

## RED LIGHT AREAS: A MATTER OF DELIGHT OR THE BRUSHED ASIDE PLIGHTS?

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### ABSTRACT

*'Prostitution' and 'Sex workers' are nothing new to the society but the way society sees the one engaged in such acts is something which is often ignored. Dating back to the historical period of Chanakya till tomorrow, this phenomenon has reserved its place in society. As it happens with every other socio-legal issue challenging the age-old ideology of the people, the 'sex workers' also face a lot of social stigmas as society has divided opinions. For some, it is an evil while for some it is merely a way of earning a livelihood.*

*There arises a lot of questions like, why don't these socially stigmatized people just stop getting engaged in such acts? If they are doing it as per their will then what's the problem? What about those who are forcibly engaged in such acts? What about the health and other benefits of this population? Are there any laws governing their act? Like this, the series goes on and on. This article will attempt to answer these questions with some suggestions to work on at this point in time. The primary objective of the article is to brief the reader about the current situation of prostitution and prostitutes in the country.*

**KEYWORDS:** *Red Light Areas, Gigolo, Prostitutes, ITPA, Constitution*

### 1. INTRODUCTION

*Why it is like your job is a hobnob  
But their sustenance, a matter of indecent prob?  
Lady of Pleasure! Lady of night!  
These scarlet women and gigolos have their own plights.  
Plights that are seldom ignited  
Plights that are slowly becoming trite  
Plights that are not gender-specific  
As both men and women are subjected to this mimic  
**Now**, this matter cannot be brushed aside.*

***NOW**, it's a matter of their **rights**.  
Calling them whores and treating them with abhorrence  
Is no longer a matter to ignorance.  
It's time to explore; it's time to dive into the core.  
A war has paved its way.  
Waiting for a new day!*

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*The day when Justice will be upheld  
And injustice will knell!*

Just because she is a “Prostitute”, she is regarded as impure, disrespectful, a pleasure-seeking machine, a call girl having no civility and esteem and just a human who is anyways, subjected to inhuman behavior. But who are these people who are giving them these so-called tags? What authority do they have? Are they empowered do so? Well, as far as the grundnorm of the Indian Legal System i.e., the Constitution of India is concerned, it gives no such power or right any person to insult or defame another individual. “Prostitution” is defined as ‘the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly.’<sup>1</sup> The Immoral Trafficking Prevention Act, 1956 challenges the age-old notion of the population regarding prostitution. It states that ‘prostitution’ in itself is ‘legal’ but running a ‘brothel’ is not legal. A “brothel” as defined under the act includes any house, room [conveyance] or place or any portion of any house, room [conveyance] or place, which is used for purposes [of sexual exploitation or abuse] for the gain of another person or for the mutual gain of two or more prostitutes.<sup>2</sup> These connotes as the “Red Light Areas” in the common parlance. Some of the key red-light areas in India are GB Road in New Delhi, Kamathipura in Mumbai, and Sonagachi in Kolkata. Sonagachi is the biggest one all across Asia.

Apart from the legal aspect, there exists this ungracious practice in our society, i.e., the multiplicity of people at every corner just engaged in the unpaid job of judging another individual based on his/her appearance, caste, colour, creed, sex, and here, the most important one, the occupation of the person. Everybody, out there, simply says ‘Oh, these ladies have no faith, no recognition and are just a source of pleasure by shamelessly selling their bodies’. Now, just think what would a normal human do after listening to such derogatory and scurrilous remarks? Most probably, a befitting reply will be thrown. But unfortunately, these ladies/gents give no such response. Because we see what they are doing but what about the reason behind doing so? Nobody wants to know that. As the Hon’ble justice, V.R. Krishna Iyer said –

***“No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free — free to live without sale of their young flesh to lascivious wealth or commercialising their luscious figures....”<sup>3</sup>***

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<sup>1</sup> The Immoral Traffic (Prevention) Act, 1956, S. 2(f).

<sup>2</sup> The Immoral Traffic (Prevention) Act, 1956, S. 2(a).

<sup>3</sup> Ori HC, “Law makers have missed opportunity to prescribe stringent punishment; a yawning gap between law and its enforcement”: Court while feeling constrained to grant bail to

### **1.1.OBJECTIVES OF STUDY**

This article attempts to bring forth certain plights of the sex workers in the country by throwing light upon the various socio-legal angles to the act of prostitution dating back to historical instances. The objective of the write-up is to give the readers an overview of the ongoing plights of people engaged in prostitution or sex work.

### **2. RESEARCH METHODOLOGY**

The Doctrinal method of research was used primarily focusing on reliable and approved internet sources. After referring to such sources, the article is a personal opinionated analysis of the topic.

### **3. CONTENT AND DATA ANALYSIS**

#### **3.1.ARTHSHAstra: THE UNSUNG HISTORY OF ‘DEVADASIS’**

No matter how much a nation develops, its history holds an unmatched significance for its progress. Prostitution is not a newfound concept as it dates back to the writing of Kautilya. The great philosopher in his thought-provoking book, ‘Arthshastra’ has given various accounts of prostitution being practised as a vocation by women. The ‘devadasi pratha’<sup>4</sup> which was declared illegal in 1924 by the Indian government, is still practiced in some areas like Karnataka. Earlier the pratha was practised in Maharashtra, Andhra Pradesh and Telangana. Under this pratha, young girls between the age group of 5-7 years were devoted to the service of goddess Yellamma as her servant. They were majorly responsible for taking care of the deity but with time these girls were used for the purpose of satisfying the sexual pleasure of the temple priest and other men.

It has been found that some of the people engaged in this profession do this willingly without finding it offensive. But this cannot deny the harsh and cruel social stigma that the remaining lot of these ‘sex workers’ face while performing their vocation.

#### **3.2. THE ALARMING NUMBERS**

In a news report by India today, it was stated that the five southern states of Andhra Pradesh, Karnataka, Tamil Nadu, Kerala, and Telangana account for more than half of the 8.25 lakh identified female sex workers (FSW) in India.

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*accused involved in sex trafficking | SCC Blog, SCC Blog, <https://www.sconline.com/blog/post/2020/07/03/ori-hc-law-makers-have-missed-opportunity-to-prescribe-stringent-punishment-a-yawning-gap-between-law-and-its-enforcement-court-while-feeling-constrained-to-grant-bail-to-accused-involved-in-s/> (last visited Nov. 6, 2023).*

<sup>4</sup> *DEVADASI SYSTEM IN INDIA, IILS BLOG, <https://www.iilsindia.com/blogs/devadasi-system-india/> (last visited Sept. 22, 2023).*

Karnataka has 1.2 lakh sex workers, whereas Andhra Pradesh has 1.33 lakh. There are 22,060 FSWs in Uttar Pradesh and 46,787 in New Delhi.<sup>5</sup> When it comes to statistical data depicting prostitution, The number of male and female sex workers was revealed in a Kerala State Aids Control Society (KSACS) study, shocking this formerly conservative state. 13,331 men and 17,000 women work as sex workers. Additionally rising is the number of migrant sex workers.<sup>6</sup>

Also, approximately 1 in 100 (0.9%) Indian men reported past-year Commercial Sex Workers (CSW) contact; over half of such men reported inconsistent condom use with CSWs. CSW contact was most common among men ages 15-24 (3.6%) and never-married men (9.9%).<sup>7</sup> Around 20,000 women and child trafficking for sex abuse has increased by 25% since 2015, according to government data. According to statistics from the Ministry of Women and Child Development, there were 19,223 women and children who were trafficked by criminals in 2016. This number is 10% more than in 2015.<sup>8</sup>

At a time when everyone out there is fighting for gender egalitarianism and uniformity and fair treatment of all, very few of us know that ‘men too’ are subjected to this havoc of Prostitution. They are addressed as “gigolo”. This brings us to the main reason people going in this profession i.e., the indigence and the vicious web of poverty and some are just ‘forced’. The issue is more or less the same as that of female prostitution like the continuous hanging sword of contact with sexually transmitted diseases like HIV/AIDS since the concept of “CONTRACPTIVES” is not paid heed.

#### **4. ARGUMENTS AND DISCUSSION**

##### **4.1.THE DILEMMA BETWEEN PROSTITUTION BEING A ‘PROFESSION’ OR A ‘BUSINESS’**

To resolve this dilemma, let us dive into one of the most essential requirements for a vocation to qualify as a profession i.e., it should “require some particular skillset”. Since ‘prostitution’ requires its own skills and talent and not everyone

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<sup>5</sup> *SC wants dignity for sex workers: Where is prostitution most prevalent in India?*, INDIA TODAY, <https://www.indiatoday.in/diu/story/sex-workers-india-most-prevalent-in-southern-states-1955146-2022-05-27> (last visited Sept. 22, 2023).

<sup>6</sup> *13,331 male sex workers in Kerala*, DECCAN CHRONICLE, <https://www.deccanchronicle.com/nation/current-affairs/201019/13331-male-sex-workers-in-kerala.html> (last visited Sept. 22, 2023).

<sup>7</sup> *Indian Men's Use of Commercial Sex Workers: Prevalence,...* : JAIDS Journal of Acquired Immune Deficiency Syndromes, LWW, [https://journals.lww.com/jaids/Fulltext/2010/02010/Indian\\_Men\\_s\\_Use\\_of\\_Commercial\\_Sex\\_Workers\\_.13.aspx](https://journals.lww.com/jaids/Fulltext/2010/02010/Indian_Men_s_Use_of_Commercial_Sex_Workers_.13.aspx) (last visited Sept. 22, 2023).

<sup>8</sup> *CHILD PROSTITUTION IN INDIA - JLRJS*, JLRJS, <https://jlrjs.com/child-prostitution-in-india/> (last visited Sept. 22, 2023).

can do this, thus, it can be put under the category of profession. At the same time, if this act is done via way of brothels, then it will be considered illegal and will attract the provisions of Article 19 and the ITPA among others.

Now, the area of major conflict is the decision regarding putting a particular matter under the preview of “Obscenity and being against public order and morality”. The matter of ‘Obscenity’ has been a matter of great concern and controversy. Earlier the “Hicklin Test” was applied to check whether a particular thing falls into the obscene category or not. This test was laid down in the case of *Regina vs. Hicklin*<sup>9</sup> according to this test, Obscenity is the question of whether the allegedly obscene material has the potential to deprave and corrupt people whose minds are susceptible to such immoral influences and into whose hands a publication of this nature may fall.

Being a foreign judgment, it only has a persuasive impact on Indian courts and cannot have a binding and authoritative impact. Also, the Hon’ble Supreme Court while striking down this test observed that the decisions in such cases must be taken keeping in mind the contemporary national standards and not that of a group of sensitive persons. Thus, giving preference to the more adaptive Community Standards test.<sup>10</sup>

#### **4.2.THE LEGAL ANGLE**

Although there are various rules and regulation at both national and international level which considered and related to prostitution, there is still an urgent need for a proper implementation mechanism. Particularly the ITPA provides for a full-fledged mechanism for the check and balance of these activities but lacks proper execution. Some of the key laws taking account of this domain are:

- The Constitution of India, 1950
- The Indian Penal Code, 1860
- The Criminal Procedure Code, 1973
- Suppression of Immoral Trafficking in Women & Girls Act, 1956 [SITA]
- The Immoral Trafficking Prevention Act, 1956 [ITPA]
- The Juvenile Justice (Care & Protection of Children) Act, 2000
- The Information Technology Act, 2000
- Indecent Representation of Women (Prevention) Act, 1986
- End of Child Prostitution, Child Pornography, & Trafficking of Children for Sexual Purposes (ECRAT)

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<sup>9</sup> *Regina v. Hicklin* (1868) L.R.3 Q.B. 360.

<sup>10</sup> *Aveek Sarkar And Ors. vs State of West Bengal and Anr.* (2005) 2 CHN 694.

- and The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

When deciding how wide a piece of legislation should be, judges play a crucial role. This is an important position since it can address any potential legal loopholes. For a better grasp of the rights and limitations of sex workers, we'll go over some of the most well-known cases below.

As far as the basic fundamental right is concerned, this issue attracts the provisions of Article 19<sup>11</sup> of the Constitution of India which lays down provisions regarding the 'Protection of certain rights regarding freedom of speech, etc. The Article provides that all the citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.' Although the article itself imposes some restrictions upon the rights granted under clause (1), such as prohibition on any occupation, trade or business wherein the public morality is hampered. The overall objective of the provision is to uphold the public interest, law and order and decency in the society. The prohibition of a fundamental right to engage in professional or commercial activities is considered unreasonable if it is exercised not in the public interest but in taking into account the sensitivities and feelings of a part of the community.<sup>12</sup> Now, if we consider this last statement then it becomes quite crystal clear that prohibiting prostitution solely upon the notion that it imparts a bad impact on the feeling of the population while challenging their pre-conceived notions, would be a breach of the fundamental rights of the people engaged in this profession.

This was further clarified by the Bombay High Court stating that the law does not criminalize the act of the sex workers, instead, it puts restrictions and penal provisions upon the support system which facilitates prostitution like the sexual exploitation for commercial purposes, such as pimping, recruitment or seduction in public places and operating a brothel.<sup>13</sup>

In the *Budhadev Karmaskar vs State of West Bengal*<sup>14</sup> case. In addition to declaring that the prostitutes were human beings with a right to a dignified existence under Article 21, the court also found the appellant guilty. In order to provide sex workers with an alternative source of income to selling their bodies,

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<sup>11</sup> Constitution of India, 1950, Art. 19.

<sup>12</sup> *PROSTITUTION IN INDIA AND ITS LEGALITY - Prime Legal*, PRIMELEGAL, [https://primelegal.in/2023/03/06/prostitution-in-india-and-its-legality/#:~:text=THE%20IMMORAL%20TRAFFIC%20\(PREVENTION\)%20ACT,into%20sexual%20activities%20is%20illegal](https://primelegal.in/2023/03/06/prostitution-in-india-and-its-legality/#:~:text=THE%20IMMORAL%20TRAFFIC%20(PREVENTION)%20ACT,into%20sexual%20activities%20is%20illegal) (last visited Sept. 22, 2023).

<sup>13</sup> *Kajal Mukesh Singh and Ors vs The State of Maharashtra* (2020) criminal writ petition no. 6065 OF 2019.

<sup>14</sup> *Budhadev Karmaskar vs State of West Bengal* CRIMINAL APPEAL NO. 135 OF 2010.

it also mandated that the government create rehabilitation schemes that include vocational training. Additionally, it was argued that rather than viewing prostitutes as less than human, people should be sympathetic to their predicament because most women enter this industry out of necessity rather than choice.

A number of prostitutes had to be removed from their residences in the *Kaushalya v. State of Uttar Pradesh* case in order to preserve the decorum of Kanpur. According to the Allahabad High Court of Judicature, the respondents' fundamental rights under Article 14<sup>15</sup> and subclauses (d) and (e) of Article 19(1)<sup>16</sup> of the Constitution were breached by Section 20<sup>17</sup> of the Act. Since there was a clear line between a prostitute and someone causing a nuisance, the Act was deemed to be constitutionally valid. The Act also aligns with its purpose, which is to uphold decorum and order in society. The Bombay High Court ruled in *Kajal Mukesh Singh and Ors vs The State of Maharashtra*<sup>18</sup> that prostitution is not illegal under the Immoral Traffic (Prevention) Act of 1956, that an adult woman has the right to select her career, and that she cannot be imprisoned against her will. Three sex workers who were housed in prisons were released by the court.

#### **4.2.1. KEY HIGHLIGHTS OF THE IMMORAL TRAFFICKING (PREVENTION) ACT, 1956**

The United Nations International Convention for the "Suppression of Women in Traffic in Persons and of the Exploitation in Others" was signed by India in New York on May 9, 1950, and the act was created to combat the immoral trafficking of women and children. This legislation aims to stop immoral trafficking and prostitution in India and is divided into 25 sections and one schedule. The Act apart from defining brothel (as discussed in the introduction) provides for certain powers to the magistrate and police officers.

The authority to designate "trafficking police officers," who are supposed to handle offences involving the sexual exploitation of individuals, has been granted to the central government. They are able to look into any offence under this act or any other currently enacted law that is broken across multiple states. These officers have the same authority and capacity to carry out tasks as Special Police Officers (SPO) across India. An SPO is authorized to exercise the following powers:

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<sup>15</sup> Constitution of India, 1950, Art. 14.

<sup>16</sup> Constitution of India, 1950, Art. 19.

<sup>17</sup> The Immoral Traffic (Prevention) Act, 1956, s. 20.

<sup>18</sup> *Kajal Mukesh Singh and Ors vs The State of Maharashtra* CRIMINAL WRIT PETITION NO. 6065 OF 2020.

- Under Section 15 of the Act<sup>19</sup>, such an officer has the power to search any premises without a warrant if there is any possibility of tempering of evidence,
- When conducting a search under Section 15, he must go with at least two female officers and may call two or more respectable neighbours, one of whom must be a woman. The residents will be present to witness it, and the SPO is empowered to take anyone discovered on the property to the proper magistrate and
- A necessary medical examination of that individual must be performed. A female officer or a woman from an established welfare organization will question a woman who has been detained during a search.

Thus, the Act clearly provides for a full-fledged investigation while ensuring the safety of the person involved. Furthermore, it lays down certain provisions with regard to the powers of the Magistrate such as:

- A person under section 16<sup>20</sup> who is living or engaged in prostitution in a brothel may be rescued by a magistrate. To do this, an officer not less than a sub-inspector will be assigned the duty of entering the brothel and bringing the person who has been removed from it before the magistrate and
- The removed or rescued person may be brought to the closest magistrate, who will issue an order for his safe custody if they were not produced before a suitable magistrate. The probation officer will be the subject of an investigation after the proper magistrate has taken notice of the situation, and an order of the same kind may be issued under section 17(2)<sup>21</sup>.

To give the Act a more binding force and strictness, it lays down provisions for grievous punishment. Also, to ensure the safe upkeep of the victim, it provides for protective homes. The Act works harmoniously with all other existing laws listed above in order to reach the best outcomes.

## 5. RESULT AND FINDINGS

### 5.1. THE KOLKATA OUTCRY

Will you believe it if I say that the socially stigmatized “sex workers” do have dignity? That they are entitled to the same benefits as any other section of the society?

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<sup>19</sup> The Immoral Traffic (Prevention) Act, 1956, s. 15.

<sup>20</sup> The Immoral Traffic (Prevention) Act, 1956, s. 16.

<sup>21</sup> The Immoral Traffic (Prevention) Act, 1956, s. 17(2).



*“Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases, on the basis of ‘age’ and ‘consent’, ‘sex work is a profession’ and these workers should not be harassed by the police.”<sup>22</sup>*

All these are the key highlights of the ruling of the apex Court in the Kolkata outcry. The Court observed that *“a section of society which has not only been forgotten but no one wants to even think about them. They are not even treated as human beings.”* and held that the police and other law enforcement agencies should be sensitised to the rights of sex workers by letting them enjoy a life of dignity as guaranteed under Article 21 of the Constitution of India.<sup>23</sup>

## 5.2. THE FUTURE IS IN DANGER

*“The true character of a society is revealed in how it treats its children”*

-Nelson Mandela

When we talk about the future we talk about the children of the nation. Unfortunately, it’s not only the adult male and female population that is subjected to this rack-and-ruin culture, innocent and novice adolescents and teenagers are also trapped in this web of outrageous evil. Some of the key reasons that ignite prostitution of children majorly falling in the age group of 11-18 years are family issues such as disintegration and the socio-economic standing, the traditional and religious norms and practices and just a simple lure of being provided with food and shelter in case of orphans. The apex court in the case of Vishal Jeet vs Union of India<sup>24</sup> held that *“this obnoxious and abominable crime committed with all kinds of unthinkable vulgarity should be eradicated at all levels by drastic steps.”* The court also issued certain directions regarding a check and balance system for child prostitution wherein it issued guidelines for the formation of an advisory committee and rehabilitation homes for the welfare of these children.

## 5.3. THE CONCEPT OF “CONTRACEPTIVES”

The time period of 1864-1869 saw a new wave of laws related to ‘Contagious diseases. Originating from the UK it found its way to India as well. The reason behind the enactment of these laws was to regulate the spread of venereal diseases in the army officials engaged in sexual activities with prostitutes. The

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<sup>22</sup> *India’s Supreme Court Recognizes Sex Work as a Profession*, THE DIPLOMAT – THE DIPLOMAT IS A CURRENT-AFFAIRS MAGAZINE FOR THE ASIA-PACIFIC, WITH NEWS AND ANALYSIS ON POLITICS, SECURITY, BUSINESS, TECHNOLOGY AND LIFE ACROSS THE REGION., <https://thediplomat.com/2022/06/indias-supreme-court-recognizes-sex-work-as-a-profession/#:~:text=India's%20Supreme%20Court%20recently%20observed,'age'%20and%20consent> (last visited Sept. 22, 2023).

<sup>23</sup> Budhadev Karmaskar vs State of West Bengal (2011) criminal appeal no. 135 OF 2010.

<sup>24</sup> Vishal Jeet v. Union of India, (1990) 3 SCC 318.

prostitutes' women were forcefully examined and if found to carry any contagious diseases, were admitted to the 'lock hospitals. However, these acts were found as misogynist by some as they only focussed on the check-up of the concerned women but not the army official so involved. Subsequently, after the continuous struggle of one of the radical activists Josaphine Butler<sup>25</sup>, these acts were repealed.

In an attempt to secure a living, she sold her body, unaware of the subsequent foreboding and misgivings. A number of studies have been conducted wherein the use of contraceptives by sex workers has been evaluated. Particularly, Female Sex Workers (FSWs) face a lot of medical and social issues due to the lack of use of contraceptives, such as inadvertent and unplanned pregnancy, early childbearing and poor maternal outcomes. The issue does not end here, even if sex workers want to use contraceptives, there exists the problem of "unmet demand for contraceptives". In a study conducted in semi-urban Blantyre, Malawi it was found that 35.2% i.e., 102 participants out of the total of 290 reported unmet contraceptive needs.<sup>26</sup> Moreover, Lack of access to contraceptives may also lead to prolonged reliance on sex work to fund children's daily needs and, if prevention of mother-to-child transmission programs is not used, HIV transmission to children. Thus, there is an urgent need to change the attitude of these people towards Sexual and Reproductive Health services.

## 6. CONCLUSION AND SUGGESTIONS

*They don't care about your age, caste, or gender.*

*All they want is your welcoming splendour.*

*At that time, they forget all their social norms.*

*All they want is to satisfy their inner storm.*

Undoubtedly, the nation is tormented with a lot on its plate but the issues which are omnipresent are those related to violation of the basic fundamental rights. 'Prostitution' is no longer a territorial issue or an issue of any particular nation. It has spread its roots all across the globe. Even though there are the rules, regulations and laws there are the lacunae that need to be addressed. The author suggests that there is an urgent need to make these people aware of their rights and protect

<sup>25</sup> *Josephine Butler and the Campaign Against the Contagious Diseases Acts* | Professor Florence S. Boos, PROFESSOR FLORENCE S. BOOS | DEPARTMENT OF ENGLISH, <https://victorianfboos.studio.uiowa.edu/josephine-butler-and-campaign-against-contagious-diseases-acts> (last visited Sept. 22, 2023).

<sup>26</sup> *Unmet contraceptive needs among female sex workers (FSWs) in semi urban Blantyre, Malawi - Reproductive Health*, BIOMED CENTRAL, <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-020-01064-w#:~:text=Out%20of%20290%20FSWs,%2081,reported%20to%20use%20them%20consistently.> (last visited Sept. 22, 2023).

them from those who manipulate the law thus manipulating these people for their benefit. Also, awareness regarding considering prostitution as just another source of earning rather than continuing to watch it as a social stigma needs to be worked upon. The author believes that at this point in time, there is no issue as to the lack of any legislation governing this domain but the lacunae is in the implementation and awareness mechanism. Thus, steps need to be taken to strengthen these spheres and among other things, attention needs to be paid to the lack of awareness and unmet demands of contraceptives till the time any effective mechanism is enforced coming up with the required changes.