

# JOURNAL FOR LAW STUDENTS AND RESEARCHERS

## **TAWAIF- Pleasure for Others, but livelihood for someone**

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### **ABSTRACT**

Human trafficking and prostitution would be called as two faces of one coin. Human trafficking is a multifaceted issue which requires a multidisplinary approach. Human trafficking basically starts with family members handling over responsibility for the safety and well- being of the trafficked for the persons to others known to them, but they are trafficked to the third person as a commercial sex worker. The term prostitute has always aroused a range of hostile feeling and perceptions. However, till date no society has been able to eradicate or abolish it. Earlier this profession only includes “the profession of dance and reciting a music in the temple of Kingdom. But with the expansion of Muslim period, prostitution has reach to the at the final stage to every part of India. “In the present day the practice of prostitution is illegal and important court judgments have defined a “brothel”. “A *brothel is a place ‘restored to by persons of both sexes of the purpose of prostitution who are strangers to the occupancy. This means that both men and women have to go this place to constitute a “brothel”*”. It is considered as the third largest organised and well-planned crime, globally and the rate of this business is increasing everywhere. The main reason of this profession is the poverty of the victims. This paper is an attempt to show the effect of this profession in the society, analyse the cause of this professional, and laws which are available for the protection of victims. It also includes some sort of real case studies of victims. The research of the paper is based on the various case studies, editorials of some editors along with some analytical reports of United Nations and some court cases.

**Keywords :** Human Trafficking, Prostitution, factors, social effect

### **INTRODUCTION**

India, one of the largest democracies in the world, has constitutionally prohibited traffic in human beings and has enriched the right to be free from exploitation as a fundamental right of every person<sup>1</sup>. Human trafficking is considered as the third largest organised crime, globally and the number is increasing every year. Poverty, uneven employment, gender discrimination and harmful tradition could be the one reason of Human Trafficking and Prostitution. Prostitution can be defined as chromatic images which is nurtured by the social fabric which makes the status of women as the sexual object or sex toy for men. In one of the

<sup>1</sup> The Constitution of India-1947 Article -23, 24 III Fundamental Rights.

surveys, it is found that not only men but also the women are involved in this occupation. Although as per the I.T.P.A.<sup>2</sup> If a women who attain age of 18 and perform a sexual intercourse with her consent is not an illegal activity<sup>3</sup>, but a number of related activities including soliciting in a public place, kerb crawling, owning or managing a brothel, prostitution in a hotel<sup>4</sup>, child prostitution, pimping and pandering<sup>5</sup> are illegal<sup>6,7</sup>. On the practical aspect prostitution does not exist without exploitation.

## **OBJECTIVES**

The objectives of the study are:

- To point out the impact of prostitution
- Illegal participation of India in crime of Human Trafficking & Prostitution
- Laws which protect the victims of the prostitution
- Role of Judiciary
- Remedial Measures
- Alternative method/ option of prostitute

## **HUMAN TRAFFICKING & PROSTITUTION**

Although the Human Trafficking and Prostitution is a different topic but they are interlinked with each other, unfortunately even among governments and international organisations, there is no consistent use of the term human trafficking and no consensus on what the term comprises or how it relates to the issue of forced labour, slavery prostitution and exploitation. In 2000 The United Nations Protocol to prevent, suppress and punish trafficking in persons (the Palermo Protocol defines human trafficking as:

“the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion of abduction of fraud, of deception, of the abuse of power or of a position or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person having control over another person for the purpose of exploitation. Exploitation shall include at a minimum the, the exploitation of the prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”<sup>8</sup>.

## **PROSTITUTION**

However, in general prostitution is not a illegal activity but prostitution is a commercial business in which a women voluntary or non-voluntary sells her body for terms of money. The legality of prostitution depends from country to country. As it is seen in the figure that in

<sup>2</sup>Immoral Trafficking Prevention Act-1958

<sup>3</sup> "The Immoral Traffic (Prevention) Act, 1956". *wcd.nic.in*. Archived from [the original](#) on 2 May 2015. Retrieved 28 November 2015

<sup>4</sup> "Section 7 in The Immoral Traffic (Prevention) Act, 1956"

<sup>5</sup>2008 Human Rights Reports: India". U.S. Department of State. 25 February 2009. Retrieved 28 November 2015

<sup>6</sup>India court raises question of legalising prostitution"

<sup>7</sup>Sex Work Law - Countries". *Sexuality, Poverty and Law*. Retrieved 31 March 2018.

<sup>8</sup> Source: United Nations Convention against Transnational Organised Crime 2001

European and northern Asian countries the practice of prostitution is illegal while in American Countries the practice of prostitution is legal but neo-abolitionism is illegal to buy sex and for 3rd party involvement is legal to sell sex<sup>9</sup>.



Decriminalization - No criminal penalties for prostitution  
 Legalization - prostitution legal and regulated  
 Abolitionism - prostitution is illegal

legal, but organized activities such as brothels and pimping are illegal; prostitution is *not* regulated

Neo-abolitionism illegal to buy sex and for 3rd party involvement, legal to sell sex

Prohibitionism - prostitution illegal

Legality varies with local laws

## HISTORICAL PERSPECTIVE OF PROSTITUTION

In U.S.A., Human Trafficking and “*prostitution was virtually uncontrolled till the MANN ACT<sup>11</sup> was passed IN 1910*”. While in China Chinese officials maintains that prostitute no longer exists in their country, while in India this profession of prostitution is very old. Earlier this profession in India only include dance and singers’ professionals, but later on during the Mughal period the profession of prostitutes become more popular. In Vedic Era of India Katuliyahad drafted some rules for keeping the public women as a prostitute under control. However the rapid urbanisation and industrialisation of cities during the British Period increased the evil, and certain legislative measures were taken to stop it<sup>12</sup>.

<sup>9</sup> Source: United Nations Convention against Transnational Organised Crime 2001

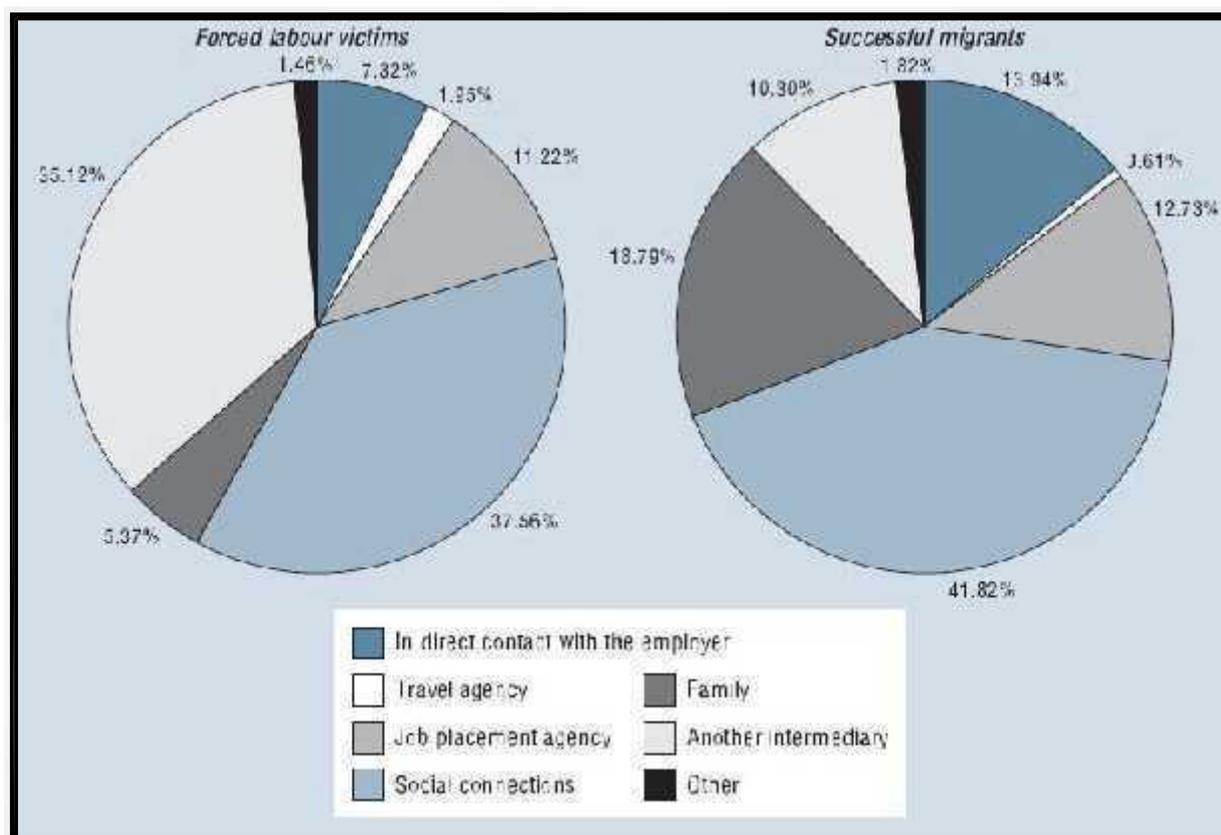
<sup>10</sup> Source: I.L.O. report of 2010

<sup>11</sup> MANN ACT LEGAL JUN 25, 1910

<sup>12</sup> Maden G.R., Indian Social Problem, Volume1, 6thEdition Allied Publishers pvt, Limited New Delhi 210 (2002)

## FACTORS OF PROSTITUTION

- **Forced Labour Victims**
  1. Poverty
  2. Under-age Employment
  3. Immoral Trafficking in Children & Women
- **Successful Migrants**
  1. Bad Neighbourhood
  2. Illegitimate Motherhood



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The rate of factors responsible for prostitution

### FORCED LABOUR VICTIMS

1. **Poverty:** Poverty is the one of the factor which increases the crime of prostitution as we look on the poverty rate of India is now declining but the one or some other ways the Human Trafficking and Prostitution. e.g. the maid servant are after objects of the lust of their employers.

<u>Year</u>	1994	2002	2007	2010	2014
<u>Rate</u>	35%	25%	22%	29.8%	21.9%

<sup>13</sup>Source: ILO Report of 2010

### Poverty rate of India.<sup>14</sup>

2. **Under Age- Employment:** Many females have to work in hotels officers, industry and shop at immature age. The Problem is that they are unaware of the exploitation that they are facing. Owners or the managers of hotels use to treat as their sex slaves.
3. **Immoral Trafficking in Children & Women:** The biggest factors that increases the prostitution rate. Most of the cases in India. Sometimes family members, Travel agents are involved in immoral trafficking of children. Sometimes the gangsters kidnapped them from their homes and properly trained them in the art of prostitution and when these girls are mature they are sold.

### **SUCCESSFUL MIGRANTS**

1. **Bad Neighbourhood:** “The children who were residing near brothels or accompanying with the immoral persons become so used to seeing sex trade that they come to accept it as normal. The care takers or owners of the brothels haunt these areas for their prey”.
2. **Illegitimate Motherhood:** The women who became pregnant as a result of their liaisons and who cannot get abortion get exposed in society. Nobody wants to marry but everybody wants to enjoy them sexually. Desperately such women usually prefer to become regular prostitutes.

### **EFFECT OF PROSTITUTION**

The effect of prostitution can be seen on societies as well as on the individual one's:

- a. Personal Impact
  - b. Social Impact
- **Personal Impact**

Although the prostitutes are treated as sex slaves, a material for pleasure for someone. The whole life of a prostitute can be summon in to 2 ways. Alienation and exploitation. But if we look on another aspect of this view the industry hugely affects the life of prostitute in some or other way.

1. **Intimidation:** The pimps or brothels keepers use to intimate the female sex workers by kills others to show force. Most of the time they uses weapons and the biggest factors that they use to lies about the police involvement in the trafficking situation.<sup>15</sup>

<sup>14</sup> Source: Data from NSSO

<sup>15</sup> Sharma R.N., Criminology and penology: social disorganization and social problems, surjeet publications, New Delhi, 101-105 (2008)

2. **Emotional Abuse:** Apart from physical abuse prostitutes also suffer from emotional abuse. The pimps or the society humiliates in front of others. The pimps used to play mind games. They make the victim feel guilt and blame for the situation.<sup>16</sup>
3. **Emotional Abuse:** Apart from physical abuse prostitutes also suffer from emotional abuse. The pimps or the society humiliates in front of others. The pimps used to play mind games. They make victim feel guilt and blame for the situation<sup>17</sup>.
4. **Isolation:** The brothels must be kept confined to prevent the rescue of prostitution. They create distrust of police and others. Transfer of victims to multiple location as per the convenience of customers. They never allow the victims to learn English or basic education.<sup>18</sup>
5. **Minimising Denying and Blaming:** They make abuse of situation and denies that anything illegal is occurring. They blame on victim for the trafficking situation.<sup>19</sup>
6. **Sexual Abuse:** Victims are forced to have sex with multiple people in a day. Rape as weapon and means of control. Most of the victims are treated as an object for monetary gain
7. **Using Privilage:**Victims are like a servant, gender roles are defined to make subservient. Sometimes victims are used to control victims. The important papers are destroyed such as their identity cards, birth certificates and other documents.
8. **Economic Abuse:** Debt creates bondage that can never be repaid. Victims are forbids to access to their bank accounts. The pimps or brothel keepers snatch their money for their livelihood.
9. **Coercion and Threats:** They suffer a lot of physical harm and threatens to harm family. The threatens shame the victims to community and report to police immigration.

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<sup>16</sup>“ Sharma R.N., *Criminology and penology: social disorganization and social problems*, surjeet publications, New Delhi, 101-105 (2008)”

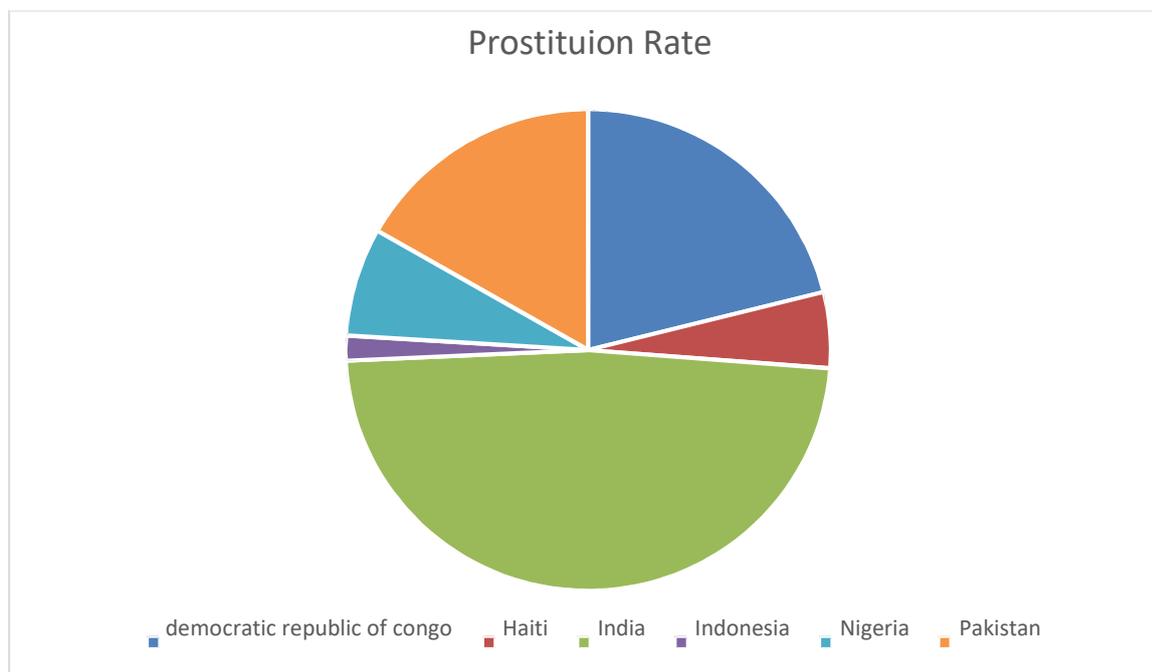
<sup>17</sup> Sharma R.N., *Criminology and penology: social disorganization and social problems*, surjeet publications, New Delhi, 101-105 (2008)

<sup>18</sup> Kumar, *Urban sociology*, 7th ed, publisher lakshmi Narayan Agarwal, Agra, 198-202 (2008)

<sup>19</sup> Kumar, *Urban sociology*, 7th ed, publisher lakshmi Narayan Agarwal, Agra, 198-202 (2008)

## COMPARISON OF PROSTITUTION RATE OF WORLD AND INDIA

In this paper I have tried an attempt to compare the neighbouring countries who are directly or indirectly involved in the illegal practice of prostitution.



### PROSTITUTION DATA OF DIFFERENT COUNTRIES:

In the above graph normally five countries are compared on the basis of their law as we can see India has the highest no. of prostitutes.

#### Numbers of prostitutes

Country	Number of prostitutes Source: UNAIDS 2016 Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Afghanistan	13,000	34,656,032
Albania		2,926,348
Algeria		40,606,052

<sup>20</sup>“ Vlassenbroeck, Julien (18 May 2015). "Plus de 20 000 prostituéessoumises à l'exploitationenBelgique". RTBF Info (in French). Retrieved 13 March 2018.”

<sup>21</sup>“Pem, Damchoe (29 July 2017). "400 to 500 possible sex workers in Bhutan - The Bhutanese". The Bhutanese. Retrieved 10 February 2018”.

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Angola	33,000	28,813,463
Antigua and Barbuda	755	100,963
Argentina	75,000	43,847,430
Armenia	5,600	2,924,816
Australia	21,000	24,125,848
Austria		8,712,137
Azerbaijan	25,000	9,725,376
Bahamas	3,035	391,232
Bahrain		1,425,171
Bangladesh	140,000	162,951,560
Belarus	22,000	9,480,042
Belgium		11,358,379
Benin	15,000	10,872,298
Bhutan		797,765

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Bolivia	31,000	10,887,882
Bosnia and Herzegovina	4,000	3,516,816
Botswana	4,200	2,250,260
Brazil	550,000	207,652,865
Bulgaria	10,000	7,131,494
Burkina Faso	31,000	18,646,433
Burundi	51,000	10,524,117
Cambodia	34,000	15,762,370
Cameroon	110,000	23,439,189
Canada		36,289,822
Cape Verde	1,400	539,560
Central African Republic	782	4,594,621
Chad	1,200	14,452,543
Chile		17,909,754

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
China		1,403,500,365
Colombia	7,200	48,653,419
Comoros	200	795,601
Congo		5,125,821
Costa Rica		4,857,274
Croatia		4,213,265
Cuba	89,000	11,475,982
Cyprus		1,170,125
Czech Republic	13,000	10,61 0,947
Democratic Republic of the Congo	2,900,000	78,736,153
Denmark		5,711,870
Djibouti	2,900	942,333
Dominican Republic		10,648,791

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
East Timor	1,700	1,268,671
Ecuador	34,000	16,385,068
Egypt	23,000	95,688,681
El Salvador	20,000	6,344,722
Equatorial Guinea	5,800	1,221,490
Eritrea	1,600	4,954,645
Estonia	1,000	1,312,442
Ethiopia	19,000	102,403,196
Federated States of Micronesia	290	104,937
Fiji	857	898,760
Finland		5,503,132
France		64,720,690
Gabon	368	1,979,786
Gambia	3,100	2,038,501

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Georgia	6,500	3,925,405
Germany		81,914,672
Ghana	52,000	28,206,728
Greece		11,183,716
Guatemala	26,000	16,582,469
Guinea	8,400	12,395,924
Guinea-Bissau	3,100	1,815,698
Guyana	5,300	773,303
Haiti	70,000	10,847,334
Honduras	23,000	9,112,867
Hungary		9,753,281
India	660,000	1,324,171,354
Indonesia	230,000	261,115,456
Iran		80,277,428

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Iraq		37,202,572
Ireland	1,000	4,726,078
Israel		8,191,828
Italy		59,429,938
Ivory Coast	9,200	23,695,919
Jamaica	19,000	2,881,355
Japan		127,748,513
Jordan		9,455,802
Kazakhstan	19,000	17,987,736
Kenya	130,000	48,461,567
Kiribati	114	114,395
Kuwait		4,052,584
Kyrgyzstan	7,100	5,955,734
Laos	13,000	6,758,353

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Latvia		1,970,530
Lebanon	4,200	6,006,668
Lesotho	6,300	2,203,821
Liberia	1,800	4,613,823
Libya		6,293,253
Lithuania		2,908,249
Luxembourg		575,747
Macedonia	3,600	2,081,206
Madagascar	170,000	24,894,551
Malawi	9,300	18,091,575
Malaysia	21,000	31,187,265
Maldives		427,756
Mali	36,000	17,994,837
Marshall Islands	250	53,066

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Mauritania	315	4,301,018
Mauritius	6,200	1,262,132
Mexico	240,000	127,540,423
Moldova	12,000	4,059,608
Mongolia	1,300	3,027,398
Morocco	75,000	35,276,786
Mozambique	14,000	28,829,476
Myanmar	66,000	52,885,223
Namibia	8,100	2,479,713
Nepal	67,000	28,982,771
Netherlands	25,000	16,987,330
New Zealand		4,660,833
Nicaragua	18,000	6,149,928
Niger	47,000	20,672,987

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Nigeria	100,000	185,989,640
North Korea		25,368,620
Norway		5,254,694
Oman		4,424,762
Pakistan	230,000	193,203,476
Palestine		4,790,705
Panama	5,200	4,034,119
Papua New Guinea		8,084,991
Paraguay	3,400	6,725,308
Peru	67,000	31,773,839
Philippines	150,000	103,320,222
Poland		38,224,410
Portugal		10,371,627
Qatar		2,569,804

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Romania		19,778,083
Russia		143,964,513
Rwanda	12,000	11,917,508
Samoa	400	195,125
Saudi Arabia		32,275,687
Senegal	21,000	15,411,614
Serbia	3,900	8,820,083
Seychelles	586	94,228
Sierra Leone	240,000	7,396,190
Singapore		5,622,455
Slovakia		5,444,218
Slovenia		2,077,862
Somalia	11,000	14,317,996
South Africa	24,000	56,015,473

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
South Korea		50,791,919
South Sudan	5,000	12,230,730
Spain	70,000	46,347,576
Sri Lanka	14,000	20,798,492
Sudan	210,000	39,578,828
Suriname	2,200	558,368
Swaziland	4,000	1,343,098
Sweden		9,837,533
Switzerland	20,000	8,401,739
Syria	25,000	18,430,453
São Tomé and Príncipe	89	199,910
Taiwan		23,556,706
Tajikistan	14,000	8,734,951
Tanzania	160,000	55,572,201

### Numbers of prostitutes

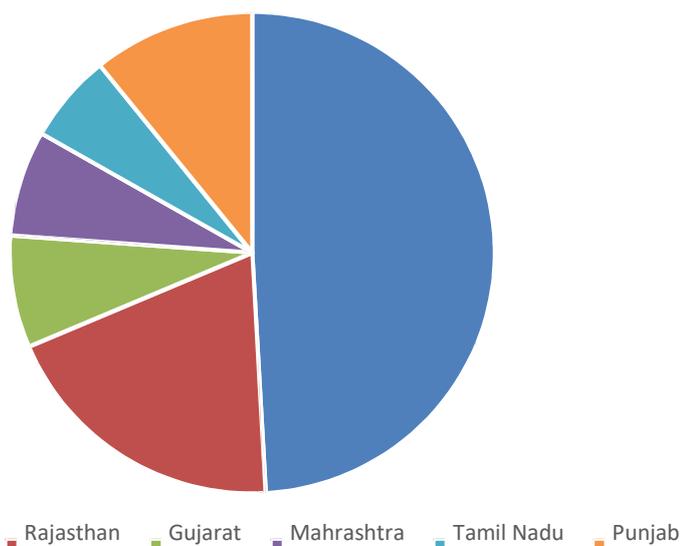
Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Thailand	150,000	68,863,514
Togo	10,000	7,606,374
Tonga	1,000	107,122
Tunisia	25,000	11,403,248
Turkey		79,512,426
Turkmenistan		5,662,544
Tuvalu	10	11,097
Uganda		41,487,965
Ukraine	80,000	44,438,625
United Arab Emirates		9,269,612
United Kingdom		65,788,574
United States		322,179,605
Uruguay	8,200	3,444,006
Uzbekistan	22,000	31,446,795

### Numbers of prostitutes

Country	Number of prostitutes Source: <b>UNAIDS 2016</b> Sex Workers: Size Estimates <sup>20</sup>	Population <sup>21</sup>
Vanuatu	2,000	270,402
Venezuela		31,568,179
Vietnam	72,000	94,569,072
Yemen	54,000	27,584,213
Zambia	9,300	16,591,390
Zimbabwe		16,150,362

### ProstitutionRate of India On basis of States.

Rate of Prostitution as per some educated state



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**National Capital i.e., Delhi had decreased the rate from 87 to 66**

### Some of the case reports:

<sup>22</sup> Source: Data report of NCBI (2012)

In 2011, India ratified the Palermo Protocol to prevent, suppress and punish trafficking in persons, especially women and children. So it has an obligation to implement it domestically. The definition says that human beings are trafficked for different types of exploitation, which at a minimum includes the exploitation of the prostitution of others, sexual exploitation found labour and begging.

There are some cases, the cases of studies is based upon the editorial of the editors.

1. There was a lady after the day after arrest of Gurjit Kaur, the conduit who allegedly altered 19 year old Simranjit Kaur of Pandoori Gola Village in Tarn Taran district in to the network of travel agent, was duped there as a commercial sex worker in Oman<sup>23</sup>
2. Another story of a lady Simran Kaur told that she was duped along with her 17 girls from Punjab was sold to other countries for selling them as a sex workers.<sup>24</sup>
3. A 60 year old women from ferozpur had claimed there are around 30 women from Punjab who are forced to work as prostitutes in Oman.<sup>25</sup>
4. Recently 8,000 cases of Human Trafficking. Almost 23,000 victims were rescued.<sup>26</sup>

## PREVAILING LAWS ON HUMAN TRAFFICKING

**International Concerns:** As per “*the international cooperation to end the traffic in women for the purpose of prostitution began in 1899. In 1921, League of Nations appointed a committee, the committee on the Immoral Traffic In Women and Children*”. There is a law which prevails internationally.

Universal declaration of Human Rights, which says that no one shall be in all their forms.<sup>27</sup> Article 4(2) of the International Convent on Civil and Political Rights declared the right to be free from slavery.<sup>28</sup>

Article 8: Non degradable right: It is a right that has acquired the status of jus cogens under customary international law.<sup>29</sup> While article 8(1) and (2) respectively states that no one shall be held in servitude.<sup>30</sup>

**Indian Law Concerns:** On the part of Indian, There are many laws which are prevailing to keep strict ban on practice of prostitution and immoral trafficking of Human Beings

**The Constitution of India 1947:** The Indian Constitution prohibits trafficking in persons and guarantees many of the internationally recognised Human Rights norms.<sup>31</sup> Some of them are:

<sup>23</sup> The Hindustan Editorial Report 2002

<sup>24</sup> The Hindustan Editorial Report 2002

<sup>25</sup> The Hindustan Editorial Report 2000

<sup>26</sup> Source: National Crime Records Bureau Data

<sup>27</sup> See contemporary slavery, Supra note 14 at 497 IMDAR consultation with UN/IGOS Trafficking and the Global Sex Industry at, 9 June 21-22, 1999 available at <http://www.imadr.org/project/petw.pdf>.

<sup>28</sup> International Conventional civil and political rights art4. Dec16,1966,999. U.N.T.s. 171 [here in after ICCPR]. India acceded to this covenant on April 10,1979

<sup>29</sup> Universal Declaration of Human Rights art4 GA Res 217A, at 71 U.N. GAOR,3d sess, 1<sup>st</sup>plen mtg, U.N.Doc. A/810 (Dec.12,1948) [herein after UDHR]

<sup>30</sup> ICCPR article 8

<sup>31</sup> The Constitution Of India Article 23 Part III Fundamental Rights

1. Right to life and personal liberty.<sup>32</sup>: No person shall be deprived of his life or personal liberty except according to procedure established by law.
2. Right to Equality<sup>33</sup>: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
3. Prohibition of traffic in human beings and forced labour<sup>34</sup>:(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the state from imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

**The Indian Penal Code 1860:** Apart from the Indian Constitution, The Indian Penal Code also prohibits the practice of prostitution as it contains the sections. 370A, 371, 372 and 373. It includes the punishment and imprisonment if a person trafficked a minor for the purpose of sexual activity,<sup>35</sup> While the section 372 and section 373 deals with the punishment of selling and buyer of minor for the purpose of prostitution the person is liable for the imprisonment of 10 years and shall also be liable to fine.<sup>36</sup> All these laws are directly applicable to brothel owners, brothel staff and customers when they engage in sexual intercourse with children and minors, with or without their consent, or with those women who are kept in brothels under force or threat.

### **DOMESTIC LEGISLATION SUBSEQUENT TO THE TRAFFICKING CONVENTION:**

#### **S.I.T.A. and I.T.P.A. (1986)**

Although the Indian Constitution and I.P.C. contains laws to prevent the prostitution. But to give effect to these constitutional provisions and to provide coherence with the practice of Human Trafficking and prostitution India enacted a law **SITA (The Suppression of Immoral Traffic in Women and Girls Act, 1956)**, later it was named as **ITPA (Immoral Trafficking Prevention Act 1986)**. Under this act Section 1 contains provisions” to punish any person who to gratify the passions of another person, even with the consent of that person. (2) Exploits the prostitution of another person even with the consent of that person.<sup>37</sup> ~~Under Section 2 of the convention further “agree to punish any person~~ who: 1. Keeps or manages, or knowingly finances or takes part in the financing of a brothel; knowingly lets or rents a building or other place or any part there for the purpose of the prostitution of others.<sup>38</sup>

<sup>32</sup> The Constitution Of India Article 21 Part III Fundamental Rights

<sup>33</sup> The Constitution Of India Article 14, Part III Fundamental Rights

<sup>34</sup> The Constitution Of India Article 23, Part III Fundamental Rights

<sup>35</sup> The Indian Penal Code 1860, Section 370-A

<sup>36</sup> The Indian Penal Code 1860 Section 372, 373

<sup>37</sup> ITPA 1956 Section 1

<sup>38</sup> ITPA 1956 Section 2

## CASE STUDIES

### **1. Kaushailya V. State of Others**<sup>39</sup>

In a 1963 case, Kaushailya V. State, the Allahabad High Court had struck down the Section 20 of S.I.T.A. on the grounds that it infringed fundamental rights granted by the constitution.<sup>40</sup> Although the High Court did not look in to the fundamental issues of prostitution or the various interests involved in it. Justice W. Broome declared that if a profession or trade that is an “inherently immoral activity like prostitution”, then it is open to the state to impose a total ban; and no one can claim any fundamental right to carry on such an activity.

### **2. Begum V. State of Others**<sup>41</sup>: “In the appeal of Begum V. State, Judge Patel touched the central nerve of the problem of prostitution in India. In the beginning of his Judgement, Justice Patel hints that instead of being insensitive towards victims of prostitution, the state should be looking at options to provide them alternatives.

However, the Supreme Court did not analyse or try to refute the arguments given by the High Courts in a logical manner instead they quashed the decisions and wrongly upheld the law. The effect of this was to add to the discrimination and forceful suppression of the women and girls in prostitution. This reveals a lack of humanity on the part of the Supreme Court, as the High Court pointed out the arbitrariness of the removal provisions, which not only violates A-14 and A-19(1)(d) and (e) of the Constitution, but also Article 21 which protects the right to life and personal liberty of a person.”<sup>42</sup>

### **3. Gaurav Jain V. Union of India**<sup>43</sup>: “In another recent and rather bizarre case, Gaurav Jain v. Union of India and others<sup>44</sup>, an overly enthusiastic Justice of the Supreme Court from the Division Bench passed an order singly, in defiance of the Constitution which requires a majority vote before judgment is issued<sup>45</sup>. The order stated that the prostitutes were to be rehabilitated through self-employment schemes, and that the children should be provided with “adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or State Government.<sup>46</sup>” This decision was later to be overruled by the three justice bench of the Supreme Court<sup>47</sup>. In this case, Justice K. Ramaswamy, after discussing various facets of prostitution in India, issued an order under Article 142 of the Constitution<sup>48</sup>.

<sup>39</sup> A.I.R. 1963 All 71, 1963, Cril. CJ 138

<sup>40</sup> The Constitution of India, 1947 Article : 16

<sup>41</sup> A.I.R. 1963 All 71, 1963 Bom. 17

<sup>42</sup> The Constitution of India 1950 Article: 14, article19 (1) (d), article19 (1) & article 21.

<sup>43</sup> A.I.R. 1997 8 S.C.C. 114

<sup>44</sup> See generally Gaurav Jain I v Union of India, (1997) 8 S.C.C. 114 [hereinafter Gaurav Jain I ].

<sup>45</sup> INDIA CONST. art. 145 § 5

<sup>46</sup> See generally Gaurav Jain I, (1997) 8 S.C.C. 114.

<sup>47</sup> Gaurav Jain II v Union of India and others, 1998, 4 S.C.C. 277.

<sup>48</sup> See generally Gaurav Jain I, (1997) 8 S.C.C. 114; see also INDIA CONST.

According to Article 142, any order or decree passed by the Supreme Court shall have force of law and “shall be enforceable throughout the territory of India.<sup>49</sup>” However, the power of Court under Article 142 is subject to Article 145(5) of the Constitution, under which “no judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case.<sup>50</sup>” In a Division Bench when two justices differ on an opinion, neither opinion forms the majority opinion, and in such a case the matter is to be referred to the Chief Justice, who then places the matter before a higher bench to resolve the disputed matter<sup>51</sup>. The Deep prejudice and discriminatory attitude of the justices against victims of prostitution have prompted them to play an indifferent role.”

## **REMEDIAL MEASURES**

**Sex Education:** The two important pillars of the society which are invented by the god to make the society in civilised form : Men and Women. The government should take step to make sex education as a compulsory subject. The illiterate person should be making aware of the venereal disease and their impact on regular basis of their life.

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**Employment opportunities for Women:** Due to poverty some of the unsupported women who are either divorced or widow and do not have any family support they indulge in these practices. The government or the non-profit organisation should provide a rehabilitation centre to these women with the employment.

**Abolition of Certain Social Customs:** Widow Remarriage should be encouraged. With Window Remarriage Act window became free to marry. Unfortunately the restriction of Society. On widow marriage has perpetuated. The system of dowry which debarred many girls from getting married should be discouraged wholeheartedly in practice. There is an urgent need to change the society’s attitude towards the widow marriage, dowry and Devdasi.

**Double Standards of morality has to be discouraged:** The notation of double standards of morality should be discouraged. It is in reality impossible to have double standard morally in matters of sex for without male chastity, female chastity is impossible. As a result of a double standard of morality which demands ds woman to be chaste, and expects man to be irregular and there developed tolerated vice”.<sup>53</sup>

**Publicity and propaganda:** Public should be enlightened on the legislations and if any such nuisances in the surrounding areas are found then, immediately one should come forward to report this event. Besides, films stimulating sex interest and pornographic literature should be discouraged. The present younger generation has a free access to Internet. In internet there are many sites are there that are capable of

art. 142.

<sup>49</sup>INDIA CONST. art. 142, 145 §5.

<sup>50</sup> INDIA CONST. art. 145 §5.

<sup>51</sup>Supreme Court Rules, 1996, Part I, Order VII, Rules 1, 2

<sup>52</sup><http://ken-foundation-awareness2.blogspot.com/p/stop-prostitution.html>

<sup>53</sup><https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2287067/>

bringing down the moral standards among youngsters, hence, parents should be cautious about the internet habits of their children<sup>54</sup>.

**Establishment of Venereal Disease Clinics:** Special Venereal Disease Clinics should be opened to treat the victims of venereal diseases. Diagnostic facilities should be provided to vulnerable groups like prostitutes and lorry drivers.

**Bulletins:** Pamphlets should be issued to create public awareness about the flesh trade. Public should be advised to seek treatment immediately if they are suffering from such venereal diseases. Besides, there should be free blood test examination and treatment of all antenatal cases to ensure the birth of normal, healthy children free from all congenital blemishes.

**Advertisements:** A government should publish the advertisement on news and media channels to make general awareness of Human Rights and it should focus on the illegality of prostitution.

### **SEX ROBOTS: ALTERNATIVE OPTION**

**Sex robots** or **sexbots** are hypothetical [anthropomorphic robot sex dolls](#).<sup>55</sup> As of 2018, although elaborately instrumented sex dolls have been created by a number of inventors, no fully functioning<sup>[vague]</sup> sex robots exist. There is controversy as to whether developing them would be [morally](#) justifiable.

By 1968, sex dolls were first advertised in pornographic magazines and became available for purchase via mail. These sex dolls were inflatable with air; consisting of penetration areas at the mouth, vagina, and anus. However, due to their inflatable nature, these dolls were subject to deterioration and were not sustainable for constant use. By the 1970's, materials such as latex and silicone were widely used in the manufacturing of sex dolls to facilitate enhanced durability and a greater resemblance to a human<sup>56</sup>.

The realism of sex robots greatly accelerated in the late 1990s. In 1997, Matt McMullen began constructing lifelike, tin-cure silicon mannequins called RealDolls that were 'realistic, posable, and life-sized'. McMullen received much criticism about the anatomical correctness of his mannequins; using this as motivation to create a more enhanced version. In 2009, McMullen switched to using platinum material, instead of tin-cure silicon, to further enhance the durability and lifelike nature of the doll. Consequently, all other sex doll manufacturers have followed suit. Many manufacturers, including McMullen, believed that companionship is a critical part of the sex bot dynamic and that incorporating AI into them is the next step.

<sup>54</sup><https://www.nij.gov/topics/crime/prostitution/pages/welcome.aspx>

<sup>55</sup>**Sex robots** or **sexbots** are hypothetical [anthropomorphic robot sex dolls](#).<sup>[1]</sup> As of 2018, although elaborately instrumented sex dolls have been created by a number of inventors, no fully functioning<sup>[vague]</sup> sex robots exist. There is controversy as to whether developing them would be [morally](#) justifiable

<sup>56</sup>Ferguson, Anthony. *The Sex Doll: A History*. McFarland, 2010. p 31. [ISBN 978-0-7864-4794-7](#)

## IN POPULAR CULTURE

Intimacy with robots, artificial intelligence, and other human-constructed items are saturated in the media landscape. They provoke questions about what is love, why people crave the need for affection, and challenge pre-existing beliefs of what it means to be human<sup>57</sup>.

Originally published in 1886, the novel Tomorrow's Eve centers around a fictionalized Edison, who creates a female robot for his lonely patron. While the robot's beauty is apparent, the robot lacks the emotional capabilities to fulfill that hole in his heart<sup>58</sup>.

The film Ex Machina questions common notions about consciousness. A sentient robot is created with a violent outcome, rebelling against her creators. Throughout the story, Ex Machina appeals to empathize with the robot as a victim of a man with a god complex. Responding to the protagonist's uncertainty about her fate if she does not live up to her creator's standards, the robot, Ava, responds "Why is it up to anyone?" about whether or not she lives. This questions the audience's underlying belief about whether or not a robot is entitled to a free life like other conscious beings<sup>59</sup>.

The film Lars and the Real Girl explores the idea of a romantic attachment to artificial human-like items. Ultimately, the film concludes with the protagonist "murdering" his sex doll lover in a river: emphasizing the projection of one's idealized lover onto an inanimate object<sup>60</sup>.

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<sup>57</sup>Wiseman, Eva. "Sex, Love and Robots: Is This the End of Intimacy?" *The Guardian*, Guardian Media Group, 13 Dec. 2015, [www.theguardian.com/technology/2015/dec/13/sex-love-and-robots-the-end-of-intimacy](http://www.theguardian.com/technology/2015/dec/13/sex-love-and-robots-the-end-of-intimacy). DOA: February 25, 2018

<sup>58</sup>De Fren, Allison. "The Anatomical Gaze in Tomorrow's Eve." *Science Fiction Studies*, vol. 36, no. 2, 2009, pp. 235–265. *JSTOR*, JSTOR, [www.jstor.org/stable/40649958](http://www.jstor.org/stable/40649958)

<sup>59</sup>Garland, Alex, director. *Ex Machina*. Universal Studios, 2015. DOA February 27, 2018

<sup>60</sup>Wiseman, Eva. "Sex, Love and Robots: Is This the End of Intimacy?" *The Guardian*, Guardian Media Group, 13 Dec. 2015, [www.theguardian.com/technology/2015/dec/13/sex-love-and-robots-the-end-of-intimacy](http://www.theguardian.com/technology/2015/dec/13/sex-love-and-robots-the-end-of-intimacy). DOA: February 25, 2018

## CONCLUSION

The purpose of this article is to show the dark side of the Judiciary. From the early 1960s the highest Court has worked quite discriminability and has been overly protective of all people participating in prostitution except for the victims. My overall conclusion after writing this paper is that the Supreme Court should lead the nation in taking action with sensitivity and concern towards victims. It should protect the various rights of the trafficked women and girls, such as freedom of movement, the right not to be discriminated against or stigmatized, and the right to essential services. The Supreme Court should effectively direct the implementation of existing laws by upholding constitutional norms, and recommend changes if existing laws are inadequate. The poorest of the poor and the weakest of the weak must also get the justice that is their due. It is important to realize that "economic hardship is a form of psychological stress. And all mental stress of whatever kind is one of the commonest precipitation factors in abnormal conduct" Hence, The efforts should be made not only to alleviate every variety of psychological stress, but to provide relief to the children with the love, affection, proper knowledge of all aspects of life' and sense of security and belongingness that is necessary for their normal life, we cannot expect them to lead normal life. This calls for upliftment of the entire problem of child care and child upbringing.

