

CHAPTER - I

INTRODUCTION

Exploitation of any kind becomes a matter of concern for any civilized society. Prostitution is one of the crudest forms of exploitation. Unfortunately, its universal nature, its wide magnitude, its hidden character and its socio-religious masking make its prevention and control difficult. Most social, economic, political and religious systems have accepted prostitution as an unavoidable evil and have more or less opted to ignore it.

Whether sale of sex is seen as a victimless offence, as a victim consented offence or as any other normal occupation, may depend on the value structure of a given society. Objectification of human body is never appreciated in any civilized society, - however liberal its value structure may be. Calling prostitution 'sex work' may attribute mental satisfaction to those in the profession; it may also help in shifting the burden of guilt from those engaged in work to those enjoying the work; but that does not alter the fact that a live human body is made available as an object of pleasure to someone - not for 'pleasure' in return but for 'money' as 'price'. Money which fills a hungry stomach. Who should be blamed ? The one who sells sex ? The one who buys sex ? The one who forcibly makes someone

sell sex or the society at large which can let its citizens starve but can not tolerate exchange of body against bread ?

Should sex work be seen as any other normal, socially recognized mode of earning? Whether exploitation of sexworkers should really be differentiated from exploitation of rest of the 'have nots' of the society ?

Several opinions exist as far as adult prostitution is concerned. Unaffected by these intellectual debates, thousands of girls and women keep pouring in the sex industry year after year. To understand different dimensions of this complex institution of prostitution thoroughly, one must go close to it and interact with the actual persons who form this 'sub (or contra?) culture'. The present study is one such attempt.

Prostitution : Concept and Definitions :

The concept of prostitution keeps changing from time to time and place to place. Prostitution is seen as an offshoot of the institution of marriage. Until recently, the term prostitution referred usually only to prostitution among women to meet the masculine needs.

Traditionally, prostitution is generally synonymous with “elements of **hire, promiscuity and emotional indifference**” (Davis, 1937). The Encyclopaedia of social sciences defines prostitution “as the practice of **habitual** or intermittent **sexual union** more or less **promiscuous**, for **mercenary** inducement”.

“Promiscuity”, “Emotional indifference” and “payment of consideration” are the three important elements covered by this definition. Elliot and Merrill (1961) describe prostitution as “an **illicit** sex union on a **promiscuous** and **mercenary** basis with accompanying **emotional indifference**”.

“What is involved in prostitution is **heterosexual interaction** which fulfils a basic human need, which is recognized as a normal and legitimate act within the institution of marriage. Therefore, when prostitution is discouraged by the society, it is not the sexual act per se which is disapproved, but the **context** in which it takes place and the **motivation** behind the act.” (Oomen, 1979)

Arthur Shadwell, writer and lecturer on sociological and industrial subjects, has defined prostitution in the 18th volume of Encyclopaedia Britannica as the “word which may best be defined as **promiscuous unchastity** for **gain**”. According to him, prostitution has always been distinguished in law and custom from concubinage which is an inferior state of marriage and other irregular sexual relations in which the motive is passion.

Criticizing Shadwell’s definition Varma (1979) points out that this definition sounds defective because it fails to cover the developments of modern times like “call girls” and also because he failed to recognize that a prostitute is also a short-term concubine.

Joardar B. (1989) modifying his own earlier definition; defines prostitution as “the practice of **habitual** intermittent **sexual relation** more or less **promiscuous** for money or for other **mercenary** consideration **without emotional attachment**”.

The last three words have been substituted for ‘emotional indifference’ as, according to Joardar, complete emotional indifference is quite impossible. The realization was out of his field experience that in some cases prostitutes fell in love with a particular client.

Unlike most traditional definitions, one given by Ryle Scott (n.d.) is wide enough to cover both types of sexual relations, heterosexual as well as homosexual. Thus, “A prostitute is an individual - **male or female** - who for some kind of **gain**, monetary or otherwise or for some form of personal satisfaction and as a part-time or wholetime profession, engages in **normal or abnormal sexual** intercourse with various persons who may be of the **same or opposite sex**.”

Havelock Ellis (1913) has defined a prostitute as “a person who makes it a profession to gratify the lust of various persons of the opposite or the same sex”. Perhaps the shortest definition of prostitution is given by Wardlaw writing (1842). Accordingly, “prostitution is the illicit intercourse of sexes”. It is obvious that this definition emphasizes **morality** rather than gain. Guyot (n.d.) defines a prostitute as “any person for whom sexual relations are subordinated to gain”. Thus, this definition emphasizes **gain** rather than morality.

The Dutch criminologist W.A. Bonger (1916) advocated that “the act of prostitution is intrinsically equal to that of a man or woman who contracts a marriage for economical reasons”. In other words, he puts any marriage with **economic motive** at par with prostitution.

M. Maurice Vallard (1918) said that prostitution is “the partial or complete specialization of certain woman in the satisfaction of the masculine sexual instinct”. As is obvious, this definition refers only to **female** prostitution. In France, the law of April 24, 1946, Article I, defines a prostitute as “Any woman who habitually consents to have sexual relations with undefined number of man for payment”.

The legal definition of prostitution as per the Suppression of Immoral Traffic in women and Girls Act 1956 was “The act of a **female** who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind, and whether offered immediately or otherwise”. It is clear that this definition, too, covered only female prostitution. However, this Act was amended as “Prevention of Immoral Traffic Act” 1986 and as “Immoral Traffic Prevention Act” in 1987. According to the new legal definition, “Prostitution means the sexual **exploitation** or **abuse** of **persons** for **commercial** purposes”.

Thus, in India, now, prostitution is no longer confined to female offering her body for hire, but includes sexual exploitation or abuse of a male or a child for commercial purpose (Midha, 1989).

It would be interesting to note how the sexworkers themselves like to define their work. At the National Sex Workers' Conference at Calcutta, Jo Bindman (1997) said, 'We propose the following definition of sex work:' "Negotiation and performance of **sexual services for remuneration -**

- (i) with or without intervention by a third party,
- (ii) where those services are advertised or generally recognised as available from a specific location,
- (iii) where the price of services reflects the pressures of **supply and demand**".

In this definition, 'negotiation' implies the rejection of specific clients or acts on an individual basis. Indiscriminate acceptance by the worker of all proposed transactions is not presumed- such acceptance would indicate the presence of coercion. The linkage of price with demand and supply implies that prostitution is like any other economic activity.

Brothel Defined :

According to the English law 'a brothel is a place where people of opposite sexes are allowed to resort to illicit intercourse whether the women are common prostitutes or not'. This was a court ruling of 1895 which says that "A house occupied by one woman for the purposes of prostituting herself there in with a

number of different men but not allowing other woman to use the premises for a like purpose is not a brothel (Varma, 1979).

In India, important court judgements have defined a “brothel” ‘as a place resorted to by persons of both sexes for the purpose of prostitution who are strangers to the occupancy’. Thus, to constitute a brothel men as well as women have to go to this place (Varma, 1979). This judgement, however, does not seem to apply after the amended ITPA came in to effect (Midha, 1989).

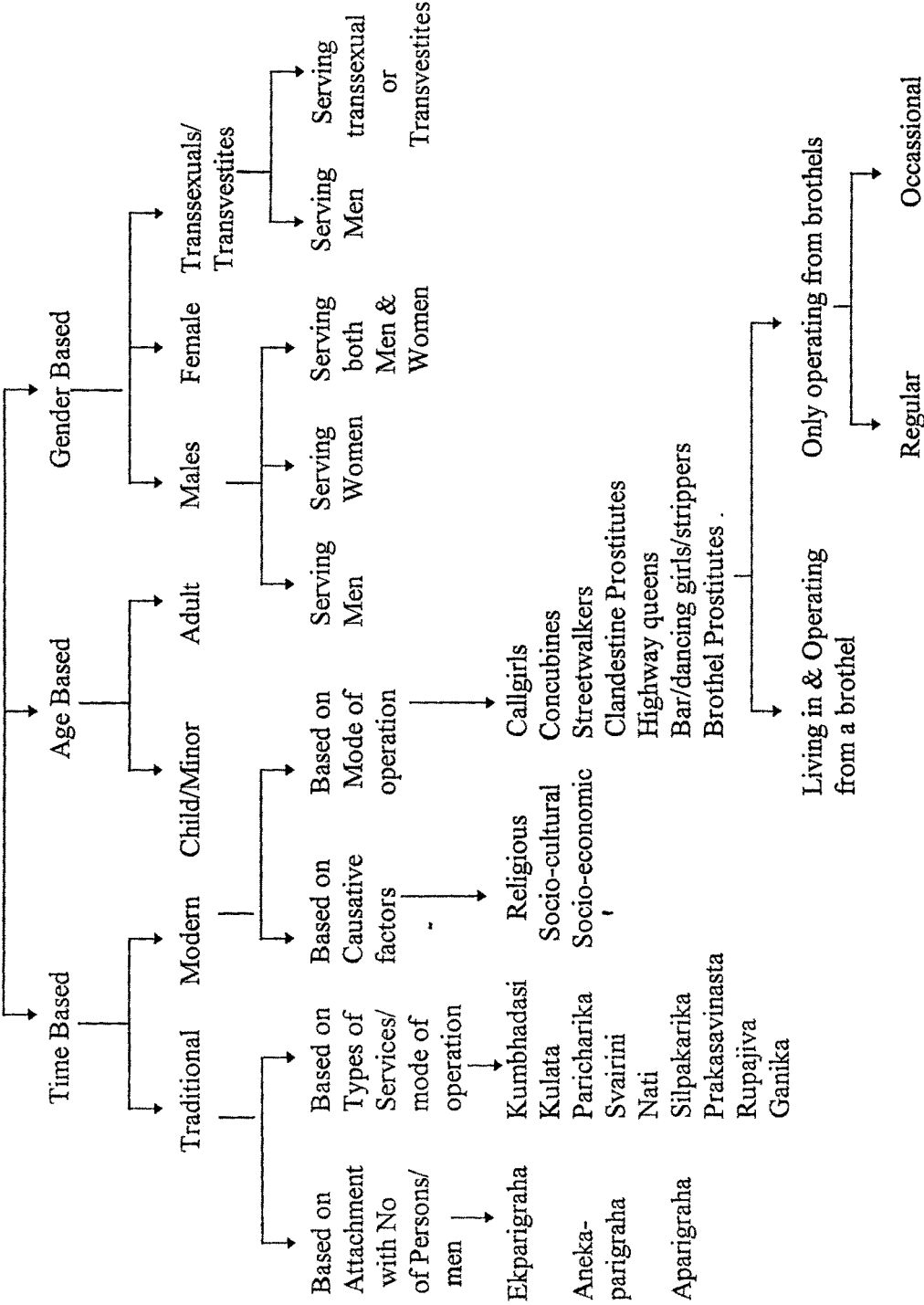
In Arunkumar V. state of Bihar 1984 (32) BLJR 291 it was held that if any room of any hotel was being used for the purpose of prostitution, it will definitely fall under the definition of brothel. In re Dhanlaxmi 1974 (Cr. L.J. 61) Mad-it was held that if there was only one girl in the premises and the place was used only once for the purpose of prostitution and the prosecution could prove only one act of prostitution the house of the accused could not be treated as a brothel. Bedi M.S. (1992) quoting the definition from PITA writes ‘Brothel 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’.

Classification of Prostitutes :

Prostitutes are classified in to different categories based on age, gender, time, causative factors and modes of operation.

Schematically, it can be presented as shown under :

Classification of Prostitutes in India



The Traditional Classification :

A realistic and comprehensive description of prostitutes is given in Vatsyayana's Kamsutra in a chapter named 'vaisikam'. He categorises prostitutes in to three: 'Ekaparigraha' - one who lives as one man's concubine, 'Anekaparigraha' - one who resorts to more than one man and 'Aparigraha' - without attaching herself to any one.

Among different types, he mentions 'Kumbhadasi' (Bawd) 'Paricharika' (the female attendant) Kulata (the secretly unchaste women), 'S'vairini' (the openly unchaste women), 'Nati' - (the dancing girl), 'Silpakarika' (the female artisan), 'Prakasavinasta' - the woman who has openly left her family, 'Rupajiva' - the ordinary harlot who lives on her beauty, and 'Ganika' the regular courtesan (Aggrawal, 1993).

Types / Classification of Prostitutes in Modern Times :

A. The modern classifications are made by the Advisory Committee on Social & Moral Hygiene. They are:

1. Hereditary group who enter the profession due to the custom of family patterns like naiks.
2. Religious and Social Groups. Here, the girls are drawn in to the profession due to religious customs like devdasis.
3. Social practice and Sociological conditions i.e. due to economic necessity, ill-treatment by husband and in-laws, widows etc.,

B. The second classification is according to their ways of dealing. They are :

1. Registered prostitutes, who stay in brothel.
2. Society prostitutes like callgirls.
3. Streetwalkers who solicit on road and public places.
4. Clandestine prostitutes who live as respectable women and are not easily identifiable, and
5. Mistresses and concubines who stick to one man at a time.

The researcher feels that in the changing socio-economics scenario, two more categories can be added to this list viz.

6. Highway Queens who operate on National Highways catering to the needs mainly of truck drivers and other frequently travelling (by road) men.
7. Bar girls / Massage parlour / Dancing girls/Strippers-both male and female, who, over and above their official jobs, cater to the sex needs of their clients.

Age Based Classification :

As per the Immoral Traffic Prevention Act, 1986, 'child' is one who has not completed sixteen years, and 'minor' is a person who has completed sixteen years but has not yet completed the age of eighteen years.

Thus, prostitutes above the age of eighteen years are adult prostitutes; the one below the age of sixteen years is a child prostitute and the one between the ages of sixteen and eighteen years is a 'minor prostitute'.

The agewise classification is important from legal point of view as prostitution other than adult prostitution is absolutely illegal, and forcing child prostitution is a serious offence. Gender based classifications are more or less self explanatory and hence not discussed in detail.

History of Prostitution :

According to Ghosh (1996), prostitutes and prostitution have existed in all ages and in all societies to meet the masculine needs. "So long as the virtue of respectable women is regarded as a matter of great importance, the institution of marriage has to be supplemented by another institution which may really be regarded as a part of it - the institution of prostitution" (Russel n.d.).

The earliest form of prostitution was religious or temple prostitution. Narrating the status of prostitution, Ghosh (1996) writes, "Through literature, art, paintings and sculptures, the presence of prostitution had been documented in the most ancient civilizations Sacred prostitution was very widespread in antiquity. Religions incorporated prostitution as a transitory rite

e.g. in ancient Babylon “Myletta” rite existed by which every female was required to sit in the temple of the goddess and accept coitus from the first male who threw a silver coin in her lap.

The Egyptian temples, too, are noted to have consisted of the most extravagant sex orgies, where in girls were purchased for temples.

In Rome, virgins were dedicated to the service of Goddess ‘Vetsa’ - the Goddess of Fire. Laws governing prostitution are noted to date from the reign of Augustus, and during the reign of Trajan, prostitutes were required to register themselves.

In Renaissance Italy, lower class ‘whores’ were culturally distinguished from the upper class ‘courtesans’.

In Athens, women living on prostitution were divided in to four classes. Highest class ‘Hetaire’ or kept women who exercised influence on the state politics. ‘Auletrides’ were usually foreigner flute players and dancers earning through prostitution. ‘Dicteriades’ were the lowest class prostitutes operating through prostitution houses filled with female slaves called ‘Dicteria’ under the control of the municipal police. Last were the ‘concubines’ - slaves owned by rich men with the knowledge and consent of their wives. All of these paid taxes.

In Jerusalem, holy female prostitute was known as ‘Qedeshah’ and the male as ‘Qadesh’.

Greeks indulged in homosexuality and prostitution through both boy and girl prostitutes in their sacred places of worship.

Nuns in Medieval Christianity were considered to be the brides of Christ - (like the Devdasis of India) who lived under the vow of chastity. However Martin Luther is noted to have told about a fish pond in Rome situated close to a convent of nuns, which, when it was cleaned out on the orders of Pope Gregory, over 6000 infant skulls were discovered at its bottom.

The laws of Moses for the jews however, were very strict and the penalty for adultery was death.

In France, concubinage called 'gynecea' was an accepted institution but common prostitutes were severely punished. Louis VIII and Louis IX tried to regulate and check prostitution.

In the nineteenth century, prostitution prevailed all throughout the country of Great Britain. The earliest activist on the prostitution issue was British social reformer Josephine Butler who opposed Britain's Contagious Disease Act calling for health examination for street walkers. She campaigned against 'child prostitution' and 'white slave trafficking' and reached the League of Nations and the United Nations.

In China, young girls were liable to be stolen for the purpose of prostitution. 'Foot binding' practice to make women's feet small and beautiful also restricted their free movements.

Geisha houses in Japan contained thirty to fifty girls and apprenticed 'maikis' (geisha trainees). After the expiry of their term as Geishas they could resume their places in society without any stigma.

Majority of prostitutes in U.S.A. were of foreign births immigrating to U.S. for livelihood. The first class grade prostitutes resided and operated through 'Parlour House'.

In Germany, till 17th century, prostitution was tolerated as necessary evil but afterwards strict laws were framed and public women were expelled. Still later, brothel keeping and prostitution were permitted under severe restriction.

Russian Czars maintained a large number of concubines. Whorehouses housed registered prostitutes.

In short, prostitution existed in one form or the other all over the world.

Prostitution in India :

As evidenced in some passages of Rigveda, prostitution in India existed in vedic era. The authorities on erotics prescribed sixty four arts in which a high class 'Ganika' must be trained. Apart from beauty and pleasing personality, such courtesans had to master the arts of composing poetry and riddles, archery, spying,

etc. which called for high level of intellectual abilities. The rules and restrictions by which freedom of normal house wives was restricted did not apply to them. A 'Ganika', expert in all these arts, had a right to have a seat of honour among men in the Royal court and fetched praise and honour from the kings and the learned.

The Middle Age literature gave evidence of this fact. 'Vasantsena', the heroine of the 'Mrichha Katikam' written by the Great writer Shudraka and 'Amrapali' - the accomplished courtesan from 'Vaishali' in Buddhist legends are famous characters of whom hardly any Indian would be unaware. The 'Kamasutra' of Vatsyayana written around 250-300 A.D. and the 'Arthashastra' compiled by Kautilya in Chandragupta Empire around 325 B.C. are the most important sources of information about courtesans and prostitutes in ancient India (Bedi, 1992). The duties of 'Ganikadhyaksha' - the superintendent of prostitutes, as mentioned in 'Arthashastra' were to supervise the palace of courtesans, inspection of brothels and collection of two days earnings from each prostitute per month as tax to the government.

Sikka (1984) notes that "the institution of Devdasis - the temple girls as existed since ancient times - declined in North India as a result of the destruction of major Hindu temples in North India and the Muslim invaders in medieval India but it continued to flourish in Southern India".

In the Mughal period, prostitution was a recognised institution. The famous work of Abul-Fazl - 'Aine-Akbari' describes that in order to control the nuisance of prostitution, "Akbar ordered for the segregation of prostitutes in an area as was called 'Shaitanpura' or the devils' Quarters and appointed some officers to regulate the profession of prostitution by putting restrictions on their movements." These officers noted down the names of persons who visited the prostitutes or took them to their houses with permission.

Later Mughal rulers permitted and even invited 'Kanchans' - the superior category of prostitutes in state celebrations or on the marriages in the families of nobles to sing and dance i.e. for 'Mujra'. But Aurangzeb strictly prohibited prostitution, singing and dancing and even 'Kanchans' were ordered either to be married or to leave the empire (Bedi, 1992).

The paradoxical treatment to prostitutes - acceptance, tolerance and honour on one hand and disgust and despise on the other, has continued from the time of 'Smriti' writers till today. Ghosh (1996) notes that "Prostitution though in many contexts honoured and respected, was much disapproved by the Smriti writers whose works contain passages of warning against the evils of prostitutes. 'Matsya Purana', on the other hand, considered the 'veshya' as a good omen and in parts of South India the 'Mangal sutram' of the new bride was made by the prostitute ! Similarly, in North Eastern India even now, while making the holy image of

Goddess Durga a handful of earth from the threshold of a prostitute's house has to be used" (Sinha & Basu n.d.).

Legal History in Modern India :

The legal developments in present form have their roots in the beginning of seventeenth century when commercialisation of prostitution started in port towns of India; slowly spreading also to other parts of the country. The systematic legal measures and administrative measures against the social evil of prostitution started with the enactment of Indian Penal Code in 1860. These provisions have continued and are applicable even today and hence are included under "present legal status" (Encyclopaedia of social work 1987).

In 1868, the Contagious Diseases Act of 1868 came which provided for compulsory examination of common prostitutes and for their detention in hospitals until they were cured and also for registration of their names with the police (Sandesh' 8.6.96). This law, however was repealed in 1888. Between 1923 to 1953 some 17 State Acts were enacted (Bedi, 1988).

The Present Legal Status :

Prostitution per se is not a legal offence in India. However, prostitution, in its commercialized and organized form, is prohibited by the Immoral Traffic

Prevention Act of 1987. Thus, law takes cognizance only when persons are dragged in to the evil and sexually exploited for the benefit of others or where prostitution is practiced in and near public place, creating a nuisance for public at large.

As explained in the sixty fourth report on the 'SITA 1956' of the law commission of India, the scope of the SITA was restricted in view of the following considerations:

- i) Morality can not be legislated beyond a point and therefore apparent enforcement difficulties have to be considered; and
- ii) A complete ban on prostitution may lead to clandestine forms of prostitution which may prove even more detrimental to society (Encyclopaedia of Socialwork 1987).

Constitutional Provisions Relating to Immoral Traffic (Midha, 1989) :

The important provisions are as follows :-

Article 21	Guarantees rights to life which as interpreted by the Supreme Court in Sunil Batra's and Bandhua Mukti Morcha's cases as "Right to live with dignity".
Article 23	Prohibits traffic in human beings.
Article 39 e	Directs that "the health and strength of women and the tender age of children shall not be forced by economic necessity to enter into avocations unsuited to their age or strength".

Article 39 f	Directs that “children should be given opportunities and facilities to develop in a healthy manner and conditions of dignity so that childhood and youth are protected against moral and material abandonment”.
Article 41	Obligates the state to make effective provisions for securing the right to work and education.
Article 51 A	Casts a duty upon every citizen and on the state itself to eliminate practices derogatory to the dignity of women to develop humanism and practice compassion.
	Thus, over and above ensuring equality, social justice and dignity, our constitution casts a duty on the state to protect women and children from exploitation.

Indian Penal Code Provisions :

The Indian Penal Code of 1860 (Act No. 45 of 1860) also contains important provisions relating to prostitution. Thus according to -

-IPC Section 372	---	Any person selling minor for the purposes of prostitution etc. is punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
- IPC Section 373	---	Any person buying a minor for the purposes of prostitution is punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Immoral Traffic (Prevention) Act, 1957 :

After having signed the international convention for the suppression of Immoral Traffic in women and girls, a Central Act known as the Suppression of

Immoral Traffic in Women and Girls Act (popularly known as SITA) was passed in 1956 by the parliament. In 1978, it was amended to remove lacunae which affected its effective enforcement.

In 1986, it was amended as Prevention of Immoral Traffic Act (PITA) and later in 1987 as Immoral Traffic (Prevention) Act. The major amendment was in the definition of 'prostitution' itself - thus, no longer attaching the act of prostitution with the fair sex only but also extending it to cover the act of sexual exploitation or abuse of a male or a child for commercial purpose.

The Act has two-fold objectives viz.

- punishing persons deriving monetary gains from the earnings of prostitutes and persons causing a public nuisance; and also
- providing for protection and correction of persons in need of care and protection.

Offences under ITPA (1987) :

The following nine acts become illegal and therefore punishable under the law.

1. Brothel keeping.
2. Abatement in Brothel keeping.
3. Living on the earnings of prostitution.

4. Procuring or inducing or taking a person for the sake of prostitution.
5. Detaining persons in premises where prostitution is carried on.
6. Prostitution in or in the vicinity of public places.
7. Abatement of prostitution in public places.
8. Seducing or soliciting for purposes of prostitution.
9. Seducing of persons by those having custody over them.

Any offence punishable under this act is a cognizable offence. Thus, the special police officers or traffic police officer can search a place or arrest a person without a warrant.

A Magistrate can direct any police officer to rescue any person forced to carry on prostitution in a brothel and may pass an order to place such a person in a protective home for a period ranging from 1 to 3 years.

Important Judicial Pronouncements :

Judicial Pronouncements are an important means to attain social justice especially for the vulnerable sections of the society. In Indian Democracy, judiciary has a special status. The onus of searching the true soul and spirit of a piece of legislation in light of the prevailing social realities is on the judiciary. Our system of administration of justice not only implements and applies law but also modifies law by reinterpreting and rediscovering the meaning of a given legal provision in the interest of justice. In recent years, there are many instances when

through its pro-active stand, and through the means of 'Public Interest Litigation'. Judiciary has compelled the state administration to break its indifference on issues of social importance. Prostitution - especially child prostitution is one such issue.

Following are some of the important judicial pronouncements which reveal the trend of legal machinery with reference to sex industry.

Brothel - Its Definition & Regulation :

1. Lalchand V. Emperor, AIR 1932 All. 370 "Bye-law prohibiting prostitutes from residing in a particular area may be validly made. But prohibition must be of general application and must not hit particular prostitutes while leaving others to ply their trade".
2. Venkateswara Rao V. Emperor 1936 MWN 494 "A landlord who has let his house to a tenant cannot be said to be 'incharge' of that house. In the absence of any evidence to show that the landlord wilfully was a party to the use of the premises as brothel, he cannot be convicted".
3. Arunkumar V. State of Bihar, 1984 (32) BLJR 291 "If any room of any hotel was being used for the purpose of prostitution, it will definitely fall under the definition of brothel prostitution".

4. Ram Devi V. state, 1963 All. L.. 894 “There is nothing in the Act which punishes or makes liable for action a woman who carries on prostitution for her own gain unaided by others or who carries it on for the mere pleasure or fun of it”.

5. Kamala, AIR 1966 Mad. 312 “Merely to indulge in flirtation with a stranger may be immodest, but ‘per se’ it does not amount to any offence under the Act. It also excludes a permanently kept concubine or a woman taken without paying any consideration”.

Living on Earning of Prostitution :

6. “If the husband lives with his wife and allows his wife to be a prostitute, there is no reason for not believing that the husband was living on the earnings of prostitution of his wife. In such a case, presumption would be stronger and until contrary is proved, it can be presumed that the husband was living on the earning of the prostitution of his wife”.

Procuring/inducing/taking a person for Prostitution :

7. Thakurlal V. state of Gujarat 1973, 25CC413 “The word ‘takes’ does not necessarily connote taking by force and it is not confined only to use of force actual or constructive. This word merely means ‘to cause to go’, ‘to escort’ or ‘to

get in to possession’.” The word ‘entice’ seems to involve the idea of inducement or allurements by giving rise to hope or desire in the other.

Prostitution in/near Public Places :

8. (1) Shantabai V. state 1959, AWR 509

“The idea behind the enactment of S.7 is that the atmosphere of places of public religious worship should be kept pure and free from the contaminated atmosphere of a place where prostitution is being carried on. It can not be denied that this is a reasonable restriction”.

(2) Re Deva Kumar (1972) 1 Mad. L.J. 200

“Section 7(1) of the Act is an unusual one which makes prostitution ‘per se’ indictable, not merely against the woman who carries on prostitution but also the person with whom such prostitution is carried on. -

9. News Item in Daily ‘Sandesh’, p.11, dated.3-12-1999.

The Supreme Court has pronounced a judgement where by the user of the services of a sex worker or a sex worker working unaided of her free will can not be punished except on grounds under section 8a/b of ITPA. Actions can be taken only on a pimp or brothel keeper who earns a commission from a prostitute’s earning.

Institutionalization in Protective Homes :

10. Kalyani Choudhri V. state of U.P., 1978, Cr. L.J. 1003.

“No person can be kept in a protective home unless she is required to be kept there in pursuance of the provisions of the Act or under some other law permitting her detention in such a home. The question of minority is irrelevant as even a minor can not be detained against her will or the will of her father in a protective home.”

Rescue Rehabilitation of the Children of Prostitutes :

11. Gaurav Jain V. Union of India and others. AIR, 1990, SC 292, decided on 9.7.97.

“The rescue and rehabilitation of the child prostitutes and children of prostitutes should be kept under the nodal department ---- Department of Women and Child Development under the Ministry of Welfare and Human Resource.”

12. Vishaljeet V. Union of India, other states and Union Territories (writ petition criminal No. 421 of 1988, dated. 2-5-1990).

(1) 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 ramissness or culpable indifference.

(2) The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the (1) Secretary of the Social Welfare Department or Board, (2) the Secretary of the Law Department, (3) Sociologists, (4) Criminologists, (5) Members of the Women's Organisations, (6) Members of Indian Council of Child Welfare and (7) Indian Council of Social Welfare as well as the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of :

- (a) the measures to be taken in eradicating the child prostitution, and
- (b) 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.

(3) 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.

(4) The Union Government should set up a committee of its own in the line, we have suggested under direction No.(2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. of the young fallen victims namely the children and

girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

(5) The Central Government and the Governments of states and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

(6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the Government could do in that regard.

(7) The copies of the affidavits and the list containing the names of 9 girls are directed to be forwarded to the Commissioner of Police, Delhi for necessary action.

“We may add that we are not giving an exhaustive list of the members for the constitution of the committee. Therefore, it is open to the concerned Government to include any member or members in the committee as it deems necessary”. The honerable judges added.

We hope and trust that the directions given by us will go a long way towards eradicating the malady of child prostitution, devadasi system and jogin

tradition and will also at the same time protect and safeguard the interests of the children by preventing them from sexual abuse and exploitation.

The Prevention of Immoral Traffic and the Rehabilitation of Prostituted Persons Bill, 1993 :

The researcher had an opportunity to attend a work shop (12.2.2000) organised by the Ahmedabad Women's Action Group (AWAG), and sponsored by National Commission for Women. The purpose was to debate and discuss the proposed Bill on Immoral Trafficking. The objects of the Bill are as follows :-

1. The name of the Act is to reflect the twin objectives intended to be achieved by the law, namely,
 - (a) The prevention of immoral trafficking in human beings, and (b) the protection and rehabilitation of victims of prostitution, particularly of girls.
2. It is proposed to prevent the exploitation of sex for commercial purposes (prostitution) by making the exploiters including the customers pay exemplary fine and do compensatory work.
3. It is proposed to make offences against children under the Act punishable very severely.
4. Sentences under the Act are proposed to be diversified in order to make it deterrent and effective in different situations.

5. It is proposed to involve voluntary organizations in the investigation of offences under the Act and in the implementation of objects under the Act.
6. It is proposed to empower women with certain rights for protection from exploitation and to provide for them effective rehabilitation.
7. Enabling provisions are included in the Act to authorise appropriate governments to constitute special investigation machinery for enforcing the provisions of the Act and with civil and criminal jurisdictions for trial and dispositions of cases under the Act.

It is worth noting that the bill not only intends to prohibit trafficking especially in women and children but also aims to mitigate the suffering of victims of prostitution. It is heartening to note that some of the radical judgements of Supreme Court have more or less been incorporated in the proposed law (see Appendix).

e.g. Section 9 requires government to set up special cells for health care and to organize health check-ups for victims. Section 11 recognizes the role of NGO and requires rehabilitation to be community based, with NGO Assistance. Section 12 calls for creating a welfare fund for women and children in Moral Danger. Section 13 entitles the victims to claim compensation / damages from sexual exploiters for injuries caused in prostitution.

While the bill is definitely a step ahead in ensuring justice to victims of prostitution, much depends on the political will of the government machinery to implement it, and efficiency and honesty of the law implementing agencies.

Approaches to Prostitution :

The strategies to curtail the evil effects of prostitution are based on the views or approaches subscribed by the respective society or nation.

Ghosh (1996) summarizes the three different approaches all over the world as :

- (1) Prohibition
- (2) Regulation and
- (3) Abolition

Prohibition :

These countries ban prostitution and pimping. Their police and departments of Justice play a vital role - closing down brothels, fining and imprisonment of those who practice prostitution or who profit from such activities. The inequalities apparent in this kind of police activity are appalling - the clients themselves are not affected.

Regulation :

These countries permit prostitution and the existence of brothels, etc. The State considers prostitution a ‘Public Service’ and a “necessary evil” and facilitates conditions for its existence and growth in different forms. These governments, in agreement with reality, establish rules to control the system and to protect law and order. Files, police cards, medical check-up reports are maintained for the prostitutes who are registered and licensed. However, registration, police cards, medical examination are not applicable in cases of the clients.

Abolition :

These countries advocate only the abolition of the regulation of prostitution and its exploitation but not the abolition of prostitution itself, since this is legal.

The aim of the abolition system is (i) to eliminate administrative and police regulation; (ii) to forbid obvious prostitution such as soliciting and (iii) to prohibit pimping and the establishment of organised prostitution.

Jo Bindman (1997) from Anti Slavery International, while presenting a paper on “Redefining Prostitution as sex work on International Agenda” at the first National Conference of sex workers at Calcutta explained and commented on Abolitionist approach thus:- “The Abolitionist approach declares that the

institution of prostitution itself constitutes a violation of human rights, akin to the institution of slavery (in fact the term 'Abolitionist' was originally used to describe campaigners against the transatlantic slave trade). As such, no person, even an adult, is believed to be able to give genuine consent to engaging in prostitution. Prostitution only persists through the efforts of procurers or pimps, the 'third parties', who induce a woman into prostitution, openly or by means of deceit and coercion, to extort her earnings from her. The Abolitionist approach requires governments to abolish prostitution through the penalisation of this 'third party', which profits from the transaction between prostitute and client. The prostitute cannot be punished, as she is the victim of a process she does not control. Without the 'third party', it is believed that the institution of prostitution will wither away".

The United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), which largely reflects the Abolitionist position, has been widely criticised and poorly ratified. There is no evidence that the Convention or other international and local sanctions have been effective either in eliminating the flow of women and men into the sex industry, or in curtailing abuses within it. Meanwhile, in the years since 1949, prostitutes themselves and others have been redefining the problem, asserting that the abuses are neither inherent nor unique to prostitution, but are the outcome of the stigmatisation of the prostitute.

Das and Chopra (1990) classify the main divergent views with regard to prostitution as:

- (1) The Moralistic view
- (2) The Realistic view
- (3) The Liberal view.

1. The moralistic view says that prostitution degrades and denies a person's self-respect and dignity and reduces him/her to a marketable commodity. Therefore it cannot be justified or accepted on any account.
2. As per the realistic view the system is deep rooted and has been in existence far too long to be eradicated even though it is not respectable. Those engaged in the profession may be tolerated but segregated from the society and confined to Red Light areas.
3. The liberal view advocates that it is a profession like any other and should be given legal sanction so that the prostitute can lead a life of dignity.

India has subscribed to the Abolitionist approach as is evident from its present legal policy.

The sexworkers world over have started organizing themselves to promote the Liberal view.

The very first appeal made to the delegates of the 12th world AIDS conference at Geneva in June 1998 by the Asia/Pacific sex worker's Network was "to recognize that sex work is an occupation".

The Indian sex workers' demands expressed at the Calcutta National Conference in 1997 echoed the same feeling. Out of their four-fold demands, the three that reflected their commitment to the Liberal views were :-

- (1) PITA should be done away with,
- (2) Status of 'worker' to be accorded to sex workers, and
- (3) Right to self regulation i.e. Professional freedom - (Islam, 1998).

It is felt that until loopholes in all these systems/approaches are completely removed, no single approach can be successful in preventing the abuse in toto, and history of mankind proves that doing so is next to impossible. The ideal solution would be to accept the approach keeping pace with time and trying to ensure honest attempts to minimise abuse of innocent ones.

The Present Indian Scenario :

A thorough review of literature on prostitution in contemporary India reveals that prostitution in all its three major forms - Religious Prostitution, Guest Prostitution and Commercial Prostitution is widely practiced.

The clandestine nature of sex work does not permit measuring its magnitude accurately. However, based on surveys, observations and studies, the estimated magnitude of the problem is projected from time to time.

Quoting the TISS study Das and Chopra (1990) write, "there are approximately 20 lakh prostitutes in India, residing in 817 Red-light areas with more than 50 lakh children labelled as illegitimate --. The number of call girls or high society prostitutes has not been included in the survey".

The CEDPA (The Centre for Development of Population Activities) Report of a conference on Girls Rights at Mumbai (Dec. 1997) notes "More than two million women and children are trapped in prostitution in red-light districts through out the country. The Indian government estimates that the vast majority of the 5,00,000 children in sex industry are girls. In addition, Nepalese and Bangladeshi girls are trafficked in to India to work in brothels as so called 'cage prostitutes' ----. The Indian Health Organization reports that 80% of sex workers are infected with a sexually transmitted disease ---- in Calcutta, at least 20% of prostitutes are under the age of 18 and 1,00,000 to 1,60,000 Nepalese women and girls are reportedly working in India's Brothels".

A survey of six cities - Bombay, Delhi, Calcutta, Madras, Bangalore and Hyderabad - by the Central Advisory Committee on child prostitution revealed that

of the 70,000 to 1,00,000 prostitutes 50% were below 15 years of age and 24.5% were between 16 to 18 years of age (Sandesh, 1994).

Fernandes' (1997) review of various surveys reveals that every year 4,000 to 6,000 girls are dedicated to Goddess Yellamma as devdasis (Malik n.d.). 88% of girls are dedicated before they are ten years old (Pandey, 1990). According to Bharatiya Patita Uddhar Sabha there are about five lakh child prostitutes (Theodore, 1994) ... of the 1,25,000 prostitutes in Bombay, 40,000 are under the age of 16. Quoting Joseph Gathia, the President of centre of concern for child, centre for child labour, the TOI special report (Nov.98) says --- "In India, of the estimated 9,00,000 prostitutes, 30% are children. The study pinpointed 70 districts in the country where the trafficking is more acute -- M.P. topping the list with ten such districts".

Prostitution in Gujarat :

In Gujarat, so far, no comprehensive study has been made about the magnitude of the problem covering the whole state.

Apart from call girls, street walking, clandestine prostitutes, and highway prostitutes, three known places are there where commercial sex work is carried out visibly.

In a village called Wadia, women of Saraniya community are traditionally engaged in prostitution and are sole bread earners of their families.

In Rajkot, a red-light area exists where, according to informal sources brothel based sex workers operate openly.

In Surat a red-light area exists since the time of Mughal ruler Akbar. According to a police list some 112 sex workers live and operate as sex workers. The informally reported number is however, much larger.

The details of Surat red-light area are described at length in the chapter on the field setting.

After having discussed the concept of prostitution in detail in this chapter, the following chapter presents a brief description of the literature reviewed by the researcher.