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“PROSTITUTION: IT’S NOT DEAD MEAT BEING SERVED.”

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I. INTRODUCTION:

The society is developing at speeds that could only be a thought of imagination in the past, with rapid globalization, betterment in the field of science, technology and lots more. However, there are some issues that always have been ignored and downgraded, one of such which is the question pertaining to prostitution. Although it is one of the oldest professions, if not the oldest, it is still treated as a taboo and is the least discussed ethical and human rights issue.

The ambiguity of law, constant derogation of the status of women, violation of the freedom of profession is what calls for immediate action to be taken. The conditions of prostitutes have been adversely affected in the cities of *Mumbai, Delhi, Lucknow and Kolkata*, where the number of prostitutes and crimes related to prostitution has been increasing uncontrollably due to the lack of any machinery that can keep a check on it.

The status of prostitutes and the notion about prostitution was very different in the past in India. They were treated better and were kept at a higher pedestal than what they enjoy now which can be traced in a lot of historic writings and even in literary work of the recent past.

The mentions dates back to the *Ramayana*, *Mahabharata* and also the *Jatakas* and they had civil rights as well as domestic rights. Now, women often enter street prostitution as minors and most commonly they are coerced by fraudulent measures or due to financial needs. It has further been noticed that prostitutes are victims of sexual abuse or physical abuse or both. Even if these sex workers try to run away from the hell that they live in they are either isolated or are forced to return due to lack of education, support and their professional past that leads to unemployment.

II. UNDERSTANDING THE INTERNATIONAL SCENARIO:

New Zealand is often held up as the model that is supposed to be followed by other countries in terms of legalising prostitution, wherein, the nation had completely legalised prostitution and made activities linked to it to be known as businesses. Although this might sound inspiring but it losses ground when any mishap in the so-called business are now treated as a work hazard and the remuneration of the now newly made employees are still fixed and regulated by the pimps.¹

Whereas, Australia is divided when it comes to prostitution. It has been made illegal in the Northern Territory by the *Prostitution Regulation Act, 2004*. In Queensland, private and licensed brothels are allowed (*yet only 10% of the activities take place in licensed brothels*). In Southern Australia, brothels are illegal under the *Criminal Law Consolidation Act, 1935* and *the Summary Offences Act, 1953*. In Tasmania, sex work is legal but making profit out of individual workers is illegal. In Western Australia, sex work is legal but associated acts are not. In New South Wales, prostitution was made legal in 1979. Brothels are legal under the *Summary Offences Act, 1988*.² Though prostitution was legalised in Australia to some degree the effects were similar to that in New Zealand and the lives of the sex workers worsened. The activities are still conducted by unlicensed brothels which defeats the primary purpose of the legislations. In Africa, the situation is complex as it is catalysed by the

¹ Julie Bindel, This is what really happens when prostitution is decriminalised, Independent(August 5, 2017, 2PM) <https://www.independent.co.uk/voices/prostitution-decriminalisation-new-zealand-holland-abuse-harm-commercialisation-a7878586.html>

² Is Prostitution legal in Australia?, Nyman Gibson Mirallis <https://ngm.com.au/is-prostitution-legal-in-australia/>

widespread poverty and low literacy. African society has promoted stigmatisation of sex workers by blaming them for being the reason of spreading of sexually transmitted diseases.³

Due to stigmatization, they have even failed to receive proper treatment as they are discouraged by hospitals and health care.⁴ Places like *Ethiopia, Malawi, Madagascar, Democratic Republic of Congo* and many more have not explicitly criminalised prostitution but soliciting it in public places is mostly illegal making it very difficult for prostitutes to legally engage in prostitution whereas places like *Kenya⁵, Ghana⁶, Guinea⁷, Liberia⁸, South Africa⁹* and many other places have not only criminalised prostitution but also living on money coming from prostitution or any other activities related to it like brothel, pimping etc. as illegal. Other places have made it illegal but owing to the above-mentioned reasons prostitution is widespread. Nigerian women are trafficked to European Countries for sex work and this is not only limited to the country.¹⁰ The conditions are bad and most are forced into prostitution coercively at a very young age.

³ Nicole Fick, *The Stigmatisation of Sex Workers*, PAMBAZUKA NEWS (Oxford), Nov. 23, 2006, <http://www.pambazuka.org/en/category/features/38524>

⁴ Sani Aliou et al., *Niger: Sex Workers at the Market*, RESEARCH FOR SEX WORK 5 (Vrije Universiteit Med. Cnt., Amsterdam, Neth.) June 2002, http://www.childtrafficking.com/Docs/research_for_sex_work_no_5_.pdf; Caroline Mango, *Police Demanding Bribes, Say Sex Workers*, E. AFR. STANDARD (Nairobi), Sept. 29, 2002, available at <http://allafrica.com/stories/200209300766.html>

⁵ Penal Code, (2009) Cap. 63 §§ 153–56 (criminalizing prostitution, pimping, and brothel ownership). <http://www.kenyalaw.org/Downloads/Acts/Penal%20Code%20Cap%2063%28%202009Final%20Final%29.pdf>.

⁶ Criminal Code §§ 107(1), 273–77, amendments consolidated in Criminal Code (Amendment) Act, No. 646 (2003) (prohibiting prostitution, solicitation, and a host of surrounding activities including pimping, pandering, and providing for prostitution). A copy of the original code, as it was enacted in 1960, can be found in HENRIETTA J.A.N. MENSA-BONSU, *THE ANNOTATED CRIMINAL CODE OF GHANA* (4th ed., 2005)

⁷ Code Pénal arts. 328–29, Loi 36 of Dec. 31, 1998, *Journal Officiel de la République de Guinée* [Official Gazette of Guinea], (Jan. 10, 1999), http://www.adh-geneva.ch/RULAC/pdf_state/CODE-PENAL.pdf

⁸ New Penal Law of 1976 §§ 18.1–18.5, in *LIBERIAN STATUTES 1* (rev. ed. 1976) (condemning acts of prostitution, brothel ownership, pimping, and facilitation as criminal offenses) An overview of the pertinent provisions of the Liberian Penal Code can be found in *SEXUAL AND GENDER-BASED VIOLENCE CRIMES UNIT, MINISTRY OF JUSTICE, SEXUAL ASSAULT AND ABUSE PROSECUTION HANDBOOK 263* (Jan. 2009) http://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/liberia/sgbv-prosecutionhandbook-v1.pdf.

⁹ Sexual Offences Act, 23 of 1957 ss. 19–21 (sanctioning prostitution, soliciting, and living off the proceeds of prostitution). In 2002, South Africa’s constitutional court upheld the country’s Sexual Offences Act as nondiscriminatory on the basis of gender. See *S. v. Jordan* 2002 (6) SA 642 (CC).

¹⁰ *Countries Where Prostitution is Legal in 2020* (April 7, 2020) <https://worldpopulationreview.com/countries/countries-where-prostitution-is-legal/>.

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When it comes to North America, countries like *Bermuda*¹¹, *Canada*¹² and *Mexico* have legalised prostitution however buying of sex, running of brothels or other related activities have been criminalised under their criminal code. However, it is illegal in *Greenland* and prostitution laws in the *USA* are determined by state laws. The only state which has legalised prostitution in the *USA* is Nevada. In Central America, countries like *Belize*¹³¹⁴ and *Costa Rica*¹⁵ have legalized prostitution but however, all other activities related to it is illegal.

In South America, *Argentina* has legalized prostitution under federal law but organised prostitution is illegal¹⁶, also the individual provinces can have other restrictions on prostitution.¹⁷, *Bolivia* has not only legalised prostitution but also regularised¹⁸ it and only registered prostitutes going through proper health check-up under licensed brothel¹⁹ will only be allowed to continue their services. *Brazil*²⁰, *Chile*²¹, *Falkland Island*²² have legalised prostitution but to employ a sex worker in any way or to run a brothel is illegal. In Austria, Germany, Netherlands, Greece, Hungary, Turkey both indoor and outdoor prostitution is regulated and is not prohibited when the regulations are followed. It has been proved that regulations “produce” more victims.²³ In Austria, even Non-European Union residents can become prostitutes by “temporary residence permits for self-employed persons without a

¹¹ *Criminal Code of Bermuda* (February 25, 2018).

<http://www.bermudalaws.bm/Laws/Consolidated%20Laws/Criminal%20Code%20Act%201907.pdf>

¹² Stephanie Levitz, Controversial prostitution law introduced on day of action on violence against women (December 3, 2014).

https://www.thestar.com/news/canada/2014/12/03/controversial_prostitution_law_introduced_on_day_of_action_on_violence_against_women.html.

¹³ Delahnie Bain, Special envoy for Women and Children focus on sex predators (October 5, 2011)

<https://edition.channel5belize.com/archives/61581>.

¹⁴ Sex Work Law, Sexuality, Poverty and Law programme <http://spl.ids.ac.uk/sexworklaw/countries>.

¹⁵ Asamblea Legislativa de la República de Costa Rica <http://web.oas.org/mla/en/Pages/default.aspx>.

¹⁶ Sex and Danger, Department of History, Ohio University <https://history.osu.edu/publications/sex-and-danger-buenos-aires-prostitution-family-and-nation-argentina>.

¹⁷ Adam Duvobe, Argentinean Sex Workers Demand the Right to Sell Their Own Bodies (December 4, 2015) <https://panampost.com/adam-dubove/2015/12/04/argentinean-sex-workers-demand-the-right-to-exploit-their-own-bodies/>.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ In Brazil 2018, UNAIDS <https://www.unaids.org/en/regionscountries/countries/brazil>.

²¹ Sex Work Law, Sexuality, Poverty and Law programme <http://spl.ids.ac.uk/sexworklaw/countries>.

²² Crimes and ordinances, Falkland Island https://www.legislation.gov.fk/download/pdf/6c9c7e4a-a076-4a64-a48e-7143f8926b44/eb16e7a2-f7c9-41b2-963e-c0349baff69a/fiord-2014-13_2017-07-31.pdf.

²³ Andrea Di Nicola & others, Study on National Legislation on Prostitution And The Trafficking in Women and Children (August, 2005) https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/study_on_national_legislation_and_prostitution_en_6.pdf.

permanent place of residence” to work as prostitutes²⁴. These permits are envisaged by the *Decree on Show Dancers and Prostitutes (2001)* and do not let the holder change the occupation or apply for residential permit, making them completely dependent on bar owners and brothels which expose them to further exploitation.²⁵ Even though prostitution is regulated in many parts of the country but prostitutes are greatly stigmatised and are considered to be against the public morality.²⁶ Victims are misled about the working conditions by traffickers, due to which they consent to it.

In Germany, full social security is given and there is no need to register but they are discriminated against when other laws in the country are taken into consideration. There is a steep rise in trafficking as reported by the Criminal Federal Police but the law is silent about it. Due to migration regulations of Germany, it is difficult for immigrants to enter and the demand for illegal immigration rises which results in the growth of women and child trafficking. Welfare measures are different from their country of origin. This results in higher rate of poverty and unemployment²⁷. A report submitted by the International Labour Organisation mentioned that there is an immense rise in the demand of prostitution and also pointed out its negative impact on public morality, transmission of HIV/AIDS, increased crimes and violation of basic human rights. "The sex sector is not recognized as an economic sector in official statistics, development plans or government budgets."²⁸ In Hong Kong, buying sex from single woman is legal but running a brothel is illegal. In Japan, even though prostitution is illegal but buying sex is not. Prostitution is defined as being coital intercourse. The sale of sex services being a big business in Japan have resulted in many venues like clubs, bars and salons to provide alternatives like hand jobs, blowjobs or body rubs.²⁹ In

²⁴ A Transnational Initiative on Social and Labour Inclusion for Trafficked Women and Migrant Sex Workers, Gender Street Project Gender Street Project, Gender Street, Savigliano (2004).

²⁵ Ibid.

²⁶ Ibid.

²⁷ Andrea Di Nicola & others, Study on National Legislation on Prostitution And The Trafficking in Women and Children (August, 2005) https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/study_on_national_legislation_and_prostitution_en_6.pdf.

²⁸ Sex industry assuming massive proportions in Southeast Asia, International Labour Organisation https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007994/lang--en/index.htm.

²⁹ Staff Writer, Prostitution Laws Across Asia: What Is Legal and Where? (January 14, 2019) <https://asiasexscene.com/prostitution-laws-in-asia/>.

Bangladesh, prostitution is just legal but regularised with licensed brothels. The prostitutes need to register themselves vide an affidavit to the State.

III. ANALYSIS:

The notion that legalisation or decriminalization of commercial sex or prostitution would lead to reduction in harm is flawed. There have been several claims that with sex trade being legal, the profession would be treated in a mainstream manner but countries where the same has been made legal, there has been a surge in human trafficking, pimping and other crimes associated with it. Reports have revealed that most prostitutes are either female or transgender women³⁰ whereas most consumers are male³¹ and sex-based violence would still remain even if the act itself is legalised or decriminalized. Interviews conducted in New Zealand reveal that decriminalization did not curb violence and abuse. In America, it is reported by 36% of prostitutes that there are violence and abuse.³² This indicates that it is inherent to prostitution.³³ This is further confirmed by reports from San Francisco where it is stated that 62% of women employed in massage parlours have been subjected to physical abuse by the customer.³⁴ Workplace homicide has been heightened and has seven times as more death as that of the most dangerous work done by men as Reports stated in Colorado.³⁵ Legalisation would bring a higher risk of STDs which is inevitable with higher interactions. According to an investigation commission conducted by the European Parliament, e.g. Austria countries that have legalised prostitution are at a higher risk of increase in prostitution

³⁰ Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major and The Impact of the Prostitution Reform Act on the Health and Safety practices of Sex Workers <https://www.demandabolition.org/research/evidence-against-legalizing-prostitution/>.

³¹ A Study of Experiences of People Who Pay for Sex in Canada ,Executive Summary of the Preliminary Findings for Team Grant Project 4 – Sex, Safety and Security <https://prostitutionresearch.com/wp-content/uploads/2012/01/Fact-Sheet-on-Decriminalization-Demand-Abolition.pdf>.

³² Meredith Dank & others , Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities [tps://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view_full_report](https://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities/view_full_report).

³³ Report of the Prostitution Law Review Committee, Justice Sector and Policy <https://www.justice.govt.nz/justice-sector-policy/>.

³⁴ Tooru Nemoto & Others, HIV Risk among Asian Women Working at Massage Parlors in San Francisco, The GuildfordPress116768.gridserver.com/sites/default/files/content/pphg/surveillance/CDC-MARPs/resources/targeted-snowball-venue/3.pdf.

³⁵ John J & Others , Mortality in a Long-term Open Cohort of Prostitute Women , American Journal of Epidemiology, Vol.159, No.8 <https://watermark.silverchair.com/kwh110.pdf?token>.

and may also develop a separate illegal market for the trade.³⁶ One of the best examples is of Denmark where after decriminalization in 1999, there was a substantial growth in the coming decade.³⁷ The Netherlands had to close down their street prostitution zones and had to restrict window prostitution just after three years of the legalisation. The step to legalise prostitution is but an easy way to get rid of all its burdens and with legalisation of prostitution there is no guarantee that the workers would be treated equally in the society and that their exploitation would come to an end. With availability the price would drop, giving rise to coercive actions to bring the unwilling into the profession. Even the attempt to escape fails due to lack of education and reality of unemployment. With the increase in the sex industry, there has been an increase in the demand for sex, increasing the organized crime in this field alongside the exploitation that comes with it. The brothels would become legal outlets where victims of sex trafficking would be kept with a façade of legitimacy.³⁸ In some cases, women are promised jobs like house cleaners, hotel-maids, waitresses, dancers and au-pairs but on the contrary they face violence, abuse and are exploited by the brothel owners and pimps.³⁹

IV. SUGGESTIONS:

The objective of the State should be the liberation of sex workers. It can be very well seen that the individuals opting for prostitution as a profession do it out of hard times and not out of choice. We need to rehabilitate and empower the workers and not open the gates to worse forms of exploitation, which would be catalysed by their lack of education. The benefits of legalisation are far outweighed by the disadvantages as it can be inferred from the situations in the countries that have legalised it. Determining who are underage would be impossible due to the sheer volume that legalisation would bring. The eradication of child prostitution

³⁶NATIONAL LEGISLATION ON PROSTITUTION AND THE TRAFFICKING IN WOMEN AND CHILDREN, European Parliament (September 2005).

³⁷ Prostitutioners og former (2013)

<http://quicksetup.html?randid=1397759549?updatearedirect=socialstyrelsen.dk/udgivelseser/prostitutionens-omfang-og-former-2012-2013/>.

³⁸ Wim Huisman & Edward , The challenges of fighting sex trafficking in the legalized prostitution market of the Netherlands

https://www.researchgate.net/publication/260493897_The_challenges_of_fighting_sex_trafficking_in_the_legalized_prostitution_market_of_the_Netherlands.

³⁹ Transcrime, MON-EU-TRAF II..., op. cit.

should be the prime concern. The notion that one shall be able to choose their profession as a Human Right makes the workers more vulnerable to the pimps, brothel owners and sex tourist.

A step by step approach shall be taken so as to protect the victims. The children shall be filtered out and rehabilitated and educated followed by taking care of the ones who become unemployed due to criminalization. Criminalizing the customers and halting of all associated activities shall be done immediately.

The individuals who would be unemployed should be given an opportunity by the Government by offering them work while also keeping in mind that the previous profession of such individual should not hamper their present and future. The jobs can be based on their strength that they may exhibit while rehabilitation or maybe general as the Government may deem fit at the moment.

Thorough and mandatory check-ups need to be conducted to find whether any individual in such profession has contracted any Sexually Transmitted Disease and they shall be provided with appropriate medical care free of cost. The number of care homes for the children of these individuals needs to be increased and a conscious and effective effort to restrict any form of discrimination on them shall be made. Subsidies shall be given to the ones who are being rehabilitated and newly employed till the time they have a stable financial position.

V. CONCLUSION:

The condition of the sex workers is worsening day by day, their workplace has become a breeding ground for fatal diseases and the women are at a great risk of physical abuse and exploitation. The statistics establish the fact that the claims of betterment in the condition of living and work for the prostitutes are nowhere near the truth. The current law only makes the associated acts and living out of the earning of the prostitute illegal, but it is given that if the very act of prostitution is legal, then the associated acts cannot be restricted by any means.

These acts are not severable from the very act of prostitution itself. The only way to deal with this issue is criminalization of prostitution itself, but the same would not be an easy feat and only if appropriate measures are taken in a timely and systematic manner it can be achieved.

The contention that Freedom to profession is being violated would not stand, as this is for the public welfare and also to keep the victims of sex trade safe and to prevent such from happening in the future. When the situation is overviewed from the human rights perspective, the trade of human body itself is a gross violation and the restriction is for the protection of the prostitutes and not a bar on their free will. The actions should be taken at the earliest as still pimps in New Zealand compare their businesses to that of McDonalds but here it is not dead meat that is being served.⁴⁰

⁴⁰ Julie Bindel, This is what really happens when prostitution is decriminalised, Independent(August 5, 2017, 2PM) <https://www.independent.co.uk/voices/prostitution-decriminalisation-new-zealand-holland-abuse-harm-commercialisation-a7878586.html>.