economic problems (SDG 1- No Poverty) faced by women, rather it acts as a barrier to women achieving the full potential. Not only women are a victim of such inequalities but also other vulnerable groups like LGBT's are a direct victim of marginalization as a consequence of prostitution. They are infact at a more disadvantageous position as compared to women facing addition inequalities (SDG 1- Reduced Inequalities), disabilities, violence etc.

**(B) *Peace, Justice And Inclusive Societies (Sdg 16)***

The World Health Organisation (WHO) has found that factors related to violence against women generally occur at individual, family, community and wider societal levels. It further added the significant risk factors for both sexual violence and intimate partner violence which are as follows:

- Attitude of accepting violence and gender inequalities as a normal course;
- Ideologies of male sexual entitlement and chauvinism; and
- Poor legal sanctions against sexual violence (World Health Organization: WHO, 2021).<sup>90</sup>

WHO has further added that violence against women increases in conflict zones which often are a consequence of deepened patriarchal views and gender stereotypes (World Health Organization: WHO, 2021).<sup>91</sup> Unquestionably, the decriminalization of prostitution fall within the ambit of the above mentioned points of “ideology of male sexual entitlement” and “poor legal sanctions”.

A UNDP Report in a multi country study has shown that sex trade is one of the major causes of increased sexual violence against women. The report notes the nexus between intimate partner violence and sexual violence and also studies its relation with increased risk of transmission of STD's like HIV/AIDS (Fulu E. et al n.d. ).<sup>92</sup>

From the above, we can come to the conclusion that the factors like intimate sexual violence, sexual violence, STD's, poor legal sanctions etc cannot be viewed in isolation and are also a part of SDG 3 dealing with Good Health and Well Being.

**(C) *Decent Work (Sdg 8)***

The standards set for a “decent work” as laid down under SDC 8 for women (SDG 8.5) are not satisfied by sex work. It also goes against the norm of safe and secure working environment especially for women migrants as laid down in SDG 8.8. Prostitution imperils

<sup>89</sup> Sustainable Development Goals. (n.d.). UN,Org. Retrieved November 16, 2022, from <https://www.un.org/sustainabledevelopment/sustainable-development-goals>

<sup>90</sup> World Health Organization: WHO. (2021, March 9). Violence against women. WHO.Org. <http://www.who.int/mediacentre/factsheets/fs239/en>

<sup>91</sup> *Id.*

<sup>92</sup> Fulu E. et al (n.d.). Why Do Some Men Use Violence Against Women and How Can We Prevent It? Summary Report of Quantitative Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific. UNDP.

the health, safety, dignity and welfare of most women. The exploitation of women has been renamed as “sex work” by those in advantageous position thereby putting women as a serious risk. They even go as far as to distort treaties and conventions to fit their agenda.

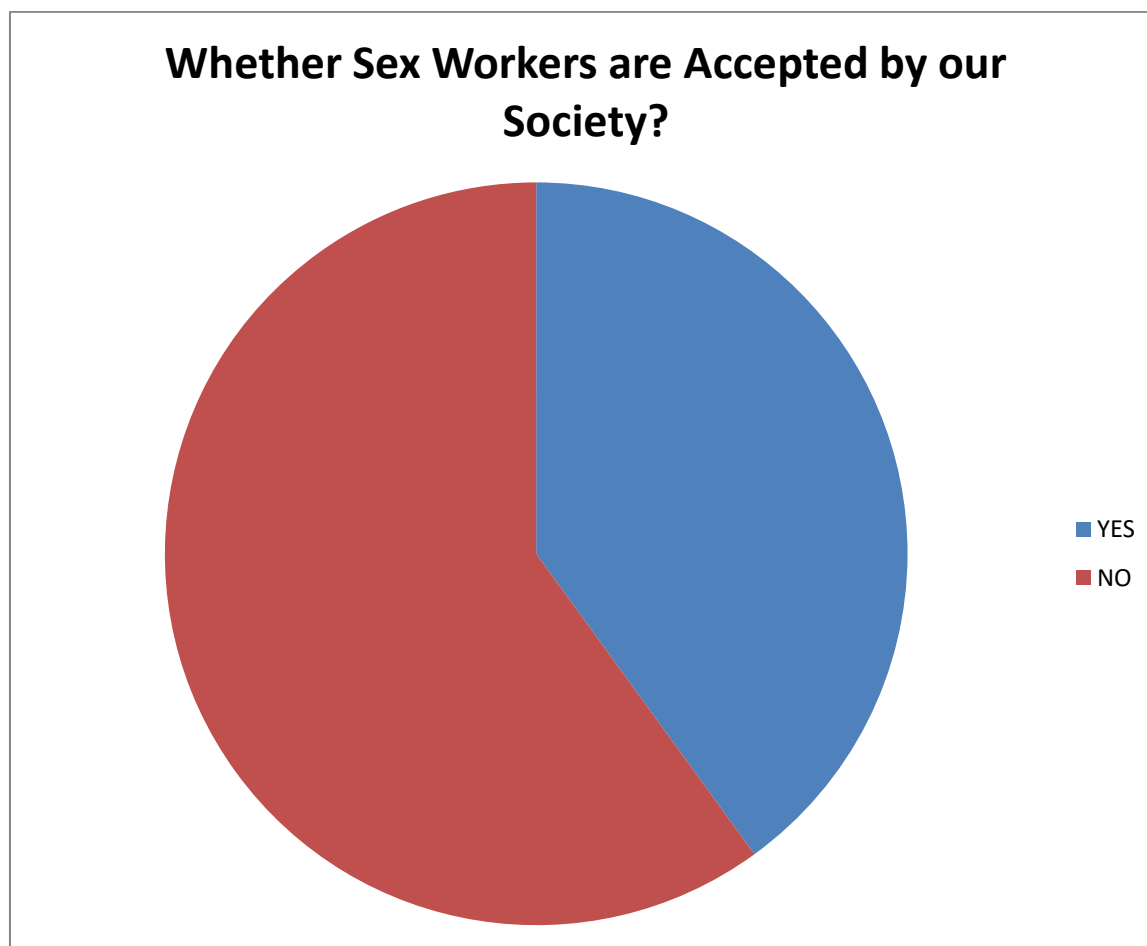
It is shocking to note that prostitution has been considered as a “woman’s work” which is in conflict with Article 5 of CEDAW which states that:

*“State Parties shall take all suitable measures:*

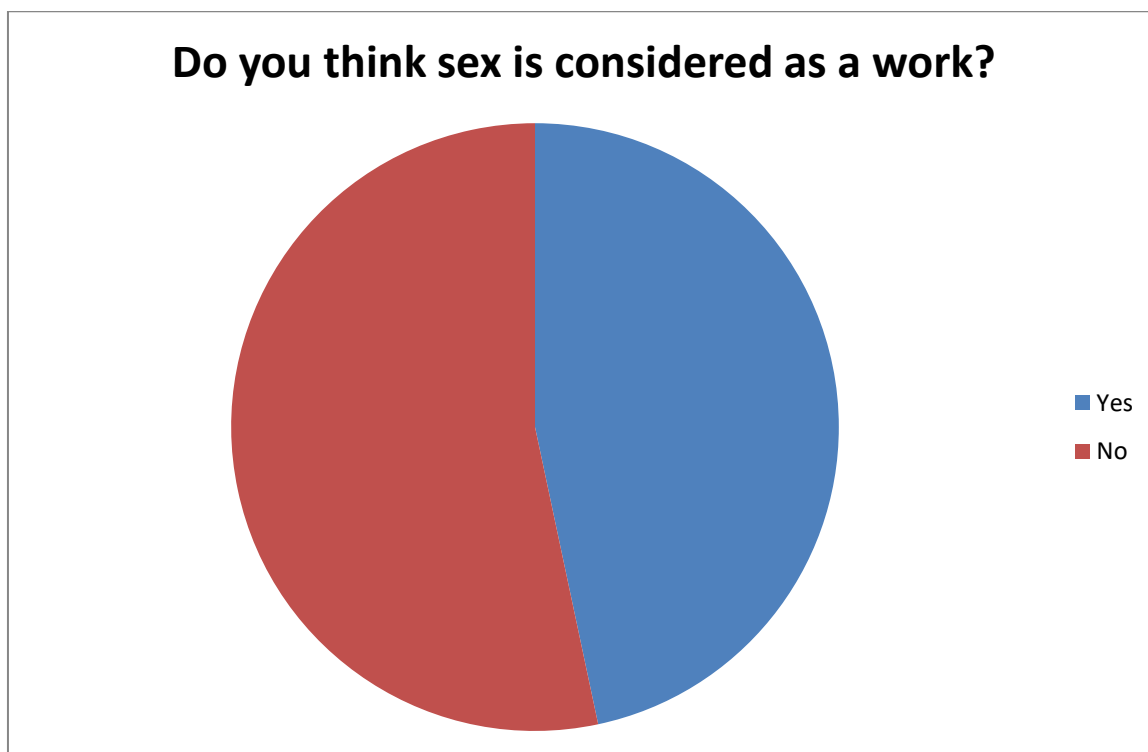
*(a) To change the cultural and social patterns of conduct of women and men, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men.”*

Contemporary high profile cases have highlighted the most terrifying cases of sex trafficking, which target women refugees and migrants. We need to ensure that migrant and refugee women have safe migration routes, which do not result in sexual exploitation.

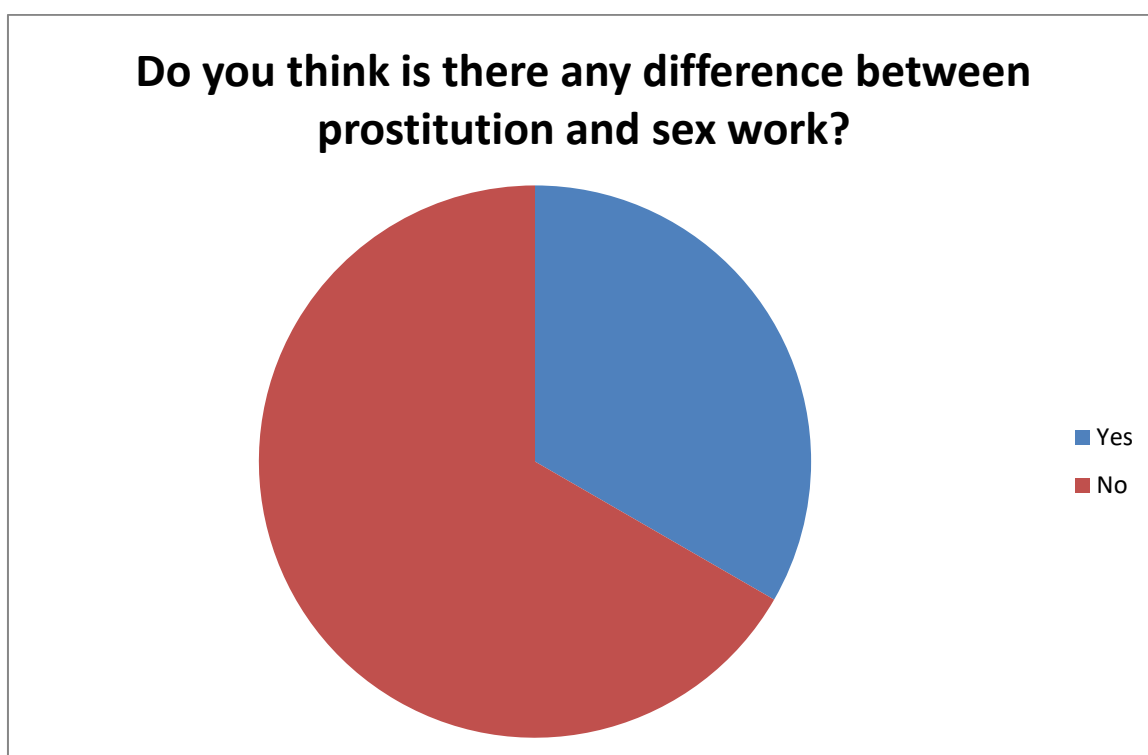
#### **14. Survey Analysis And Interpretation**



The survey answers prove that 34 out of 50 people having the age between 18 to 40 years believed that society shall not accept the sex workers.

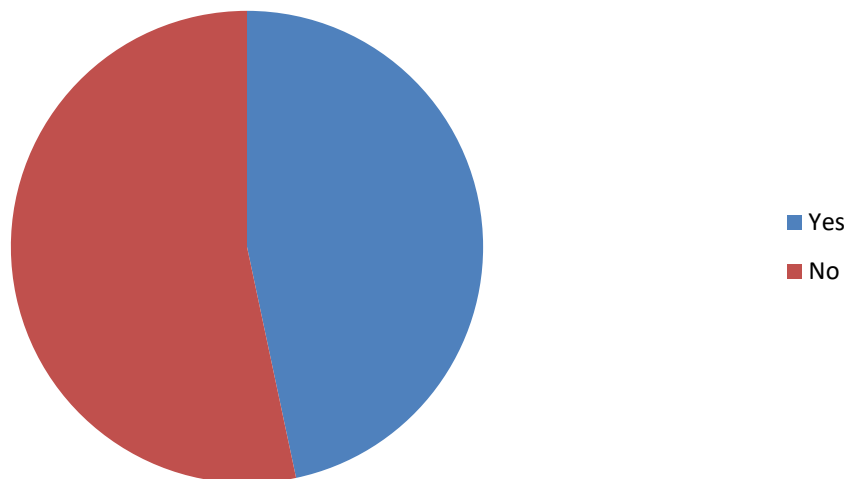


The survey answers prove that 33 out of 50 people having the age between 18 to 40 years believed that sex is not a work.



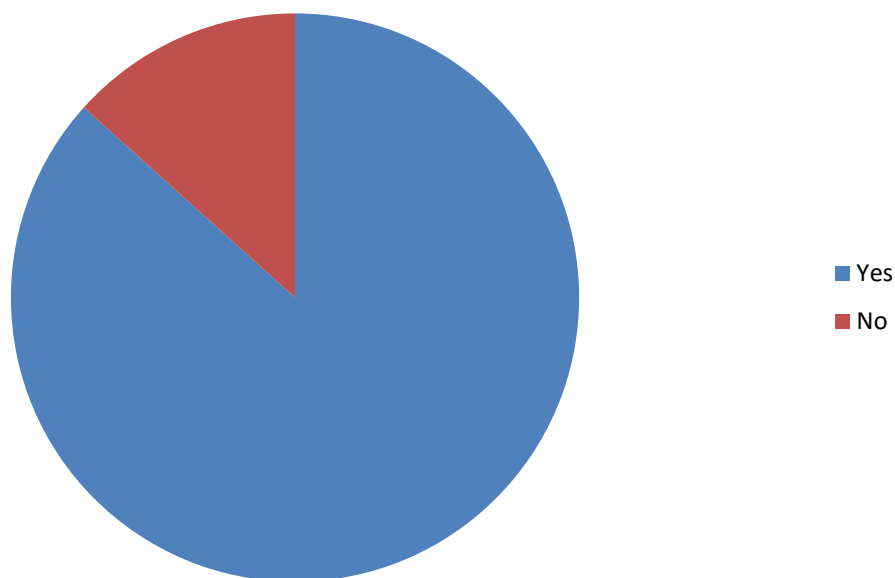
The survey answers prove that 20 out of 50 people having the age between 18 to 40 years believed that prostitution and sex work are not same which majority believes that they are same.

**Does legalisation of sex work ensure the welfare of those engaged in it?**



The survey answers prove that 20 out of 50 people having the age between 18 to 40 years believed that sex works legalisation will benefit the prostitutes while 30 others don't believe the same.

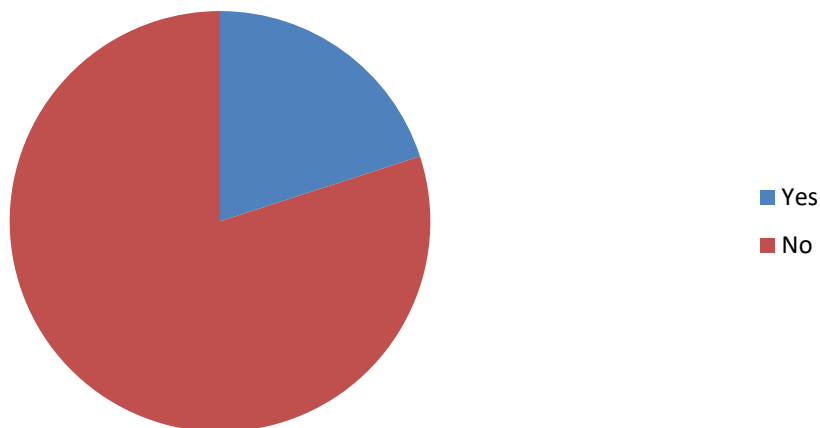
**Whether women engaged in prostitution are considered as objects?**



The survey answers prove that 43 out of 50 people having the age between 18 to 40 years believed that sex works are reduced to a status of mere objects in the society.

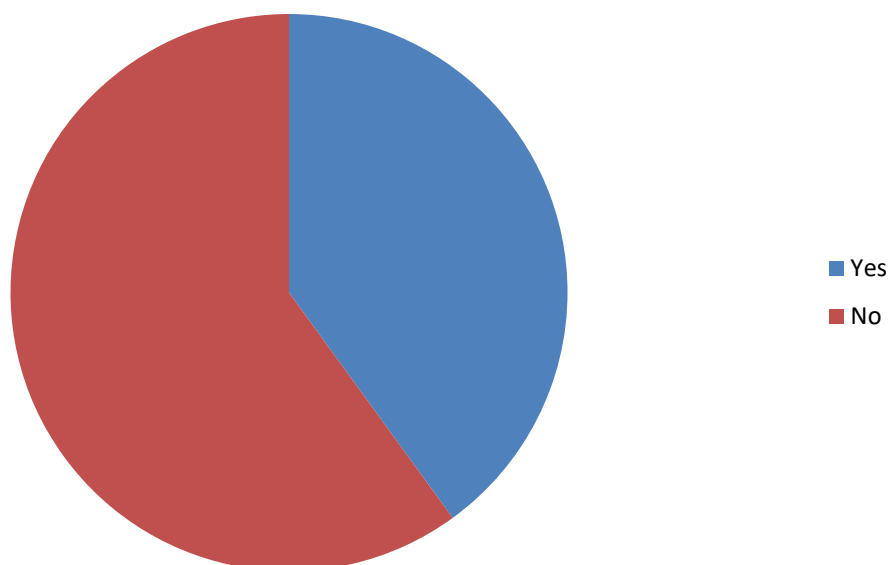


**Do you think only those men who are depressed and feel lonely go to sex workers for the purpose of their satisfaction and happiness?**



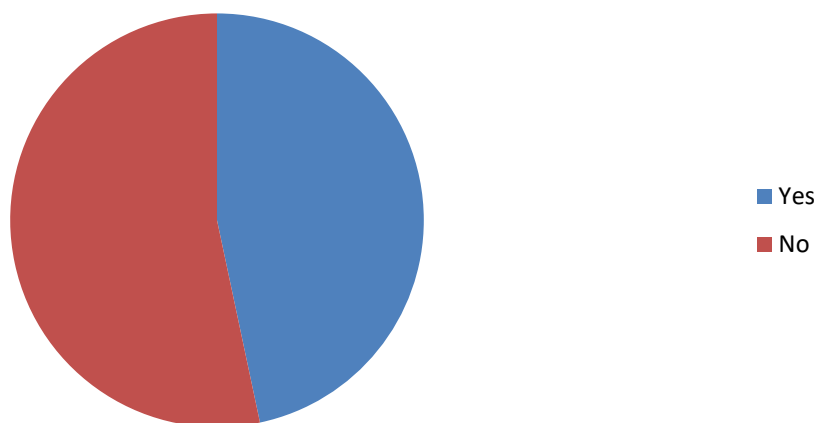
The survey answers prove that 12 out of 50 people having the age between 18 to 40 years believed that men go to sex workers only when they are lonely and repressed while 38 others opined that there are varied reasons for the same.

**Does legalisation of prostitution reduce incidents of rape and sexual abuse?**



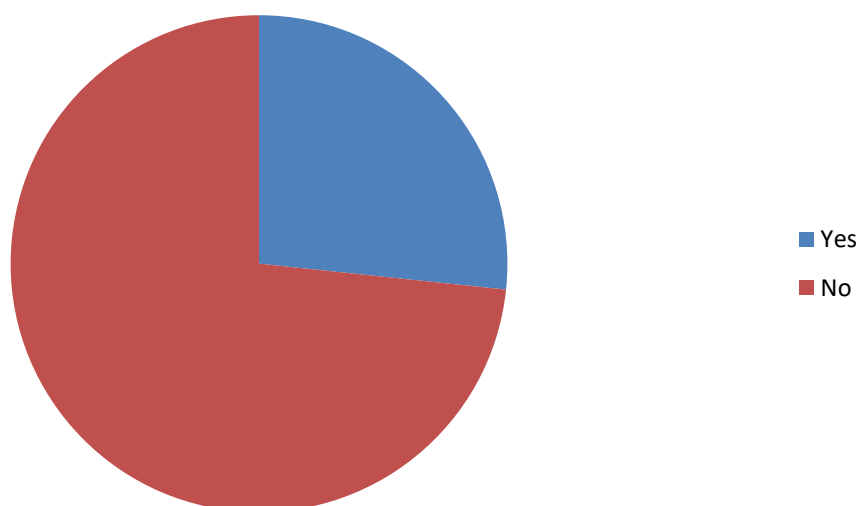
The survey answers prove that 27 out of 50 people having the age between 18 to 40 years believed that legalisation will prevent rapes and sexual abuses.

**Does legalisation of prostitution provide a greater protection against violence and exploitation?**



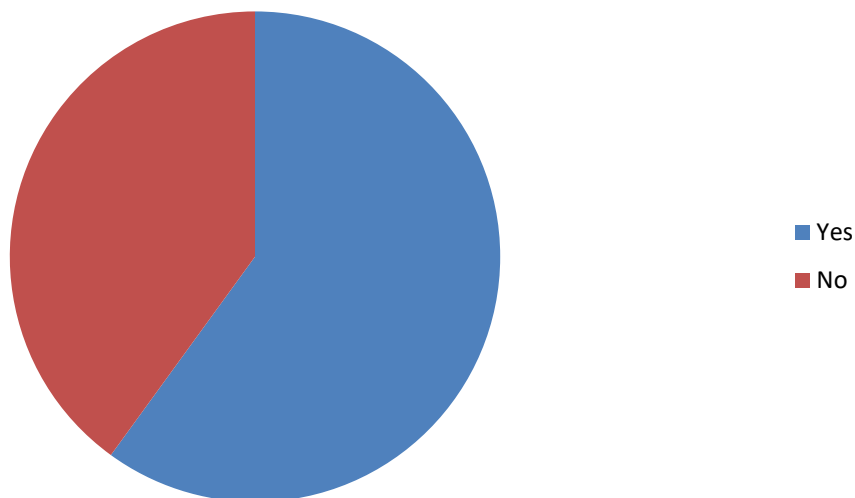
The survey answers prove that 39 out of 50 people having the age between 18 to 40 years don't believe that legalisation will act as protection against violence and exploitation.

**Does legalisation of prostitution reduce the control as well as power of pimps in the sex workers life?**



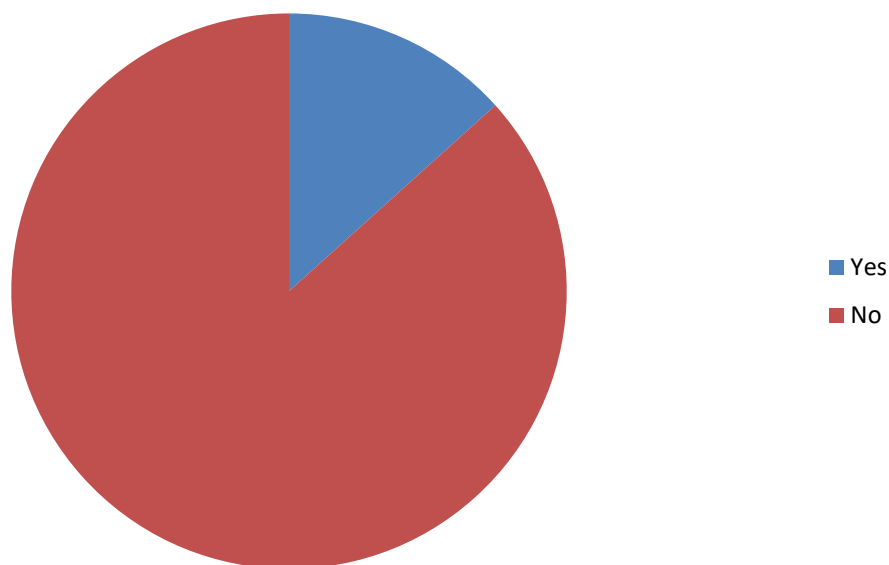
The survey answers prove that 41 out of 50 people having the age between 18 to 40 years don't believe that legalisation will act as protection against control as well as power of pimps in the sex workers life.

**Does legalising prostitution leads to an increase in sex trafficking throughout the world?**

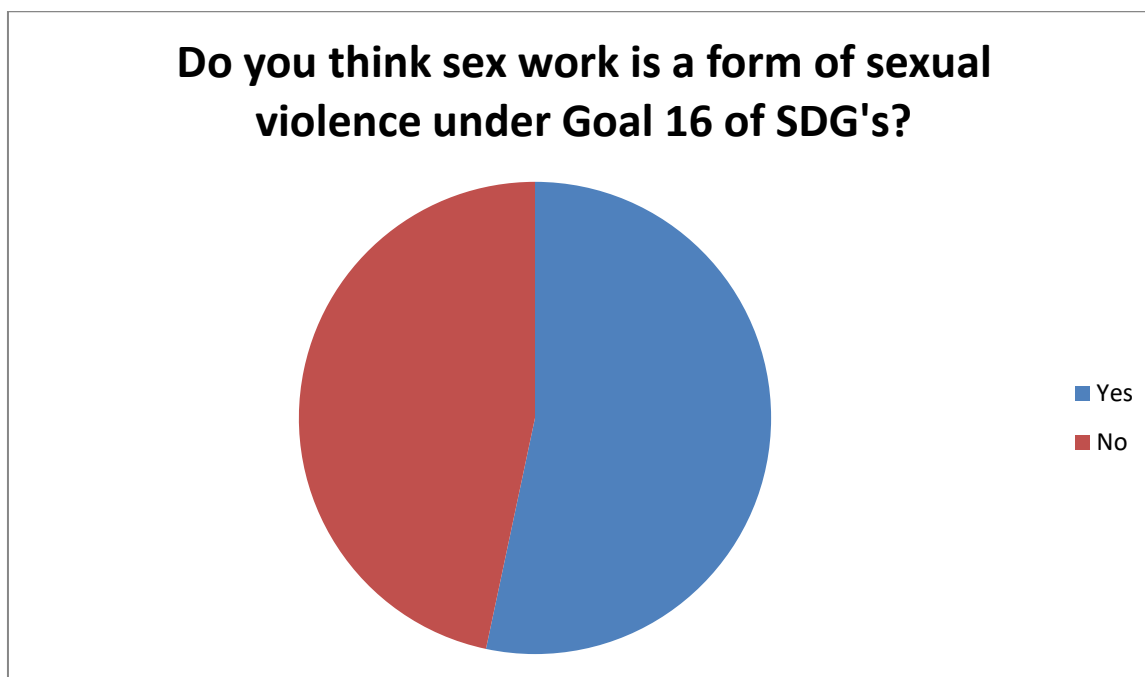


The survey answers prove that 33 out of 50 people with the age range of 18-40 believe that legalisation will lead to proliferation of sex trafficking across the globe.

**Do you think sex work is a decent work under Goal 18 of SDG's?**



The survey answers prove that 43 out of 50 people having the age between 18 to 40 years believed that sex work is not a decent work under Goal 18 of SDG's.



The survey answers prove that 38 out of 50 people belonging to age between 18 to 40 years considered that sex work is a form of sexual violence under Goal 16 of SDG's.

## 15. Discussions

The entire sample size was composed of 50 Indian citizens including 15 sex workers. The majority of those who participated were between the ages of 18 and 40. Males made up 57% of the participants, while females made up 43%. According to the findings, 84.85% of people participating are conscious that prostitution appears to exist in India. Of the 54% of people participating who said "yes" to the question of whether prostitution is legal in India.

To learn about the participants' perspectives, individuals were questioned to explain why prostitution was illegal in India. The majority of them said it was a sin (i.e., forbidden by religion) and did not reflect Indian culture.

Participants agreed that poverty, emotional trauma, and domestic violence are the most common reasons people engage in prostitution.

Participants were split as to whether prostitution should indeed be legalised in India. 83% strongly opposed legalisation. On the contrary side, 17% of participants supported legalising prostitution in India.

76% of people participating disagreed that legalising prostitution would reduce rape and sexual abuse. 71% of people participating disagreed or strongly disagreed that legalising prostitution reduces the spread of sexually transmitted diseases such as HIV.

When asked whether legalising prostitution reduces pimps' power and control over sex workers' lives, 83% said no. Surprisingly, only 17% consented that legalising prostitution provides better protection against exploitation and violence.

There were also significant differences between those who disagreed and agreed that legalising prostitution gives sex workers with better health care (70% versus 30%).

49% agreed that legalising prostitution would result in increased legal protections. 74% agreed or strongly agreed that legalisation would lead to an increase in sex trafficking around the world.

Another common theme was that social stigma exists in India regardless of the system, but manifests differently depending on the social context. In India, prostitution is both illegal and tolerated. However, it continues to be regarded as a viable business by Indian citizens. For instance, 77% of people participating disagreed that legalising prostitution reduces the social stigma attached with it, while the remaining participants agreed/strongly agreed. 74% were opposed to or strongly opposed to legalising prostitution in India.

Since this social and religious contexts wherein the participants of the study draw their conclusions are so disparate, it is natural for them to view the sex industry through differing perspectives. Prostitution, on the other hand, has existed since ancient times and it can be discovered in each and every large human society. According to the findings of this study on Indian citizens' attitudes toward prostitution, the majority of participants believe that prostitution really shouldn't be legalised.

The stigmatisation of sex workers further victimises those compelled into to the industry, making it more difficult to incorporate prostitutes into "normal life." The importance of social stereotype cannot be overstated.

This study brings much-needed attention to opposing viewpoints on the legalisation of prostitution. Diverse perspectives demonstrate that this isn't a simple subject matter, and no perfect system exists. Finally, the problems surrounding female prostitution seem to be complex, and they require a broader lens that includes a variety of perspectives that acknowledge this complexity. Future studies should be more definitive in exploring these complexities, free of personal bias or public perceptions of morality. Hopefully, future studies will aid in the development of government policies aimed at assisting those in the sex trades in order to minimize the negative repercussions of their activities and advancing to better lives.

## **16. Limitations**

The following limitations apply to this study:

- confined time and resources,
- small number of participants,
- sample representativeness, and
- biasness.

## **17. Why Prostitution Should Not Be Legalised In India**

- Decriminalizing prostitution benefits pimps, brothel owners, traffickers, and the entire sex industry by granting consumers the legal right to purchase sex. This does not appear to be honouring the women in the industry and therefore does not appear to be advantageous to her in the longterm.
- The legalisation of prostitution doesn't really specify any specific methods for identifying coercive power and forced sex work. Furthermore, legalising the sex industry and prostitution will help in promoting sex trafficking in the long run

because there will be no way to ensure that immigrant sex-workers from those other countries have knowingly and willingly consented to being a part of the sex industry.

- Legalisation of prostitution boosts and expands the sex industry. It would foster private sector entry into the industry. With the capitalization of sex workers, this will eventually increase their exploitation. It would pave the way for those other forms of atrocity and exploitation, such as pornography, table top dancers, peep shows, and so on.
- This will also raise clandestine, illegal, and street sex work since many workers of this industry will be ineligible to register with local authorities, some of whom may be underage, illegal migrants, or suffer from diseases like hiv or even other venereal diseases, causing them to avoid legalisation. To avoid being caught, they may go underground, which will make a significant contribution to illegal sex. Working on the roadside or underground poses numerous risks, including rape, police abuse, exploitation, and substance abuse, all of which are classified as occupational hazards.
- It will lead to an increase in child prostitution, as research and studies show in the Netherlands, Victoria, Australia, and elsewhere. Child prostitution grew exponentially, leading to commercial exploitation of children at a young age.
- It will boost the market for prostitutes and encourage men to purchase women for their bodies in order to fulfill their sexual desires. As the barriers fall away, men will neglect their social, ethical, and moral barriers and view women as sexual commodities, leading to the commoditization of women along with their bodies. This also jeopardises the stance of other women who are not involved in the prostitution industry because of trend of generalisation will affect all women, not just prostitutes.
- Legalizing prostitution is harmful to women's health. Because legalisation would require only sex workers to be tested for Sexually Transmitted Diseases (STDs) like HIV/AIDS, rather than customers, there is no assurance that the spread of STDs would be reduced. The condom policy has also failed because it is left up to sex workers to decide whether or not to engage in safe sexual practises.
- Legalizing sex trafficking does not benefit women economically, particularly in terms of wages earned for sex work. Most of them do not make rational decisions when entering the profession of sex work, and many are victims of trafficking, threats, and coercion, which forces them into prostitution against their will.
- Sex workers, in particular, oppose legalisation of the industry because it would increase the danger and humiliation they face. It will not only escalate violence against them, but it will also violate their right to health and life.
- Respondents have suggested that licencing and tracking of sex workers could be detrimental to their ability to live a dignified life. They believe that regulating their job would be dehumanising to them because they would be publicly identified as prostitutes. Furthermore, legalisation would imply mandatory medical testing, which would violate sex workers' privacy and freedom of choice. Participants also presume that legalisation of prostitution would then start creating a distinction between legal and illegal prostitution.
- If the legalisation of prostitution is contended on the basis of its legalisation in various countries, it should be noted that all those countries that have already legalised this issue are far more advanced than India in terms of liberal frame of mind as well as public morals in the current era. Our country's society and customs are very different from those of the West. It is a fundamental tenet of jurisprudence that social customs are a source of law. If that is the case, it would be immoral and unethical to pass any such statute in a country that violates its social and ethical standards. Not only that, but despite the fact that it is legal in many countries, prostitutes do not receive social

respect, and the inhuman practise of sex slavery persists. Along with their legal businesses, organised criminal groups continue to illegally traffic women and children for sex prostitution operations. Legalisation led to a rapid rise in child prostitution in countries such as the Netherlands as well as ,Australia, Victoria resulting in widespread commercial children's exploitation. As a result, blindly following the lead of any country will not serve the purpose.

- Another issue that the country will face is that of clandestine prostitutes who collaborate covertly while wearing a respectable mask. It is argued that monitoring and licencing will not assist them in living lawfully in society. Legalisation would mean distinguishing among both legal and illegal sex workers, effectively marginalising the latter. Many prostitutes oppose legalisation because it would expose them as prostitutes.
- According to respondents, is not only linked to sex work, but also to child labour, which is philosophically equivalent to child slavery. As a result, legalisation would not solve their problem, but will instead trap them in the vicious cycle of the sex industry.
- Due to the broad and authorised scope of then legally and socially recognized systems, legalisation of prostitution will also broaden the sex industry, encouraging hungry men to buy women's body for satisfying carnal desires. This could be a boon to pimps and traffickers because it will provide legal legitimacy to sex clients while being detrimental to prostitutes. It would eventually lead to the commodification of women. It will be a terrible move in the frame of reference of countries such as India because the early phase of prostitution in India was the result of coercion, force, or forgery by a trafficker, husband or parents. Even though a few of them have begun to sell their bodies voluntarily, it ought to never be neglected that The first act's cause was coercive in essence. This means that even if the red light districts were also substantiated, newcomers will proceed to be trafficked into them.
- After legalisation, sex workers may be unable to enroll because many of them are minors or illegal immigrants, and some may have STDs. These obstacles may prevent them from becoming legal. However, because they must continue to earn a living through sexual slavery, they will go underground and work as roadside hookers. As a result, legalising prostitution is out of the question.

## **18. Conclusion And Suggestions**

Legalisation is not the best way to combat the threat of the social evil as well as human trafficking in prostitution. Prostitution has survived through the ages in diverse Indian society, despite being despised due to the demeaning aspects of the work. Large numbers of sex workers live as a community in major cities like Mumbai, and they are concentrated in one area. Any legalisation, licencing, or police registration may be futile until the stigma associated with sex work is removed. To accomplish this, police sensitization is the most pressing need of the hour, along with recognition of sex workers' human rights.

Lawmaking bodies must ensure that basic rights are available to them under both international and municipal law. The primary emphasis should be on improving their social and economic conditions. They must be recovered and trained in order to be conveyed to jobs that provide them with dignity and support.

If prostitution is legalised, their problems will becoe more worse, and prostitution will become even more entrenched the society, with no way out. A distinction must be made

among sex workers who have voluntarily entered the profession and those who were or are being compelled into it. Even though the latter requires immediate attention, both must be addressed.

Basic rights, such as life insurance and voting rights, must be made accessible to them as a protected right. As the link between police officers and brothel owners is severed, sex workers will also have a say in their own affairs.

The best way forward will be to criminalise brothel owners while also penalising customers who demand sexual services.

It would be prudent to implement the following recommendations to improve the situations of prostitutes in India until appropriate steps are taken by the state:

- Before attempting to legalise prostitution, the government must first make it sufficient through policies, as sex work is not recognized as a decent work in society. Regulations such as licensing system will not be effective till the stigma surrounding the exploitation industry is removed.
- To improve their situation in the society, a realistic option is to provide alternative employment where current workers of this occupation can be paid more. They must be properly trained and rehabilitated. The reformative homes which are overburdened inadequacy should be investigated. There is no alternative job where they will be treated with dignity and reasonable support, and the reparative residences must provide appropriate literacy and specialized training for that job.
- Despite having a well-drafted law, our nation is currently having difficulty detecting flaws. It does not take much imagination to see that legalisation will unleash a flood of human exploitation. So, before declaring the status 'legal,' there should be a well-thought-out policy or legislation capable of putting a stop to the illegal activity known as 'trafficking.'
- To maintain the safety of workers of this industry, it is also important to measure the client's health in order to prevent the spread of sex-transmitted diseases. Making regular exams mandatory only for sex workers will not ensure that people will not be chased by the infection while having sexual intercourse.
- As human beings, all sex workers have the right to the basic human rights assured by international and municipal laws. The government is responsible for protecting them, and we are all responsible for not infringing on them and respecting them. In the particular instance of *Budhadev Karmaskar v. State of West Bengal*, the Hon'ble Supreme Court upheld the same principle, holding that prostitutes are also human beings who deserve the right to live with respect. The court further mentioned the difficulties in the work of prostitution. Other critical point is that the link between, pimps, brothel owners, prostitution mafias, and police must be severed. Only prostitutes will be able to freely explain their concerns.
- The ITPA should be strictly enforced, replacing the current corrupt implementation.

As a result, it can be said that it is the most justified and prudent step for this country to legalise "prostitution" while straightaway criminalising brothels and instituting harsh penalties for disobedience, thereby completely individualising the profession. Finally, the petition can be concluded by quoting Hon'ble former CJI Markandey Katju:



“We are aware that merely by our directions, sex workers in our nation won't be rehabilitated immediately.” It will take time, but we must be patient in this regard. In this case, we attempted to educate the public by accurately portraying the scenario of sex workers in the country. Finally, it is the individuals of the country, especially young people, who can solve the severe issues of sex workers through their idealism and patriotism. As a result, we especially encourage the country's youth to contact the panel members and provide their assistance in any way that the panel may require, so that the panel can be more effective.”<sup>93</sup>

## **19. Questionnaire**

You are invited to take part in a research study regarding **LEGALISATION OF PROSTITUTION IN INDIA THROUGH THE LENS OF SDG's: AN EMPIRICAL STUDY.**

The goal of this research study is to address the problems associated with prostitution. This study is being conducted by Janees Rafiq and Dr Geeta.

Participation in this study is voluntary. Your participation in the present survey or study may not directly benefit you but it will definitely help me to get to know about your opinion on whether prostitution should be legalized or not and what are the possible implication of the same on the society. While answering the questions some of them may be upsetting for you, but I anticipate that such questions are not other than what you talk about with your friends or family members. However, you are not bound to answer all the questions you can skip any of the following questions if you are not comfortable with the same as well as you are allowed to terminate the present interview at any moment.

The data or information shared by you with us while participating in the present study shall remain entirely confidential to the greatest extent as provided by law.

**NAME:**

**OCCUPATION:**

**AGE:**

**GENDER:**

**1. WHAT ARE THE MAIN REASONS FOR PROSTITUTION IN YOUR OPINION?**

**2. WHETHER SEX WORKERS ARE ACCEPTED BY OUR SOCIETY?**

**YES**

**NO**

**3. DO YOU THINK SEX IS CONSIDERED AS A WORK?**

**YES**

**NO**

**4. DO YOU THINK IS THERE ANY DIFFERENCE BETWEEN PROSTITUTION AND SEX WORK?**

**YES**

**NO**

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<sup>93</sup> Budhadev Karmaskar v.State of West Bengal, AIR 2011 SC 2636 (India).

**5. DOES THE LEGALISATION OF SEX WORK ENSURE THE SAFETY OF THOSE INVOLVED?**

- YES
- NO

**6. DO YOU THINK SUCH FEMALES NO LONGER REMAIN HUMAN BEINGS BUT ARE REDUCED TO OBJECTS?**

- YES
- NO

**7. DO YOU THINK SUCH FEMALES NO LONGER REMAIN HUMAN BEINGS BUT ARE REDUCED TO OBJECTS?**

- YES
- NO

**8. DO YOU THINK ONLY THOSE MEN WHO ARE DEPRESSED AND FEEL LONELY GO TO SEX WORKERS FOR THE PURPOSE OF THEIR SATISFACTION AND HAPPINESS?**

- YES
- NO

**9. DOES LEGALIZING PROSTITUTION REDUCE INCIDENTS OF RAPE AND SEXUAL ABUSE?**

- YES
- NO

**10. DOES LEGALISATION OF PROSTITUTION REDUCE THE CONTROL AS WELL AS POWER OF PIMPS IN THE SEX WORKERS LIFE?**

- YES
- NO

**11. DOES LEGALISING PROSTITUTION LEADS TO AN INCREASE IN SEX TRAFFICKING THROUGHOUT THE WORLD?**

- YES
- NO

**THANK YOU.**

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