

Submission by Anti-Trafficking Coalition Organisations to the UN Special Rapporteur on Violence Against Women and Girls to the Human Rights Council on Prostitution and Violence Against Women and Girls

The following submission is made by a coalition of organisations working in the area of anti-trafficking of women and children for commercial sexual exploitation (CSE), prevention of trafficking, rescue of women and children trapped into CSE, post-rescue support and long-term rehabilitation of women engaged in or exiting CSE.

It is difficult to estimate the number of women and girls trapped into prostitution or commercial sexual exploitation in India. It may run into thousands and millions. There are numerous studies on human trafficking for the purpose of commercial sexual exploitation which provide the basis for the seriousness and scale of the problem.¹ The National Crime Records Bureau (NCRB) cites that over 6,500 human trafficking victims were identified in the country during 2022 — 60% of them women and girls. The actual numbers are much higher, due to acute underreporting. Also the number of missing women may point to many of them been trafficked into commercial sexual exploitation. According to the NCRB data, 3,75,058 women above 18 years of age went missing from across the country in 2021. Collectively, a total of 10,61,648 women went missing from 2019 to 2021 across the country. Simultaneously, 2,51,430 girls disappeared during the same period.²

More than 47,000 children are missing in India, according to the latest data from the National Crime Records Bureau (NCRB), with 71.4 per cent of these being minor girls. NCRB figures for the five years up to 2022 also show a mostly rising trend in the figures of missing children — a spike of 7.5 per cent in 2022 in comparison to 2021, a significant surge of 30.8 per cent in 2021 against 2020, a drop of 19.8 per cent in 2020 against 2019 and again an increase of 8.9 per cent in 2019 against 2018 and of 5.6 per cent in 2018 against 2017.³

Our experience reveals that Dalits, Adivasis, OBCs, and minority communities are over-represented disproportionately among the women who get trafficked and end up in commercial sexual exploitation. Most of them are non or semi-literate, and come from poor and rural families.⁴

Prostitution involves physical and sexual violence from customers and agents.

‘Prostitution’ in India does not bear express legitimacy and is considered exploitative under the Immoral Traffic Prevention Act. S. 2 (f) of the ITPA defines “Prostitution” as the “sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly”. Subsequently by way of criminal law amendment in 2013, S.370 was inserted that deals with Trafficking in Person. The provision expressly criminalizes

¹ <https://humantraffickingsearch.org/resource/human-trafficking-in-vulnerable-districts-of-india-national-report/>
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiLg425r4WEAxW_afUH HQgnA6MQFnOECUQAQ&url=https%3A%2F%2Fnhrcc.nic.in%2Fsites%2Fdefault%2Ffiles%2FReportonTrafficking.pdf&usq=AOvVaw3jt2YIRH_57R70gx30ANp&opi=89978449

² <https://www.hindustantimes.com/india-news/women-missing-in-india-ncrb-data-government-maharashtra-madhya-pradesh-101690431904692.html>

³ <https://theprint.in/india/more-than-47000-children-missing-in-india-71-are-girls-shows-ncrb-data/1880048/>

⁴ <https://www.voanews.com/a/in-india-human-traffickers-target-tribal-women-and-girls/7235083.html>

physical or any form of sexual exploitation that is undertaken by use of force, fraud, coercion, abduction, deception, threats, use of force, abuse of power and inducement as some of the means by which a person is trafficked.

The law makers have also considered the fact that most of the time “consent” of the victim is obtained by using any of the above means and the victim is compelled into submission as a result of the vulnerabilities or choicelessness. In view of this, the section further explains that, “The consent of the victim is immaterial in determination of the offence of trafficking”.

In short, the Indian law aims to punish the exploiters like brothel keepers, pimps, traffickers, customers, and others aiding and abetting in the exploitative sex trade and not the woman engaged/entrapped in prostitution. Legalizing the trade would mean decriminalizing the offences of trafficking, procuring, detaining girls and young women, brothel-keeping and pimping. **Legalisation of prostitution would disarm the victim / survivor of her legal recourse against sexual exploitation.**

Women with former and current prostitution engagements testify to this. Further, women (we are in touch with) who currently engage in prostitution speak about the aggravated violence that they face, but many of them have accepted this violence. A few of them do speak about legalisation of prostitution but that is because they see no alternative option before them. Women and girls in CSE routinely face violence from sex buyers, pimps, brothel owners, traffickers. These include rape, sexual abuse, physical, emotional, verbal abuse and PTSD. The other forms of violence include getting pushed into alcoholism and substance abuse leading to negative health and mental health consequences. It leads to lowering their average life expectancy, and prevalence of diseases like STDs, and exposing them to life threatening diseases like HIV/AIDS.⁵

There is an integral link between sex trafficking and prostitution in India. Therefore, they cannot be addressed as two separate issues. In our experience, a significant percentage of women in prostitution were trafficked as minors. The demand for prostitution fuels the trafficking of women and girls. Trends in commercial sexual exploitation have undergone a sea change. Ostensibly legitimate businesses like beauty parlours, massage parlours, spas etc are used as facades to perpetrate commercial sexual exploitation.

Consequently, there is a growing demand for women and minors in massage parlours, dance bars, online sites and the pornography market which leads to trafficking of women and girls. Essentially the scale and scope of the problem is so large and growing so exponentially that targeting demand for prostituted persons may be the most effective way to address trafficking of women and girls in India.

Majority of women are forced to "choose" prostitution because of poverty and violence within the family and therefore prostitution in India is not really voluntary – economic coercion is not consent and as Catharine MacKinnon (1989) says, sexual relations as

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5806326/?report=printable>
[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2980885/#:~:text=Of%20the%20total%20sample%2C%2076.acts%20\(73%25\)%20by%20clients](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2980885/#:~:text=Of%20the%20total%20sample%2C%2076.acts%20(73%25)%20by%20clients)

structured by relations of coerced subordination and based on sexual domination of women by men.⁶

Laws governing trafficking and forced prostitution (Immoral Trafficking Prevention Act, 1956, Juvenile Justice Act, 2015, and Indian Penal Code sections 370 and 376) clearly frame prostitution as commercial sexual exploitation, including violence against women. There are international obligations that India is party to, for example, the Convention Against Trafficking, Palermo Protocol, and CEDAW, whereby commercial sexual exploitation is seen as a violation of human rights.

Legalising prostitution will not reduce violence in prostitution. Contrary to popular belief, legalizing prostitution does not reduce violence in prostitution. There is evidence that shows that in countries that have legalized prostitution, violence continues and grows. Further, women engaged in prostitution also testify to the fact that it is difficult to counter customers who are violent, as they have to satisfy customers enough to get paid and ensure that customers come back to them. Failure to accept violence from customers invites harassment and torture from prostitution agents, and also reduced earnings for the women. The Indian courts have attempted to implement the existing laws in the spirit that they have been enacted. In the case of *Mathew v State of Kerala* [2022 (7) KHC 515] The KHC held that a customer in a brothel can be prosecuted under the provisions of section 7 of the ITPA.

A person trafficked for CSE may be subjected to various serious offences. As Nair (2007) states,

'these violations can be realized only during a careful interview of a trafficked person. Once the victim is allowed, facilitated and promoted to speak, the unheard story will reveal a long list of violating acts perpetrated on her. As a typical example, under the Indian Penal Code (IPC), a trafficked girl child has been subjected to a multitude of violations. She has been:

- ❑ *Displaced from her community, which tantamounts to kidnapping/ abduction (Sections 361, 362, 365, 366 IPC may apply).*
- ❑ *Procured illegally (S.366 A IPC).*
- ❑ *Sold by somebody (S.372 IPC).*
- ❑ *Bought by somebody (S.373 IPC).*
- ❑ *Imported from a foreign country (if she hails from a foreign country, or even from J & K State, and is under 21 years of age – S.366 B IPC).*
- ❑ *Wrongfully restrained (S.339 IPC).*
- ❑ *Wrongfully confined (S 340 IPC).*
- ❑ *Physically tortured/injured (S.327, 329 IPC).*
- ❑ *Subjected to criminal force (S. 350 IPC).*
- ❑ *Mentally tortured/harassed/assaulted (S. 351 IPC).*
- ❑ *Criminally intimidated (S.506 IPC).*
- ❑ *Outraged of her modesty (S 354 IPC).*
- ❑ *Raped/ Subjected to perverse sexual exploitation ('unnatural offences') (S.377 IPC).*

⁶ Mackinnon, Catharine, A. (1989). *Towards a Feminist Theory of the State*, Boston: Harvard University Press.

- ☐ *Defamed (S 499 IPC).*
- ☐ *Subjected to unlawful compulsory labor (S.374 IPC).*
- ☐ *Victim of criminal conspiracy (S 120 B IPC).*

This list is only illustrative and not exhaustive. Undoubtedly, in every case, the trafficked person is a victim of at least one or more of the violations listed above'.⁷

In some cases, the process of exploitation has proven fatal wherein the victim succumbs to the direct effects of the harm or to the consequential problems arising thereof.

Legalising prostitution would lead to reduced action of the police against brothels and places where prostitution is carried out and hence reduce chances of women forced into prostitution to be rescued. Once prostitution is legalized, police would hesitate to enter brothels, spas, massage parlours, hotels and lodges where commercial prostitution is carried out for fear of court cases against them by brothel owners and business interests engaged in commercial sex trade. This would impact the chances of victims of CSE being rescued from such places, if they are being forced into prostitution. It may also mean that minors being forced into CSE would not be easily found and rescued on time.

Legalising prostitution would lead to increased surveillance and control of the bodies of women in prostitution by health authorities. Once prostitution is legalized, the women engaged in prostitution would be subjected to surveillance by health authorities and they would have to undergo regular health check-ups and get fitness certificates stating that they are free of HIV/AIDS or other sexually transmitted diseases. This would lead to increased corruption and women who get certified as unfit would be thrown out of the trade with no alternatives.

Legalising prostitution may legitimize acts of force, deceit, trafficking and rape of prostituted women. Legalising prostitution may lead to acts of agents and pimps getting legal sanction, or they may receive legitimacy.

Legalising prostitution would in effect violate/ not adhere to Article 42 of the Constitution of India that provides for just and humane conditions of work. Prostitution is inherently unsafe, inhuman, exploitative, and violates the dignity of women who have no choice. **It also threatens protection under Article 23 of the Constitution of India that prohibits traffic in human beings and forced labour.** Legalising prostitution would imply legalizing commercial “sexual exploitation or abuse of persons for commercial purpose” as stipulated in S.2(f) of ITPA. It is also violative of Article 21. Right to Life that includes life of dignity and that which is free from any form of exploitation.

In our experience, a substantial number of women and girls trapped in prostitution are in fact looking for exit and do not see prostitution as work like any other - they see it as violence. We support the Government of India’s law and policy approach to combat human trafficking which includes rescue and rehabilitation of victims of CSE. However, lack of mechanisms to address issues of alternative livelihoods leads women to continue their dependence on prostitution. When the starting point for women is absence/lack of choice and force, and these

⁷ Nair, P.M. (2007). Handbook for Law Enforcement Agencies in India, New Delhi: UNODC. Retrieved on January 30, 2024, from: https://www.unodc.org/documents/human-trafficking/India_Training_material/Handbook_for_Law_Enforcement_Agencies_in_India.pdf

issues must be addressed by the State. Legalising prostitution would inadvertently lead to denial of these issues, and neglect in addressing them. **Empowering women with alternative choices rather than legalizing the harm that they face in prostitution would be in keeping with the state's mandate to protect women.**

A large percentage of women acknowledge that there is violence in prostitution. However, they hope that legalizing prostitution would reduce stigma, invite pension and social security, and eliminate police action. If these are what the women desire, the state must address those issues, without legalizing the harm and criminal intent that prostitution carries. Prostituted women often benefit least; it is agents and persons running prostitution rackets that benefit from selling of women's bodies.

We suggest the following approach to address the issue of women in prostitution / commercial sexual exploitation:

- Empowering and strengthening of protective homes through infrastructure development and trained human resources to make it more women-friendly. The focus of these institutions should be on trauma care, counselling, family support and livelihood and skill development of women which is empowerment oriented which reduces their vulnerability to re-exploitation. The socio-legal and rehabilitative interventions in these institutions should be based on a partnership approach where women are seen as adults with agency, who can plan their futures in collaboration with the social workers and counsellors available to support them.
- Designing a grant-in-aid community-based rehabilitation programme to support NGOs which work with women who would like to move away from prostitution into alternative lifestyle. The current institution based rehabilitation programmes do not prepare women for life after discharge from institutions and therefore there is a need to develop aftercare programmes as well as have community-based support structures for women who have not entered or do not want to enter the institutional framework.
- Taking proactive steps to extend existing child sponsorship schemes for children of women formerly or currently in prostitution.
- De-criminalising women's engagements in prostitution, in particular Section 7 and 8 of ITPA, as it only ends up criminalizing women victims of CSE.
- Supporting women exiting prostitution with a monthly stipend for minimally two years or till she obtains an alternative income source, whichever is earlier.
- Including rescued victims in victim compensation scheme as they have been victims of sexual assault and abuse.

Rehabilitation and Social Reintegration measures must be treated as a matter of right and not as facilities.

The steps in this direction should include:

- a) Developing graded community-based alternatives to institutional programmes in the post-rescue phase
- b) Legislation asserting Rights of Persons Exiting Commercial Sex
- c) Special scheme for community-based social reintegration (with provisions for community based shelters, stipends during training, child support programmes).

The rationale for the above-suggested approach is as follows:

1. Women face violence in commercial sex. Those wishing to exit have limited/no support. They continue in prostitution engagements owing to a combination of factors such as social ostracisation and lack of viable economic options which compels some women to view prostitution as the only choice and therefore may perceive legalization as an answer for social acceptance and reduced violence from enforcement mechanisms. They then accept the violence associated within prostitution.
2. Women rescued from commercial sex under the law⁸ are placed in 'protective custody' in protective homes after detailed inquiry by the Magistrate u/s. 17(2) ITPA. If after the inquiry the Magistrate is satisfied only then the person is placed in Protective Home. Nowadays, some Magistrates are also restoring the rescued persons back to families and communities by nominating an NGO to assist the woman in her rehabilitation. In effect, the journey from the commercial sex site to the protective home is akin to the experience of an arrest. The legal intent of placing them in the Protective Homes is to put an end to immediate commercial sexual exploitation and assist them in their empowerment and rehabilitation. It is important that rehabilitation measures in Government Protective Homes are not just restricted to food, clothing and shelter; efforts must be invested to ensure measures that lead to empowerment and reduction in vulnerability to re-exploitation.
3. Persons exploited for commercial sex are viewed not as victims of crime entitled to compensation. Instead they are stigmatized for their past, accounted for their violence and left to (re)construct their lives out of violence on their own.
4. For a significantly large number of women, life in commercial sex ends in destitution, homelessness, entry into other forms of violence, physical/psychological illness, and premature death.
5. Current state measures address those who have been rescued under the law. Those who are not, are presumed to consent to violence and hence receive no support.

In conclusion

Prostitution is not about two adults engaging in consensual sexual activity within the private confines. Prostitution is about "sexual exploitation" and it is about "abuse" "for commercial purposes". It is based on exploitation, abuse and commerce for the gain of another person. From the various studies conducted, legalization of prostitution would perpetrate trafficking.⁹ We have experienced that women get entrapped in sex-trade out of lack of choice and lack of options. They must be treated as victims of serious offences must be protected and assisted for alternative livelihood options.

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⁸ Immoral Traffic Prevention Act (1956). Following rescue under this law, persons are referred to protective homes. Law mandates a minimum stay of 21 days. A few may be 'detained' for months.

⁹ https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjYmf_XqoWEAxXtUWwGHeL6AWoQFnoECA8QAQ&url=https%3A%2F%2Fcatwinternational.org%2Fwp-content%2Fuploads%2F2019%2F09%2FTen-Reasons-for-NOT-Legalizing-Prostitution.pdf&usq=AOvVaw0pe1BHGiu4_jG0u3JLclYe&opi=89978449

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