

## **“Plight of the Female Sex Workers in India – Need for Recognition and Regularisation of the Profession”**

An Insight from visit to Kamathipura, Mumbai

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### **ABSTRACT**

Prostitution in India is not a new age profession. In India prostitution per se is not considered as illegal but the allied activities which lead to the profession of prostitution are considered legal. Human Trafficking is a global crime which involves mostly women and children resulting in violation of their fundamental right. “Trafficking in persons is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them”<sup>1</sup>. India is a source destination and transit country for men, women and children trafficked into forced labour and commercial sexual exploitation India. The most vulnerable amongst these are women and children who are trafficked for the purposes of forced prostitution. Kamathipura which is a red light area in Mumbai has a capacity of around 4000 female prostitutes and is home to a number of illegal activities. The female sex workers term it as a cage of sexual abuse and exploitation. Trafficking per se is not defined in any legislation, however, the Indian Penal Code, 1860, the Immoral Trafficking (Prevention) Act, 1956 and the Constitution of India has prohibitive approach towards trafficking of humans for sexual exploitation for the purpose of prostitution and also the allied activities leading to it. This paper seeks to address the plights of female sex workers and focuses on the ways for regularization and recognition of prostitution as a profession.

**Keywords** – Prostitution, human trafficking, sexual exploitation, Kamathipura, female sex workers, regularization, recognition.

### **INTRODUCTION**

*“Slavery still exist, but now it applies to women and its name is prostitution.”*

**-Victor Hugo**

Famously referred as the “World’s Oldest Profession” and yet, the word ‘Prostitute’ is always deemed to be derogatory, serving as an adjective for a ‘sexually transgressive women’ (Gangoli, 2008)<sup>2</sup>. “I have two kids and one of them is married now. I did not want him to stay here and get involved in bad activities”, says Sudha (name changed), a commercial sex worker from

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<sup>1</sup>UNODC on trafficking in persons and smuggling of migrants, United Nations Office on Drugs and Crime

<sup>2</sup>SurabhiChatterjee, “Law and Discourses around Prostitution in India”,2015

*Kamathipura, red light area in Mumbai, the financial capital of India. Further she adds to her statement, "I have been here from past 15 years. My village is in West Bengal. I visit my son and daughter in law once in a year; they too have a son now. I do not want to go back to my village as I have to take care of my younger son". Sudha who had a troublesome/disturbing childhood do not really remember anything of her past life, all she had in her mind now was to not let her sons indulge in the profession she is into.* Prostitution is the most stigmatized profession in the Indian society, young girls and women unfortunately turn out to be its victims.

“Red light areas” or “Pleasure districts” are the un-identifiable pockets of large cities where the practice of prostitution is carried out. Focusing on the Indian scenario the identification of large red lights areas is very rare, the most popular ones being Kamathipura in Mumbai, Sonagachi in Kolkata and G.B. (Garstin Bastion) Road in Delhi. Brothels are run in smaller scale in many towns in India which are generally managed by a lady head with three to five women carrying on sexual activities. The gender biasness in this profession is sufficient enough to trigger the sense of violation of fundamental rights based on discrimination. *“This place is like a cage. It is captivity and getting out from this is very difficult”*, says a member of the NGO which works for the welfare of the women in the profession of prostitution in the area of Kamathipura, Mumbai.

Hundreds and thousands of young girls and women are trafficked on a daily basis for this profession. In fact, trafficking in human beings is supposedly one of the largest criminal activities in India close to the trade in drugs and arms. These women and young girls are brought by the pimps or their own family members and sold to the brothel owners for some amount of money pushing these innocent souls to a world of torture and sexual exploitation. These human beings are engaged in the prostitution and are being sexually exploited in the same process. Indian legislation also prohibits the sexual exploitation of sex-worker for the commercial purposes, but it does not per se prohibit the practice in which a female offers her body for promiscuous sexual intercourse for hire. The ambiguous and vague definition of the word “Prostitution” has the scope of regularization of this profession to provide rights to the human being involved in the profession.

Workers involved in the profession of prostitution faces a number of obstacles in their living. Inhumanly treatment at the early stages of their stay in the brothels is an everyday phenomenon for these women; most of them are kept under house arrest to prevent their possible escape.<sup>3</sup> The health and sanitation conditions prevailing in the areas are worse than what can be imagined. There is a need to understand the issues faced by these workers for their up-liftment.

Legal framework of India on the issue of prostitution prohibits sexual exploitation of sex-workers in the process. Currently, *Immoral Trafficking (Prevention) Act, 1956* is the special legislation on the issue which has the purpose to limit and eliminate prostitution in India by

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<sup>3</sup>Dr. Tulsingh Sonwani, *Prostitution in Indian Society: Issue, Trends and Rehabilitation*, <https://www.ugc.ac.in/mrp/paper/MRP-MAJOR-SOCI-2013-25158-PAPER.pdf>

progressively criminalizing various aspect of sex work.<sup>4</sup> We also have general law on the issue i.e. Indian Penal Code, 1860 which penalize the trafficking for the purpose of sexual exploitation. In spite of all these legislation in the system, there is continuous sexual exploitation and violation of rights of the human being in the prostitution.

A silver lining has appeared for these women with the emergence of many nonprofit organizations which work for their rescue and rehabilitation. Some of them also seek to work with the government to change policy. There are a number of policies and schemes framed by the Government of India aiming at the welfare of the sex workers and also providing them skill development training in order to rescue them from the trap of sexual abuse, but it is important to note that many of the schemes and policies have not been executed in the way it should have been.

Authors here with the help of this article advocating for the rights of workers who are engaged in the profession of prostitution by focusing on need of recognition and regularization of the profession where sex-workers are engaged in the process on their will.

### **HUMAN TRAFFICKING AND PROSTITUTION**

Before going into the depth of issue of human trafficking, it is important to have an idea of what the term “Human Trafficking” means. According to Merriam-Webster Dictionary, Human Trafficking has been defined as *an organized criminal activity in which human beings are treated as possessions to be controlled and exploited (as by being forced into prostitution or involuntary labour)*. It clearly suggests that human trafficking is an illegal act. It is a global crime which involves mostly women and children resulting in violation of their fundamental right. Trafficking is a complex issue and requires a multifaceted approach. *The Immoral Trafficking (Prevention) Act, 1956* does not talk about the term ‘trafficking’ per se but has mentioned what amounts to trafficking in a number of sections, such as Section 5 speaks about procuring, taking and even inducing a person for the sake of prostitution. According to this section, even attempt to procure and attempt to take or cause a person to carry on prostitution amounts to trafficking. Therefore ‘trafficking’ has been given a broad scope to include every kind of act where human being taken against their consent and engaged in activity of violation of their rights.<sup>5</sup>

“Trafficking in persons is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them”<sup>6</sup>. The most vulnerable amongst these are women and children who are trafficked for the purposes of forced prostitution. Almost all the countries in the

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<sup>4</sup>*Legalizing Prostitution In India: A Critical Analysis*, Alexis Foundation, <http://alexis.org.in/legalising-prostitution-in-india-a-critical-analysis/>

<sup>5</sup>Vikaspedia, Human Trafficking, <http://vikaspedia.in/social-welfare/social-awareness/human-trafficking-1/human-trafficking>

<sup>6</sup>*UNODC on trafficking in persons and smuggling of migrants*, United Nations Office on Drugs and Crime

world are affected by the crime of trafficking humans for such activities and India is one of them. India is a source destination and transit country for men, women and children trafficked into forced labour and commercial sexual exploitation. “Crime rates are much higher in big cities than in either small cities or rural areas, and this situation has been relatively pervasive for several centuries”.<sup>7</sup>

This article focuses on human trafficking for the purpose of sexual exploitation in prostitution, which makes it necessary for us to explain the meaning of prostitution. General understanding of word “prostitution” means engagement in the sexual activity as a sex-worker for the exchange of money. The most widely accepted definition; however, is the one given in the encyclopedia of social science which defines prostitution “*as the practice in which a female offers her body for promiscuous sexual intercourse for hire etc*”.<sup>8</sup> Legal definition of term “prostitution” as defined in Immoral Traffic (Prevention) Act, 1956 under section 2 (f) of PITA Act, 1956; prostitution means *the sexual exploitation or abuse of a persons for commercial purpose*”. All these definitions and understanding of the term prostitution make us understand that prostitution per se as an act is not prohibited rather it prohibits the other inter-related activities of prostitution like trafficking, exploitation, commercial use etc.

For the purpose of this article, there is need to read both these terms human trafficking and prostitution in simultaneously. Focus here would be on all kind of human trafficking for the purpose of sexual exploitation for prostitution. There are various kinds of prostitution namely brothel prostitution, call girl prostitution, street prostitution and others.<sup>9</sup> Currently in India, prostitution per se as act where workers are engaging themselves willingly is not prohibited instead of which all allied activities including soliciting in the public place, kerb crawling, owning and managing a brothel, prostitution in a hotel, child prostitution, pimping, pandering trafficking etc. are illegal and being prohibited and penalized in the law.<sup>10</sup>

• **DATA OF REPORTED CASES OF HUMAN TRAFFICKING IN 2016 AND 2017  
(As Per National Crime Records Bureau Reports)**

	<u>2016</u>	<u>2017</u>
<b>Human trafficking (in Total)</b>	8132	2854
<b>Human Trafficking (for the purpose of sexual exploitation for Prostitution)</b>	4980	1275

<sup>7</sup>Edward L. Glaeser, Bruce Sacerdote, *Why Is There More Crime in Cities?* The National Bureau of Economic Research Working Paper No. 5430, Issued in January 1996

<sup>8</sup>Supra 3

<sup>9</sup>Supra 3

<sup>10</sup>[https://en.wikipedia.org/wiki/Prostitution\\_in\\_India](https://en.wikipedia.org/wiki/Prostitution_in_India)

As mentioned in the above table, the total number of cases reported in **Human Trafficking** during the year 2017 is 2854 with Jharkhand leading with 373 cases (13.07%) followed by West Bengal (357), Telangana(329), Rajasthan(316), Maharashtra(310). Delhi ranks the highest among the Union territories with 95 cases of trafficking reported in 2017.<sup>11</sup> There has been a sharp decrease in the number of reported cases in 2017 compared to the previous year. The possible reason behind it may be the non-reporting of cases in the recent years.

The sex trade makes billions of dollars every year from millions of young girls and women (Edlund&Korn, 2002).<sup>12</sup> Women and young girls are trafficked every year, within and outside national borders, and forced to join the trade of prostitution (UNODC, 2012), while some also join the trade, due to a plethora of other reasons. The National Crime Records Bureau, 2017 report states that the total number of cases reported on **Human Trafficking for the purpose of sexual exploitation for Prostitution** is 1287 which is approximately 74% lesser than the previous year 2016 where the total number was 4980. Maharashtra ranks the highest among the states with 474 cases reported of trafficking for the purpose of prostitution, followed by Telangana (241) and Tamil Nadu (137).

Women and children are the most vulnerable sections which are most likely to be affected by such activities. To add to their plight, they are made to see the persons responsible for their miserable condition and causing harassment walk out freely from Courts because of the serious lacunae in the Indian Criminal Justice System and the gap between laws and implementation. A serious lookout is required in this direction.

### **HARDSHIPS OF A SEX WORKER'S LIFE**

Life of a sex worker is not a cake walk. The miseries and sufferings faced by them is beyond what words can explain. Inhumanly treatment at the early stages of their stay in the brothels is an everyday phenomenon for these women; most of them are kept under house arrest to prevent their possible escape.<sup>13</sup> From a visit to Kamathipura red light area in Mumbai, a number of factors for their distress were traced out, the most important ones being health, sanitation, poverty and non legal identity. Prerana NGO which works for the welfare of the female sex workers and their children in Kamathipura during our visit mentioned that these women involved in the profession of prostitution never come to the profession by choice and therefore they are the victims and are called as '*Victims of Commercial Sexual Exploitation and Trafficking*'. These ladies sleep throughout the day since they have to stay awake the entire night and are paid peanuts for their service. The brothel owners or the agents keep the money to themselves and also compel these poor women to pay a rent ranging from around Rs.300 to Rs.900 on a daily basis failing which they would be thrown out of the house the next day. These women are also

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<sup>11</sup> National Crime Records Bureau, 2017, *Human Trafficking cases(IPC)-2017*, Table 14.1, Pg. 973

<sup>12</sup>Supra 2

<sup>13</sup>Supra 3

mothers who want their children to study and not fall into this trap. There have been cases where the children educate themselves and at a later stage of time rescue their mothers from this web of exploitation.

**Right as a Citizen** - Article 5 to 11 of the Indian Constitution lays down the provisions relating to the concept of citizenship. Citizenship of a person is recognized as the legal identity of a person and that he or she is a legal member of a sovereign state. The term citizenship entails the enjoyment of full membership of any State in which a citizen has civil and political rights. Non legal identity of these women, most of which belong to the vulnerable strata of the society, are trafficked and thrown into this profession at a very young age, i.e. mostly in their teens is a surprising factor. They do not even have their basic documents like birth certificate or any other identity card, which can make them eligible as citizens. Without any identity proof, they become ineligible for availing any kind of benefit under any of the government schemes that have been launched. The recent schemes that have been launched, i.e. the Ujjawala Scheme states that it is the responsibility of the State government to provide these victims with identity proofs, but nothing seemed to have been done so far. Moreover, it is of utmost surprise that the schemes framed just for the women in the profession of prostitution have also not been implemented. *“The NGO works for our welfare. My younger son is also taken care by them”* says Sudha. It is not surprising to know that they are unaware of any government effort, if any, made towards the protection of their rights as a citizen, all they knew was that the NGO is the only institute which works for their upliftment.

**Conditions of Brothels** - Long dark passages lead to the brothels. Any person can get scared while entering such a space. Old buildings which can collapse at any moment are supported by bamboo sticks towards the ceiling. *Section 18 of the Immoral Trafficking (Prevention Act), 1986 lays the provision of ‘Closure of brothel and eviction of offenders from the premises’.*

**In the landmark judgment of GeetaKanchaTamang vs. State of Maharashtra<sup>14</sup>**, the Supreme Court denied the release of a women trafficker, on mercy grounds, who had served 14 months imprisonment and stated that the first aspect that the Court has to consider for such a heinous crime is that trafficking in persons is prohibited under Article 23 of the Constitution of India. It is, therefore, the Fundamental Right of every Indian citizen not to be trafficked. Such act constitutes the grossest violence of the Human Rights of the victim child. The court also stated that despite the specific provision under Section 18 of the PITA,1986 the prosecution has not taken any step for closure of the brothels and therefore releasing of the applicant might lead to violation upon other persons including children since the applicant is a brothel owner which is not sealed or closed.<sup>15</sup>

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<sup>14</sup>Criminal Appeal No. 858 of 2009

<sup>15</sup> National Legal Research Desk, *Landmark Rulings of the Courts in India on Combatting Human Trafficking*, Oct.15, 2013



**Health and Sanitation** - Article 21 of the Indian Constitutions which talks about for Right to Life and Personal liberty also includes in it 'Right to a Healthy and safe environment'. One of the basic problems that the victims face is that of the health and sanitation. Every person irrespective of their legal identity is entitled to a healthy life and proper sanitation. The women in the profession of prostitution are debarred from this right as well. There are instances where they are denied proper medical facilities. They live in places which are damp and do not have exposure to sunlight. Most of them are also unaware of the fact that contraceptives are compulsory during such sexual activities. There is no regulation to enforce the safety of these victims as far as their health is concerned. This exposes them to HIV and other sexually transmitted diseases (STDs) which are the biggest threat to their lives.

Sex workers in Kamathipura live in a claustrophobic space, which is so small (35 x 40 ft) that it is not possible to enter it while in a standing position. Most of the so called "rooms" (spaces) consists of a bed, which is more like a wooden plank (some of which has a mattress on) for the "sex service" and the belongings, utensils, etc has to be kept underneath the table/bed. The pimps, agents and the brothel owners are dependent on the profits made by the victims. The victims pay them daily from their own earnings, which are not even the rent, and then whatever is left with them, they have to survive and manage food and cooking, etc for themselves and their children. They don't have any gas connection; they use Kerosene stoves for cooking.

**Violation of Fundamental Rights** – Prostitution as a profession per se is not considered illegal, it is not a new age profession and it is important that the workers involved in this profession are given recognition and allowed to live a life with dignity. Every person has a right to live with dignity. The following two Articles of the Indian Constitution relates to right to live with dignity-

i) Article 21 – Right to Life and Personal Liberty.

The ambit of Right to Life and Personal Liberty is wide and also includes 'Right to live with dignity'. The rights of every sex worker are protected under this Article.

In the case of *BudhadevKarmaskar v. State of West Bengal*<sup>16</sup>, the Supreme Court observed that "*the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed*". SC also observed that "*a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.*" Further, the Supreme Court directed "*the Central Government and all the State Governments to prepare schemes for giving technical/vocational training to sex workers in all cities in India.*"

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<sup>16</sup>[Criminal Appeal No. 135 of 2010]

- ii) Article 23(1) – Prohibition of traffic in human beings and forced labour.

The Article states that trafficking of humans is a punishable offence and the accused shall be punished in accordance with law. This Article can also be implemented in cases of human trafficking for sexual exploitation for the purpose of prostitution.

The way these women are treated is a complete violation of their right to life which is entitled to every person irrespective of their legal identity.

### **LEGAL FRAMEWORK FOR PROSTITUTION IN INDIA**

India Legal framework does not prohibit the act of prostitute per se but it prohibits the sexual exploitation of human being engaged in the process. All the available legislation on the issue talks about prostitution and its inter-related activity i.e. of trafficking, but no legislation provides for the regularization of the prostitution which would help the engaged person to exercise their rights in dignified manner. Indian Constitution under Article 23(1) prohibits any kind of trafficking of human being which will also include trafficking of women and children for the commercial sexual exploitation.<sup>17</sup>

We also have special legislation on the issue i.e. *Immoral Trafficking (Prevention) Act, 1956* (PITA), which specifically provides for the prohibition and punishment of sexual exploitation for the purpose of prostitution. This legislation also shows that Indian does not per se prohibits prostitution as an activity but it prohibits the inter-related activities. The Indian legal framework on the issue also has general criminal law, namely Indian Penal Code, 1860 for prostitution and allied activities like trafficking and exploitation.

### **A Brief History of Legal Framework**

To understand the chronology of legislation on the issue authors want to mention that India signed the International Convention for *The Suppression of the Traffic in Persons and of the exploitation of the prostitution of others* in the year 1950 in New York. First legislation on the issue was enacted in the year 1956 in pursuance of the ratification of this UN Convention, 1949 and passed as *The Suppression of Immoral Traffic in Women and Girls Act* in the year 1956 (SITA, 1956) to address the problem of trafficking for the purpose of sexual exploitation. The Act has been amended several times, firstly in the year 1978 to make good some inadequacies in the implementation of the Act.<sup>18</sup> Again, the SITA, 1956 was amended further in the year 1986 as *Immoral Traffic (Prevention) Act, 1986* (PITA, 1956) with a view to widen the scope of the Act to cover all persons, whether male or female, who are exploited sexually for commercial

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<sup>17</sup> Article 23(1): *Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.*

<sup>18</sup> Bill No. 47 of 2006 as introduced in the Lok Sabha in the year 2006 to further amend the Immoral Traffic (Prevention) Act, 1956 and the Prevention Money Laundering Act, 2002.



purposes.<sup>19</sup> The amended act, PITA, 1986 also enhanced the penalties for the crime.<sup>20</sup> Attempts were made in the year 2006 also to make some changes in the legislation which penalize the sex-workers. Need for omission of section 8 and 20 of the PITA, 1956 was highlighted in the statement of objects and reasons of the proposed Amendment Bill of 2006 which states that “*implementation of the Act is hampered by the existence of certain provisions of the Act, such as section 8 and 20, which are the most commonly invoked provision for any enforcement being done under the Act.*” These provisions talk about prosecution of the trafficked person which would result in further victimization of the victim as it mostly persecuted those who have been trafficked in the sex-work under section 8 of the Act instead of prosecuting traffickers under section 3,4,5 and 6 of the Act.<sup>21</sup> Still after making attempt in the year 2006, said section 8 and 20 exists as it is. Recently in the year 2018, *Trafficking of Persons (Prevention, Protection and Rehabilitation) bill, 2018* was introduced in Lok Sabha on Jul 18, 2018 by The Ministry of Women and Child Development and passed by the same house on Jul 26, 2018.<sup>22</sup> The statement of Objects and Reasons of the Bill, 2018 states that the Bill intends to serve as a comprehensive law to deal with all cases of trafficking and it would create a parallel legal framework and enforcement machinery to deal with trafficking in certain cases.<sup>23</sup> The Bill proposed for the punishment of Imprisonment of 7-10 years and fine for trafficking in Prostitution along with other penalties under Existing Laws.<sup>24</sup>

### **General Legislation on the Issue**

Apart from the special legislation on the issue, Indian legal framework also provides for the general legislation on the issue i.e India Penal Code, 1860. There are some provisions in the Indian Penal Code (IPC), 1860 which penalize prostitution and related activities. Section 370 of the IPC was amended and a new section 370A was also added in 2013 by Justice Verma Committee. Section 370 of IPC provides for the offence of Trafficking of person and a new section 370A which was added in 2013 provides for the offence of Exploitation of Trafficked persons and it also includes for the penalties of trafficking against minor for the purpose of sexual exploitation. Section 370 of IPC was added on the same line of *Palemro Protocol* (United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children) supplementing United Nations Protocol to Prevent, Suppress

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<sup>19</sup>Supra 18

<sup>20</sup>Prabhakotiswaran, *How did we get here? Or A short History of 2018 Trafficking Bill, 2018*, Vol. 53, Issue No. 29, 21 July 2018, Economic and political Weekly.

<sup>21</sup>Supra 18

<sup>22</sup><http://prsindia.org/billtrack/trafficking-persons-prevention-protection-and-rehabilitation-bill-2018>

<sup>23</sup>Supra

<sup>24</sup>Supra

and Punish Trafficking in Persons, Especially Women and Children which gives the recognition to International framework on the issue.<sup>25</sup>

*Section 370 and Section 370A* under the Indian Penal Code, 1860 states penalties ranging from seven years to life imprisonment for crimes relating to slavery, servitude and any forms of sex trafficking. Moreover, Indian Penal Code sections 372 (Selling minor for Purposes of Prostitution etc.) and 373 (Buying minor for Purposes of Prostitution etc.) are provisions prescribing penalties of up to ten years and fine for crimes relating to exploitation of children for the purpose of prostitution.<sup>26</sup> The Immoral Trafficking (Prevention) Act, provides that prostitution is an offence when there is commercial exploitation of any person.

In a landmark judgment passed by the Supreme Court in *Vishal Jeet v. Union of India*<sup>27</sup> in the year, the Supreme Court stated that “*all the State Governments and the Governments of Union territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference. It advised to set up a separate Advisory Committee within their respective zones and the main objects of the Advisory Committee being to make suggestions for the measures to be taken in eradicating the child prostitution, and the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution. All the State Governments and the Governments of Union territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors*”<sup>28</sup>.

**SCHEMES:** Government of India provides for various schemes like Ujjawala Schemes, National Schemes for Rehabilitation of Sex Schemes, Kishore Shakti Yojana etc. which contains specific community based programmes to prevent trafficking in women and children for Prevention of Trafficking and Rescue, Rehabilitation, Re-Integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation. There are other schemes also for providing rehabilitation of victims of sexual exploitation.

### **WAY OUT- RECOGNITION & REGULATION OF PROSTITUTION**

As authors have mentioned about the plight of sex-workers engaged in the prostitution and also availability of legal framework on the issue, still the conditions of those engaged in the profession is same. In spite of all stringent penalty provisions in the laws situation is worsening

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<sup>25</sup>Prabhakotisarwan, *How did we get here? Or A short History of 208 Trafficking Bill, 2018*, Vol. 53, Issue No. 29, 21 July 2018, Economic and political Weekly.

<sup>26</sup>United States Department of State, *2018 Trafficking in Persons Report - India*, 28 June 2018, available at: <https://www.refworld.org/docid/5b3e0b1ea.html> [accessed 24 December 2019]

<sup>27</sup>(1990) 3 SCC 318

<sup>28</sup>National Legal Research Desk, *Landmark Rulings of the Courts in India on Combatting Human Trafficking*, Oct.15, 2013

and women and children are continuously being trafficked for the purpose of sexual exploitation in prostitution.

Indian legislations on the issue nowhere talks about the regularization of the prostitution where sex-workers who are engaged in the profession on their will can freely profess this profession. The Immoral Traffic (Prevention) Act, 1956 only prohibits allied activities of prostitution like trafficking, exploitation, pimping, running of brothels etc. but it nowhere talks about prohibition of prostitution per se as a sexual act. Absence of such mention in the PITA, 1956 gives scope for the regularization of prostitution as a profession because according to these legislation prostitution is not criminalize and can be termed as legal activity (if devoid of sexual exploitation in the same process).

In the year 2013, when Justice Verma Committee proposed to amend section 370 of the IPC which dealt with the offence of “buying and disposing of any person as a slave”, a doubt was raised by The National Network of Sex Workers that amended section could be misused by police and other government authorities to further abuse adult consenting sex workers and clients. They doubted that the amended section is open to interpretation that the prostitution in itself in exploitative and their by criminalizing all acts and activities related to it. On this point, Justice Verma Committee clarified that the thrust of the amended Section 370 IPC is to protect women and children from being trafficked. The committee has not intended to bring within the ambit of Section 370 IPC sex workers who practice of their own volition. Further that the recast ought not to be interpreted to permit law enforcement agencies to harass sex workers who undertake activities of their own free will, and their clients. In the process, for the first time a government appointed commission has recognised the distinction between commercial sexual exploitation and adult consenting women who are in sex work on their own volition.<sup>29</sup>

Indian Legislations have prohibition approach toward prostitution in India. It prohibits only those act which sexually exploit sex-workers for the purpose of prostitution. Prohibition approach toward these acts is good but along with it there should also be system to regularise prostitution as profession to where sex-workers would be able to have right to regular medical check-ups, access to birth control tools etc. Law should provide security to consenting adult in the sex-work so as to allow them to live with dignity and to profess their profession with security and safety without depending on some middle-man who can exploit them for the purpose of prostitution. These human beings who want to be engage in the profession should have recognition of their profession as an respectful profession. Article 19(1)(g) of the Constitution entails freedom of profession and entails every person a right to choose his own employment or takeup any trade.<sup>30</sup> Absence of any legislation for regularization of prostitution is a clear violation of their fundamental under article 19(1) (g) of the Indian Constitution.

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<sup>29</sup>Aarthi Pai, CASAM, Sangli, *Section 370, Indian Penal Code Amendments and advocacy to prevent conflation of trafficking and sex work, 2013.*

<sup>30</sup>Article 19(1)(g) of the Indian Constitution

Though ITPA, 1956 does not criminalise prostitution but there is need to have a law to legalise and regularise the prostitution so as to give security to these sex workers. Right to life under Article 21 of the Constitution has many facets which includes right to reputation, right to health, right to live with dignity and the present legislation on the issue violates our right under Article 21 of the Constitution.<sup>31</sup>

Apart from the change in the philosophy of these legislations, there is also need to bring changes in the law. ITPA, 1956 is the law on the point but it also has some loopholes which creates hindrance in the implementation of legislation and further victimisation of the victim. There is need to make distinction between sex works per se and commercial sexual exploitation following trafficking. For the purpose, the term “commercial sexual exploitation” and “trafficked victim” be clearly defined.<sup>32</sup>

### **CONCLUSION**

Tricked, trafficked, sold into prostitution or harassed, this is a vicious circle of sex and difficult to get out of. The stigma attached to our minds and their non acceptance in society grabs them back into this captivity. Burden of heavy debts on their shoulders compel them to block their sub consciousness and their ethics. Kamathipura is the only home they will ever know. When we look at them we see ourselves failing as humans. Taking a pledge for our country we say “all Indians are my brothers and sisters” then is it not our responsibility to rescue them from the trap? The biggest question of the hour is if the profession of prostitution is not criminalized then why is that the women involved in this profession do not have any legal identity? The discussion on the topic is a never ending one and it is for the betterment of the country to accept this profession as a legal profession to let these women live a life of dignity with the minimum needs they deserve to get. The need of the time is to provide these women their right to life by providing them the right to live with dignity and also to curb human trafficking. Every person has a right to live his or her life with dignity and this can be only possible if the prostitution is regularized and recognized as profession.

India should take inspiration from Germany, New Zealand and China where the profession is a legalized and ladies in the profession live a life of dignity. Government should take initiatives to educate these women and provide them skill development training so that they can take up alternate employment and make a living.

*“Justice will not be served until those who are unaffected are as outraged as those who are”*

*-Benjamin Franklin*

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<sup>31</sup>Rishav Sharma &Ujjawal Kumar Singh, *Whether Prostitution Shall be Legalised and Regularised In Furtherance of Article 14, 19 and 21 of the Constitution of India*, Vol. 5, Issue 2, April-June 2018, e-ISSN 2348-1269, Print ISSN 2349-5138, March 26, 2018

<sup>32</sup>KiranBhatty, *A Review of the Immoral Traffic Prevention Act, 1986*, November 2017, Policy brief, Centre for Policy Research