

**EMERGING DIMENSIONS OF SEX WORKERS AND
PROSTITUTION IN CYBERSPACE: REGULATORY
CHALLENGES AND LIABILITIES OF INTERMEDIARIES**

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[2022-2023]

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ABSTRACT

Since the time immemorial the buying and selling of the sexual favors are the part of the human culture. Evidences are found in mythology, drama, art, sculptures, literature, music and many more. The evidence has also evolved that this celebrated profession has become necessary evil from the most reputed profession in the society. The most catastrophic thing about this profession is that everyone wants to visit that place and the person who visit them actually enjoy but in the society they pretend otherwise. Nothing has been changed in last 1000 years about the profession except the mode through which it is done. Previously it was brothel homes from kota and now on the Internet. If we have to define the word prostitution then we can say that the prostitution means the pleasure of physical need commonly sex in lieu of money or any favor in kind. According to the Act- “prostitution” means the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly. According to American Heritage Dictionary defines prostitution as “the act or practice of engaging in sex acts for hire.” The question stills the same in spite of the oldest and righteous profession in the olden days why the people don’t want to talk about it and don’t want to think about them as because they are not the vote banks and they doesn’t involve in any type of direct work to the economy. India which is most emerging economy of the world and so called very rich in culture has to think again about this and decide that the prostitution was the part of the Indian culture or not? If yes, then why we are not ready to accept them as citizens of our society and as a mere human being sometime. Prostitution is a business carried by the prostitutes which are generally the women. The majority of prostitutes are females in India. This is generally an illegal work in the world; in India the prostitution is lawful but the associated works with the prostitution like running brothels, devadasi system, car picking, and working as pimps are illegal. A woman may simply choose to work as a prostitute based upon her personal choice and free will. I argue that the realm of prostitution is like a coin which has two faces to it. On the one side of this coin there lies freedom; this is where women have the choice of working as prostitutes based upon free will. The other side of the coin is where there

does not lay any freedom for women to choose whether or not they wish to work as prostitutes. On this particular side, women are forced, abducted or deceived into prostitution. The prostitution basically leads towards the disease which caused due to the sexual contamination, the problem of STD's including HIV, unwanted pregnancies, abortion and many more are very common in these women and the meaning of government drives against these issues is the drives against these women.

If we talk about the modern day prostitution then the most popular form of prostitution is the Internet Prostitution or Online prostitution in which the women offer herself as an independent call girl or as a part of the call girl agency. The internet has become the most popular venue to find his match which remains anonymous. There is no need to visit the brothel homes and bargain with the agents. The best example for this is the online auctions website called Gesext offers the possibility to make a bid just like on ebay but on any kind of sexual services. It mostly contains the picture of a women along with the price, it also describe the sexual services a women offer to the men's. The website got famous when a 19 year old girl sold her virginity to 6.650 euro with a doctor's certificate. This website is also famous for the single mothers who offer themselves in order to become pregnant. The online prostitution is also very common because of the women who choose prostitution as their part time career option. The one more quality why this internet prostitution is famous is because of the role-play they offer to their clients. It is on the client that what they want from there to pretend like Girlfriend, Wife, any anonymous character or anyone. In short we can say that it is more than the prostitution, it is overall experience the girl take care of everybody needs of their clients. The main motive for this kind of services is that they make believe to the customer that they are making live not the only sex and they are not involve in any prostitution but they are genuinely a great couple.

In my view the person who visited these websites for the sex is basically nor happy with their sexual life or those persons who wants to try something new in their lives and the best place to visit is the Internet because everything will be in one click without any sociological barriers. There is no doubt that this has changed the prostitution system all over the globe and it has also made the prostitution very approachable. So, it is up to the states that how they control this issue before becoming a social problem or the state give free hand to their citizens to decide their

own fate for the online prostitution. Whatever the policy will be it is on the state but the state has to make sure that they have to separate internet prostitution from human trafficking.

India is the second largest country in terms of use of internet after China. So, it is very evident that the rate of crime in cyberspace will also high in India. The crimes like fraud, harassment, bulling in cyberspace is very common in India and there are laws for them but the problem lies with those issues which is very much alien to the legislation and doesn't have any laws against its, online prostitution is among them. Prostitution or sex work is not a new concept for any country in this globe and India is not an exception to this. Prostitution is as old as our civilization, it is carrying out from the vedic period, the example of Ramba, Urvasi in the Vedic books are the examples of the prostitution in Indian mythology. However, it was not closely related to the sex work in that period, and but not prostitution has changed its role from dance to sex work and from courtyard to the brothel homes.

Now, the prostitution has taken one step more toward our doorstep by going digital or in a cyberspace. The technology has not only beneficial in the free advertisements to the sex workers and their pimps but it also saves them and their customers from arrest and humiliation in the society. This is a win-win condition for both the customers and the sex workers. The prostitution in a closed wall circle within adult women and men and outside 22 yards of public place with full consent. It is allowed in India according to the laws but the related acts like brothels and pimps and of course advertisement for it is illegal in India.

The basic problem with the online prostitution is that it has changed its structure from sex to physical arouse and this form of prostitution is not only affecting the hard-core sex addicts or the adult persons but it is hampering to the teenagers or adolescent children because everything is in the figure tips and within 4 walls of the home. So, it is very easy for them to participate in these types of play. This is the most destructive social problem in India now a days because it has the capacity to destroy not only the family system but also the future of the society. However, the role of the intermediaries, the so-called service providers is very important in this regard, they have to identify between legal and illegal content and comply with strict policy not to tolerate the illegal content in their IP address. However, government should take

necessary step and make strict liability on intermediaries. Now, the social media, dating app, Instagram, twitter, private chat room, the advertisement for the prostitution in one way or another way is very common in India.

The research work started with the historical evolution of the sex work and its changing role till it reaches to the internet. However, in this regard the researcher has also discussed the human trafficking because human trafficking is one of the basic elements of prostitution in India. This researcher is a purely a doctrinal research in which the researcher from its extensive study of laws from different states and precedents from different states try to make a model law in this regard. The primary work of the researcher is to study the present scenario of the prostitution of India in cyberspace and what are the causes for its increase and challenges of the government. The aim of the researcher is also to decide the role of every blocks of the society namely courts, governments, police, citizens, NGO's in attempting this issue. The researcher has also done a profound study on the existing laws of the country regarding the subject importantly ITPA and IT act and what are the changes it requires and most importantly the comparative analysis between India, USA, Bangladesh and the important judgments of the Supreme Court in this regard. Last but not the least the conclusion and recommendation according to the study of the researcher.

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2	Bachpan Bachao Andolan v Union of India	2011(5)SCC1
3	Bangladesh National Women Layers Association vs. Government of Bangladesh & others	(5916 of 2008)
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5	Dhananjay Chatterjee vs. State of West Bengal	(1994) 2 SCC 220
6	Delhi Women Commission vs. Delhi Police	W.P. (Cri) 696/2008, Dt:23.4.2009
7	Delhi Domestic Working Women's Forum v, Union of India	(1995)1 SCC14
8	Gaurav Jain v. Union of India	(1997) 8 SCC 114, SC 3021, (India)
9	Google v. Visakha Industries	Criminal Petition No. 7207 of 2009, (India)
10	Geeta Kancha Tamang vs State of Maharashtra	CA No. 858 of 2009
11	Janhit Manch & Ors. v. The Union of India	PIL No. 155 of 2009
12	Jawaya Kapur vs. State of Punjab	AIR 1955 SC 549
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36	State of West Bengal vs Anwar Ali Sarkar	(1952), (SC 75, CriLJ 510, 1 SCR 284) (India)
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38	SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra-JogeshKwatra	2014,SCC,1279,65/14 (India)
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40	State of Uttar Pradesh v. Kaushalia	AIR 1964 SC 416
41	State of West Bengal vs. Anwar Ali Sarkar	1952 SCR 284
42	Sakshi v Union of India	A.I.R, 2004 S.C.3566
43	State of Maharashtra vs Dr.PrafulB.Desai	A.I.R, 2003 S.C.2053
44	Stratton Oakmont, Inc. v. Prodigy Services Company	(1995) N.Y. Misc. LEXIS 229 (USA)
45	The State of Tamil Nadu vs Suhaskatti	2004, C.C.NO.4680/2004, (India)
46	Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh	The Agra Home Case, 1983 2 SCC 308
47	United States v. Hilton	(1999) 167 F.3d 61 (1st GR.), [cert. denied, 120 S. Ct. 115] (USA)
48	United States v. Mathews	(1998) 11 F. Supp 2d 656 (D. Md) (USA)
49	Vishakha vs. State of Rajasthan	AIR 1997 SC 3011
50	Vishal Jeet vs. Union of India	1990 AIR 1412, 1990 SCR (2) 861

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2. Journal of Positive School Psychology, ISSN-2717-7564, Scopus Indexed Journal, Cyber Sex trafficking-A new way of Exploitation
3. Kala Sarovar, ISSN-0975-4520, 2021, UGC Care Journal, Rights and liabilities of Internet Service Providers in Online Prostitution: A question on Digital World.
4. International Journal of Recent Research and Aspects, 2017, vol-4, issue-4, pg no-34-37, ISSN-2349-7688, Legalisation of Prostitution in India-A question for Indian Society.

LIST OF ABBREVIATIONS

Sr no	Particular	Abbreviation
1	Aadhaar Base Internet Access System	AIAS
2	Communications Decency Act	CDA
3	Commercial Sexual Exploitation	CSE
4	Common Service Centre	CSC
5	Digital Video Disk	DVD
6	European Union	EU
7	Facebook	FB
8	First Information Report	FIR
9	Global Positioning System	GPS
10	Human immunodeficiency virus	HIV
11	Information & Communication Technology	ICT
12	Internet Protocol	IP
13	Indian Penal Code	IPC
14	Immoral trafficking prevention act	ITPA
15	Internet Service Provider	ISP
16	Information Technology	IT
17	International labour Organisation	ILO
18	International Covenant on Civil and Political Rights	ICCPR
19	Juvenile Justice Act	JJ
20	Multimedia Messaging Service	MMS
21	Ministry of Women and Child Development	MWCD
22	National Crime Records Bureau	NCRB
23	Non-governmental Organization	NGO
24	National Human Rights Commission	NHRC
25	Post-Traumatic Stress Disorder	PTSD
26	Peer to Peer file sharing	P2P
27	Personal Identification Number	PIN
28	Personal Digital Assistance	PDA
29	Public Private Partnership	PPP

30	One Time Password	OTP
31	Short Messaging Service	SMS
32	Sexually Transmitted Disease	STD
33	Suppression of Immoral Traffic in Women and Girls Act	SITA
34	Schedule tribe, Sex Tourism	ST
35	Schedule Caste	SC
36	United Nations	UN
37	United States of America	USA
38	United Kingdom	UK
39	Wireless Fidelity	WIFI
40	World Wide Web	WWW

CHAPTER-1

INTRODUCTION

1.1 Introduction

Prostitution is a business carried by the prostitutes which are generally the women. The majority of prostitutes are females in India. This is generally an illegal work in the world; in India the prostitution is lawful but the associated works with the prostitution like running brothels, devadasi system, car picking, and working as pimps are illegal. A woman may easily choose to work as a prostitute out of her own volition and free will, the only requirement is that she must be more than 18 years. I believe that the world of prostitution is like a coin with two sides. On one hand, there is freedom; where women can choose to work as prostitutes based on their own free will. On the other hand, when women don't want to work as a prostitute and they are pushed, abducted, or persuaded into prostitution on this side.

The prostitution basically leads towards the disease which caused due to the sexual contamination, the problem of STD's including HIV, unwanted pregnancies, abortion and many more are very common in these women and the government drives against these issues is the drives against these women.

If we talk about the modern day prostitution then the most popular form of prostitution is the Internet Prostitution or Online prostitution in which the women offer herself as an independent call girl or as a part of the call girl agency. The internet has become the most popular venue to find his match which remains anonymous. There is no need to visit the brothel homes and bargain with the agents. The best example for this, is the online auctions website called Gesext offers the possibility to make a bid just like on ebay but on any kind of sexual services. It mostly contains the picture of a women along with the price, it also describe the sexual services a women offer to a men. The website got famous when a 19 year old girl sold her virginity to 6.650 euro with a doctor's certificate. This website is also famous for the single mothers who offer themselves in order to become pregnant. The online

prostitution is also very common because of the women, who choose prostitution as their part time career option. The one more quality why these internet prostitution is famous now a days among the youngsters is because of the role-play service they offer to their clients. It is on the client that what they want from them to pretend like Girlfriend, Wife, any anonymous character or anyone. In short we can say that it is more than the prostitution, it is overall experience of a real life to there clients and the girls who indulge in this have to take care of everybody needs. The main motive for this kind of services is that they make believe to the customer, that they are not involve in any prostitution but they are genuinely a great couple.

In my view the person who visited these websites for the sex is basically not happy with their sexual life or those persons who wants to try something new in their lives and the best place to visit is the Internet because everything will be in one click without any sociological barriers. There is no doubt that this has changed the prostitution system all over the globe and it has also made the prostitution very approachable. So, it is up to the state that how they control this issue before becoming a social problem or the state give free hand to their citizens to decide their own fate for the online prostitution. Whatever the policy will be it is on the state but the state has to make sure that they have to separate internet prostitution from human trafficking.

The trafficking and prostitution in India are not a new concept but of course the one of the most controversial and toughest question which the Indian society has ever answered due to its partial and religious structure from ages. The journey of the prostitution in India has downgraded from very agreeable to the discarded population in the society. My research work basically focuses on every aspects of the prostitution, whether is cultural aspects (Nagar vadhu), religious aspects (Devdasi) or the political aspects (mentioning in the party manifesto) and again the modern-day prostitution called cyber prostitution. This thesis work has also taken the aspects of the role and liabilities of the intermediaries in the process of online prostitution. So, in this regard this first chapter is the complete introduction of the research work. Which basically focus on the trafficking in India and how the trafficking leads to the prostitution and what are the implementations of this. My first chapter focuses on the origin of computer and the internet which has provided the platform for online

prostitution. I have narrowed down my research by focusing only on female indulgence in the online prostitution.

1.2 Problem Statement

Since the time immemorial the buying and selling of the sexual favors are the part of the human culture. Evidences are found in mythology, drama, art, sculptures, literature, music and many more. The evidence has also evolved that this celebrated profession has become necessary evil from the most reputed profession in the society. The most catastrophic thing about this profession is that everyone wants to visit the place but no one wants to talk about them in public. Nothing has been changed in last 1000 years about the profession except the mode through which it is done. Previously it was brothel homes from Kota and now on the Internet. If we have to define the word prostitution then we can say that the prostitution means the pleasure of physical need commonly sex in lieu of money or any favor in kind. According to the Act-The term "prostitution" refers to the sexual exploitation or abuse of people for a profit, and the term "prostitute" has the same meaning.

According to American Heritage Dictionary defines prostitution as “the act or practice of engaging in sex acts for hire.” The question stills the same in spite of the oldest and righteous profession in the olden days why the people don’t want to talk about it and government don’t want to think about them as because they are not the vote banks and they doesn’t involve in any type of direct work to the economy. India which is most emerging economy of the world and so called very rich in culture has to think again about this and decide that the prostitution was the part of the Indian culture or not? If yes, then why we are not ready to accept them as citizens of our society and as a mere human being sometime. The society in India has been trapped between the morality and their fast changing lifestyles and online sex work in India has become a part of changing adulthood in India. However it is widely acceptable and normal in the most of the metropolitan in India but still India has to re-think on these sex workers and about their life’s and recognising this as a full time work and as a profession with Fundamental rights.

1.3 Hypothesis

H1- There is a need for separate laws and investigating agencies to combat the issue of prostitution on internet and mere De-criminalization of prostitution will never solve the issue of prostitution on internet.

H2- The Immoral Trafficking Prevention Act is not sufficient to combat the problem of prostitution on Internet.

1.4 Research Questions

1. What are the dimensions of trafficking which leads to the online prostitution.
2. Who are responsible for ordering sex work on internet, whether physiological factors or changing technology.
3. What are the changes required in ITPA act for Online Sex work in India.
4. What is the role and liabilities of Internet service providers in India.
5. What are the differences between the developed, developing and under developed countries regarding the cyber sex work?

1.5 Aim and Scope of the study

The Aim and scope for studying in this matter is vast and enormous as in every Indian States; there are many women and girls who are indulge in this new social problem in the society, fighting every day for their basic needs and for their basic self-respect. Even the study will touch the constitutional safeguards, the Indian Penal Code, various other Indian and International Laws, Bills and committee report, comparative analysis and case laws of India and abroad can be analysed in this context.

1.6 Objective

The Objective of the Study is as-

1. To analyse the emerging dimensions and present scenario of Human Trafficking in online Prostitution.
2. To analyse the legal rights of sex workers in Cyber Space.

3. To study the role of Cyber Space in the sex work.
4. To study the regulatory challenges in the regard of cyber prostitution.
5. To analyse the liabilities of the Internet service Providers in this regard.
6. To do a comparative analysis with developing, developed and under developed countries.

1.7 Literature Review

1.7.1 Sex 2.O-pornography and prostitution influenced by internet- Carsten Glockner

This book is written in the form of essay, writer has assimilated the different topic related to online prostitution like Psychological aspects of prostitution, emerging dimensions, porn and prostitution, client motivation for using internet and many more. This book is more concentrating on the side of emerging dimensions of prostitution which includes internet prostitution not as a social problem. It also connected with the human trafficking and what authorities have to play in dealing with the prostitution. I had chosen this book because of its wider nature and the lucid language which writer has used to make understand the basic concepts of online prostitution. The book also makes a short comparative analysis between the countries and their role on the prostitution.

1.7. 2. Selling sex from the suite to the street: Prostitution in the Digital Age ¹

This book is a wonderfully written from the point of view of digital world. It gives emphasis on the history part of the prostitution and most importantly its transformation from Brothels to websites, reason for the shift and its pros and cons. This book has also given emphasis on the new way of prostitution like male hustlers, Escort services, street walkers and finally a debate that whether it should be allowed or not.

¹ R. Barri flowers, ISBN 978-0-313-38460-8 (hardback: acid-free paper) — ISBN 978-0-313-38461-5 (ebook), Available at-<https://www.questia.com/read/124091106/prostitution-in-the-digital-age-selling-sex-from>.

1.7.3 Co-modification of Sexual Labor: The Contribution of Internet Communities to Prostitution Reform²

The goal of this study is to show that some online prostitution venues contribute to acceptable prostitution reform by encouraging members to trust and respect one another. As a result, the goal of this research is to show that prostitution may be facilitated online with trust and respect, as well as to identify the social and economic factors that influence these attitudes and to explain this occurrence using a suitable social science model. This research identifies a non-legal enforcement technique for facilitating cooperative exchanges based on participant trust. A reputation mechanism is at the heart of the cooperation system, encouraging participants to submit honest ratings of their interactions with one another in order to create trust amongst potential partners. The mutual trust and respect that players have for one other can be explained by viewing the social order as a cooperative game in which individuals publicly signal each other in an attempt to identify the most attractive partners. According to this study, prostitution reform that is acceptable to many feminists is conceivable. However, for significant reform to succeed in practise, it must be accompanied with legislation that safeguard women's sexual autonomy while not stigmatising prostitutes.

1.7.4 Prostitution and Beyond: An Analysis of Sex Workers in India³

The first portion examines the place of prostitution among women in mainstream feminist discourse in India, as well as how it has changed through time. The second portion focuses on the diversity of sex work practises, including historical relics, modern expressions, and urban-rural disparities. The third segment looks at how society and prostitution interact, tracking economic and social undercurrents, as well as health issues and legal regulations. The final portion examines the impact of prostitution on literary, linguistic, cinematic, theatrical, and media cultures.

² ISBN-13: 978-1612334158, Publisher: Dissertation.com (January 4, 2016), Available on- https://www.amazon.com/Commodification-Sexual-Labor-Contribution-Prostitution/dp/1612334156/ref=tmm_pap_swatch_0?_encoding=UTF8&qid=&sr=

³ Rohini Sahini, ISBN-13: 978-0761936381, Publisher: SAGE India; First edition (23 June 2008) Available at- <https://www.amazon.in/Prostitution-Beyond-Analysis-Workers-India/dp/0761936386>

1.7.5 Dot.Cons⁴

The consequences of these major developments in information and communication technology for the growth of criminal and deviant identities and conduct on the Internet are explored in this book, which crosses the boundaries of sociological, criminological, and cultural discourse. This is a book about people and the new patterns of human identity, conduct, and association that are evolving as a result of the communications revolution, not about computers or legal arguments over cyberspace governance.

1.7.6 Internet and Prostitution Activities⁵

The use of communication technology in prostitute operations and the optimization of internet technology for prostitution suppliers and users are two of the topics covered in this article. New media, according to this article, can allow open and flexible usage, but it can also cause turmoil and confusion. New media offers some advantages, but it also has some disadvantages. The findings suggest that the Internet has made prostitution more accessible; transactions have become easier, cheaper, more practical, and more efficient in terms of time and energy. Technology has been optimised to the point where it has become a promotional tool for the lower classes, while the upper classes use it to book plane tickets, hotels, and transfer payments for prostitution services.

1.7.7 Online Prostitution and Trafficking⁶

Beginning with the emergence of social networking sites, discussion forums, message boards, and online chats, the author has outlined the history of online trafficking and the astonishingly effective use of the Internet for advertising prostitution locally, regionally, and worldwide. This paper also highlights the role of organised crime in online trafficking, as well as a number of successful prosecutions of online traffickers.

⁴Yvonne Jewkes, Publisher: Willan; ISBN-13: 978-1843920014 1 edition (1 January 2003), Available at- <https://www.amazon.in/Dot-cons-Yvonne-Jewkes/dp/1843920018>.

⁵published in 2018 J. Phys.: Conf. Ser. 1114 012153, Available on-<https://iopscience.iop.org/>

⁶Farley, Melissa; Franzblau, Kenneth; Kennedy, M. Alexis, Albany Law Review, <https://www.questia.com/>

1.7.8 Status of Prostitution and Related Crimes in India⁷

This article has discussed the prostitution into Indian aspects as their history, importance, case laws and Psychological factors behind the prostitution. The articles have specially focused on the victims of the prostitution and the role played by the agencies and Ngo's in combating this problem.

1.7.9 Sex and life politics are established as a result of online and offline dating. Young women's perspectives.⁸

This research aims to comprehend China's and other Asian countries' rapidly evolving sexual and social cultures. It will focus on young women's sexual encounters online and offline, as well as how they deal with a fast-changing, modern city in the digital age of the twenty-first century as women. This article also looks at how women develop new virtual networks for themselves, as well as how they adapt these virtual networks into so-called "real" social networks and use them to achieve their personal goals. This article looked at how women use 'hidden activities' to establish new social spaces and possibilities for themselves, as well as how they use the Internet to enhance their lives.

1.7.10 Trafficked women and girls are sold online⁹

This article basically concentrates on the European region and the thing which makes this article important is the relationship between human trafficking and prostitution and online is only the new tool but this old age problem.

⁷ Available on-<http://www.legalservicesindia.com/article/2513/Status-of-Prostitution-and-Related-Crimes-In-India.html>

⁸Women and the Cyberspace,KhunEngKuah-Pearce, Amsterdam University Press. (2008), Available on-<https://www.jstor.org/stable/j.ctt46mvqc.14> (last retrived-20-12-2019)

⁹ By Hannah Bondi, posted on-18/01/2019, Available on-<https://www.youngfeminist.eu/2019/01/trafficked-women-and-girls-sold-online/> (last retrieved-17/12/2019)

1.7.11 House of Commons, home affairs committee Report on Prostitution¹⁰

Key findings of the committee

- Around 11% of British men aged 16–74 have paid for sex at least once, equating to 2.3 million people.
- Around 72,800 sex workers are estimated to be employed in the UK, with roughly 32,000 working in London.
- Sex workers see an average of 25 clients every week, with each visit costing an average of £78, and the internet plays an important part in client management.
- There were 456 sex workers prosecuted for loitering and solicitation in 2014–15.
- Between 1990 and 2015, an estimated 152 sex workers were murdered. In one survey, 49 percent of sex workers stated they were concerned about their safety.
- In 2014, there were 1,139 victims of human trafficking for sexual exploitation, and in April to June 2015, there were 248 victims.

1.7.12 the nature and prevalence of prostitution and sex work in England and Wales today.¹¹

This paper is an important step toward understanding sex work, the various types of sex services, and why people become attached to it. Researchers from the University's School for Policy Studies interviewed over 500 people now or formerly involved in prostitution or sex work, solicited input from over 90 organisations, and analysed over 1,400 relevant papers published since 2000 between May 2018 and June 2019. Their findings reveal a multifaceted picture, with people from all walks of life participating in a variety of activities, ranging from street labour to web-camming, for a variety of reasons. The paper also discusses how the internet has transformed the sex industry by providing new ways to advertise and find sex.

¹⁰ Published on 1st July 2016 by house of commons, Available on- [https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf,\(last](https://publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf,(last) retrieved- 21-12-2019)

¹¹ Professor Marianne Hester, Dr Natasha Mulvihill, Dr Andrea Matolcsi, Dr Alba Lanau Sanchez and Sarah-Jane Walker for the Home Office and the Office of the South Wales Police and Crime Commissioner ,published on-30 October 2019, Available on- [http://www.bristol.ac.uk/news/2019/october/sex-work-report.html,\(last](http://www.bristol.ac.uk/news/2019/october/sex-work-report.html,(last) retrived-22-12-2019)

1.7.13 Final Report on Prostitution and Sex Trafficking Demand Reduction Efforts across the United States¹²

This paper is intended to provide a descriptive overview of initiatives in the United States aimed at increasing demand for commercial sex. It explains how the data for this (and subsequent) reports was gathered, examines specific projects, and spotlights chosen communities to show how and why their members have attempted to combat prostitution and sex trafficking by reducing demand. The paper is designed to serve as a primer for individuals exploring anti-demand measures in their communities, as well as those considering policies, regulations, and infrastructure expenditures to assist local efforts at the state level.¹³

1.7.14 Committee on prostitution, child prostitution and children of Prostitution¹⁴

This report is basically a reformative report for the prostitution and their children. After the case of Gaurav Jain vs. Union of India & others¹⁵, the debate has been increased for the re-establishment of the prostitute and their children. So, this report is basically the outcome of this case. This report has been talked about their health rehabilitation, their retirement schemes, housing, shelter and their civic immunities, legal reform and law immunities and the role of the government in this regard. The role of the Ngo's is also very important in the regard of the awareness and the other social security. This report has also talked about the economic empowerment and establishment of separate machinery in this regard.

1.7.15 Justice Verma Committee¹⁶

The Justice Verma Committee was formed to recommend changes to the Criminal Code that would allow people convicted of sexual assault against women to be tried

¹² Michael Shively, Ph.D., Kristina Kliorys, Kristin Wheeler, Dana Hunt, Ph.D. Document No.: 238796, Date Received: June 2012, Award Number: 2008-IJ-CX-0010, Available on- <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf> (last retrieved-22-12-2019)

¹³ ibid

¹⁴ Published by- Ministry of Women and children, Government of India, 1998. Available on- <https://feministlawarchives.pldindia.org/wp-content/uploads/Report-of-the-committee-on-Prostitution-child-prostitute-and-children-of-prostitute-by-DCW-and-MHRD.pdf> (last retrieved-22-12-2019)

¹⁵ 09/07/1997

¹⁶ Available on- <http://prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

more quickly and receive harsher penalty. On January 23, 2013, the Committee submitted its report. On January 23, 2013, the Committee submitted its report. It presented recommendations on rape, sexual harassment, human trafficking, and child sexual abuse laws, as well as victim medical examinations, police, electoral, and educational reforms. We summarise the Committee's principal recommendations.

1.7.16 Law commission sixty fourth Report on the suppression of Immoral Traffic in women and Girls, 1956¹⁷

This report has clearly suggested that no government can stop prostitution it is related with the human existence. So, the prostitution can be only reduced, not over and this can only be done with the harsher law and the strong rehabilitation method. This report has also given the example of the city of Rome in order to tackle this problem. So, this report has suggested numerous amendments like the harsh law, separate ministry, police and court and the award for those persons who are giving information to the brothel homes and many more.

1.7.17 Early Childhood Development and Legal Entitlements¹⁸

This law commission report has been basically focused on the childhood of the child of sex workers and the role of the government. This report has also talked about the introduction of the lessons of the human trafficking and prostitution in the course curriculum just like sex education in the school. This report has been also focused from the point of view of the Fundamental rights and the human Rights development in the nation.

1.7.18 A report on the trafficking in women and children in India¹⁹

This report has been made in the collaboration of NHRC and it talks about the emerging dimensions of the trafficking including the love propaganda which is running under the syndicate. The study revealed the multi-faceted nature of the problem, as well as legal loopholes, shortcomings in law enforcement, organised mafia involvement, and victims' anguish. It also revealed that India serves as a source, transit, and destination for the exploitation of thousands of women and children on a

¹⁷ Published in 1975, Available on-<http://lawcommissionofindia.nic.in/51-100/Report64.pdf>

¹⁸ Law commission report no-259, Published in 2015, Available on-August 2015, Available on-<http://lawcommissionofindia.nic.in/reports/Report259.pdf>.

¹⁹ Available on-<https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf>

daily basis. It also demonstrates that efficient coordination of what appears to be a dispersed activity is a crucial element of the trafficking network. Actors in the human trafficking network cooperate together and protect one another.²⁰

1.8 Research Methodology

This is an interdisciplinary research basically focuses on socio-legal aspects of the subject. The Method of Doctrinal would be used to complete this Research work. So, basically this research work would be purely in Doctrinal form with the interpretation of all the secondary data best available. Data would be collected through Secondary sources, which includes books, articles, case laws, commentaries etc. A systematic way to assess the possibilities provided in the chosen research method forms the study's doctrinal preposition. The problem's complexity necessitated a multi-pronged approach to handle it from several perspectives. Each of the research problem's ancillary questions is addressed separately using the proper research method.

A period of three to maximum four years is desired as necessity for the study especially for comparing the authentication of the source. The first one year for studying the existing legal framework and important cases along with that of the rest of the world whereas the major part of time starting from the second year can be devoted for the research interpretation and writing down the thesis.

1.9 Significance of the Research

The advent of the human kind has opened the avenues of the different social and moral events; the sex work is also among them in the society. The present research is the journey of sex work in India from the oldest way of sex work to the latest way of sex work that is online sex work. The form of sex in India and the globe has changes a lot. The motive of the present research work is to highlight the area of online prostitution which is still not digged and which are not find out by most of the people in the society. The Online prostitution has still not had much researched. So, this study in a form of research work is an attempt to fill some of the gaps of the present research problem.

²⁰ ibid

1.10 Limitations of the study

The present research work has limitations like it is the vast area of research in which the researcher is focusing basically the factors of online prostitution and role and liabilities of Internet service providers. The researcher is only focusing in India however; a valid comparison has also been done with the other developed and under developed countries in the form of comparative analysis. The problem lies that there is very little research has been done in India on the said issue. As a result of a time limitation, the researcher's findings may only be suggestive rather than definite. For legal and ethical considerations of sex work in India, the researcher must consult previous relevant and authentic studies.

1.11 Scheme of the study

The research study is having the following chapters:

Introduction is the first chapter, and it provides an overview of what the research is about and how it will be conducted. Research questions and hypotheses are outlined in this section along with the purpose of the study and any limitations it may have. It also includes an overview of the technique and instruments used to conduct the research as well as any implications that may result from it.

The second chapter that is **Historical background and development of sex work in India**, researcher will be dealing with the introduction of trafficking and sex work and how they are connected with each other. Researcher is also focusing on Ancient, Medieval, Modern-Pre-Independence and Post-Independence era of the Prostitution. In which the Devadasi system and prostitution in the colonial period will be specially taken care and transformation from brothel to online prostitution.

The third chapter that is **Existing laws on sex work and need for change** examines the existing laws of the country specially the IT act 2000 and other committees report and law commission report and special drafting pertaining to internet prostitution and need for changes in the existing laws. In this segment the reasons and the factors of internet prostitution will also be discussed.

The fourth chapter that is **Online Sex work- The players, roles and liabilities of Intermediaries in India** will deal with the research part in which the questionnaire

and interview method will play a major role and the sample which is collected will be elaborated through the percentage method. The liabilities and role of intermediaries and service providers will be also seen in this segment.

The fifth chapter that is **Judicial Approach towards online Sex work** will discuss the judicial approach and Important Precedents regarding these Issues. A thorough study of judicial decisions and other enforcement mechanism will be done.

The sixth chapter that is **Comparative analysis**, this section will discuss the existing laws of developed, developing and underdeveloped countries (USA, India, and Bangladesh) and try to compare those laws among themselves.

The last chapter and seventh chapter would be of the **Recommendation and Conclusion and suggested model laws**, in which the researcher will suggest some important aspects for combating this issue, and the role of Government, Media. The researcher will also provide some changes in the present ITPA act and a Model Law in this regard.

CHAPTER- 2

HISTORICAL BACKGROUND AND DEVELOPMENT OF PROSTITUTION IN INDIA

2.1 Introduction

The prostitution is not a new concept of India as well as for the Indians. The growth of the sex work and workers is as old as the human civilization in India. India as a country has seen almost ever aspects of the sex work in its country from good to bad to worst. The ancient history is full of the stories which actually show the good situation of the sex workers at that time. They were given proper respect and revenue to grow in the society. The concept of the Nagar vadhu is the best example for this. The interference of the prostitutes in the policy making of the king can be traced from the writings of the Chanakya at the Mauryan Empire. As the time flow the situation has been changed from good to worst. The Mughal period or the medieval period is the period from which the situation of the prostitutes getting worse. As the rise of the temple culture in the society, the authority of the prostitutes in the king's courtyard has been started degrading.

The present chapter is the brief over-view of the historical development of sex work in India. The prostitution in India has grown in India with the society; it has shown every possible aspect. The irony of the Indian society is that the people in the ancient India is much more open minded than in the 21st c. regarding the topic like prostitution and transgender. As the society change in India from Metrical to Patriarchal the subject like prostitution has its worst impact. However, the reality is far from the mindset of the general class in India. Basically, the prostitution is used to keep the balance in the society to keep the crime graph done but eventually it has submitted as a very evil profession for the society. However, in every phase of the society this vulnerable section of the society is the center of attraction.

In the present chapter the researcher has focused on all ages of the prostitution and try to find the link that how this profession has changed their dimension. The researcher has also focus on the invention of the technology and how this has been given birth to

the online prostitution and most importantly the researcher in this segment has also discussed the future change which might possible that will come in the online prostitution.

The modern period or the British era is the worst period which researcher consider for the sex workers. They have been only understood as the commodity of the either British troops or the big bureaucrats. The bruisers exploit these sex workers also to show the authority on the Indians. However, after the independence the situation has been changed a bit with the coming of new laws and indulging the NGO's in this regard but still more to improve because they are still fighting to meet their daily needs.

Researchers in this segment highlighted the work of the prostitution in all the ages like in Ancient, Medieval, and Modern and after independence. Basically, the researcher has focused on their situation how it is degraded in the society. Last but not the least the researcher has focus on the invention and change in the technology system which is the computer and internet and how this change leads to the online Prostitution.

Prostitution is one of the oldest professions in the world and India is not an exception to this. As the time change, sex workers are recognized by different names such as Devdasi, Tawayaf, Nagar Vadhu and many more but the profession remains same. In the early days it had different aspect in which the sex workers have different way of life and different reputation in the society. As the time changes the life style of the sex workers has decreased with every passing decades and now, they are in this phase that no one even wants to talk about them. The emerging dimensions of human Trafficking have lighted the matchstick in this gun powder.

If we conclude about the situation of women as a whole then we can say that today female is generally considered the weaker section of the society. The universal social structure holds that she must be safeguarded by the powerful, however this was not the case during the Vedic period, since women in India had great social position during the Rig Vedic period. Women were given the opportunity to reach a high intellectual and spiritual level.

During this time, there were a lot of female Rishis. Though monogamy was the norm, the wealthier members of society practised polygamy. There was no sati system in place, and there were no early marriages. Girls are treated and revered as Goddess Lakshmi in Hinduism. Though boys are not treated in the same way as Rama or

Krishna, girls in the Sindhi, Punjabi, and Nepali communities are not allowed to touch their parents' feet, everyone - including parents - touches the feet of the girls on occasions like Navaratri.

Discrimination against women began following the Vedic period, particularly in the areas of education and other household privileges and amenities. Child marriages, widow burning, the purdha, and polygamy exacerbated the situation for women. Women were equated with property in the epics and purans, and Buddhism did nothing to help women, but the Mauryan Kings frequently used female bodyguards, spies, and stri - adhyakshamahamatras. However, their social standing was still harmed because upper caste women are required to adopt purdha. Men were polygamous throughout this time, and widow burning was a common practise. Women were subjected to even harsher stigmas in Arthashastra, as Kautilya denied women's liberation, and they were not allowed to leave the house without the permission of their husbands. During the Gupta period, women's conditions and status deteriorated.²¹ The Smritishastras abused them; Manu dictated women would be dependent on her father in childhood on her husband in youth and on her children in old age. Apart from child marriage and sati, prostitution and devadasi system became widespread. In a welfare State constitutionally, every crime should be reported, and every person whose rights have been violated should get justice. There have been attempts in India, since independence to improve the status and condition of women through various modes and legal enactments. For example, equality before law is now a fundamental right and discrimination based on sex is legally prohibited under the constitutional scheme, there is also equal pay for equal work.

In 2010 a bill was passed through Raj Sabha to reserves 33% of the seats for women at the lower house of the Parliament but unfortunately never voted in Lok Sabha. Now due to social change, women especially in urban areas, have to work in different sectors, thus there is likelihood of their sexual harassment, incidences of sexual offences and violence against women in India is high and have been on the increase and continued to be a constant feature in the media in the shape of “Breaking News”, data available on the incidence of sexual offences and violence against women in India is a cause of worry because this is despite the introduction of stiffer punishment for culprits.

²¹Afifi Macmillan Turner (et.al), Relationship between Child Abuse Exposure and Reported Contact with Child Protection Organizations, Child Abuse and Neglect, 146, 198-206 (2015).

The profession of Prostitution starts with the organization of the man's in the society. According to the oxford dictionary-the act of engaging in sexual activity with another person in exchange for money. According to me, the most frequently recognised definition is found in the Encyclopedia of Social Science, which defines prostitution as "the practise of a female offering her body for promiscuous sexual intercourse for hire or other purposes." According to legislation in India, "Sexual exploitation or abuse of persons for commercial purposes. "Prostitution Practiced in almost every country in the globe including India. In olden days of Vedas, the court rooms of Indra (lord of Gods) use to keep the ladies like Urvasi, Menaka and Rambha for their entertainment as well as to test the resolve of sadhus to make sure them and their thoughts are implacably pure and are fit on all moral pedestals. Indian culture of Prostitution is full of Entertainment, dance and crime.

Kautilya a famous economist and writer of Mauryan times recommended appointing prostitutes for the courtyards to keep on eyes on their bureaucrats and from time to time they are invited in the court room to entertain and money, land, jewelry as a remuneration were given to them from time to time for their work. They were paying taxes to the kings at that time and they were first class citizens in the society. Many girls were trained from very childhood only to dance in the courtyard and to become Nagar vadhu at that time; it was very proud work to many women at that time. The Concept of Nagar Vadhu is famous during this period. The Nagar Vadhu is considered as one of the most important ladies of the area and she enjoyed all the protocols and immunities which kings gave to her from time to time.

In the Jatakas, a collection of Buddhist stories written in the ancient period, there are numerous references to prostitutes indicating that they were tolerated and even esteemed to a certain degree. The fees paid to them were exceedingly high. Ram Mohan Das, an eminent sociologist states that Manu had a very low opinion about such women. He states that the patriarchal double standards of allowing the institution to prevail while at the same time, looking down at these women as 'fallen women' and calling them 'harlots' is reflected in Manu's Philosophy.²²

In the famous book Kamasutra, talk about the profession of the prostitutes and said that they are profound in all the 64 postures of sex. The Mitakshara states that the

²²Vālmīki, The Rāmāyaṇa Ayodhyākāṇḍa, 67,11 (Sheldon Pollock trans., Vol. II, 1987). (For the original text, see the text with the same translation, published from the New York University Press, New York, 2007).

SkandaPurana, ancient scriptures, regards the prostitutes as the fifth caste beyond the four recognized ones. It adds that such courtesans who are not maintained exclusively by any particular person do not incur any sin if they have intercourse with men of the same or the superior caste. The king punishes neither them nor the men having connection with them.

The Mugal period is the most advancing phase of this system. The emperors keep the women's in their harems for the physical pleasure and after sometimes they change all the women's in their harems with the young and beautiful women. The women who came outside the harems of the Mugal emperor are associated with the prostitution because they don't have any option other than this. The G.B road of New Delhi is the best example of this custom. It was once thought to be an art form reserved for the royal or upper classes of India. We can all relate to this from the popular Bollywood film Devdas, in which it was eloquently depicted how girls participating in prostitution are solely designed to entertain the people of their society and have no other existence.²³

The trace of Prostitution is also witnessed in the South India in the form of Devdasi system, in which a girl of Lower caste is given to the higher caste of Bramins to become his mistress and after some time they are send to the brothels to live their remaining lives. The irony is, its entire stake in the shadow of the religion but the fact is that it happens because of the poverty. A whole organized system is working behind this, a celebration is there when a girl attained her puberty and the highest bidder gets the girl. However, the government had tried a lot to stop this system through legislation but failed in its major part.

From the ancient era of the 'Dasi system' to the present era of the 'Prostitute' system, India has come a long way, not only in terms of how we view prostitution on moral grounds, but also in terms of how we as a society have rejected prostitution as a career. It is also mandatory to mention here that the women who entered into this profession are not by his will but by force. Sometimes it is because of the poverty or the illness of the family members.²⁴

To summarize the basic history of prostitution in India, the practice of prostitution has long been a part of Indian culture. Prostitution was closely associated with the

²³Nath Vijay, Women as Property and their Right to Inherit Property up to the Gupta Period, 20(12) Ind. Hist. Rev. 1-15 (1993-1994).

²⁴ Bṛhaspati, The Minor Law Books (Part-I) xxIII.6-9, Julius Jolly ed, (1969). Original text, BṛhaspatiSmṛti (P.V. Kane ed., (1933).

performing arts throughout the Mughal era, which lasted from 1526 until 1857. The Mughals favored prostitution, elevating the position of singers and dancers to new heights of prostitution. King Jahangir's harem, for example, had 6,000 mistresses who symbolized authority, money, and power. Prostitution flourished during the British rule in India, with the popular kamathipura, a red-light district in Mumbai, created for the refreshment' of British troops. This was eventually taken over by sex workers from India.

The Hindu mythology is full of the examples of the prostitution, the sculptures like Ajanta and Ellora has an image in their walls. India is a country which gives the concept of Kama sutra. The Vedic or early age India is very much modernised in this regards and they openly accept the concept of Sex as an important part of the life and they feel that there is no harm in the openness in this regard, even at that time the people feel the importance of this sex in the life of the people and they considered that it is their duty to pass the knowledge to the coming generation.²⁵

The new concept which emerged in India is the concept of sex tourism and the religious places like Varanasi, Puskar and many more is the new favourite to the foreigners. The concept of seasonal Prostitution is also their Mela in khubh in Prayagraj, Uttar Pradesh is the best example of this. In which the people gather in the month of January every year for bath in Ganga. The frequent transitions of one into the other, as well as their ongoing relationship, are explained by the identity of religious and sexual perceptions. The unusually interesting history, of the complicated and remarkable sexual, if renders clear to us individual processes of their kind and certain peculiarities of racial psychology; and thus we are led to understand the powerful after-effects of the phenomenon in the customs, morals, and conventions of our time, and we are enlightened as to the role still played.²⁶

2.2 Trafficking- Meaning and Nature

The term "trafficking" is defined in several sections of the Immoral Trafficking Prevention Act, the most pertinent of which being Section -5. It discusses obtaining, capturing, and even inducing a person for the purpose of prostitution. Even attempting to obtain and attempting to take or cause a person to engage in prostitution is

²⁵ Ibid.

²⁶ Sinha S.N. & Basu N.K., The History of Marriage and Prostitution (Vedas to Vatsyayana), Khama house Publication, ed.2, 110-111(2015).

considered trafficking under this clause. As a result, the term "trafficking" has been given a broad definition. According to Section 2 (z), of Goa Children's act 2003, trafficking" means "*the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise*". The Trafficking Protocol, which had 117 signatories and as of November, 2018 there are 173 parties, defines human trafficking as:

1. Recruitment, transportation, transfer, harboring, or receipt of persons for the purpose of exploitation by the threat or use of force or other types of coercion, abduction, fraud, deception, abuse of authority or vulnerability, or the providing or receiving of compensation or benefits. The exploitation of others' prostitution or other types of sexual exploitation, forced labor or services, slavery or practices comparable to slavery, servitude, or the removal, manipulation, or implantation of organs are all examples of exploitation.²⁷

2. "Trafficking in persons" includes the recruitment, transportation, transfer, harboring, or receiving of a child for the purpose of exploitation. "

3. Child" shall mean any person less than eighteen years of age.²⁸

Trafficking in simple terms means the use of force, fraud, coercion to obtain the unpleasant favour like commercial sex or bonded labour. The trafficking is very common for whole globe and India is not an exception to this. The most challenging problem in trafficking is the person who is victim and the person who is culprit they generally know each other and they have personal relations between themselves. So, it is very difficult for the agencies and family of victim to stop the crime before it happens.

2.3 Prostitution- Meaning and Nature

In one sentence, if we have to define the word prostitution then we can say that the prostitution means the pleasure of physical need commonly sex in lieu of money or any favour in kind.

²⁷ United Nation convention on transnational organized crime, 55/25 (2003)

²⁸ Ibid.

According to Act-The term "prostitution" refers to the sexual exploitation or abuse of people for a profit, and the term "prostitute" has the same meaning.²⁹

According to American Heritage Dictionary defines "The act or practise of participating in sex acts for hire" is defined as prostitution.³⁰

According to Merriam Webster- the act or practise of having multiple sexual relationships for the purpose of making money.³¹

Prostitution is a business carried by the sex workers which are generally women. The majority of sex workers are female in India. This is generally an illegal work in the world and in India the prostitution outside the 22 yards of public place is legal in India but the associated works with the prostitution like running brothel homes, devadasi system, car picking, and working as pimps and many more, which are closely related to the prostitution are illegal in India. A woman may easily choose to work as a prostitute out of her own volition and free will. I believe that the world of prostitution is like a coin with two sides. On one hand, there is freedom; this is where women can choose to work as prostitutes based on their own free will. On the other hand, where there is no freedom for women, only humiliation and exploitation, is the other side of the coin. Women are pushed, abducted, or persuaded into prostitution on this difficult side. In this sense, force does not only relate to the force used on women by exploiters or traffickers; it also refers to economic and social circumstances that may lead to prostitution.³²

These individuals doesn't have any option or choice other than sex work due to their social and personal issues like poverty and many more. Exploiters or traffickers force them to perform sex jobs. Women and children who are exploited in the sex industry are members of society who are socially, economically, and politically marginalised. Women and children who are exploited or trafficked into prostitution are unable to exercise their right to self-determination because the exploiters and traffickers do not

²⁹ Immoral traffic prevention act, s-2(f), 1956

³⁰ Perry John, the sex trade, (12.05 am 29/01/2019), www.philosophytalk.org/blog/prostitution, (2012)

³¹ Merriam Webster (1.15 am, 29/01/2019), <https://www.merriam-webster.com/>,2018,pg no-543(2105)

³² SonwamiTulsing, Prostitution in Indian society, (2.05pm 03-02-2019),<https://www.ugc.ac.in/mrp/paper/MRP-MAJOR-SOCI-2013-25158-PAPER.pdf> (2015).

care about their permission. Every year, millions of young children and women are pushed, deceived, or abducted into prostitution in countries like India.³³

2.3.1 Prostitution vs. Trafficking

The trafficking and the Prostitution are not synonyms to each other, According to the Act, prostitution is only punishable when the money or any transaction involved in the process.³⁴ In India, commercialisation of prostitution is not allowed. It is only allowed into a private place outside the 22 yards of public place with the consent of both the parties and not involved minor. The trafficking is the process for appointing, transacting, exploiting and completing the commercial sexual exploitation.³⁵ So, we can say that trafficking is the original and the prostitution is the by product. CSE demand creates, supports, and sustains human trafficking. This is a never-ending circle. Other forms of breaches could include generating pornographic material, promoting sex tourism, sexual exploitation under the guise of bartending, massage parlours, and so on, or even exploitative labour where sexual abuse may or may not occur. Immoral trafficking Act only envisaged the trafficking for the commercial purposes and that too in the public places like brothel homes and others. It is also correct that the main purpose of trafficking is the prostitution; however this is the only one outcome of the many, which trafficking has provided. The country like India, this is the most important aspect of the trafficking. However, any police officer working under the ITPA Act can arrest any person from any place whether private or public, anyone has been exploited in lieu of money.

2.3.2 Human trafficking in India

Human Trafficking in India is vast issue and it is generally done in India for sexual or bonded/forced labour exploitation. Human trafficking is a vicious circle, the men or women of Bangladesh and Nepal exploited and bring to India and the Indians go to the Arab countries and Arab Nationals into European countries. Human trafficking occurs in India for the purposes of sexual slavery, commercial sexual exploitation, organ or tissue extraction, forced marriage, forced labour, or domestic servitude.

³³ Brian Robert Brehman, factors influencing attitudes towards prostitution, university of Nevada Publication, thesis, 210, 5, 2010.

³⁴Immoral Trafficking Prevention Act, s-4, (1956).

³⁵2018, Trafficking in Persons Report – India, United States Department of State, 28 June 2018,<https://www.refworld.org/docid/5b3e0b1ea.html>.

Human trafficking is the world's third largest organised crime behind drugs and the arms trade. Human trafficking is mostly carried out for the purpose of sexual exploitation of women and children all around the world.³⁶ The ITPA³⁷ act is only taking care about the human trafficking and prostitution but if the purpose of human trafficking is different than we have to look into IPC³⁸ and other related laws.

As a result, in order to prevent human trafficking in India, the legislative laws relating to human trafficking as a whole must be improved. Many countries, including India, have ratified international accords aimed at curbing human trafficking. Individuals' human rights are violated as a result of human trafficking, and they are also victimised. Human trafficking laws must be strengthened to ensure that they meet all standards for preventing human trafficking. The girls especially in their adolescent age must understand about the consequences in order to prevent them from victimisation and the role of the government and the NGO's has been increased up to great extent in this regard.

Human trafficking is one of the most serious problems in today's modern India. Men, women and specially children are trafficked for various reasons in India and especially for the prostitution. Many boys and girls are trafficked in India for commercial sexual exploitations and forced marriage especially in Haryana, Bihar and Rajasthan.³⁹ The trafficking is also for the purpose of household work especially in Delhi and Mumbai.⁴⁰ A considerable number of children are compelled to work as factory labourers, household servants, beggars, and agricultural labourers, and certain terrorist and insurgent groups have also utilised children as armed combatants. Women and girls from Nepal and Bangladesh are also trafficked to India for the purpose of commercial sexual exploitation. Nepalese youngsters are also trafficked to India to work in circuses as forced labour. Indian women are trafficked to the Middle East to be sexually exploited for profit. Every year, thousands of Indian migrants freely move to the Middle East and Europe in search of work as domestic servants

³⁶Michael Shively, Kristina Kliorys, Kristin Wheeler, Dana Hunt, A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, US department of Justice, Cambridge Publication, 15, June 2012.

³⁷ The Immoral Trafficking Prevention act, 1956, No. 104, Acts of Parliament, 1956 (India)

³⁸The Indian Penal Code, 1860, No. 45, Acts of parliament, 1860 (India)

³⁹Submission to the HRC on the Situation of Child, Early, and Forced Marriages in India, KHUSHI-INDIA (NGO)

<https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/KHUSHIIndia.pdf>

⁴⁰Ibid.

and low-skilled labourers may end up as victims of human trafficking. Basically, the persons who want to go to the middle-east and different European countries in search of good jobs and good life's end with the fraudulent recruitment process by the agencies. These people generally struck down by the debt-bondage of recruitment fees, unlawful withholding of passports which generally leads into physical and sexual abuse.⁴¹

Mental issues include disorders such as PTSD⁴², depression and anxieties are common in these cases. Women who have forced into trafficking are at a higher risk for HIV, TB and other STDs. Condoms are rarely used and therefore there is a higher risk for victims to suffer from STD diseases. Trafficking in India means a trade which is illegal and punishable. Human trafficking is carrying out as a trade on humans with the motive of abnormal, unethical exploitation. Humans are trafficked for a variety of reasons, including sexual slavery, commercial sexual exploitation, organ and tissue extraction, forced marriage, forced labour, and domestic servitude. After drugs and the arms trade, human trafficking is the world's third largest organised crime.⁴³

Human trafficking is mostly carried out for the purpose of sexual exploitation of women and children all around the world. Human trafficking can be done for a variety of reasons, but in our country, the only law that prohibits it is the Immoral Trafficking Prevention Act (ITPA), which only prohibits it if it is done for the purpose of sexual exploitation. As a result, in order to prevent human trafficking in India, the legislative laws relating to human trafficking as a whole must be improved. International conventions exist to combat human trafficking, and India is a signatory to one of them. Individuals' human rights are violated as a result of human trafficking, and they are also victimised. Human trafficking laws must be enforced.

The Immoral Trafficking Prevention Act (ITPA) of the Indian government punishes trafficking for commercial sexual exploitation, with penalties ranging from seven years to life imprisonment. The Bonded Labour Abolition Act, the Child Labour Act, and the Juvenile Justice Act all prohibit bonded and forced labour in India. To apprehend traffickers, Indian authorities apply Sections 366(A) and 372 of the Indian

⁴¹ Brian Robert Brehman, factors influencing attitudes towards prostitution, university of Nevada publication, thesis, 210, 5,2010.

⁴²Post-Traumatic Stress Disorder

⁴³Ibid.

Penal Code, which prohibit kidnapping and selling kids into prostitution, respectively. The maximum penalty under these laws is ten years in prison and a fine, or both. Corruption may enable bonded labour and the mobility of sex trafficking victims in general, which is the basic issue in this regard.⁴⁴ The one of the significant drawbacks of the ITPA Act is that it is only punished the sex workers or the pimps but it doesn't have the provisions to punish the customers involved in the prostitution.

2.3.3 Legal framework to counter Human Trafficking in India

The Indian Penal Code 1860: The Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in India. It is addressed in Section 370 and 370 A of the Indian Penal Code. It prohibited trafficking of women and girls and prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes shall be liable for the imprisonment up to 10 years and also be liable for fine. It also recognizes cross border trafficking into prostitution and whoever imports into India from any country outside India. Any girl under the age of twenty-one years with the intent that she may knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.⁴⁵

The Constitution of India, 1949- The Indian Constitution of India prohibits trafficking in persons and guarantees many of the internationally acknowledged various human rights norms such as the right to life and personal liberty, the right to equality, right to freedom, the right to constitutional remedies. The right to be free from exploitation is also assured as one of the fundamental rights of any person living in India.

The Juvenile Justice (Care and Protection of Children) Act, 2000- According to this Act there is no difference between a minor and a child. All the persons under the age of eighteen years are considered children.

⁴⁴Michael Shively, Kristina Kliorys, Kristin Wheeler, Dana Hunt, A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, US department of Justice, Cambridge Publication, 15, June 2012.

⁴⁵Sturgeon Nichola, Human Trafficking, Scotland, Ministry of Health Publication, 18, 512, 2009.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, there are many victims of trafficking belong to the marginalized groups. The traffickers specially target those areas, which are backward in social and literacy sense because generally in these areas people are not aware about their social rights and doesn't have much knowledge about this social problem. If the offender has the knowledge that victim belongs to these communities then this Act can be effectively used to counter the offence of trafficking. Section 3 of this act deals with atrocities committed against people belongs to Scheduled Caste and Scheduled Tribes. It covers some forms of trafficking such as forced or bonded labours and sexual exploitation of women. A minimum punishment of six months is provided which may extend to five years if the offence is covered under section 3 of the said Act.

Immoral Traffic Prevention Act 1986, the government of India ratified the Convention⁴⁶ in persons and the exploitation of the Prostitution of others in 1950. The Government of India passed the Suppression of Immoral Traffic in Women and Girls Act (SITA) in the year 1956. In the year 1986 the Act was further amended and changed which is now known as the Immoral Traffic Prevention Act, 1986.⁴⁷ This is a very important law in this regard as this can be evident from its preamble only; the purpose of this Act is to give effect to the Trafficking Convention and to prohibit the immoral human trafficking. This Act dealt with trafficking and it has its objective as to abolish traffic in women and girls for the purpose of sexual exploitation. The offences included are taking persons for prostitution, detaining persons in premises where prostitution is carried on, seducing or soliciting for prostitution, making life on the earnings of prostitution, seduction of a person in custody, keeping a brothel or allowing premises to be used as a brothel, prohibits employment of children in certain conditions of work of children.⁴⁸

2.3.4 International Conventions to prevent Human Trafficking

Article- 4 of the Universal Declaration of Human Rights- This article provides that a person should not be detained under slavery or servitude. Slavery or servitude trade must be prohibited in all its forms.

⁴⁶The International Convention on suppression of traffic in person.

⁴⁷ The Immoral trafficking prevention amendment act, 1986, No. 44, Acts of Parliament, 1986, (India)

⁴⁸Human trafficking in India, Jannai, International Journal of Pure and Applied Mathematics, 120, 5, 43-55, ISSN: 1314-3395(2018)

International Covenant on Civil and Political Rights Articles 8(1) and 8(2) of ICCPR respectively states that the person should not be apprehended under bondage and servitude. The trade which is done for domestic slavery and servitude must be prohibited.

International Covenant on Economic, Social, and Cultural Rights Article 10(3) of the Covenant on Economic, Social, and Cultural Rights (ICESCR) provides that every children and young people should be given a protection and assistance without any discrimination or biasness on the basis of caste, for reason of parentage and any other condition. They should be protected from economic and social exploitation.⁴⁹

ILO Convention concerning forced Labour, this Convention basically calls for the suppression of forced or compulsory labour in all its forms. Forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which they said person has not offered him voluntarily”. This convention is the most ratified convention among all the ILO conventions.⁵⁰

Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, The Convention specifically declares that the main reason behind the commercial sexual exploitation of women and children is their dependency, mostly in Asian, African and Arab countries women are basically depended on their men and the men are the bread earner in the society.⁵¹ The Convention provides a number of activities aiming at preventing commercial sexual exploitation and at restriction on pornography through criminalization and punishment of all forms of acquirement. Member States commit themselves to eliminating all forms of discriminations that ostracize victims of commercial sexual exploitation. Member States should cooperate in the identification of international networks of procurers and, if they are members of the International Criminal Police Organization in order to cooperate with that Organization then suppression of the human trafficking should be their one of priorities.⁵²

⁴⁹ Brian Robert brehman, factors influencing attitudes towards prostitution, university of Nevada Publication, thesis, 210, 5, 2010.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

International convention for suppression of white slave traffic, 1910, This convention criminalized procurement, enticement or leading away of a woman or girl under the age of 21, even with her consent for immoral purposes irrespective of the fact that the various acts constituting the offence may have been committed in different countries.

United Nations convention against torture and other cruel, inhuman or degrading treatment or Punishment, 1984, This Convention specifically provides that, if any person returns to his or her state under substantial ground of being in danger of torture then compensation is also predetermined under this convention.

United Nations Convention against transnational organized crime, the United Nations Convention against Transnational Organized Crime (UNTOC) was adopted by the Assembly resolution of 15 November 2000, is the first International instrument against transnational organized crime. A high-level conference was convened in Palermo, Italy on 12-15 December 2000 for signature of the Member states and entered into force on 29 September 2003. Three protocols were further supplemented which target specific areas and manifestations of organized crime. One among them is the protocol to prevent, suppress and punish trafficking in persons, especially women and children. This Convention consists of forty-one articles that require States Parties to criminalize, inter alia, participation in an organized group⁵³ the laundering of the proceeds of crime⁵⁴ and corruption⁵⁵ States Parties are additionally obligated to adopt measures for the prosecution of offenders⁵⁶ and for the confiscation and seizure of, inter alia, the proceeds of such crimes (articles 12 to 14).⁵⁷ Each protocol sets out a number of obligations for each of the three specific sub-areas of transnational organized crime that are focused upon. The convention represents a major step in the fight against transnational organized crime and emphasizes the seriousness of the problem posed by it to be recognized by the Member States.

It also signifies the need to nurture and enhance close international cooperation for the purpose to tackle the problem posed by it. The States who have ratified the convention commit themselves to take action against these crimes. Their action includes creating domestic criminal offences, the adoption of new frameworks for

⁵³The United Nations convention against transnational organized crime, 55/25, art.5, (2003).

⁵⁴The United Nations convention against transnational organized crime, 55/25, art.6, (2003).

⁵⁵The United Nations convention against transnational organized crime, 55/25, art.8, (2003).

⁵⁶The United Nations convention against transnational organized crime, 55/25, art.10 &11, (2003).

⁵⁷The United Nations convention against transnational organized crime, 55/25, art.12&14, (2003).

extradition, mutual legal assistance and law enforcement, for building or upgrading the necessary capacity of national authorities. The International Journal of Pure and Applied Mathematics Special Issue 50 protocol to prevent, suppress and punish Trafficking in persons, especially women and children is the first globally legally binding instrument with an agreed definition of trafficking in persons.

The intention of this definition is to facilitate National approaches for the purpose of establishment of domestic criminal offences. This would help to support for international cooperation in investigating and prosecuting trafficking in person cases. One more additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

2.4 Prostitution-A step forward

1. Risk of Substance Abuse-

The use of alcohol and other drugs is higher among sex workers than the general Population. Sixty percent of the sex workers have sought out treatment for crack usage, 30% for cocaine, and nearly 20% for heroin with 40% of sex workers admitting to arterial drug use.⁵⁸

2. Risk of Physical Harm-

With the rates of higher substance use, predictably, so are the rates of sexual assault. Research has found that 82% of sex workers have been the victim of a physical assault and 68% have been raped. The risk of contracting sexually transmitted diseases is also serious in nature.⁵⁹

3. Risk of Psychological Harm-

The risks to sex workers are not contained to just physical harm; psychological harm is a serious risk as well. Farley and Barkan (2018) found that 68% of sex workers met the criteria for post-traumatic stress disorder found over 60% of sex workers had depression, nearly 30% suffered from anxiety, and over 40% had attempted suicide at some point in their life with 14% recently attempting suicide.⁶⁰ No girl or Women

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

wants to do prostitution by his own will, it is the situation which motivates them and left with no other choice, other than to indulge in this profession. The factor which leads to prostitution is divided into various factors like sociological factor, Physiological factor, Economical factor and so on.

Once Amnesty International has observed that the human trafficking is an umbrella term and many other crimes are under the human Trafficking⁶¹ Prostitution is the 3rd largest profession after drugs and arms and one of the oldest professions of the world. The 1st and foremost causes of the prostitution are the money or financial crisis which the family faces, especially in big cities like Mumbai and Delhi.

In many cases after the break down of marriage or the death of husband, the women found difficult to carry out the daily expenses and the expenses of their children. So, they leave with no other option other than to indulge in this profession and support their family. If we talk about the trafficking, then trafficking is the most significant cause for the prostitution. Women are exploited and sold for different reasons, which all includes with the exploitative purposes. Among these are forced labour, including forced domestic labour, and sexual exploitation, including sex tourism and forced marriage. Some are completely ignorant about the nature of work and falsely misunderstood by agents and then forced to carry out and some are aware of the nature and condition of the work but left with no other option they see no viable economic alternate then this.⁶²

Economic inconsistencies have created a chaos situation in the society, which leads to the prostitution. The migration of the rural female villagers to the urban in the search of good jobs, are also the major reason of prostitution in urban areas and this will not only stop till prostitution but also get to the many venereal STDs diseases specially in the villagers because they are illiterate. The worst victim of this problem is the adivasis women, who came in search of the good jobs and end with the sex work in urban areas.

⁶¹Broken bodies, shattered minds Torture and ill treatment of Women, Amnesty International Publications,

1, Easton Street,6, London WC1X 0DW, UK, (2001).

⁶² Ibid.

2.4.1 Types of Prostitution

The prostitution can be categorized in many aspects; few forms of the prostitutions are as follows-

1. **Call Girl-** This is the mostly commonly types of prostitution in the metropolitan cities of Delhi, Mumbai and Kolkata. This type of girls is commonly living in the high societies and they meet their customers in some farm house or big hotels, they are highly professionals, they have fixed clients and charged high amount generally.
2. **Bar Prostitution-** It is like side business to the girls who are working in the bars as a bar tender. Again, they have fixed clients and they charged generally high. They don't have any fixed place to meet.
3. **Street Walker-** This is the most traditional way of prostitution in India. Generally, they have fixed places the customers have to go to them. They lived in the confined walls and they don't have high charges. However, this may vary according to the age of the prostitutes. The G.B Road of Delhi and the sonagachi of Kolkata is the best example for this.
4. **Gimmick Prostitute-** What we have in mind here are special techniques of marketing prostitution and unusual modus operandi of prostitutes. These include auctions and raffles, billboard and newspaper advertisements and call girl directories, credit card scheme, travelling brothels, window displays of harlots, and so on.⁶³
5. **Adolescent-** A great deal is heard today about high school girls living at home with their parents and perusing prostitution as an evocation, sometimes for "kicks," sometimes for money, probably most often for both.⁶⁴
6. **Child Prostitution-** the Child Prostitution is one of the earliest prostitutions sometime in the temple or sometime in the name of the religion by the priest. Now the demands of the virgin girls or the children are very high in the metropolitan cities. The big businessmen are basically interested in this type of prostitution.⁶⁵
7. **Online Prostitution-** Online Prostitution or internet prostitution means the digital prostitution through the internet or smart phone or other connecting method. This is the safest mode of connection of prostitutes and clients.

⁶³Haveripethprakash, Prostitution and Its Impact on Society-A Criminological Perspective, International Research Journal of Social Sciences, ISSN 2319-3565, Vol. 2(3), 31-39, March (2013)

⁶⁴ Ibid.

⁶⁵ Ibid.

2.4.2 Factors leading to the Prostitution

It is very difficult to identify the causes of the prostitution because of the social factors presented in the country and the factors of the prostitution is scattered on the various factors and the worst part is that for every region it is different.

1. **Kidnapping-** In my view Indian Prostitution market has largest intake from the Kidnapping and this kidnapping of a young girls are also leads to some other crimes like organs transfer and drugs.
2. **Poverty-** As referred to earlier, the poverty is the main economic factor responsible for prostitution. A woman who is unable to get any profitable employment and who has no family support must either starve to death or earn her livelihood through prostitution.
3. **Under-age employment-** Many females have to work in hotels, officers, industry and shop at immature age, at this impressionable age they are easily misled by lust-seekers.⁶⁶
4. **Devadasi System-** The inhuman system of prostitution with religious sanction. Devadasi System” still continues to flourish in the so called progressive and democratic country like India. Every year thousands of girls are dedicated to goddess Yellamma, ‘Renuka’ (mostly in the State of Karnataka and Maharashtra) and after a brief period of concubine, they become accessible to urban-prostitution. Within these mechanics we find, that three socialized instruments perpetuate the fates of these women, name Economic organization, brute force and the religious rituals.⁶⁷
5. **Rape-** Most of the girls entered prostitution after the incidence of rape. Rape on the girls is a great social stigma and, in some circumstances, the victims of rape are not even accepted at home. Apart from the delay or even absence of justice, the victims have to face similar incidents every now and then.⁶⁸
6. **Marriage-** Though the problem of prostitution is not directly related with marriage and the outbreak of marriage leading to the prostitution is not very much common in India, a few cases were noticed through this source also.
7. **Social Factors in Prostitution-** The view of women as a commodity is prevalent in popular appearances of Indian culture. Women who have had sexual experiences are

⁶⁶ Ibid.

⁶⁷ Bedikiran, Human Trafficking in India, Yojana publication, 52, 38, Feb. (2008), yojana.gov.in

⁶⁸ Ibid.

considered to be ‘used goods’ and are unlikely to ever marry. Without a husband, a woman has no source of income; she also cannot wear the marriage bindi. She is an impoverished cultural outcast.⁶⁹

2.4.3 Effect of Prostitution

- STDs and other venereal diseases
- High risk of unwanted pregnancy
- Risk of injury from violent clients
- Risk of alcohol/drug addiction to deal with the lifestyle
- Depression/guilt
- Can no longer be a part of general society
- Shunning from anyone who realizes her profession or social status
- Possibly never gaining a proper education

2.4.4 General Dynamics of Prostitution

The Concept of mutual respect and sexual ethics is not a very new concept in India but still it is most unheard concept in terms of prostitution in India. The Indian sex trade is one of the largest sex trade markets in the globe and especially in the Asia, but still it is highly unorganized. If we discussed the term sex ethics then it means that it is an adequate between human and their sexual relations, moral conduct of inter-related sexual activities.

Sex occurs in mutual respect and within the atmosphere of love, affection and respect among the male and female. The Sexual desire of sex and the prospects of agreements are necessary for the sex ethics. The concept of prostitution is not an exception to this but the modern-day prostitution had blurred all its ethics of the prostitution and prostitutes are no more than an unwanted thing in the society. Although verbal consent is the most appropriate thing to indulge in an activity but this verbal consent must be a free consent. Without mutual consent, desire, and concern, potentially pleasing, bodily acts become sexual interruptions that is not possible or incomprehensible the distinction between a human body and a thing in the Indian society. Other standards might be necessary to determine that a sexual meeting is

⁶⁹India: The Demand for Sex Trafficking: Holding Commercial Sex Buyers Accountable, 67, 134, (12-02-2019,10.15 pm), <http://saynotoviolence.org/join-say-no/india-demand-sex-trafficking-holding-commercial-sex-buyers-accountable> (2009).

ethically right, personally filling, or sensible, and also the respect for persons in the sexual context requires these minimum criteria.

Prostitutes used their body only for the purpose of gaining monetary profits. She engages in the act for reasons other than her own sexual desire and hence, her toleration of sex in the prostitution encounter occurs without expressing a desire to relate to her client sexually.⁷⁰ The prostitute has only one intention to earn more and more money for herself and for family, she knows that she don't had whole life to earn, even more than half of the time she is ready for unnatural sex also for the extra income. Many liberal prospects are also there for the prostitution like many philosophers compares this as a mere and necessity physical needs like hunger, cold and smell. It is just like buying a dinner for yourself because you are hungry.

The prostitute does not satisfy the need for a woman or even the demand for a particular sort of woman. She accommodates the client's desires for a woman who ceases to exist when she is no longer wanted. A man seeks a prostitute in order to avoid the inconvenience of sexual relations with another subject.⁷¹ Indeed, he pays her to disguise the subjectivity expressed through her individual needs, interests, and desires. With a prostitute, a man can have sex when and how he wants it.

Both the prostitutes and their clients have one thing common that they both want to achieve something in lieu but they don't achieve anything neither they are correct on the statement of morals because both goals are self-contrary to each other. In my view both are guilty towards the society, Indian society is not too advanced that it will not judge the theory of prostitution on the grounds of morality and religion. However, there are few exceptions regarding the human trafficking and forced prostitution but what about that persons who wants to take it as his career. Should be allowed them? The question is vague and very confusing but still we have to answer this question because we can't leave the large number of populations on their own will and destiny, as because they are not a vote bank, we can't leave them to live a miserable life.

2.4.5 Prostitution-A Modern day Slavery

When people talk about slavery, they thought that it had been abolished. Unfortunately, this is far from the truth, the truth is that slavery and the global slave

⁷⁰Estes, Yolanda Moral Reflections on Prostitution, the philosophy of love and sex, Pacific University Library publication, ISSN- 1526-0569,2,2, (2015)

⁷¹ Ibid.

trade continues to flourish up until this day. In fact, it is more likely that “people are being trafficked across borders now than any point in the past” Contemporary slavery “involves women and children being forced into servitude through violence and deprivation”. Enforced prostitution is considered to be slavery-like practice. This distinction has been formalized under International Law, the exploitation of prostitution was equated with slavery and an international convention was drawn under the United Nations.⁷² These instruments regard prostitution as human rights violation only if it involves exploitation and coercion. For the Special Rapporteur of the United Nations Economic and Social Council, prostitution is a “form of slavery in which the alienation of the person is far more- reaching than with slavery in its usual sense, where what is alienated is labor, not intimacy”.⁷³

Once entered, prostitution results in a “state of servitude which may be maintained through overt coercion and physical abuse but is more frequently the result of emotional blackmail, economic deprivation, marginalization and the loss of identity”. This demonstrates that coerced prostitution is not something which the prostitute can easily leave; rather coerced prostitution is maintained by enforcing abuse upon the victim. Under International Law, coerced prostitution is slavery. The UNESCO experts concluded that enforced: prostitution is a violation of Article 1 of the Universal Declaration of Human Rights (“All human beings are born free and equal in dignity and rights”, of Article 4 “No one shall be held in slavery or servitude”, and of Article 5 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”⁷⁴

Therefore, when a human being is enforced into prostitution, one is not only being deprived of their basic human rights, but they are also degraded to slaves in society. Approximately 800, 000 women and children are trafficked each year across the international borders and 80 per cent of these individuals end up in forced sex work human trafficking for CSE is a gross violation of human rights and has been described as a modern form of slavery.⁷⁵ The United Nations estimates that the trafficking of women and children in relation to CSE in Asia has victimized over 30 million people India has been identified as one of the Asian nations with a severe CSE trafficking

⁷²Ibid.

⁷³Ibid.

⁷⁴ Peterson-iyer, k, Prostitution: A feminist ethical analysis, Journal of Feminist Studies in Religion, 14(2), 19-44, (1998).

⁷⁵Lee Samuel, Persson Petra, Human Trafficking and Regulating Prostitution, 996, EC-12-07,oct. 2018, (10-05-2019,12.05 pm) <https://web.stanford.edu/~perssonp/Prostitution.pdf>,

problem.⁷⁶ The U.S Department of State has placed India on the Tier- 2 Watch List for the fourth consecutive year. The U.S has warned India that it may be downgraded to a Tier 3 category, exposing itself to international sanctions, unless there are improvements and changes on its record of trafficking. The Department of Women and Child Development (India) has estimated the number of persons specifically for the purpose of commercial sexual exploitation in India to be around 2.8 million, an increase of 22% from the past.⁷⁷ The vast majority of trafficked persons in India are young women or children who have been forced into the sex trade as a result of poverty, often before the age of.⁷⁸

Child prostitution is a multi-billion-dollar industry where greed outweighs the best interests of the child. Another form of sexual exploitation in India which can be seen as slavery includes Sex Tourism (ST). ST includes the sexual exploitation of young girls by international and Indian tourists; street children are the most vulnerable to this type of sexual exploitation. It is said that sex tourism is more prevalent in the ‘pink triangle,’ this includes the “Agra-Delhi-Jaipur belt, as well as south and south-west India; Goa, Maharashtra (Mumbai), Karnataka, Kerala, Tamil Nadu and in Orissa”. Himachal Pradesh and Rajasthan are also Indian states where sex tourism is emerging.⁷⁹

In India, sex tourism can be facilitated by travel agencies, hotels, associated business and tour operators. It is believed that within the last 15 years, CSE⁸⁰ has been recognized by two major changes. Women from upper castes are becoming victims of CSE and also prostitution is no longer confined to traditional brothels and can be found in new avenues such as dance bars, massage parlors, friendship clubs and huts or bath establishments along the national highways such as the, Kolkata- Siliguri- Guwahati- Shillong highway, the Delhi-Kolkata- Chennai-Mumbai highway, the Sholapur-Hyderabad highway; the Grand Trunk Road between Bangladesh and Pakistan. Sex tourism is a key element to the sexual exploitation of the child. Nations in Asia have highly populated child prostitution industry.

The consumers of this industry include clients who are American, German, Swedish, European, Australian and also Japanese men. Men from the western, industrialized

⁷⁶Ibid.

⁷⁷Laura reanda, Prostitution as a human rights question: problems and prospects of United Nations action. Human Rights journal, 13, 2, 202-228, (2018)

⁷⁸ Ibid.

⁷⁹Ibid.

⁸⁰Commercial Sexual Exploitation

nations are the ones who are contributing in exploiting children in prostitution.⁸¹ This is not only unfortunate, but also disgusting because it is argued that sex tourism remains so popular among these peoples because it “allows patrons to engage in illegal acts and escape without punishment” I as a researcher wants to ask question, why should these individuals be allowed to escape without punishment? Why should the innocence of a child be put on the line for a western man to sexually exploit? Why should the child have to place its human dignity in the hands of a potentially psychologically disturbed individual? I use the term ‘psychologically disturbed’ in this context because I believe that a mentally and a psychologically healthy individual will not think of, or support the idea of sexually exploiting such young, innocent human beings. These exploited children are helpless because there is no one in the sex industry to look after their mental and physical well-being, while their bodies are constantly being sexually utilized by individuals.

In an impartial society, there should be a concern about punishing criminals who commit crimes. Even for minor traffic violation; one receives a fine which must be paid, otherwise there will be consequences for not abiding by the law for the committed crime.⁸² Yet people are traveling to Asian countries to sexually exploit the bodies of young innocent women. The consumers are not punished for sexually exploiting these children. Rather, one can argue that the patrons are given the permission to do whatever they wish to do with someone’s body, as long as the body has been paid for. Where is the justice for the young children, girls and women in this context? In cases like these, what happens to law and justice? If someone commits a minor traffic violation and does not pay his or her fine; one will suffer with harsh legal consequences which lead to imprisonment. This lack of justice is unjust for the millions of children who are being sexually exploited against their will on a daily basis.⁸³

In all forms of slavery, girls and women are subject to physical and mental abuse because of their gender. Exploitative employers often prefer children in contrast to adults because children are more vulnerable, easier to control, cheaper and less likely to demand higher wages and better working conditions. Millions of children all

⁸¹ Laura reanda, Prostitution as a human rights question: problems and prospects of United Nations action. *Human Rights journal*, 13, 2, 202-228, (2018)

⁸² Sinha, Murli M. Sex, structural violence, and AIDS: Case studies of Indian prostitutes. *Women's studies quarterly journal* 27, 1/2, 65-72, (1998)

⁸³ Ibid.

around the globe are forced into 'work' that is extremely exploitive and damaging.⁸⁴ These children are being denied their basic right to education and their mental and physical health and their lives are being placed in great risk. Despite the scale of slavery today, in the 21st century, change is possible. Anti-Slavery International, which is a human rights organization, works at the local, national and international levels to eliminate different forms of slavery around the world.⁸⁵ Globalization in today's world directly means the control of developed countries increased in developing countries. The reason behind this is the lack of political will of the government. There exists no 'natural' way to abolish slavery and any productive policy must start by acknowledging this fact. When it comes to politics, Abraham Lincoln said it best: "in giving freedom to the slave, we ensure freedom to the free".⁸⁶ The government is always augmenting, that they are doing best to eradicate the prostitution but I doubt because if it could happen then India is not leading in human trafficking in Asia. The government has to play its role with honesty in order to eradicate this problem. So that it will not become one of the social problems in India.

2.5 Cyber Sex Trafficking

Cyber Sex trafficking is different from the normal trafficking, as the children or the teenagers have been trafficked and brought to the cybersex den. In this type of trafficking, the women bring to the place where all establishments like web-cam, audio player and all the items used to foreplay have been kept in advance. The most common and famous or we can say the higher demand is of the teenager's video and the rape videos. The websites like hamster.com are promoting the webcam sex in which the girls are showing their private parts on the webcam to arouse the man who is sitting next to the webcam and for every minute they have to pay the agency for which the girl is working and basically these payments are through virtual mode except in few trusted or regular customers.

It is different from the traditional or the old trafficking, in this type of trafficking the girls don't have to do sex with the customers like in brothel homes except in few cases

⁸⁴ Smile Foundation, child rights, (23-03-2019,15.55pm), 2012, <http://smilefoundation.org/contactus.htm>

⁸⁵ King Lindsey, International Law and Human Trafficking, (23-03-2019,16.35 pm), 2014 <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf>

⁸⁶ Khan M.Z, Singh D.R, Prostitution, Human Rights, Law and Voluntary Action; The Indian Journal of Social Work, 47,22, 101-103, (1987).

like if the customer is trusted or paying very high amount but they have to perform the act of sexual arousing on the webcam with the customers and help them in satisfying their clients. This is basically done through the webcam facility with internet facility and with video sharing software in a very secret place.

The invention of the video call has changed the life in many ways. The urge of meeting with friends and family has been decreased to at many extents. The exploitation of women has got a new space in the society with the invention of Audio-Video technology. However, in this type of exploitation the victim doesn't have to sleep with the random customers but they have to perform the sexual act on themselves or on the actors with them in the agency. The Victims has to follow the commands of the customers and it is most of the time commercialized on that network or some other network. This is nothing but the cyber form of forced prostitution.

Only the modes of the prostitution have been changed in these days but the reason for the prostitution has been not changed yet. The major source of the internet prostitution is still the Poverty. The Children and women from the village area has been trafficked for the purpose of cyber prostitution because they are vulnerable and below the poverty line. There is no data available about the sex crime every year and there has no software developed till now that indicate about the live streaming of sexual activity on the internet. It is a billion-dollar industrial which is working freely and very high magnitude because of the lack of proper laws in many developed, developing as well as underdeveloped countries and India is not an exception to this. It is a business which is brought by the technology to the globalization.

Basically, in the developing countries it is run on a changing network, using of encrypted networks and private software's and above all to hide the transactions crypto currency has been used. The transnational nature of the crime has been proved that it has a wider dimension and need to be combat together, all the nations including the NGO's and enforcement agency need to tackle this problem together and in the urgency.⁸⁷

The planning of the work needs to be done at very base level. The seminars, the informative schemes and the mock drills should be taken care of very carefully and minutely and specially among the villages or small cities among the population who are below the poverty line and above all every country now in a globe either need an

⁸⁷Kristin M. Finklea Specialist in Domestic Security, Cybercrime: Conceptual Issues for Congress and U.S. Law Enforcement. Jan 9, 2013.

effective law against this crime or need to change their laws with the present scenario otherwise the situation would be worse for the female child in the entire globe and the civil society of every country would be responsible for the same.

The most interesting thing about the online sex is that the partial exploitation happens in the virtual world and the partial exploitation is real. The exploitation is without the permission of victim most of the time but like the real brothel trafficking, they don't have to face the unknown and enormous strange people. They have to do sex only with the actors of the agency in order to arouse the person sitting over on the video conferencing call and who is paying for this act. In India, basically the people from the Arabian countries or the people from the European countries make these types of international call.⁸⁸

Basically, the Women and children are the victim of this trend; they are threatened, deceived, abducted or drugged. They have locked in a room with no window, doors and curtains all around and with a webcam and no permission to get out from a room. They face physical and emotional trauma in the captive and sometime the nature of the world will ashamed of the act like Gang rape in a video camera. Victims were denied food, not allowed to sleep properly and they have to work also in extreme sickness or in the infectious disease also. They have been assaulted and tortured till last breath.

Victims can be exploited in any place with the software of video capture and internet facility. Commonly, these places have been called as the cyber-sex den, these dens can be any where like homes, hotels, cyber cafes, offices, shops etc. basically the agents tries to take this out from the eyes of enforcement mechanism. The major issue for the enforcement agencies is to identify these places because without identifying these places, it is very difficult to mark a figure about the women or girl who has been trafficked in this business.

Most of the girls has been trafficked and transferred to the brothel or to the other location or cybersex den. So, it became very difficult for the enforcement agencies to break this chain. It is interesting to know that some children or girls are not trafficked but they are bullied or webcam blackmailed and online torched to make of a film of them and send it through the internet. Victims are also forced to self-penetrate themselves and to what they called is the rape at a distance.

⁸⁸Dr.Manikyam.K.S, Cyber Crimes: Law and Policy perspective: Hind Law House pub, Pune. Edi, 56, (2009).

These videos are filmed and uploaded on a website and can also be used for the private sell. There also many videos which are made by the agencies through the boy who are actually working for the agencies and pretending to love the girl and make sex MMS or they coerced the victim girl to send the nude videos to the boy and the boy upload those videos or pictures on porn websites in lieu of money and also sell to some private persons or to some adult magazines.

Basically, in these types of crimes the marginalized sections of the society like below the poverty, conflict, discrimination, conflict, social exclusion etc. are the real target or they have the chance to doing these types of work because of the ignorance of internet power and the need of money.

It is interesting to know that the agents change their places very frequently with webcams and according to the need and location they established themselves. It is also interesting to know that in few cases the person sitting behind the screen is the real master and not the person who is directing the movie. The person who is paying the amount will decide the moves of sex, cloths of the character and also the background view.

Internet platforms used in this process is very much famous among the teenagers in India as well as rest of the world the platforms like Facebook used to chat with the victims or to get the details of the victims. The video calling system like Skype or Zoom videos are used for recording or filming the sex work. They used telegram and cloud or other instant messaging app for the quick communication. Moreover, they used virtual private software and Tor network to continue the work with anonymity.

This is the latest and most emerging crime in the cybersex world and the most dangerous part is that it is popularizing at a very high rate and every person wants to see this once in his life time. It generally shares the similar characteristics with other sex crime in real world or it overlaps also sometime.

According to attorney Joshua T. Carback, it is 'a unique development in the history of sexual violence and 'distinct in several respects from traditional conceptions of online child pornography and human trafficking. The United Nations Office on Drugs and Crime has also identified the cybercrime involving trafficked victims on webcam sex shows as an emerging problem. The online webcam shows are sometimes also referred as the webcam rape.

This is the worst emerging social issues against the younger generations in today's world.

Despite the number of investigating agencies in India and the globe, this problem has arisen very fast and tremendously, the major reason behind the rise of this issue is the unprofessional approach of the investigating agencies. Mostly in India the police officers see the victim as the offender and of loose character and they start their investigation with examining the girls. This is the reason that most of the women or girls do not register this type of crime. The second basic problem is with the knowledge of the investigating agencies; they are not well trained with the computer technology. So, they investigate on the old method which is not applicable in these types of crime.

Further, it is also to note that the role of the victim's family is also very important; they have to concentrate on every minute crime happening on the internet against their daughter. The approach of the family members especially in India against the small cybercrimes like Cyber bullying, Cyber defamation is very negative. The Guardians and parents basically thought that they are the trafficking acts among the friends of their daughters. So, this approach should be controlled in order to archive the harassment free society in India.

Every single body of the society like Guardians including family, Society, NGO's, Enforcement agencies, Government should play their part very neatly, honestly and in dependably, so that the most vulnerable section of the society that is women should gain faith in the society and this is the only way to become a fully developed society in every prospect.

2.6 Cyber Prostitution- A new way of Exploitation

Today world is facing new challenges in the form of internet, the real world is all similar to the virtual world, the ratio of crime is almost similar and the treacherous people are in both worlds. There is no doubt that the initiation of internet has created more opportunity to develop then what was in past but it is also not deniable that the use of internet has also created threat to human being and especially to children's and adolescents. The 21st c. is the digital century everyone is sharing his idea, thoughts and messages on via internet or electronic gazettes. The use of technology to deal with various daily matters is inexorable. In such a scenario, the sensible use of technoproducts is highly demanded in order for it to be more effective. Ignorance of its

potential threats and traps has been resulted the terrible consequences, especially in the lives of children and teenagers.⁸⁹

As every nation believes that the children's and young generations are the assets and future of any state. So, in order to make the future strong the government should ensure that their younger generation will know the pros and cons of the internet use. The younger generations and specially children are actively indulged in e-shopping, education, social interaction, entertainment on the internet but the concern is when they bet trapped in unsocial work like cyber stalking and bullying, child pornography, sexual exploitation, online harassment, identity theft, morphing etc. they also didn't know. This is generally because of the less awareness and proper knowledge in the younger generation and proper care of the parents. The fault lies on citizens as well as government. The government is equally responsible for not educating their citizens in cyber-crimes and doesn't make aware about it. The virtual world is as full of crimes as the real world. Everything that we see, listen and read in Digital World are not true, sometimes it is misleading. The criminals in cyber world driven by the same motives as they driven in real world but here in digital world provides great anonymity to the criminals.⁹⁰

Educating the children about practicing safe online behavior in order to enjoy the gifts of web world and safeguard from the potential danger of online criminals is of pivotal importance. At the same time, it is important that the government, together with the law enforcement agencies, epistemic community, school teachers, parents and children should actively work to, build safe environment for the innocent minors as well as mitigate and combat the cyber pedophiles. It is a need of the hour for a multi-layer approach to address, the online risks, which carries different challenges and require broader international collaboration to find innovative solutions.⁹¹ With the rapid spread of computers and internet, cyber-crimes have emerged as a major challenge for law enforcement agencies and civil society. In India, almost 440 billion children are below 18 years and it serves home to 19% of the world children's.⁹² As per one of the reports released by Ericsson reveals 30 Million urban Indian kids and

⁸⁹Halder, Debarati, and JaishankarKaruppanan, Cyber socializing and victimization of women, The Journal on Victimization, 12, 3, 5-26, (Apr 2015).

⁹⁰Ibid.

⁹¹Marcum, Catherine & Higgins George &Freigburger Tina & Ricketts Melissa, Battle of the sexes: An examination of male and female cyber bullying, International Journal of Cyber Criminology, International journal of cyber criminology publication, 6(1), ISSN: 0974 – 2891, (Jun 2012)

⁹² Ibid.

teens own mobile phones and 3 Million use broadband on phones and parents using mobile broadband are more likely to introduce their children to the technology⁹³

The younger generation which use the internet and online technologies extensively for staying connected for all his day to day works and entertainments, including information, e-mails, social networking, e-banking, e-shopping, web-TV, news, education, home-work research, online gaming, downloading music, videos, movies and other contents etc., are more vulnerable to targeted cybercrimes.⁹⁴ This often happen in the form of cyber stalking, cyber bullying, child pornography, online harassment, hacking of email or social networking account, identity theft, unwanted exposure to sexually explicit material, in appropriate contents, etc. These risks are not confined to their local area but occur from people all around the world. Parents and teachers do not have direct experience with the risks posed by new media technologies. Addressing the risks online therefore carries different challenges and requires broader collaboration to find innovative solutions. The need for a multilayered approach to internet governance in India is highlighted by a comparative study of the various measures available internationally to make communications over the information and communication technologies safe.⁹⁵

The most alarming and destructive phase of the internet has been started in recent years, when the internet has become a new method of prostitution as it has very less chance of arrest and assault. It is the best mode of connection between clients and sex workers as it is cheap and not easily anyone can locate. Before the rise of the internet the newspapers, magazines, pamphlets in telephone booths, train toilets, posters in subways were the primary sources of the advertisement for the prostitution services. By the end of year 2000, the internet has become the primary source of advertisement because of its vulnerability for less arrest and assault. The prostitution was a part of civilization but then thanks to internet that it is now like a blood to the society almost from 15 year to 50-year men everyone knows it and has tried even once. The use of the internet for advertisement has become a necessary evil and it is used through the advertising agency also. There are commercial websites which are open for advertising the sex workers and their services only. However, most of the times these sex workers advertised through their personal domain name.

⁹³Halder, Debarati, and JaishankarKaruppannan, Cyber socializing and victimization of women, The Journal on Victimization, 12, 3, 5-26, (Apr 2015)

⁹⁴Ibid.

⁹⁵ Ibid.

The Social media has become the top most advertising agencies for the sex workers especially face book and Instagram and the best part is the online payment mode, everything is on the internet, enabled the sex workers and escorts to take online payment. When PayPal had been launched in 2001, the escorts were the first customers. Subsequently with the changing time the PayPal has change their policies in order to restrict the unauthorized online transactions. In 2013, the Escort agency VIP of England has become first agency to accept the Virtual Currency, Bitcoin.⁹⁶

The modernization has made the resource available and the teenagers are using the internet more to access the bodies of the women and girls then on other valuable resources. This is not only a fun game but it eventually became a habit and destroyed the creative minds of the teenagers. It is not hard to realize that the teenagers who use more porn websites in their daily life are more violent than other teenagers and their way of thinking about girls and women has also changed. The behavior of these teenagers is much more aggressive than the other non-user teenager.

The world of crime is associated with each other, the major role of trafficking is Prostitution and the prostitution ultimately lead to other crimes specially crime against women. Advertising is the most important part of any organized crime and the prostitution is one of the best organized crime run by mafias. Escort agencies, brothels, and strip clubs are advertised on websites and chat rooms, enabling pimps and traffickers to sell women for sex. The organized crimes not only sell the sex but also other related services with sex like massage parlors and other online services.

The organization or mafia understood that in order to have more business, the advertisement should be more and the only advertisement which is very easily available and reach to the masses is the online advertisement. For example, a sex buyer may first look at free pornography downloads, then be offered hardcore pornography for sale, and then he might see a pop-up advertisement for prostitution in his zip code.⁹⁷ Web-based advertising happens daily in all areas of business enterprise on the World Wide Web. While traffickers use the same online sales model as other businesses, they also use Internet technologies usually not accessed by other businesses such as online forums, Skype, and gaming technology such as Xbox Live,

⁹⁶Chang Samantha, Sex Marketplace 'Backpage' Used Bitcoinfor Money Laundering, ccn markets, (29-04-2019, 10.04 pm) <https://www.ccn.com/sex-marketplace-backpage-used-bitcoin-for-money-laundering-doj>

⁹⁷Saha, Tanaya&SrivastavaAkansha, Indian women at risk in the cyber space: a conceptual model of reasons of victimization, International Journal of Cyber Criminology publication, 8(1), 57-67, ISSN: 0974 – 2891, (Jun 2014)

Sony Online Entertainment, or real-time games such as World of War craft.⁹⁸ The organized crimes are not only depends on each other but it is also have each other's influence like the money of prostitution are used for drugs and illegal weapons smuggling.

The access of internet has proved accurate to use the body of the young women's and girls' then it has access to employment, education and other meaningful things. Every man wealthy enough to own a computer and pay an ISP can enjoy an infinite virtual arouses in the silence of their home.⁹⁹ Advertisement is the most significant part of the prostitution business. The thing which looks good have the chance of sell easily, this is the simple rule of any industry and the sex industry is not an exception to this.

The advertisement has gone on next level with the services like strip clubs shows, scot services, personal chat rooms etc., every were the photos and videos have been used with girl's description of personal and professional substance and specially the body structure and with a promise that the information of customer have been kept secretly. Furthermore, with the coming of mafia's in this business it has got an un-official status and it is more planned and structured now. The mafias are very well understood that the advertisement not only promote sex industry but it has become a habit for the young and especially teenage people, which can eventually be in cashed by pop up messages in the private email. The mafia is using the same old model of advertisement, they first make a feeling of special one for the customers by giving lots of offers and discounts and once the man get trapped and addicted then they charged high rates from them or provide less services. The next level thing which is used by the mafias now days is the sexual attraction through gaming.¹⁰⁰

2.7 Prostitution in Ancient Period

Prostitution is one of the oldest professions in India since the birth of the structured civilization. The sex workers let hires her body for the sexual satisfaction of the client in lieu of money generally but sometime gifts or payment in kind also. For our country, prostitution is not at all new thing. The origin of Kama sutra and the

⁹⁸Ibid.

⁹⁹Stark Christine &Whisnant Rebecca, not for sale: Feminists Resisting Prostitution and pornography, spinfex press publication,ISBN-1-876756-49-7, 149, 176, (2eds., 2019)

sculptures of the sex positions on the walls of the Ajanta and Ellora caves are the examples that the prostitution was still present in the Vedic age in our country and the sex work is not a taboo in India. The courtyard of the Indra, the king of gods is filled with the dancing girls like Rambha, Meneka and Urvasi are the authentication that the prostitution in the form of the dancing girls are existed in the Indian mythology and it is before the starting of the Vedic period. However, there are no documents which support the existence of prostitution in Pre-Vedic Indian society.

Before the sunrise of the civilization there was no concept of marriage. In this phase the men and women live in a cave like animals and they frequently change their partners. In the pre-Vedic age the archeological survey of India has found the proof of urbanized cities but they had not found the evidence of prostitution in that period.¹⁰¹ In the phase of Indus valley civilization, this phase is known for economic prosperity and its wealthy merchants and they can easily afford the wine and women but there is nowhere in the history has been discussed about the places of the prostitute or any places which belong for the prostitute work.¹⁰²

It is well established in the Vedic era that the prostitution is the bye product of the marriage with the introduction of the polygamous and polyandry marriage the women is treated as a mere commodity and the women of these outburst marriage need to sell their body in order to take care of themselves and their children with the outburst of the family system in the Vedic Period. The agrarian society has been developed in the Vedic age which contributed towards the establishment of the family system which ultimately ends in the relationship outside marriage.

However, we can't call this as the prostitution but mere promiscuity. At the journey of later Rig and Yajurveda marriage institution established. But it took hundreds of years. In order to demonstrate the prostitution is the by-product of marriage institution.¹⁰³ In the period of Rig Veda, the only thing which gave knowledge about the prostitution is the dancing girls but that dancing girl is very much related to the religion, at the same time, we can't deny the fact that there was a concept of the Religious Prostitution.¹⁰⁴

¹⁰¹ Chandra, Moti, The world of courtesans, Vikas publishing house, 1973,3, 1-2 (re-2015).

¹⁰² Khan M.Z, Singh D.R, Prostitution, Human Rights, Law and Voluntary Action; The Indian Journal of Social Work publication,47, 15-20, (1987).

¹⁰³ Ibid.

¹⁰⁴ The dancing girls were performing in the temple and to take care of the priests in all forms and this is prime work for them.

The primitive Non-Aryan phase has also witnessed the concept of the Guest Prostitution in which a king of one state gave another king a beautiful girl as a token of love to build his relationship stronger and better diplomatically. In that period there is a concept of Vedic sabha and that Sabha has served many functions and the prostitution is one of the functions among many. Rig Veda refers these Sabha as which happen in the private bedrooms. There is also mention in the Rig Veda about the visit of the women in the Sabha hall and if this concept stands correct then this visit of women in the Sabha hall must belong to the visit of the prostitutes in the Sabha hall for the entertainment purpose. There is the evidence in the Rig Veda that the gamblers are gathered in the Sabha hall and if this observation is correct then we can say that the gambling, drinking and prostitution were going in hand with each other and the society has already connected with the prostitution and alcohol.¹⁰⁵ It is important to mention here that the reason for degrading the life styles of prostitution is alcohol at a large extent.

The history shows that during Brahmana period prostitution was accepted profession by society. The term Vaisya has already been introduced in this period and the real clients of these Vaishyas is the merchants of the town. Vaishyas gradually changed into “Beshya” which means approachable by all and lost its honour and pride and only used for the entertainment purposes. These women had started losing their identity and not have any value than a mere commodity. The prostitutes were variously known as Ganika, Bandhki, Rupjiva, Varangana, Kultani, Sambhali, Pumsali etc. At this period the concubine relationship started the marriage as a sacred relation falls and the merchants and the Kings and others started keeping other women for the entertainment purpose primarily for the sex and for the Music, these are the women who engages in the sex and dance and never get the status of wife to that man who is visiting his place.

In this period when the marriage as an institution started collapsing and the monogamous marriage started ending in many ways and the women as a living being losing her identity. The girl who is virgin or pure has higher value in the market. So, the hunger for the women body has started in this phase. The kings and the maharaja were generally corrupt and the people don't start questioning or revolting. So, they

¹⁰⁵Sinha S.N. & Basu N.K., The History of Marriage and Prostitution (Vedas to Vatsyayana), Khama house Publication, ed.2, 110-111(2015).

started making the houses for the sex workers and the arrangement of the dancing live shows was very common at that time. It was the daily practise at that time that the persons in the village will meet sex workers once in their daily life. Every village has its place where the people see their dance and drink. However, till that time sexual relation with them for the general people is not the common phenomena and people are not started thinking to marry those girls. The great sage Vasishta, was the son of women engaged in prostitution. There is not an account about elucidation the life of the prostitutes, their habits, modes and manners and the laws relating to and regulating them in Brahmana literatures.¹⁰⁶

Dharma sutras and Dharma shastras are the law books at the time of the Ancient Aryans. The Aryan period is the most successful period for the sex workers. They are called as the Ganikas¹⁰⁷ at that time and generally have a very reputed place in the society. Generally, they have a separate place in the society and special place in the courtyard of king. The ganikas has a proper training from the childhood and the women who became ganikas as a matter of pride for those women. The dancing women have a special personality at that time and the people of the society are much keener towards the dancing than the sexual life. The culture of drinking and dancing has been started in this phase only. The marriage among the ganikas and the Brahmins and other higher caste of people are common at that time and the ganikas generally preferred to do this to obtain a higher class in the society. However, the society had never accepted this type of marriage in the society.

They have also chance to uplift themselves from the ganikas life to the life of courtyards of any king. Generally, in the courtyard the struggle for basic stuffs has end and the dancing performance can be only done before the king or in the courtyard. The time of the Vedic age is very much in the favour of the sex workers. The women are not used primarily for the sex work. The society considered them artists instead of uncast women. The society is full of the stories or fairy tale of the heaven including god at that time. These women also considered themselves as the goddesses like Ramba and Urvasi. They also considered themselves as the property of the king and their only duty is to serve the courtyard. These ladies are also used to spy the neighbouring states which generally help in the war. At that time many stories like

¹⁰⁶Augoustion. M, Development effect of child abuse: Recent findings, *Child Abuse & Neglect*, 11(1), 15-27(1987).

¹⁰⁷Ganika was a prostitute who lived in a market in the city.

Pururava and Urvasi is very common and the sex workers are very much taking this in their life.¹⁰⁸

The later part of ancient India is full of religious innovation. At this phase the two most popular religion of the world Jainism and Buddhism has been emerged and Mauryan Empire is one of the most important kingdoms in terms of power and revenue has been emerged. Pataliputra was at the time of Chandra Gupta Maurya a flourishing centre of prostitution and it was the first time the attention of the State was drawn to the colony of prostitutes for its effective control and to bring it under the obligation of a stabilized taxation system. Brothel keeping was looked upon as a source of Govt. revenue. Kautilya has used the words such as Ganika, Praganika, Dasi, Devadasi, Rupijiva etc. for the prostitutes and courtesans.¹⁰⁹

The kautilya adhashasta is also described as one of the basic books for prostitute at that time; it describes how the life of the prostitute is and how prostitute should behave. In this phase of the society the prostitutes have given high status and they have a special place in courtyard of any king but the most recognized development has been taken place in the work of prostitutes at this time only when the prostitutes has been used not only for the entertainment purpose but also for the espionage purpose. The second most shocking development in terms of the nature of king towards these prostitutes at that time, the kingdom start collecting taxes from them also in order of their services and given them the rights in the state's property. This is one of the best periods for them they were not considered as tainted and the work of prostitute is described as the work for creating balance in the society. In short it was a necessary evil and everyone has accepted with full affection to this as a profession in the society.¹¹⁰

In Gupta period the institution of the courtesan became fully evolved and played a very important role in the social and cultural life of the people.¹¹¹ In the city, the courtesans and the prostitutes had separate quarters assigned to them. The Gupta period has also maintained the same philosophy as what at the time of Mauryan. However, they have given the special privileges to courtesans then to normal

¹⁰⁸Ibid.

¹⁰⁹Resenbulum, Karen E, Female Deviance and the Female Sex Role: A Preliminary Investigation, British Journal of Sociology publication,26, 181-182,(2016)

¹¹⁰Augoustion. M, Development effect of child abuse: Recent findings, Child Abuse & Neglect, 11(1), 15-27(1987).

¹¹¹Sinha S.N. &Basu N.K., The History of Marriage and Prostitution (Vedas to Vatsyayana), Khama house Publication, ed.2, 110-111(2015).

prostitutes but at least no one exploiting them at that time and they were given a special place in military and in cultural festivals. Ujjain in that period was great centre of learning Gandharva Kala. This art was also included all kinds of information on courtesans appears to be current because in this period the quarters where the courtesans lived had their own importance. The intimate contact between the dancing girls and temples and the courts gave rise to difference sorts of rules and regulations which governed and regulated their relationship with these institutions.¹¹²

2.8 Prostitution in Medieval Period

In the early medieval period the empires like Pala, Rastrakuta and Pratihara Empire has been emerged in India. This period had witnessed the emergence of agriculture, focus on literatures and temples. The Sanskrit language is the most popular language among the people. If we observe minutely then, we will find that this is the time when the decline of the life style of the prostitutes get started and they are considered as the loose character lady who only wants lust and exploit their clients for money and this is generally happened because in past years the kingdoms had fallen down because of the sex workers. The priests of the temples were also against them because it was directly hitting on the Hindu culture and against the concept of Monogamy system of marriage in the society. The synonyms like vasya has been emerged at this time and the culture of drinking alcohol became the necessary arrangements at their places which actually degrade the status of these places and the lower, middle- and high-class arrangement of the prostitute has come into picture. The people who have more money visits the higher class and then accordingly the clients-based arrangements and area-based arrangements was also get started in the society at that time.¹¹³

In the Medieval period temple emerged as the source of power in the society and it was also above the king in many of the state affairs. The temples were the owner of vast land property and the managers of a large number of religious and non-religious functions. The religious functionaries included the priests, dancing girls, dancing masters, singers and others. The temple pidariyar in kolar had twenty-four dancing girls.¹¹⁴ The concept of Devadasi as became very famous at that time, the low-class

¹¹²Ibid.

¹¹³AgnesFlavia, violence against Women: Review of Recent Enactments, in In the Name of Justice: Women and Law in Society 81-116 (SwapnaMukhopadhyay ed., 1998).

¹¹⁴Ghosh, S. K., The world of Prostitution, A. P. H. Publication, 2, 674-675, (2005)

girls specially the non-brahmins has performed the work of dancing and singing in the temple. Temples also purchase slaves and the parents of lower-class girls generally offer their girl for the services of god and priests and due to the immoral approach of the priest these girls were exploited. Under the grab of religious dedication of girls to temples the prostitution developed without the religious recluse because it is a service to the god not the prostitution. The priests and temples are so powerful at that time that the kings can also not indulge in these matters and they are bound to support these types of activity.

At that time the temples are the most important source of revenue generation for the kings and the temple are acting as the banks for the states and kings and most importantly the temples at that time is playing the role of state face to the outside world for that particular state. Temples has the primarily role to control the state population in case of revolt. In short, we can say that the temples are acting as the catalyst among the society and the kingdoms. So, now we can say that it is the religious prostitution which has emerged and playing important role in the state at that time.

According to Huen – Tsang¹¹⁵ in his famous book Great Tang Records on the Western Regions he described that there were several dancing girls in the Sun temple of Multan. The work of these girls is to perform in the rituals of the temple on the order of the head priests and every evening they have to perform either dancing or play some music. They have proper training in this regard and the training was arranged by the priests only with the money of offerings. The girls were generally indulged in the prostitution for the priests of the temples and even buying of the girls for the temple are very common at that time and very much recognised and legal in fact the girls are much more higher status in the society than other girls specially that girl who became the personal deity of the head priest in any temple.¹¹⁶

In the middle of 12c and 13c, there was time of the Delhi sultanate; the Muslim rulers were in the Delhi crown. The great sultan has its rise under Qutub Din Aibak, Mohammad Gori and many more; they will be leading a high standard probably highest at that time in the globe. Due to the rapid expansion of the empire, large salaries and allowances were given to the nobles by Sultans also. The nobles tried to

¹¹⁵Chinese traveller, who travel India in 7th century.

¹¹⁶Singh Nagendra Divine Prostitution, ed.5, 44, ISBN- 81-7024-821-3, A.P.H Publishing Corporation (1997).

imitate the Sultans in flashy living. They are living very high standards and they are surrounded by the servants and the many officers including transgender guards also for the queens. The concept of private prostitution house has been emerged at that time and keeping concubine is a matter of pride and strength at this time as this was considered as the shameful act till the time of rising of middle age. The concubines and haram in the houses are the regular practice in the society and they didn't feel any shame in keeping this in their home. In fact, this was also used as the source of entertainment for the guests. It is also correct to say that the many nobles turn their houses in the private brothels and they are responsible for degrading the lives of the sex workers. The dancing and the music became the secondary for the people now the drink and sex became the primary refrain for these girls. Now at this time the pride is no more associated with this work and only those women come in this profession, who are either very poor or sold by her family. There was very little difference between such harems and modern-day brothels. Harem was reserved for few men's while brothels are visited by many but in brothels there were the freedom to sleep while in haram there were no freedom to sleep. They are forced to sleep with their masters.

In Muslim rulers' period, many of the prostitutes were foreigners and were slaves recruited from Persia, America and even Europe. There was great demand for these foreign girls. These prostitutes procured from the Christian and other Non-Muslim races were obligatory to declare themselves converted in the Muslim religion. It is very common to present women in gift to the neighbouring countries for keeping good relation among themselves. It is not incorrect to say that these ladies have no more a right than an animal. The concept of kept mistress is also very common among the neighbouring rulers, commonly the women who are most beautiful are generally distributed among the rulers as a symbol of peace and harmony among them.

During the period (1526 - 1707) the Mughal Empire was ruled by Akbar, Jahangir, Shahjahan and Aurangzeb. Generally, the Mughal emperors-maintained harems and these harems have nearly 5000 ladies at a time and the women are taken forcefully for this purpose, it is very common phenomena at that time. It is of no concern that these women are unmarried, married or having kids and the rulers are very much protective about their harems. These harems are guards by the best guards of the rulers which specially includes the transgender. Akbar is the first emperor among the Mughal who started this system at a large scale. He is very fond of his harms and especially with

Non-Muslims girls. Meena Bazar at the Red Fort area in Delhi is the best example of this, the Akbar established this Meena Bazar to pick girls for his harems because the kings and his guards were the only men's who allowed to visit the Meena bazar¹¹⁷ However, Akbar made some regulations so that the services of prostitutes might not be available very easily to the public.¹¹⁸

The prostitution houses were generally outside the city Agra and Delhi became one of the major centres for this type of work. The nobles has also followed the same pattern and didn't concentrate on the good governance of their states and only leads lavish life and spent lots of tax money in the harems. The governors of the kings and their nobles has understood that the most important way to make their masters happy is to make changes in the harems on daily basis and they also started exploiting their citizens and specially to those families who have girls. Kidnapping is the most common phenomena at that time and especially among the Non-Muslims. In Mughal period the concubines and favourite slave girls led a pleasant life.¹¹⁹ The major time of the rulers is getting in these harems and the life of their citizens is degrading every day, which ultimately results in the higher tax and exploitation in the society. There was also competition among the lady of the harems to become a chief lady or the favourite lady and gain the respect of primary women after the queen¹²⁰ the chief lady live a splendours and lavish life and the women who is not able to please or not manage the lives of the harems had killed by the soldiers at that time and this was the most common phenomena at that time in the society.

2.9 Prostitution in Modern Period

After the advent of the British rule in India, the face of the prostitution has been changed in India. The Prostitution has not been considered as the noble profession anymore, the prostitute has been no more the jewel in the crown of any king's courtyard. This profession was considered as the dreadful profession and not required for the society. The British government is using prostitutes to keep vigilance on the king's and they use the prostitute against the king's, so that kings can't keep their

¹¹⁷ Agnes Flavia, violence Against Women: Review of Recent Enactments, in In the Name of Justice: Women and Law in Society 81-116 (SwapnaMukhopadhyay ed., 1998).

¹¹⁸ Burgess, R.L, Social incompetence as a precipitant to and consequences of child maltreatment. Victim logy: An International Journal publication, 10, 72-86, (2018)

¹¹⁹ Ibid.

¹²⁰ Carlson, B.E, Children's beliefs about punishment, American Journal of Orthopsychiatry publication, 56, 308-312, (2017)

administration strong and indulge in these activities only. Not only the prostitution has been influenced by the British rules and policies but also change from their laws and policies. Colonial supremacy, cultural misunderstanding and the want of exploitation play a vital role in British regulation of prostitution in 20th c. The British has deep effect on prostitution both legislatively as well as socially also.

Although there were regulations present before 1864 in India for the prostitutes but first of its kind was introduced by British government, when The Cantonment Act 1864 came into force. This Act is only for the British soldiers and the living of the prostitutes in the cantonment for the British soldiers. There were around 12 to 15 prostitutes for every regiment of about 60 to 100 troops and there were also arrangements of special hospitals for soldiers for the venereal diseases. They have to check themselves every week for this and the prostitutes have to also check every week for the diseases. These girls were basically poor and don't have the opportunity other than the prostitution to support themselves financial. During this period the chakala had been come into force, chakala is basically the place where the prostitutes take rest.

However, when military personnel were increasingly struck down by venereal diseases, more regulations were demanded. This is basically because of the unsafe sex, unhygienic condition, personal hygiene by the soldiers and prostitutes. This eventually led to the Indian Contagious Disease Acts.¹²¹ The Contagious Disease Acts sought to prevent venereal diseases in military personnel through several regulations. The Acts required the registration of women engaged in prostitution. These women were often required to carry a license in the form of a card. Furthermore, it mandated the regular medical examination of female prostitutes. If any of these women were found to be infected during an examination, they were required to undergo in-patient treatment. If they refused such treatment, they could be penalized by imprisonment. Once cured of their diseases, they were released.¹²²

However, it is not mandatory for the soldiers and other officials to go for a medical check-up. After the enactment of this act, the British soldiers start exploiting these prostitutes more and there was mass spread of diseases in those areas. However, the voice was raised against this by many writers and socialist revolutionary and feminist

¹²¹Bhandari, Sudhanshu, Prostitution in colonial India, Mainstream Weekly publication, 17, 26, (19 June 2010).

¹²²Cues, H. & Herman, B. On the Threshold of disclosure, the Effects of a Mass Media Field Experiment, Child Abuse and Neglect, 21(6), 557-573, (1997)

including Josephine Butler¹²³. Feminist see the prostitute as against the equality, so they demanded to end the prostitution in any form and especially state sanctioned prostitution. The groups were made in against of this act and in 1883 finally this act got repealed.

The most important change which took place in 20th c. is the immigration of European women for prostitution in India. The officers were not discouraging this because due to this there were no danger of cultural imbalance in Europe and further, they can't deny the state-owned prostitution because they required this to motivate their soldiers and sailors in India. Although Britishers were more interested in the state administration but there were clashes between British government and Indian religion the best can be understood is the devadasi system. The British were against these rituals and till the time Britishers came to India, it became the integral part of custom in India. The British viewed the traditional Hindu practice of devoting certain young women to the temple as the exploitation of a minor for the purposes of prostitution and from the 1860s onwards convictions for "temple prostitution" became increasingly common. The clash between British and Indian culture became increasingly apparent as the British legislators enforced more laws against Devadasi practices. Eventually, the Indian Penal Code included the Devadasi practice as a punishable offense.

The British government had allowed the prostitution in very limited manner, especially in the cantonments, they believe that this controls the problem of homosexuality among troops and give dominance over the Indians through Indian prostitution and save them from boredom. It was common believe that the British government is controlling the religion through prohibition of devadasi custom. However, at this period only the English reformist like Amy Carmichael,¹²⁴ with the help of her missionary fought against this evil custom and against the British policies of prostitution. She fought specially for the child of the prostitution and against the devadasi rituals.

After India get independence in 1947 the first and foremost question was that how to strengthen these weaker sections of the society. However, the constitution makers have tried to justify by providing them the basic Human Rights and Fundamental Rights and the DPSP but still the situation has not been changed too much. According

¹²³English feminist and social reformer in Victorian era.

¹²⁴A Protestant Missionary of the Church of England Zenana Missionary Society.

to the survey of UNAIDS,¹²⁵ in 2016 there are 657829 registered prostitutes are working in India and these figures are only for the registered prostitutes. However, Government organisations like MDACS (Maharashtra District AIDS Control Society) have played a very prominent role in generating awareness on HIV/AIDS through the assistance in providing free literature and organising street campaigns. There are several NGO that feed on funds for protecting STI/STDs spread to common population NACO (National AIDS Control Organisation), a government agency leads these NGOs.

The prostitution is more than a profession in now a day; it is a way of life. The teens are entering in the prostitution to fulfill their high increasing demands and to fulfill their sexual pleasure. The human trafficking is fully attached with the prostitution now a day and with the advent of the online prostitution the work has become more and more easy. The method of taking pleasure has been changed there is no requirement of meetings of the prostitute and the clients. The teenagers who don't have the guts to face the real prostitute because of social stigma attached to it, she is involved in the virtual sex and pays online to play the sex content game to give pleasure to himself. Many philosophers have been argued that it is not the real term of prostitution but according to my study this is the first step of the prostitution. However, the government has playing many important parts like awareness and blocking of porn websites but due to lack of proper provisions and education especially to the parents this is growing day by day.

2.10 Evolution of Computer and Internet vis-à-vis its impact on promoting online Prostitution

Carless Babbage of England is considered as the father of computer and with every going year, it became more and more perfect. From teletype to Digital Computer and from Pascal code to Super computer the journey of computer is almost a century old but the only one thing which has not changed is the invention, its growing better and better with every passing years. Historically we are in the fifth generation of computer technology. The first generation starts in 1940 in the 2nd world, which was based on valves. The second generation in 1950's with the advent of integrated Circuit. In the

¹²⁵United Nations programme on HIV and AIDS.

early 1970's the integrated circuit changed into VLSI.¹²⁶ In the early 1980's the IBM has come and in the 1980's only the concept of small personal computer had come.

The computer as a commercial stuff can be only seen in the 80's before this it was only used in the Universities and Government departments but the real face has been shown in 1990 with most portable computers at that time and with the invention of Microsoft and Internet everything has been changed, now the computer is not only the calculator or programming device, it can do what not human think till date. The invention of Internet is the game changer in the history of technology and with the invention of Internet it became the most important invention of Humankind. Now, everyone is connected to everyone in this world it was opportunity as well as threat to the mankind. There are opportunities in the matters of making a globe commercial village and promoting research and talents but the form of Prostitution and e-fraud and many more. The internet has undoubtedly made our life happier and easier but at the same time it widens the gap between child and family and in many cases, but we can't deny the fact that it is the cause of death to many innocent lives also.

With the advent of Worldwide Web by Tim Berner Lee the whole new industry called technology industry has been emerged in the globe and the whole method of business, research, study, health etc. and even the method of taking revenge by one person from another has been changed and even the exploitation method has been changed, the globe has been emerged as a large market for business.

The Internet makes our work easier by mixing computing and communications technologies. It makes information immediately and conveniently accessible worldwide. It makes it possible for individuals and small businesses to get worldwide contact. In the last decade, the Internet and World Wide Web have altered the way people communicate, conduct business and manage their daily lives. They are changing the nature of the way business is done. As per current data there are more than 147534966375 live on internet every second.¹²⁷

The advertisement for sex and Pornography is not a new concept for today's world it is a classification of 18c, with the advent of Printing press the advertisement and role of media had increased to promote sex work. Paintings, mosaics and lampshades were also used to promote the sex industry in the globe. The printing press meant that

¹²⁶Very large scale Integration.

¹²⁷Chamberland, C., Fallon, B., Black, T., Trocmé, N. Emotional maltreatment in Canada: prevalence, reporting and child welfare responses (CIS2), *Child abuse Neglect*, 35(10):841-54, (2011).

sexual material previously available only to the European aristocracy became accessible to larger numbers of common folk. Despite the fact that everyone wants to see the content but no one wants to discuss or talk about this, it had divided the European classes into two groups, the persons in the society who want to see the content and the person who don't want to see the content. The 1784 Louis XV as a sultan with a magic ring that has the power to make women's genitals talk or the 1525 sexy political satire *La Cazzaria*, which translated into English as "The Book of the Prick" are the perfect examples of the advertisements.¹²⁸

In 1817, the collection of porn museum has been set up and known as 'Secret Cabinet', in which only the high class officials and aristocrats has been given permission to see the first ever porn collection.¹²⁹ The scenario continues till late 18c, the European masses don't want to spoil their cultures and specially the churches don't want to spoil their culture and with the basis of this the first ever Anti-porn stated came in 1857 by British House of Commons. In the year 1893 Swiss International Bureau against Immoral Literature categorized porn as an international problem and advocated for a union of civilized nations to fight against the phenomena. In my view, if we connect the basis of porn and their advertisements then we should not forget that we belong to the land of Kamasutra and our Khajuraho sculptures. However the concept of porn and their advertisements were still an alien concept to the Asian people till that time but thanks to colonization that it could happened in India also and at the beginning of 19th c. the concept of video has been emerged and it gives a pornography a new life, the books and magazines on India gate is a normal phenomenon in India till then. As at the end of 1894, the photo turned into video and video into peep-booths, peep booths became VCR and VCR into CD-ROM and CD-ROM became internet and the rest is browser history.¹³⁰

The 20th c. has seen the most developed technologies ever human race had witnessed. The internet has given a vast land to play to the prostitutes especially with the advent of emails and private messaging apps and with the origin of online payment option they have tasted the real fun of the technology without getting easily trapped and humiliated. Those were the days when the people go the prostitute houses and choose

¹²⁸ Jane, L.W. Child Sexual Abuse and the Media: A Literature Review, *Journal of child sexual abuse*, 24(1) 104-105, (2015).

¹²⁹ Ibid.

¹³⁰ Kari, L. & Nuzkiewicz Using Social Media in the Prevention of Child Abuse: An Analysis of Wisconsin's Campaign Programs, Cheryl Banachowski-Fuller, University of Wisconsin-Platteville, (2012).

one among them by seeing their face. Now, it is all on the figure tips, the only thing required is Money, everything will be on the personal message every minute details including body structure to private parts to address.¹³¹The strangest thing is that the women who are less sexually active has more income and especially for those girls who are virgins.

Entering into techno of internet it has given the space to the pimps a new of sexual exploitations to the innocent girls. Bulletin boards were used to download the porn before the advent of the internet during 1970s. Since the advent of pager and cell phones in 1990s this has been used as the primary technology for the pimps and the prostitutes.¹³² Online prostitution was evolving then since, first they have AOL then yahoo then came the live video, then cam sex and now the personal board messages and the strange thing is that the websites like Fuck book which have 1000 plus girls registered to have sex instantly all you have to do is to make you a card payment for the service and the girls is at your doorstep within an hour. The dating websites and the popular social messaging apps like face book are very familiar for online prostitution now days. These apps have an option that you want one-night stand or live partner and everyone knows how to enjoy that service with fake accounts but no one wants to talk about it and in publicly they act as they don't know anything or the situation doesn't exists.¹³³

With the development of Netscape's Web browser in 1994, transmission of Web pages with text, images, sounds, and video made it possible to traffic women on the World Wide Web. "The first web-based prostitution business, A Personal Touch Services, from Seattle, WA, U.S.A., appeared in late September, 1994" and was described as the year's "most significant Internet marketing innovation."¹³⁴these are the few alarming examples of beneficiary business between the web technology and trafficking industry. By the year 1999 the web developers for pornography has developed the techniques of page jack URL's sites. In this process when a user wants to open a website then a hardcore porn website emerged and in order to close this URL you have to open this and either wait for few seconds to close the ad or enter the cookies so that you will get the notifications regularly. This method had generated

¹³¹Ibid.

¹³² F. Quinn & Craig J. Forsyth, Describing Sexual Behavior in the Era of the Internet: A Typology for Empirical Research, 26, 191-197 (2005)

¹³³Cues, H. & Herman, B. On the Threshold of disclosure, the Effects of a Mass Media Field Experiment, Child Abuse and Neglect, 21(6), 557-573, (1997)

¹³⁴Ibid.

many customers as the need of the hour; the website developers are still using this method as their best tool to make the customers.

The most recent development in this segment especially in India is the Smartphone's which bring the pimps and prostitutes at the figure tip and in the pockets of masses. The best example is the 2011 I-phone version application which advertised "SugarSugar.com is for generous men looking to spoil, and dynamic women looking for financial support with bills, or who just need some excitement in life. SugarSugar.com which 'provides a staff of sugar dating experts to help you find the perfect equally advantageous arrangements.'" ¹³⁵

The Prostitution market in 20 years has changed drastically in every phenomenon. The prostitutes are no more required to stand in a queue of a street corner in a red-light area in order to get their advertisements. At that time men choose them by seeing their physical appearance but now this happen in a very limited form due to the possibility of harassment and unnecessary torture by the administrative persons. Prostitution is like a wholesome business where you have ethics and regular customer's base, and the internet has expanded the horizons of pimps to reach to all the potential buyers. Women may be sold in 5 minutes for 15 minutes or for a week, like a rental car or it is as easier as buying a Pizza. The pornography has also played a major role in expanding the mind setup of every teenager towards the women. The most alarming thing in this regard is the concept of marriage on which the society is basing their roots is blurring day by day. The prosperity of marriage is exchanged by the sex between male and female only. Eighty-eight percent of sex buyers in a 2019 research study had bought women and children for sexual use indoors via Internet-advertised escort agencies, strip clubs, gentlemen's clubs, brothels, and massage parlors. ¹³⁶The internet has exploited to give sexual pleasure to men and exploitation to women in every part of the globe now. The internet has been useful for the pimps to provide the women all over the globe.

The internet has fantasized the world of the sex industry. Earlier it was a need and the only method to grown own generation later, it became the hobby and now for the rich people to show their money. The thing are getting worse when the people used as a business and for the business they started exploitation of innocent girls and now the

¹³⁵ Stephen J. Vaughan-Nichols, Hire a Hooker? There's an App for That, ZDNET (May 11, 2018, 11:00 AM) <http://www.zdnet.com/blog/networking/hire-a-hooker-theres-an-app-for-that/1040>

¹³⁶ MELISSA FARLEY ET AL, Comparing sex buyers with men who don't buy sex, 15(11.50 am, 8-04-2019) <http://www.prostitutionresearch.com/pdfs/Farleyetal2018 ComparingSexBuyers.pdf>, (2018)

situation are more than worse because it has no privacy as a subject matter and the teenagers have the habit of sex and the thing which make it more than worse is the entry of mafia into trafficking industry. Internet websites provide contact information, specifics on sexual acts that will be performed, pornography of the woman to be sold for sex, coded prices, and reviews by sex buyers.

The internet, Smartphones and other digital platform has made very easy to have the excess of women, who is in this business and not only for the local area but all over the globe. The most devastating thing about this industry is now the bitcoins. Bitcoins, an unregulated online currency that unlike credit cards provides the anonymity of cash, is being used to pay for web access to sites containing extremely violent or illegal images of real women and children, including online auctions of them.¹³⁷

The main concern is not only the increase of the sex industry but it also increased the human trafficking in the globe. The internet has facilitated men to shift the base of prostitution from outdoor to indoor that what we today called massage parlor, strip parlous, call girl or strip or phone sex. The development of the Internet requires new prosecutorial strategies for arresting pimps, traffickers, and sex buyers, a challenge that requires law enforcement officials and prosecutors to keep up with trafficker's familiarity with, and skills in, web technologies. Internet has blurred the boundaries; the content can be published and can be accessed from anywhere.

It makes the life of the agencies more difficult. Social networking media such as Face book, classified advertising websites such as Back page, message boards, and dating sites all provide platforms for prostitution marketing with relative anonymity and impunity. Sex buyers and traffickers benefit from the relative lack of accountability of Internet service providers for their websites' content, despite token gestures described below. At the same time, online prostitution results in an online record that can be used as an evidence in prosecutions but it is hard to achieve and if someone knows the technology better like in many cases, the teenagers are well versed with the technology then it is hard to get their jaws by the state agencies.

¹³⁷Chang Samantha, Sex Marketplace 'Backpage' Used Bitcoin for Money Laundering, ccn markets, (29 -04,2019, 10.04 pm) <https://www.ccn.com/sex-marketplace-backpage-used-bitcoin-for-money-laundering-doj>

2.11 Conclusion

The prostitution in India is not a new concept for the Indian civilization nor was its existence is from the human civilization. However, it has changed its role from the concept of Nagar Vadhu to the concept of online. It is always mentioned that if sex workers were not there then the streets of the cities will be never safe for the women in India and this concept is also correct to few aspects. The prostitution was seen as a noble profession in ancient India. The sex workers were the important stakeholders of the society but not this concept has been changed totally and they are treated as the evil of the society. it is always considered that they had destroyed the basic family structure but the truth is that their existence is few the existence of the family system in India and of course the most bitter truth is that due to our acknowledgment this system exists. Everyone in the society wants to experience or satisfy their physical and emotional need with the sex workers but no one is ready to talk about this system. The Indian society is going in the wrong direction, we have to rely that we can't ignore this structure of the society or rather than ignoring we should try to regulate this system. The society and technology have changed a lot in 20 years so does this system and the online prostitution is the byproduct of the changing technology in the society. We have to understand that the online prostitution is affecting not only the adults but also the teenagers and specially the girl child. So, every unit of the society likes parents, governments, NGO; s, administration etc., has to play their part in a serious way to curtail the evil effects of the online prostitution.

CHAPTER-3

EXISTING LAWS ON SEX WORK AND NEED FOR A CHANGE

3.1 Introduction

Prostitution is legal in India until and unless it is done in a private space, not in a public place and with a free will. The numbers of activities associated with the prostitution like Pimps, running brothels, kerb crawling, child prostitution and many more is illegal in India. In short, we can say that the organized prostitution is illegal in India. The prostitution has always changed his way in order to attract the clients, first it was in the brothel homes and very few has the right to indulge in this business but with advent of new world of business it has changed from brothels to streets to scouts services and now the most dangerous that is the online prostitution. We can say that it is more than a choice because the prostitutes who are dealing online has less chance of arrest and humiliation and internet is all at personal things. We can control the data and we can modify the data. The clients have not required going on brothels and searching for women on street late night, it is all available to you in just one click.

The law regarding prostitution in India is formless in its nature, the primary law dealing with the status of sex workers is the 1956 law referred to as The Immoral Traffic (Suppression) Act (SITA). According to this law, prostitutes can practice their trade privately but cannot legally solicit customers in public.¹³⁸ The customers can also be punished for indulging in prostitution until and unless the prostitutes sell their body voluntarily and individually and not in the 200 yards of public place. Unlike as the case with other professions, sex workers are not protected under normal labor laws, but they possess the right to rescue and rehabilitation if they desire and possess all the rights of other citizens.¹³⁹

In practice the SITA act is not commonly used, it is the IPC who is taking the up-front seat by charging for public indecency¹⁴⁰ and public nuisance.¹⁴¹ In the year 1986 the

¹³⁸ The Immoral traffic prevention act 1956, No-104, Acts of parliament 1956(India)

¹³⁹ Ibid.

¹⁴⁰ Section-294 of Indian penal code, 1860, No-45, Acts of parliament, 1860(India)

¹⁴¹ Section 268 of Indian penal code, 1860, No-45, Acts of parliament, 1860(India)

SITA act has been transformed into Immoral Traffic prevention act, with the intention to penalize the clients also but it was opposed by the health ministry.¹⁴² In the year 2006, the ministry of women and child produced a bill in order to reduce the human trafficking but it never came into existence and scrubbed in the legislative process.¹⁴³ In the year 2009, the Supreme Court ruled that prostitution should be legalized and convened a panel to consider amending the law. In 2011 the Supreme Court held that "right to live with dignity" is a Constitutional right and issued an order relating to "creating conditions conducive for sex workers to work with dignity". The court directed the Central Government, States and Union Territories to carry out a survey to determine the number of sex workers in the country willing to be rehabilitated.¹⁴⁴ However, in 2012 the Central Government made a plea to the Supreme Court arguing that sex workers should not be allowed to pursue their trade under the constitutional "right to live with dignity". Government counsel contended that any such endorsement by the court would be ultra-virus of ITPA which totally bans prostitution. Opposing counsel submitted that the Act only prohibited brothel activities and punitive action against pimps. The Supreme Court agreed to examine the plea.¹⁴⁵

The present chapter discuss about the legal framework of the laws and provisions in Indian statues. The present chapter basically focus about the cyber laws and the sex work which is pertaining to the cyber-crimes in India. The chapter basically criticized and need for a change in IT act and ITPA act in India and in implementation policy.

3.2 Indian Legal Framework of sex work

The prostitution is still an unsolved mystery by the law framers, but time to time the question has been raised and the law makers tried to solve this. Other than the ITPA act and IPC, the Constitution has a great discussion on equality, right to work and live with human dignity. Apart from this the constitution has also ensured freedom from human trafficking and forced labor. As mentioned in the preamble of constitution of India. It gives equality of opportunity, status, and dignity to every citizen. Apart from

¹⁴²Singh Kumar Mahendra, *Sex workers' clients shouldn't be penalized*. *The times of India*, 24 November 2007, at A16

¹⁴³ The Immoral traffic prevention act 1956, No-104, Acts of parliament 1956(India)

¹⁴⁴ Prostitution in India: Make it legal, *The Economist*, 1 November 2014.

¹⁴⁵ Supreme Court orders the center Sex workers cannot operate in any manner, *The Indian Express*, 12 July 2012.

only being secular, social, republic and democratic and irrespective of gender, caste, religion. Indian constitution has provided some basic provisions which make the constitution unique and ensure the equality and freedom between every citizens of India in spite of their work and occupation also.

Some of the rights ensured in constitution are-

Article 14¹⁴⁶ – This article provides the equality before law and equal protection of law. It ensures that every person has the equal right of no discrimination and in no case the citizens should be discriminated on any ground. The state not deny to any person equality before the law or the equal protection of the laws within the territory of India and the protection prohibition of discrimination on grounds of religion, race, Caste, sex, or place of birth. Prof. Dicey, explaining the concept of legal equality as it operated in England, said: “with us every official, from the prime minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen.”¹⁴⁷

The phrase equality to the law, find a place in all written constitutions that guarantees fundamental rights. All citizens irrespective of birth, religion, sex, or race are equal before law; that is to say, there shall not be any arbitrary discrimination between one citizen or class of citizens and another. All citizens shall, as human persons are held equal before law.” “All inhabitants of the republic are assured equality before the laws.

According to Patanjali shastri, CJI. has expressed that ‘the second expression is corollary of the first and it is difficult to imaging a situation in which the violation of laws will not be the violation of equality before laws thus, in substance the two expression mean one and same thing.’¹⁴⁸

According to Dr. Jennings: “Equality before the law means that equality among equals the law should be equal for all”. And should be equally administered, that like should treated alike. The right to sue and be sued, to prosecute and prosecuted for the

¹⁴⁶The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁴⁷Bernadette, J., Saunders & Goddard, the role of mass media in facilitating community education and child abuse prevention strategies, Child Family Community Australia publication, 16, C. (2002).

¹⁴⁸The State of West Bengal vs Anwar Ali Sarkar (1952), (SC 75, CriLJ 510, 1 SCR 284) (India)

same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence.”¹⁴⁹

Article-15¹⁵⁰ – This article ensures that there must not be discrimination on the basis of caste, sex, race, religion and place of birth. It is the state who should not discriminate on these criteria and treat every citizen equally irrespective of their nature of work and profession. Actually, Article 15 acts as an extension of Article 14 which talks about the fact that every person should be equal before law and should be treated equally by the law. But, in the Indian context, like should be treated alike and not unlike should be treated alike. It states that the State shall not discriminate between citizens based on their religion, race, caste, sex, place of birth or any of them. Furthermore, there must not be discrimination on the access of public places-shops, public restaurants, hotels and, places of public entertainment.¹⁵¹ The most important thing in this regard is the places where must be either of a state or the state sanctioned.

Article-21¹⁵² – This article is one of the most important fundamental rights of the India people. This article is the most common and fundamentals among fundamental right. Supreme court had used this article many a times in the prostitution case like of Gaurav Jain and Baze.com when supreme court said that the women who is working as a prostitutes or the women who trapped in the online prostitution must have a basic right to life and personal freedom and the right to life include lives with human dignity not just a mere animal existence.¹⁵³ The article 21 carries many fundamental rights among him and this is the beauty of this article and it is expanding and increasing with every decisions of the Supreme Court of India.

Article 21 of the Constitution of India, 1950 provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” ‘Life’ in Article 21 of the Constitution is much wider meaning it includes everything life fresh air, clean environment, healthy food, free movement, everything which is required for the healthy human existence. It includes everything which completes the living of man and women as a human being on earth. It is different

¹⁴⁹ King Lindsey, International Law and Human Trafficking, ,(23-03-2019,16.35pm)
<http://www.du.edu/korbel/hrhw/researchdigest/trafficking/InternationalLaw.pdf> (2014)

¹⁵⁰ Article-15 prohibits discrimination of Indians on basis of religion, race, caste, sex or place of birth.

¹⁵¹ Ibid.

¹⁵² Article 21 is protection of life and personal liberty; no person shall be deprived of his life or personal liberty except according to procedure established by law.

¹⁵³ Jain Riya, Article 21 of the Constitution of India – Right to Life and Personal Liberty, Academika, Nov 16, 2019, <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

from the living of the animal existence on earth. This article is also important because it received the broadest probable interpretation and it is increasing every day with every decisions of the S.C in India.

Moreover, Under Part IV of directive Principles of State Policy: the states have the duty to secure justice and have a policy framework for the equality between men and women in terms of work, their health, in terms of working condition, for the rise of weaker sections, payment of wages and promoting economic and social strength to the weaker sections of the society, Protecting them from the exploitation. However, all these are just mere guidelines and not enforceable in the court of law but a state government should always make provisions or even their day to day administrations are also in conformation with these points.

Section 370¹⁵⁴ and 370 A¹⁵⁵ has been inserted by the Justice Verma committee in 2013 which states the human trafficking and punishment for human trafficking. Section 372¹⁵⁶ and 373¹⁵⁷ makes punishable of selling and buying of minor girls for the purpose of Prostitution. Moreover section 354¹⁵⁸ which discuss the outraging modesty of women and punishment is of 2 years.

In the chapter of 22 of criminal intimidation, insult or annoyance, commission act, any kind of words used or intentional gestures to insult the modesty of a women or to hurt her privacy is an offense which is cognizable, bailable and triable by any magistrate and can be punished by way of fine or sentence up to 2 years of imprisonment or with both. The Indian Penal Code has at least 20 provisions that make trafficking punishable. Most of them deal with abduction for illicit intercourse, wrongful confinement after abduction inter alia. A large portion of them deal with unlawful intercourse, wrongful confinement after abduction inter alia.¹⁵⁹

¹⁵⁴ Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹⁵⁵ Exploitation of trafficked persons.

¹⁵⁶ Selling Minor for the purpose of prostitution.

¹⁵⁷ Buying Minor for the prostitution.

¹⁵⁸ Assault or criminal force to woman with intent to outrage her modesty.

¹⁵⁹ Chang Samantha, Sex Marketplace 'Backpage' Used Bitcoin for Money Laundering, ccn markets, (29 -04-2019, 10.04 pm) <https://www.ccn.com/sex-marketplace-backpage-used-bitcoin-for-money-laundering-doj>

3.3 Immoral Traffic Prevention Act, 1956

The Immoral Traffic (Prevention) Act, 1956 (hereinafter ITPA) is the supreme legislation in India for the purpose of trafficking and prostitution in India. The Act primarily makes pimping and different exercises culpable, and they are primarily responsible for the abuse of the individual for the prostitution in India.¹⁶⁰ The Act prohibits commercial activities of flesh but it does not prohibit prostitution per se. It is held that in order to prove prostitute a woman or girl is required to show that she has offered her body for sexual intercourse for hire. Section 3 of the ITPA provides for punishment of any person who allows or is in charge of the premises, uses such premises or knowingly allows someone else to use it as a brothel or conducts any activity prohibited by the act. According to this act, even a single incident is enough to prove that prostitution was being help in a particular place.

Offenses under ITPA are provided from section 3 to section 9.¹⁶¹ In a couple of judgments it was explained that ITPA aimed at abolishing the commercialized trafficking in women.¹⁶² In one of the cases in Gujarat, The High Court refused to recognize prostitution as a legitimate means of living.¹⁶³ This is because, such recognition by law would give an open invitation for women to be trafficked and also recognize such recognition to be misunderstood as their right of profession. The restrictions which were imposed in section 7 under the Act were held not to be discriminatory. Under the Act if ITPA, a Magistrate has a right to remove a prostitute from any place for the purpose of public good. It is also important to know that; this act does not punish the client whatsoever.

This law expresses that prostitutes are permitted to carry out their work in private they can't do their business in the public place. Despite the fact that trade of sex for cash is allowable only on an individual limit, a woman can't do it in inside a traverse of 200 yards of an open place. Sex works are not inside the ambit of ordinary labour laws but they have all the rights to rehabilitates and approach to the government for the

¹⁶⁰ Ibid.

¹⁶¹ Section 3 provides for discipline for keeping a brothel or allowing premises to be used as a brothel, section 4 provides for punishments for living on the earning of a prostitute, section 5 provides for procuring, inducing or taking persons for the sake of prostitution, section 6 provides for detaining a person in premises where prostitution is carried on, section 7 provides for punishments for offences regarding prostitution taken place in public places, section 8 provides for alluring or requesting with end goal of prostitution, section 9 provides for seduction of a person in custody.

¹⁶² Ratnamala and Another v. Respondent (1962) Madras 31, (India)

¹⁶³ Sahyog Mahila Mandal v. State of Gujarat (2002) 2 GRL 1764, (India)

betterment of their life's and the government is bound to help them and provide every right as an individual citizen of this country have in the normal situation.

3.4 Problems in Implementation

The main loophole of this act does not lie in the Act but instead it lies in the implementation of this Act by the enforcement agency. The corruption riddled implementation is one of the main impediments in this Act. This is the reason for limited outreach of the laws in our country. It is pretty evident that the attitude of the police and also the judiciary has not been changed after independence. The IT act require quick implementation, the old court framework doesn't work in the modern IT act. Corrupt officials in law enforcement agencies are highly corrupted and non-cooperative specially the lower courts. Another problem is the reformative and rehabilitation homes which are provided for these prostitutes are inadequate. These homes are inadequate and cannot accommodate large number of prostitutes who are a victim of crimes. There are shortages of number of homes and the victims are large in numbers.¹⁶⁴

Hence, this creates a problem and does not provide homes for many of them, driving them again to the same activity and became the victim of such activities. One of the solutions is that they must increase the number of homes and provide training and development to such victims. They must work on counselling them and providing trainings for jobs. The aim of decriminalization is that instead of the sex workers, customers would be held responsible and we all know that in these types of cases always the number crimes registered are less then compared to the real crimes committed. In simple words, the numbers of crimes are more in numbers but such crimes reported are very few and this happens basically because the menace of humiliation and arrest by the police officers and because many of them are unaware of the rights and laws which exists in our country for them. In some cases, the victim come to report the case but it doesn't able to make it because of the corrupt officials. For this, sensitization of the police is a must opined by Justice Ramaswamy in a renowned case said¹⁶⁵ that "women found in flesh trade should be viewed more as victims of socio-economic circumstances and not offender of the society, some police

¹⁶⁴Palash Krishna Mehrotra, Legalization of prostitution will help protect vulnerable women in India, Daily Mail, and 19th October 2014.

¹⁶⁵Gaurav Jain v. Union of India (1997) 8 SCC 114,SC 3021, (India)

authorities have already set out the process of sensitization towards the sex workers and their treatment.”

In India, with diverse societal ingredients, prostitution is usually looked down due to the nature of the profession. Sex workers live in a community formed by their own. Through the course of research, it can be observed that legalizing prostitution would benefit the people, prostitutes as well as the state. Though prostitution has been taking place in our country since many years it is still looked down in our society. It would benefit the prostitutes in many ways like, better health facilities, impose rights and duties on them, the working conditions would be improved etc and it would benefit the state by means of earning income through which the state would have better control over such activities. It also imposes a right on the state to have control over such activities and also by giving them the power to regulate these activities. With legalization, the sex workers problem will be reduced at least the trafficking with the purpose of prostitution will decrease to an extent. There must also be a distinction made between sex workers who have taken up this profession on their own will and sex workers who have been forced to do this job. The enforcement agencies must look into both these aspects and work accordingly. Sex workers must also be given life insurance and rights and for such rights, prostitution must be legalized. Instead of punishing the prostitutes the brothel owners and customers must be punished as in most of the cases they are responsible for the acts of the prostitutes. It is suggested that sex workers must be rehabilitated with the help of states and it must be seen that such deprived women have to be provided with sufficient income and be reallocated to another sector with proper training and development.¹⁶⁶

3.5 Cybercrimes against women in India

The concept of crime is not new for India; it had its emergence since time immemorial. However, its structure had changed from time to time; firstly it was crime against society then white-collar crimes or economical crime, now it is cyber-crime. The most amazing thing about this is in most cases, the parties have not seen each other ever in his/her life. In the 20th c, with the advent of the crime the concept of communication to victim has been also changed from conventional source to

¹⁶⁶Panikkar Sridevi, Child Sex Tourism: An Overview of the Domestic and International Response, Delhi Law Review, Volume II, p.157 (2005-2006)

computer-based sources and with the coming of the smart phones in recent years it has all total increased drastically.¹⁶⁷

As Prof. Allen rightly said that” the law is not the mere command of the sovereign but it is something more than that.” This theory has now rightly taken its place in the society now and the law should well versed and ready to take the challenges of the changing society. In this age of technology everyone is connected to everyone and the cyber law is the need of the hour or a necessary evil and every legislature should make a law which deal with this changing scenario of crime. If we define cyber law then we can say that the crime law means the law which dealt with the cyber-crime or the crime which is done with the help of the computer or other electronic media. The term cyber-crime has not been defined any were, not it can be possible to define the term cyber-crime because if we define the term cyber-crime then we restrict the mode of crimes and the persons who are indulge in this type of crime always think of doing crime out of the definition box which in long run hampered the interest of the society. The cyber-crime almost dealt with all the aspects of electronic crime and the aspects of internet but in long run there must be need to define the cybercrime in IT act because in my view it helps the judges and the enforcement agencies to solve the cases. In other word we can say that the crime which has been done with the help of communication source or were any type of technology involved is come under the purview of cyber-crime. With the advent of the digital world, it completely destroyed the boundaries and jurisdiction of any country and with the invention of e-commerce, e-contract, paperless applications, digital signature the things got more critical and the legislation and judiciary has to be revolutionaries himself in order to attain the pace with the crime of new generation.

A person staying in any corner of the world can communicate to other person without disclosing his identity. Due to this nature of internet, it raised various challenges not only to the government but also to the trade and individual of the entire world. Therefore, the legal system awakens and required to make certain legislations to protect the interest of the entire society. Therefore, this new branch of law is emerged, because the conventional procedure to prevent the crime is useless for offences committed through the computer or internet. The rules and regulation, which deals

¹⁶⁷Ibid.

with the cyber space internet and its regulation, are subject matter of the cyber laws.¹⁶⁸

India steeped toward the digitalization in 20th c and open its arms to make its citizens globalized but in order to become globalized and make life easy the Indians are indulging with different people on internet in which most of them are unknown to them. These people make use of this opportunity and taking the advantage of this, exploit the vulnerable sections of the society specially women and children. Offenders usually harass them for voyeuristic pleasure in India and the legislature of India no doubt remain behind from these offenders. The traditional matriarchal society has very much influenced by the men in the society, women was the bread earner and protector of the family from all odds and in Vedic period also they were given a very high status in the society and even the prostitutes had also treated with a high respect.¹⁶⁹

The concept of Nagar Vadhu was emerged during this period only and the women who were Nagar Vadhu had high status and back then a permanent chair in the king's courtyard and no one can touch her without her permission.

With the advent of the internet in 21st c. everything has been changed and the condition of the women became more miserable and the women became nothing but a vulnerable class or just a mere sex object, which can be used as per the wish of the men. The thinking of a men has been change completely towards the women, the men treated themselves as a superior class and they feel that whatever I will do towards women will not be penalized and the internet has played a major role in this regard because it gives a major setback to the authority to arrest and penalized the wrong doer and wrongdoer has sufficient time to escalate. The cyber world is a virtual world which works as a virtual layer towards the wrong doer to fake his identity and to hide him by destroying the electronic gazettes.

Cyber Crime is the most recent acknowledged way of crime through electronic devices. In cyber-crime the young women or the children are basically targeted by the wrong doer for the physical and emotional or some time monetary losses through the cyber telecommunication network called Internet. However, there are many types of the cyber-crimes which are present in India. Few of them are discussed below-

¹⁶⁸David, L.A, the Mass Media and the Social Construction of the Missing Children Problem, Sociological Quarterly publication, re, 28 (4), 473-492.(2017)

¹⁶⁹Quayle E., Holland, G., Linehan, C. & Taylor, M.The Internet and offending behavior. A case studies, Journal of Sexual Aggression, 6, 78-96, Reprint.,(2019)

a) **Cyber Harassment**

Cyber harassment or cyber bullying or online bullying is very common among the people who are using the internet and especially among the teenagers because of the advancement of the technology and less chance of humiliation and getting caught by the authority, this has become a common tool to take a revenge for the teenagers. Cyber bullying is the publication of hate speech, making sexual remarks, posting rumors or posting the personal information's of the victim not meant for the public, especially on the internet or some social media platform especially by teenagers.¹⁷⁰ Cyber bullying or harassment can be understood by the repeated post and by the tendency to harm the victim. The irony of this type of crime in India is that the parents of the victim don't support the victim and they thought that this is gag amongst their children and their friends. However, the persons who are bullied are observed as tilted more towards the depression, ill health, lower self-esteem, low confidence and more suicidal tendency.

A frequently used definition of cyber bullying is "an aggressive, intentional act or behaviour that is carried out by a group or an individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself."¹⁷¹ There are many variations of the definition, such as the National Crime Prevention Council's more specific definition: "the process of using the Internet, cell phones or other devices to send or post text or images intended to hurt or embarrass another person."¹⁷²

However cyber bullying has its traditional definition only except few changes like in internet cyber bullying, one can't know the offender but the one dangerous aspect is that it has a mass reaching effect on the victim and other dangerous affect is that the Indian society is not ready to accept this as a crime because of the generation gap and not advancement of the technology in small towns. The word cyber harassment and cyber bullying has been used interchangeably for the same crime; the later word is generally used in the case of teenagers.¹⁷³

¹⁷⁰Ibid.

¹⁷¹Moreno, Megan A. Cyberbullying, *JAMA Pediatrics*, (May 1, 2014). 168 (5):500.doi:10.1001/jamapediatrics.2013.3343.

¹⁷²Chapin, John, Adolescents and Cyber Bullying: The Precaution Adoption Process Model, *Education and Information Technologies*, 21 (4), 719–728, ISSN 1360-2357, (August 17, 2014).

¹⁷³ Ibid.

The most dangerous and discussed type of cyber harassment is the sexual harassment and unfortunately the number of cases in the cyber harassment is more of the sexual harassment in India. The new act¹⁷⁴ defined sexual harassment as the physical contact and advances involving unwelcome and explicit sexual overtures; or

- (i) A demand or request for sexual favours; or
- (ii) Making sexually coloured remarks; or
- (iii) Forcibly showing pornography; or
- (iv) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature¹⁷⁵

The IT act¹⁷⁶ has also provided the sexual harassment as the publication of the sexual content in the electronic form of any person and specially the child pornography as a sexual harassment. The next very common type of sexual harassment in India is through E-mails, hacking someone's email and retrieved all the personal pictures of the victim and blackmailing the victim for the same.¹⁷⁷ However, it is very difficult for the authorities to crackdown these cases because the people who are indulge in these types of crime use their fake profile and fake id.

The provisions in IT act like sec-66A, 66B, 66C, 66D, 66E, 67, and 72 are sufficient in combating the problems in Cyber Harassment but the main problem lies in the enforcement agencies and in the judiciary. Now is the time when a special cyber protection group and the different cyber court is required from very low level and cyber police is well tainted will every minute details of the cyber-crimes.

The revolution in the internet has not affected as much as the affordable data has been affected the cyber bullying in India. The rise of the cyber bullying is increasing as the alarming rate in India and the most important thing is that it increases because of the pornography, the pornography which is widely and easily available on the internet has not only changed the prospect of women in society but it also changed the meaning of the sex in the society. According to research conducted by Symantec¹⁷⁸, nearly 8 out of 10 individuals are subject to the different types of cyber bullying in India. Out of these around 63% faced online abuses and insults, and 59% were subject to false

¹⁷⁴ Criminal Law (Amendment) act, 2013, No-13, acts of parliament (India)

¹⁷⁵ Stark Christine & Whisnant Rebecca, not for sale: Feminists Resisting Prostitution and pornography, spinfex press publication, ISBN-1-876756-49-7, 149, 176, (2eds., 2019)

¹⁷⁶ Sec-67(a) and 67(b) of Information Technology (amendment) act 2008(India).

¹⁷⁷ Manish Kathuria Vs Ritu Kohli, (2014) C.C.No. 14616, (India)

¹⁷⁸ An American software company which deals in cyber security.

rumors and gossips for degrading their image.¹⁷⁹ The same study ranks India as the country facing the highest cyber bullying in the Asia Pacific region, more than Australia and Japan. In fact, 50% of women residing in prime Indian cities are a victim of online abuse, according to a survey by Feminism.¹⁸⁰ With increase in the cyber traffic, the exploitation method has also increased and India is not an exception to this the time has come that India should also realize this problem among the teenagers and with all the possible means it can be combated, the role of the government agencies, NGO; s and especially parents has been increased and this has to be combated through awareness in order to save the young generation of the society of India.¹⁸¹

b) Cyber Stalking

Internet communication is both shield and sword, when used wisely you will grow personally and professionally and your life will be easier but when used carelessly then it might destroy your professional as well as personal life. The most common and destructive type of internet maltreatment is the cyber stalking and it is one more step forward than normal cyber bullying or harassment. Cyber bullying or harassment includes the harassment on the internet like false publication, allegation, accusation only but in cyber stalking include monitoring, identity theft, bullying, interruption, solicitation for sex, or flock information that may be used to terrorize or harass. Cyber stalking is a continuing offence, it is the interruption of the life of the victim without permission or unwontedly with the person to whom he has no connection or might be some connection in the past. The whole continuing process is an offence. Cyber stalking is technological based control on the victim for the reasons of anger, revenge, habitual offender or control or might be some other reasons. It includes-

1. Annoyance, humiliation and disgrace to the victim.
2. Theft in the victims' bank account and to its credit and debit cards.
3. Distressing family, friends and employers to isolate the victim.
4. Playing a scare tactics to feel fear in the victim.¹⁸²

¹⁷⁹ Incognito forensic foundation,(Jan 2020), [https://ifflab.org/how-to-prevent-cyber-bullying-anti-cyber-bullying-laws-in-india/\(last](https://ifflab.org/how-to-prevent-cyber-bullying-anti-cyber-bullying-laws-in-india/(last) retrieved 27 aug 2019 at 10.19 am)

¹⁸⁰ Ibid.

¹⁸¹ A. Wagner, Human trafficking & online prostitution advertising, wagner.house.gov, 2015, (Jan. 29, 20019, 10:04 AM), [https://wagner.house.gov/Human Trafficking & Online Prostitution Advertising](https://wagner.house.gov/Human%20Trafficking%20&%20Online%20Prostitution%20Advertising).

¹⁸² Moore, Alexis A, what is cyber stalking, (2019), About.com.

With the increase in the technology and the new method of stalking, the stalking became the bitter truth of the Indian society. The parents often stalk their children's social media account to keep track on them and it is also very often that the spouses keep track on each other's to check their loyalty. The police enforcement agency always keeps a track on the offenders to keep the society safe and it is also very common for the police agencies to keep track for the terrorist attack but these are lawful stalking and it doesn't crime against the society as well as individual.¹⁸³ It is basically described as a behavior in which other persons also wants to keep track on the other person either for the harassment, terrorizing or for the benefit of that person like in the case of family relations. The most important thing is the mode of harassment; on what mode the offender has its control like chat rooms, emails, open publishing websites or many more. It is very difficult to punish the offenders because basically they are well worsted in the technology and basically, they stalk through fake profile and very cleaver to keep their profile anonymous and most of the countries and India is not an exception to this, they don't have the specific laws for cyber stalking. Like in India, the offender of Cyber stalking is punished under the section 441, 509 of IPC and 72 of IT act.¹⁸⁴

The one very important debate which needs to be especially disused is that Cyber stalking is different from social media stalking. Cyber stalking must include serious crime with legal implications, it not a mere normal or friends stalking. The cyber stalking is equally dangerous as dangerous the physical crimes are there. It doesn't mean that just because the offender is not in a physical contact, it is not dangerous it is equally dangerous and in terms of physically, professionally and socially also and the irony of this type of crime is that even the parents are not ready to considered as a threat for their children's, this is because of the technological gap between the parents and the children. The victim always receives a mental trauma, physical and emotional disturbance in the society which leads to suicide sometime and depression and anxiety many of the times. The most common type of problem faced by these persons is anxiety, sleepless nights, safety issue, loneliness and tendency to suicide.

¹⁸³ Stark Christine & Whisnant Rebecca, not for sale: Feminists Resisting Prostitution and pornography, spinfex press publication, ISBN-1-876756-49-7, 149, 176, (2eds., 2019)

¹⁸⁴ Criminal trespass, outraging modesty of women and breach of privacy and confidentiality respectively.

In India, Ritu Kohli case¹⁸⁵ was the first case of cyber stalking in India in which the lady personal information has been theft and publish on a website after that she receive more than 40 calls within 3 days and most of the calls are usually on the odd time and the caller wants the sexual favor in lieu of cash. The offender has been tracked down with the help of the I.P address and booked under section 509 of IPC due to the separate inability of law on cyber stalking; this is the first case of cyber stalking which is reported in India.

The most important way to protect yourself from cyber stalking is that one should must keep their social media profile very low and if not then must check their friends lists and keep track on suspicious contacts, the next way is to keep educating or updating yourself about the cyber stalking. The next way is to keep update your software and other connections regularly and do not trust on suspicious network. Last but not least and most important share your problem of cyber stalking with any one you trusted, he/she might be friends, siblings, teachers or if parents then it is very good. This will save your social as well as physical harassment and also guide you correctly through your turbulence period; they will keep you positively and hopefully so that the anti-social thought will not come in your mind. This is the most common issue in the virtual world and especially within teenagers and the time has come to think of these issues with a great grudge and have specific laws on this issue to create a fear among the wrong doer. If we want to save and cherish our younger generation then this has to be tackled and on a priority basis.¹⁸⁶

c) **Cyber Pornography**

Internet is the most efficient and viable form of information provider; the best part is that it has access to all the information worldwide in a single click on your mouse and it is very cheaper at the same time. Pornography is not a new concept for any nation, its emergence is from 14th c. only with the emergence of printing press but initially it was political pornography but with the passing of time it is not emerged as pornography or obscenity only. Pornography is nowhere defined in Indian laws but in general term pornography means the showing of sexual acts through books or films or any other communication medium in order to cause sexual pleasure or

¹⁸⁵Girish B. Cinema may help break the silence around child sexual abuse in India, *Asian Journal of Psychiatry*, 14, 71–72, (2015).

¹⁸⁶Sridevi Panikkar, *Child Sex Tourism: An Overview of the Domestic and International Response*, *Delhi Law Review*, Volume II (2005-2006), p.157.

excitement.¹⁸⁷The Concise Oxford Dictionary defines Pornography as - "the explicit description or exhibition of sexual activity in literature, films etc. intended to stimulate erotic rather than aesthetic feelings." The Little Oxford Dictionary defines pornography as - "an explicit presentation of sexual activity in literature, films, etc" Often the word obscenity is misunderstood by the concept of pornography but obscenity is much broader concept, it includes every act which is immoral and offensive to modesty of any person or society. In the much more wider sense we can say that Cyber pornography define as an act of using cyberspace to initiate, design, expose, circulate, introduce or advertise pornography or indecent items, especially material depicting children engaged in sexual acts with adults.¹⁸⁸ Naturally, considering the moral aspects pornography it is a criminal offence and has been classified as amongst the factors causing harm to persons. The pornography has been available on very wider range on the internet started from pictures, videos, cartoons, animation, 3D animation, stories and many more.

The most shocking is the child pornography in which the children are publish to create sexual desires and these types of porn's are very famous and high rated among the porn industry. The users generally watch porn to fulfil their sexual desire for very short span of time but this brings the most drastic change on their sexual and social life and sometime on personal life including within body also.¹⁸⁹

The porn excites the users for few minutes and this will lead to the masturbation many times which not only effects the inner body but also harm the marriage and social life, the person who is addicted to the porn think of his life as it was shown in the porn films. The value of his life partner is not more than the sex toy and if his desire doesn't full fill, which generally doesn't full fill in most of the cases then he start abusing his partner which many a times lead to the divorce or breakup with girlfriends. The porn has also the long-lasting effect on the society at large it lowers the societal value of the women as a gender. Women are treated as no more than a sex toy or things to obtain the sexual pleasure.

¹⁸⁷ Wales online, Study finds prostitution now career, Wales Online, 2013, www.walesonline.co.uk/news/wales-news/study-finds-prostitution-now-career1828210.

¹⁸⁸'Cyber pornography', definition Your Dictionary, (28/2/2020, 10.04 pm) <http://www.yourdictionary.com/cyberpornography>.

¹⁸⁹Girish B. Cinema may help break the silence around child sexual abuse in India, Asian Journal of Psychiatry, 14, 71–72, (2015).

Cyber pornographer's uses cyberspace for ease dissemination and distribution to sells in their products to paedophiles.¹⁹⁰ While purchasing child pornography, thus paedophiles visit online chat room in attempt to engage children into spot for sex.¹⁹¹ That alone constitutes an offence as an act of luring a child into situation of sex, thus is prohibited and in some instance a paedophiles engaged chatting with a teenager on the internet whereby suggesting a meeting or visiting a minor's home in the name of sex engagement.¹⁹²

Online pornography is the most destructive type of cybercrime against women. The women don't know whom to talk and whom not to talk because they also don't know which actions of there will be on internet and they will be in trouble. The DPS school scandal case is the very important case in this regard. The woman was in the compromising position and it was spread on the internet and many people viewed this and girl has to face humiliation including social boycott. This case is also very important because the role of intermediaries is also fixed in this case i.e. Baze.com.¹⁹³ In another incident, at Mumbai, a Swiss couple gathered slum children and then forced them to appear for obscene photographs, which they took and then uploaded those photographs to websites specially designed for pedophiles. The Mumbai police arrested the couples for pornography.¹⁹⁴

The most recent example is of Delhi Metro CCTV footage leaks case, where the CCTV recording couples getting intimate in metro station etc. which has been recorded by police security cameras has been leaked on internet.¹⁹⁵ Unlike the different crimes like cyber stalking, defamation, spoofing and many more this has to be considered as the most wicked and heinous cyber-crimes against women. In spite of different provisions like 67 of IT act and Section 290 for committing public nuisance, section 292 for sale of obscene books etc., and section 292A for printing or publishing grossly indecent or scurrilous matter or matter intended to blackmail, section 293 for sale etc. of obscene objects to young persons and then section 294 for

¹⁹⁰ 'Cyber Crime-Online Child Pornography', internet children law enforcement, available at <http://law.jrank.org/pages/11986/Cyber-Crime-Online-child-pornography.html>. Accessed 28/2/2020

¹⁹¹ Ibid.

¹⁹² Healy, Child Pornography, An International Perspective, 4, (2004)

¹⁹³ Girish B, Cinema may help break the silence around child sexual abuse in India, Asian Journal of Psychiatry, 14, 71-72, (2015).

¹⁹⁴ Rathinas abapathy, G& Rajendran L, Cyber Crimes and Information Frauds: Emerging Challenges For LIS Professionals, Conference on Recent Advances in Science & Technology, 4, 15-17 (2007)

¹⁹⁵ Zee News bureau, *Porn MMS from Delhi Metro*, Zee News(Jul 10, 2013)

http://zeenews.india.com/news/nation/porn-mmses-from-delhi-metro-cctv-footage_860933.html

doing or composing, writing etc. of obscene songs and finally under section 509 for outraging the modesty of women in IPC act.¹⁹⁶ The heinous crimes against women are not only exists in India but also growing at the drastic rate and this is mostly because the people are losing faith in the concept of respect for women.

The teenagers and adolescent generally click there private picture and send to their mates and then they delete from there gallery thought that they had deleted the pictures but in the cyberspace nothing is deleted once created always remain there and this usually came into the hands of the wrong doer or their mates also sometime upload to different sites in order to take revenge after their breakup and divorce as what happened in the case of Ritu Kohli when a person hack the email address and retrieved all the private photos of Ritu Kohli. Whatever the reasons would be and whoever is doing in spite of the fact the state has to think of this problem otherwise in the coming years this has become a social problem which will affect the society as a whole. The concept of revenge porn has been increased at a very immense level in India. This is very common method of taking revenge from the ex-gf and ex-wife's especially in India.¹⁹⁷

d) Cyber Defamation

The internet has provided an extraordinary space for the speakers who want to express his views to the world. It was never that easy in the world but with the advent of the internet, this is a work of a minute most easy and cheaper. For the person who is in the politics or artist or the social workers this is like a wish come true but with the advent of cybercrime in the society, the mode of communication has been changed and this has been laid down defamations also sometimes.

Defamation is defined as a publishing of any defamatory or false statement online and distributing among the relatives or among their known persons in order to defame him with the motive of revenge generally or sometimes for the sake of fun among the friends. Defamation is of both libel and slander in tort but in the cyber world it is mostly in the form of libel or publication. This is also the most common type of cybercrime against the women.¹⁹⁸ The defamation means publishing of any wrong or

¹⁹⁶ The Indian Penal Code, 1860, No. 45, Acts of parliament, 1860 (India).

¹⁹⁷ Strangelove, Michael E. Internet advertising review: The Internet has hormones, selling sex in Cyberspace. The Internet Business Journal, p. 10. (1995, January).

¹⁹⁸ Taylor, M., Quayle, E. & Holland, G. Child pornography, the Internet and offending. ISUMA. The Canadian Journal of Policy Research. Reprint, (2010)

false statement on the internet in order to defame the reputation of the victim. The nature of defamation is both civil and criminal in India, so it is both punishable and compensatory in nature in India.

There is no doubt that with the invention of the internet, the people gets more freedom to read, write and express their opinion freely and with more assertively but many time in the name of the freedom of speech and expression and India is not an exception to this but this has not only given right to the rightful people but also to the people who are not rightful in their mind, who comes with a revengeful mind and with an ulterior motive. Cyber defamation is a new concept but is not very much varied concept from the old defamation. The only difference is that in the modern form that is cyber defamation the publishing of the defamatory words is on the internet or in the cyber space.

However, there are many provisions are there in the IPC (sec-499¹⁹⁹, 500²⁰⁰, 469²⁰¹, 503²⁰²) and IT act (previously 66A)²⁰³ Now, anyone can complaint defamation to cyber unit cell in the cyber investigation department. The problem doesn't lie in the intention of the legislature but it lies in the mechanism of the complaints, the victims are generally the women who have the thread of society, so they choose to be exploiting in private then to raise the voice against the wrong doer. The second problem lies with the attitude of the police officers and the society specially the parents they consider this as a trifling act and doesn't allow their children to indulge in the legal affairs and this is because of the hectic nature of case disposal in India and the society approach on the girl, usually the Indian society always feel the women who is the wrong doer.

The most distressing problem with this issue is to track the person who is making the statement in the internet because generally this type of people doesn't do these types of things with their own account but with fake id and profile. It is very difficult to track that person who is seeing the content or who is leaving the comment on that

¹⁹⁹ “Whoever by words either spoken or intended to be read or by signs and visual representations makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said, except in the cases hereinafter excepted to defame that person.”

²⁰⁰ “Any person held liable under section 499 will be punishable with imprisonment of two years or fine or both.”

²⁰¹ Deals with forgery. If anyone creates a false document or fake account by which it harms the reputation of a person. The punishment of this offence can extend up to 3 years and fine.

²⁰² Deals with the offence of criminal intimidation by use of electronic means to damage one's reputation in society.

²⁰³ Struck down in 2015 in Shreya Singhal case.

content because generally people use their nick name or famous names to use the social media like Face book and also if it is published on the popular social media like Face book then it get spread and reach to the last people on earth within a fraction of seconds.

As per the Indian Evidence Act, this is called defamation –

1. Any electronic record printed on a paper or recorded or copied in optical or magnetic media shall be considered as a document and shall be admissible by court.
2. Online chats are also admissible.
3. Electronic mails are also admissible.²⁰⁴

The very first instance of cyber defamation in India was recorded in the case of SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra-Jogesh Kwatra²⁰⁵, in which an employee start publishing the derogatory words about his Managing Directors in order to lower the reputation and the good will of the company. Another famous case was the State of Tamil Nadu vs suhaskatti²⁰⁶, in which the obscene and private photos has been circulated by the person through the emails, which results in derogatory phone calls to the victims and generally in the odd hours.

The technology is changing with every passing hour and in order to maintain the significance of the society, the provisions and the method to combat these problems has to be changed at a regular interval of time. No society can claim his full growth until women are safe in the society, so we need to change the structure of the internet in order to make the women safe on the cyber world and this structure can only be changed by making strict laws, training to the authorities, establishing separate courts for this types of crimes and most importantly by changing minds of the people through education or other societal aspects

e) **Cyber Morphing**

Cyber morphing or online morphing is also known as photo shopping, this is the most common type of cybercrime against the women on the internet, the wrong doer can download the picture from any social media like face book and edit that picture with

²⁰⁴Section 65A and 65B of Information technology act 2000, No-21 of parliament act (India)

²⁰⁵2014, SCC 1279,65/14 (India)

²⁰⁶2004, C.C.NO.4680/2004, (India)

other pictures and generally in a compromising situation and blackmail the women to publish the picture. The victim generally does whatever called by the wrong doer in order to save his life and prestige. Morphing is editing the original picture by an unauthorized user. When unauthorized user with fake identity downloads victim's pictures and then uploads or reloads them after editing is known as morphing.²⁰⁷ It was observed that female's pictures are downloaded from websites by fake users and again reposted/uploaded on different websites by creating fake profiles after editing them.²⁰⁸

The recent Air Force Balbharati School case (Delhi) is a recent case comes under this category where a student of the School was teased by all his classmates for having a pockmarked face.²⁰⁹ He, who is tired of the cruel jokes, decided to get back at his tormentors and scanned photograph of his classmates and teachers, morphed them with nude photographs and put them up on a website that he uploaded on to a free web hosting service. The father of one of the class girls featured on the website came to know about this and lodged a complaint with the police.²¹⁰ Section 43²¹¹ and 46²¹² of IT act and 509²¹³ of IPC can attract in this case.

3.6 Reasons for the growth of cyber prostitution in India and related provisions

Thirty years ago, there was a time for street prostitution and the prostitutes have very limited space to advertise their services. There are limited print media and few streets in a city for them to stand and attract their customers. Those were the days the prostitution was considered as the individual works and the mafias had not entered in true sense, there were small syndicates run in every parts of the city. Now the things were changed completely, mafias have been entered in this business and also make it a complete regularized business. The money which is earned from the prostitution business is used in terrorism and mafias have full control over the business starting

²⁰⁷ Honor, G. Physical abuse: Recognition and reporting, J Pediatr Health Care. 19(1), 4-11, (2015)

²⁰⁸ibid

²⁰⁹Behera Abhimanyu, Cyber Crimes and Law in India, International journal of cyber criminology publication 31, 19,12-13 (2010)

²¹⁰Ibid.

²¹¹Sec-43 of IT act 2000, download or destruction of any picture or data without the permission of the owner.

²¹²Sec-46 of IT act 2000, grants authority to central government to investigate the matter through authority.

²¹³Outraging the modesty of women.

from advertisement to taking cash and internet service has given this Industry a boost like it was never.

The internet has provided a free and most reachable way to advertised in a single click of mouse. Now every social media platform to buddies' chat room to games websites, everything is used to advertised their services. The payment method is also changed from the hard cash to online payment. When PayPal was first introduced, the Scotts were the first customers. Now, the things have been changed completely and not only the physical sex but also virtual sex has come into picture and 3D games were also introduced to trigger the desire of the teenagers. It is whole of an organized crime now with proper business plan and motive. The internet has brought the prostitutes from virtual world to the door step in a single mouse click and the most shocking thing in this regard is that the prostitutes are now accepting virtual money like bit coin instead of real money.

Prostitution is a business which is advertised on the internet and to reach of every possible sex buyer. Cities like New York estimated that 95% of that city's prostitution trade had gone online between 2016 and 2018.²¹⁴ Ninety two percent of sex buyers in a 2018 research study had bought women and children for sexual use indoors via Internet-advertised escort agencies, strip clubs, gentlemen's clubs, brothels, and massage parlors.²¹⁵

Internet has provided every minute details of the prostituted starting from eyes colors to the special sexual moves performed by her during the sex. Most of the websites kept the names and other details of the client private and the reviews that are given by clients and can be seen only by the members. The internet has changed the way of prostitution in every aspect; the street prostitution is changed into the massage parlous, strips shows, hotels sex, residential brothels and many more. Now, ninety percent of the customers didn't go to the sex workers, the sex workers will reach to them via virtual advertisement on internet.

The most important reason for this is the emergence of residential prostitution is much safer than the street prostitution and there is very less chances of caught and humiliation by the state agency but there is little evidence to show that the residential prostitution is safer in terms of the abuse of women and girls. Internet has provided an

²¹⁴ Honor, G. Physical abuse: Recognition and reporting. *J Pediatr Health Care*. 19(1):4-11,(2015).

²¹⁵ Jessica, J. Asscher, Claudia E., Vander, & Geert, J. M. Gender Differences in the Impact of Abuse and Neglect Victimization on Adolescent Offending Behavior, *Springer online journal*. 3(25), 35-36, (2015).

opportunity to the buyers and the prostitutes to keep their work in full pace with anonymity but at the same time it gives a drastic challenge to the state agency and to the legislators in the state to tackle the prostitution.

The problem before the agency is not only the anonymity but also its organization because it is now an organized crime and it is very difficult to crack the organized crimes. The mafia is generally targeting the adolescent and the teenagers. Firstly, they send some soft porn then some hard porn and then some sexual games to entice the sexual pleasure and they generally choose children from age group of fifteen to twenty-five because, this is the time when hormonal sexual; growth increases in the body. So, it is very difficult to track any person seating in their rooms and indulging in the prostitution through their personal computers or laptops. Every country is trying to combat this problem with one or another mechanism and India is not an exception to it. India is largest user of internet and smart phones in Asia after China and this problem is increasing with drastic rate in India. There are few reasons discussed below for increase in online prostitution in India as follows-

1. Capacity to store more data

The computer has un-comprisable power to store millions and millions of data in a very small space. A small microchip can contain lakhs and lakhs of data including videos, pictures, sound recording, 3D images or many more. Before the advent of the internet advertisements were on the magazine but this paper publication has limitation that they can't advertise anything and everything. The most amazing feature of internet advertisement is that it is permanent in nature; it is not deleted until once want to delete or overwrite on it intentionally. The prostitute can advertise anything starting from their pictures to videos to their full bio data, each and everything can be advertised.

The internet is non-volatile electronic devices which are basically run on a software and technology other than the manual function, it provides connectivity to the masses within a second and easily any one can chat with anyone and his/her chat will be complete private in nature. Information dissemination through World Wide Web has created new resources for faster and cost-effective easy access to information

throughout the world.²¹⁶ It has created new environment of e-mails, chats, downloads etc. However, wider access to information creates some problems like protecting and guarding any computer system against unauthorized use.²¹⁷

2. Wider access of the information

In the late 80's the advertisements of prostitution are largely depends on mouth publication and through standing of a girl on a Red-Light Street but that too was very limited because of the state agencies. The persons who are the possible customers of the place have to visit that place and bargain with the prostitutes but now the thing has been changed. The person sitting in India can see the entire possible prostitute in New York and fix a date with them or call them to their doorstep in just a single click of mouse. This all happens because of the internet; whole globe has become a part of this game and anyone sitting in their home can easily access any one's profile. The payment is also from the internet, there is no requirement to get out of the house. With the advent of the www²¹⁸, it has made the lives of the people very simple but at the same time it has open the advent for the exploiters. Generally, the girls or women who are innocent doesn't know when they get into this trap and all it starts with a chat room message to innocent talks and the familiar talk and ends up in the prostitution. The internets and smart phones have disgraced the rights of privacy at an alarming rate. The small fault in protecting passwords can lead anyone to jail or to hell of their life. So, we can say it is sword and shield at the same time, which can be used wisely and nicely.

3. Less chance of arrest and humiliation

The most important role of the internet in prostitution is that it has provided the least chance of getting caught by the state agencies and this is also one of the important reasons that it is very much popular or very trusted source of advertisements. Generally, the in every state the prostitution is illegal and has the very less chance of open advertisement and always in the eyes of the agencies. The internet is the solution for this. Internet has the capacity to reach to the masses in a very less time and it is

²¹⁶Kerryann, W.Leisa, B. & Lisa, Mother-Child Communication about Sexual Abuse Prevention, *Journal of Child Sexual Abuse*, re., 21(4),399-421(2019)

²¹⁷Ibid.

²¹⁸World wide web

very easy to delete the evidences if there is any problem regarding the illegality with the state rules.

Generally, who are dealing in the prostitution business, run their businesses with a fake id and with fake profile? It is win- win situation for both prostitutes as well as client. The customer's specially the teenagers also don't want to reveal their identity and of course don't want to be caught and humiliate by the society. They also want their name to be kept secret that why they in most of these cases they are also using the internet with fake profile and fake account. However, this is not the only reason for internet prostitution but also its accessibility from any part of the country at any time makes it more famous and viable.

4. Cheaper than other source of advertisement

The advertisement of prostitution on the internet is not a new concept now and it is now in almost every part of the country now. The internet is always a free and most easy source for advertisement of the prostitution. It's also became important because of its efficiency to reach at the last on every corner of this earth. Generally, the websites like x box charged very limited in terms of money and the information anyone can upload is millions and billions in number, in short there is no limitation of uploading information on the internet and most suitable thing is that the information's can be uploaded in various methods like photos, videos, games, 3D images etc.

The information on social media like face book, twitter, and dating sites like tinder is free and the most important advantage is that the targeted audience that is teenagers and the adolescent's groups are generally members of these social. On the other hand, the newspapers and magazines charges very high and the information content is also very low in them and it can't be reached to the masses and the threat of arrest and humiliation is also very high in them. So, the mafias always relied online platform to access the prostitute services. Another set of benefit other than the price is that anyone can update the information anytime sitting from home only.

The mafia is following the corporate business model in this regard, they offer the soft porn to the teenagers then the hard core one and then they triggered the links in their personal chat boxes which give the details of the many prostitutes or we can say options to choose along with the prices and the body structure starting from the hair color to the performance of sexual position during the sex time and these types of information's can be possible only on the internet.

5. Destruction of evidences very easily

The most important benefit of using online prostitution to both the customers and the prostitutes are that they can delete or overwrite the discussion very easily. So, this is a viable source that can be destructed easily. Whether it is the customers or the prostitutes both of them are using the internet from their own personal computers. So, it is always upon them to destroy the possible evidences. Firstly, the users whether the customers or the prostitutes can't handle any personal account with their real name, they handle with fake ids and fake names and if the government agencies got their hold also then they can easily destroy the evidences. However, in few cases it is retrievable but it is very limited because the access is basically through fake e-mail id and if e-mail id is destructed then almost all information get destructed. The country like India is not very much well versed in technology specially their investigating agencies and In India, reporting of the cases of online prostitution is itself a challenging process and the work became more difficult because there is no direct provisions which attract this crime and the real victim in these types of cases are the teenagers, who doesn't come up because of the societal pressure and the parental involvement.

The cyber-crimes in India is increasing day by day but the crimes which is against the women or against the teenagers are not reporting in India because of the societal values and family honor, the parents of the children's are also preferred not to expose this type of crime because of the societal stigma attached to it but they forgot that these are the crimes which have the most devastating effect on the teenagers life starting from anxiety to depression and sometimes it ends with suicide.

6. Jurisdictional issues

Cyber prostitution and cyber-crimes have cut across territorial borders which undermine the feasibility and legitimacy of applying domestic laws which are normally based on geographical or territorial jurisdiction, Cyber prostitutions are committed through cyberspace network inter connectivity and therefore, they do not recognize geographical limitations because of their transnational in nature.²¹⁹ There being no uniformity in law and procedure among the different nations for handling cyber criminals, jurisdictional conflict a serious problem for a nation to deal with the cyber offenders. In many cases, it so happens that create particular cyber activity is recognize as a crime in one country but it is not so in the other country where the criminal or the victim resides with the result the criminal easily escapes from prosecution.²²⁰

In the absence of a single internationally recognized code of law and procedure governing cyber-crimes the law enforcing authorities of individual countries find it extremely difficult to tackle cyber-crimes and criminals while applying their territorial law.²²¹ Briefly stated, reporting and conviction in cyber cases is far and few due to paucity of cyber jurisdiction of the country investigation or trying these offences and this uncertainty of law encourages the cyber criminals to continue their notorious activity unabated.²²²

Cyber prostitution is not a new concept for any state now; it is the need of the hour that the most heinous and most destructive type of cyber-crime that is the online prostitution should be need to be reviewed in great detail by the countries and international communities of the globe. The countries where the internet has been more used has the more responsibility and it is the need of the hour that there must be a model law for every country and UNO will deal this problem in their special session and the countries have to make their system more citizen friendly and their authorizes well trained to combat this issue and before it becomes a social problem in the society, every country has to take this issue seriously because this issue has power to destroy the culture as well as customs of any country.

²¹⁹ Britto, P.R Ulker N Child development in developing countries: child rights and policy implications, Child Developmental journals publication, 83(1), 92-103. (2011).

²²⁰ Halder, Debarati, and Jaishankar Karuppanan, Cyber socializing and victimization of women, The Journal on Victimization, 12, 3,58-67, (Apr 2015)

²²¹ Ibid.

²²² Ibid.

3.7 Law commission and other committees report on brothel and online prostitution

1. Law commission sixty fourth Report on the suppression of Immoral Traffic in women and Girls, 1956²²³

This report has clearly suggested that no government can stop prostitution it is related with the human existence. So, the prostitution can be only reduced not over and done with and this can only be done with the harsher law and the strong rehabilitation method. This report has also given the example of the city of Rome in order to tackle this problem. So, this report has suggested numerous amendments like the harsh law, separate ministry, police and court and the award for those persons who are giving information to the brothel homes and many more. This committee report has issued its concern on various subjects like-

A) The provisions of the act operate within the limited spares. They do not penalise prostitution in general but deals only with the commercial prostitution or open prostitution in general. So basically, it has a very limited scope.

B) There are needs to take male participants also in the purview of the act but with a limitation.

C) There is a revision in the definition of prostitution, protective homes and corrective institution.

D) Special provisions for rehabilitation of girls and women

E) Special attention to the children brought in the prostitution business.

2. Justice Verma Committee Report²²⁴

The committee report summarized as follows-

A) The committee have widened the scope of rape and suggested the higher punishment for rape and also considered the rape within marriage and outside marriage. The committee had recommended bringing the marital rape under the provisions of IPC.

B) The Committee recommended that non-penetrative forms of sexual contact should be regarded as sexual assault. The offence of sexual assault should be defined so as to include all forms of non-consensual non-penetrative touching of a sexual nature. The

²²³ 64th Law commission of India report, (1975) <http://lawcommissionofindia.nic.in/51-100/Report64.pdf>. (last retrieved on 30-11-2029 at 11.10 am)

²²⁴ Submitted report on 23 January 2013.

sexual nature of an act should be determined on the basis of the circumstances. Sexual gratification as a motive for the act should not be prerequisite for proving the offence. The offence should be punishable with 5 years of imprisonment, or fine, or both and use of criminal force to disrobe a woman should be punishable with 3 to 7 years of imprisonment.

C) The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault and be punishable for 1 year imprisonment or fine or both.

D) The Committee noted that the Immoral Trafficking Prevention Act, 1956 did not define trafficking comprehensively since it only criminalised trafficking for the purpose of prostitution. It recommended that the provisions of the IPC on slavery be amended to criminalise trafficking by threat, force or inducement. It also recommended criminalising employment of a trafficked person. The juvenile and women protective homes should be placed under the legal guardianship of High Courts and steps should be taken to reintegrate the victims into society.

E) The Committee has recommended that the terms ‘harm’ and ‘health’ be defined under the Juvenile Justice Act, 2000 to include mental and physical harm and health, respectively, of the juvenile.

3. Early Childhood Development and Legal Entitlements²²⁵

This law commission report has been basically focused on the childhood of the child of sex workers and the role of the government. This report has also talked about the introduction of the lessons of the human trafficking and prostitution in the course curriculum just like sex education in the school. This report has been also focused from the point of view of the Fundamental rights and the human Rights development in the nation.

4. A report on the trafficking in women and children in India²²⁶

This report has been made in the collaboration of NHRC and it talks about the emerging dimensions of the trafficking including the love propaganda which is

²²⁵Law commission report no-259, (August 2015), <http://lawcommissionofindia.nic.in/reports/Report259.pdf>.

²²⁶NHRC report on Human trafficking (2018) <https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf>.

running under the syndicate. The research laid bare the multi-dimensional nature of the problem, loopholes in the law, gaps in law enforcement, involvement of organized mafia and the agonies of the victims. It also revealed that India serves as a source, transit and destination where thousands of women and children are exploited day in and day out. It also reveals that an important feature of the trafficking is the network because it is an efficient coordination of what appears to be a fragmented process. The actors in the trafficking network collaborate and protect each other.²²⁷

5. Status of Sex workers in India²²⁸

This committee report has been submitted by various NGO's as stated in foot note-120 to Government of India on 1st April 2014. The main points of arguments are as follows-

- a) Avoid conflation of sex work with trafficking
- b) Decriminalise sex work and all related activities
- c) Ensure participation of sex workers in policy making
- d) Develop mechanisms to recognise and act against violence faced by women in sex work
- e) Strengthen sex workers' access to justice through NHRC²²⁹
- f) Implement Supreme Court recommendations on social entitlements, identification documents
- 6) Report of the Adhoc committee of the Rajya sabha to study the alarming issue of pornography on social media and its effect on children and society as a whole²³⁰

Observation of the committee at a glance-

- a) Necessary separate provisions need to be there in the IPC, IT, POSCO regarding pornography.
- b) Broaden the definition of Pornography specially child Pornography.
- c) Include Provisions on Cyber Grooming
- d) Prepare code of conduct for social media
- e) Amend IT act
- f) Require to broaden the duty of ISP for the strict monitoring of pornography.

²²⁷ Ibid.

²²⁸NGO-Centre for Advocacy on Stigma and Marginalisation, (CASAM), India
Sampada Grameen Mahila Sanstha (SANGRAM), India Mahila Sarvangeen Utkarsh Mandal (MASUM),
India Veshya Anyay Mukti Parishad (VAMP), sex workers collective, India

²²⁹National Human Rights Commissions.

²³⁰Submitted to chairman of Rajya Sabha on-25 January 2020.

- g) Strict action if seeing obscene content.
- h) Mandatory app to be installed in all the internet connected device to monitor pornography specially child pornography
- i) Age verification and restricted to children or another minor group.
- j) Nationwide campaign
- k) Committee to keep a watch on social media.
- l) Guideline and training campaign all over the country.

3.8 Role of international bodies on internet prostitution

1. Report on women experience of abuse on Twitter²³¹

This is a research by amnesty international on online abuse of women. Violence and abuse against women on social media, including Twitter, includes a variety of experiences such as direct or indirect threats of physical or sexual violence, abuse targeting one or more aspects of a woman's identity targeted harassment, privacy violations such as doxing – i.e. uploading private identifying information publicly with the aim to cause alarm or distress, and the sharing of sexual or intimate images of a woman without her consent. Sometimes one or more forms of such violence and abuse will be used together as part of a coordinated attack against an individual which is often referred to as a pile-on. Individuals who engage in a pattern of targeted harassment against a person are often called trolls.²³²

It is important to note that violence and abuse online can take place in many different contexts. In November 2017, Amnesty International commissioned an online poll with Ipsos MORI about women's experiences of abuse and harassment on social media platforms across eight countries including the USA and UK. The findings showed that nearly a quarter (23%) of the women surveyed across the eight countries said they had experienced online abuse or harassment at least once, including 21% of women polled in the UK and 1/3 (33%) of women polled in the US. In both countries, 59% of women who experienced abuse or harassment said the perpetrators were complete strangers.²³³

Although most of the women interviewed for Amnesty International's research received violent and abusive tweets from strangers or people unknown to them, online

²³¹Report presented by Amnesty International on 18th July 2019, <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-3/>

²³²Ibid.

²³³Ibid.

violence and abuse can also be used as a tactic by current or former intimate/domestic partners of women to control women and instil fear. A survey conducted by the US organization National Network to End Domestic Violence found that, *97 percent of domestic violence programs reported that abusers use technology to stalk, harass, and control victims*. It also found that 86 percent of domestic violence programs reported that victims are harassed through social media. In the UK, research on domestic online abuse by domestic violence organization Women's Aid found that 85% of respondents said the abuse they received online from a partner or ex-partner was part of a pattern of abuse they also experienced offline. Additionally, 50% of respondents stated that the online abuse they experienced also involved direct threats to them or someone they knew. Of the women polled by Amnesty International who experienced abuse or harassment on social media platforms, 18% of women in the UK and 23% of women in the US said that the perpetrators of the abuse were current or former partners.²³⁴

2. Ending violence against women²³⁵

This committee report has given a brief discussion about the violence against women including physical violence and cyber violence. This report has divided the its submission on 5 points or we can say that the 5 points the committee want to achieve in order to end the violence against women.

- a) Women access to justice, in which it was discussed that women should get extra rights in policy making of any government and especially when it comes to their rights. The legislation, the executive and judiciary have to give extra consideration to achieve the access to justice and there must be also free flow of justice to women.
- b) Marriage, family and property Rights, there must be an equal right in the marriage, property and family as par with the men.
- c) Ending violence against the women, the state has to play the important role in ending the violence against the state by their laws and enforcement agencies.
- d) Women in conflict with the laws, the state has to take special care to those laws which hampered the rights of the women.

²³⁴Ibid.

²³⁵Published by-The United Nations Entity for Gender Equality and the Empowerment of Women in 2018

e) Programming at the country level, every state has advised to programmed and combat the violence whether physical or online against women.

3. Cyber Violence against women and Girls²³⁶

The committee's suggestions are as follows-

- a) There need for the self-regulation, specially the gaming, digital and the pornography industry.
- b) Telecom and search engine should be responsible for the content.
- c) End up of violence in main stream media.
- d) An 'open-source' approach to changing behaviours is needed with the help of an enlightened networked society.
- e) Need for social movements with the help of white collars people in the society includes bureaucrats, judges and others.

4. Protection from Sexual Exploitation, Sexual Abuse and Sexual Harassment.²³⁷

This report has been focused on the online and offline both types of harassments and especially considering the abuse in developing and developed nation because of the more internet availability in these nations. However, it has also discussed the failure of under developed nation to make the good laws for the internet abuse. The report has discussed that the state has to come upon with the stricter and stricter laws on this issues and state has to work in order to change the mentality of their citizens and the state has also have to work in order to educate their citizens through policies and their through campaigns in their respective countries. The report has clearly mentioned that the UNDP has zero tolerance level against sexual abuse it is whether in their office or outside world and the women available on the internet is not a material object to exploit.

5. Countering sexual exploitation and sexual abuse online²³⁸

This report has been presents by Economic and social council to the General assembly to attract the urgent attention on this matter, summarized as follows-

²³⁶Prepared by members of UN women, UNDP and ITU in 2018.

²³⁷Prepared by United nation population fund (25 January 2020), www.unfpa.org/protection-sexual-exploitation-sexual-abuse-and-sexual-harassment#

²³⁸Presented by economic and social council to UN General Assembly in 24th session (24 May 2019) in Vienna. https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_28/ECN152_019_L3REv1_e_V1903716.pdf.

- a) Urges member state to encourage public awareness.
- b) Urges member state to take legislative measures.
- c) Encourages member states to share the information on the women and child abuse with the UN and other nations.
- d) Encourage member states to involve government and private players.
- e) Further urges Member States to establish and implement public policies as well as proactively share information on best practices including on support programs for victims and the mainstreaming of a gender perspective, in order to protect and defend children from child sexual exploitation and sexual abuse, including online, and the non-consensual, exploitative circulation of material depicting victims.²³⁹
- f) Urges member state to support and encourages victims of sexual online abuse.
- g) Requests the United Nations Office on Drugs and Crime to assist Member States, upon request.
- h) Invite member states to exchange the best practices,
- i) Encourage member states to demonstrate their good work in combating this problem on international forums.

3.9 Conclusion

The prostitution in India is always a centre of attraction in the society. In the Medieval period it was assumed that only high-class people can achieve this luxury but after the coming of the British and the establishment of the brothel homes by the British for their soldiers and gradually it is shifted to the common Indians, it was assumed that it is for any adults depending on the amount they paid. Now, with the entry of technology in the prostitution and its invasion by the internet in place of the physical prostitution, it has gone to the teenagers also. The prostitution in the online mode is safe, easily destroy evidence and of course it has less chance of arrest and humiliations. The most important part in the internet prostitution is that till now it has many jurisdictional issues which need to be settled. However, the government through their ordinances and through their committees has approached this issue but due to the lack of proper act in this regard, it is increasing with every passing of the days in the society. Although in India, there is a problem of a proper law in this regard but the

²³⁹Ibid.

most important delinquent which in my regard India will face is the process of proper implementation to these laws in our society. The proper society is not made by their laws but by the process of proper implementations to the society and India is not an exception to this rule.

CHAPTER-4

ONLINE PROSTITUTION- THE PLAYERS, ROLES AND LIABILITIES OF INTERMEDIARIES IN INDIA

4.1 Introduction

The role of intermediaries in connecting one device to another is not a new concept for the country like India. The best can be understood with the illustration of the postman, the postman is the person who delivers the letter or other relevant things from one person to another but he doesn't have any control over the content of the letters or the person who has send the letter and neither he modify the letters other than the fixed reimbursements in lieu of safe delivery of letters. Likewise, in the field of digital world the intermediaries mean through whom the information is passed and network enabled. The work of intermediaries is same as the work of postman; he is only the medium to deliver the information. He doesn't have the control over the content neither he modifies or change the content. Network service providers, internet service providers and hosting providers are all illustrations of the online or internet intermediaries. However, the things are not simple as it was illustrated in the example of postman. The intermediaries in the online forum play a very vital and dynamic role, which are as follows-

- a. **Network operator**- The work of network operator is to provide technical support for the broadcast of the information.
- b. **Access providers**- Providing access or entry to the internet.
- c. **Search engines**- online tools to search the websites.
- d. **Host service providers**- users rent the space of the websites to upload texts, graphics, sounds, bulletins and other contents.²⁴⁰

With the growth of the internet the expanse of the media and online platform has been increased. The role and liabilities of the ISP²⁴¹ has been increased to a great extent,

²⁴⁰ Greenstein, S, Understanding the Evolution Structure of Commercial Internet Markets, Understanding the Digital Economy: Data, Tools, and Research Conference, Washington, DC, USA (1999).

²⁴¹Internet service provider

the self-proclaimed liability is that they will take necessary action to the illegal content and help in all possible ways to the state authorities to combat the situation. With the increasing online dependency and the role of the media in the society the ISP has started centralizing itself the best example can be understood that face book has been acquired Instagram and wats up also in the year 2014 and control the major portion of the world online content.²⁴²

Today there is a healthy competition in almost every country regarding ISP but with the growth of the ISP market and the online users, it is also very difficult at the same time to control every information, which is going through their channels. The misuse of the data is very common in today's world, which leads to the violation of the third party rights sometimes in the form of copyrights, harassment calls, abuse to the women and many others which not only makes these service providers liable but also create the violation of the privacy contracts to the users and on the other side these service providers will be a real failure in controlling their channels content.

In India the regulation of the intermediaries has been seen in various legislation other than the IT act,²⁴³ like the copyright act also discussed the role of the intermediaries.²⁴⁴

There are also the guidelines from the Indian government which specifically determine the role and liabilities of the intermediaries²⁴⁵ and especially clause 33 of this said guideline, which specially provide the do lists to the intermediaries. The regime of the ISP in India is not up to the mark other than the few laws and the few landmark cases like Kamlesh Vaswani v Union of India, where websites operating child pornography were required to be restricted.²⁴⁶ The enforcing policy of the agency is also very weak and sometimes the issue of the subject based jurisdictions is also there that whether the particular case will come under IT act or under copyright act.

The second problem which the legislation is facing is the role of intermediaries and fundamental rights like in the case of Shreya Singhal²⁴⁷ case when the provisions of the IT act has become null and void because of the clash between Fundamental rights

²⁴² Greenstein, S, Understanding the Evolution Structure of Commercial Internet Markets, Understanding the Digital Economy: Data, Tools, and Research Conference, Washington, DC, USA (1999).

²⁴³ Sec 79 of Information technology act 2000, No-21 of parliament act (India)

²⁴⁴ Sec 51(a)(2) of Information technology act 2000, No-21 of parliament act (India)

²⁴⁵ Licence on internet service, 2007

²⁴⁶ KamleshVaswani v Union of India, Supreme Court of India, Order No. 813-7/25/2011-DS (Vol. V) (March 31, 2015).

²⁴⁷ ShreyaSinghal and ors.v Union of India and ors., Writ Petition (Criminal) No.167 of 2012.

and other laws and in that case fundamental rights should prevail. In the above-mentioned case the question arises on the liabilities of the intermediaries that ISP should verify the content before publishing but it can't be possible because of the privacy policy with the customers and the mass viability of the content.

The country like India is also facing the issue of technical advancement, the enforcing agency or the judges are not technically sound and feeling difficulties in determining the liabilities of the intermediaries. The problem lies in the content, the section 79 of IT act said that the liability of the intermediaries is restricted to the illegal content but in many cases, it is seen that the content when uploaded was legal in the very first nature but with the addition of the more content to the original content by the open chat or the outbreak about the original content it became illegal. The time has come that in order to restrict the online sexual offences we have to restrain the basic issues like fixing the liabilities of the ISP by making more restricted laws and more technologically advance judiciary and enforcement agency. The society has to also accept that this is a major issue with the future generation and this has to be addressed in a great detail with more caution and care. The present chapter talks about the role and liabilities of intermediaries in cyber-sex work, the present chapter also inclined in the direction of the structural prospects of executive bodies towards the implantation of data and communication in cyber space. The present chapter also talks about the implementation of approach of manila principles in India with special reference to Information Technology act 2000.

4.2 Who are Intermediaries?

The intermediaries can be understood in the context of the internet is the facilitator for the vast network of internet. The intermediaries are acting as a catalyst in the internet system between the internet and the service providers. The role of the service providers is not so clear, it can be understood in either of one or two ways like it provides channels for data travelling between internet hosts and customers. It can also refer to the Network service provider or the telecom services who provides the infrastructure for the internet services like optic-fibre, which is use to connect the internet between the public and the internet service.²⁴⁸ But in the larger sense the myriad online services which empower the end users to enlarge their efficiency of the

²⁴⁸Van Eeten, M., Bauer, J., Asghari, H., Tabatabaie, S., Rand, D, The Role of Internet Service Providers in Botnet Mitigation: An Empirical Analysis Based on Spam Data, (2010).

internet like face book, e-commerce, social networking sites, education, and entertainment to a name of few. My concern is the last one who is the real intermediaries of the public, their role and challenges.

The Organization for Economic Co-operation and Development (OECD) in April 2010 proposed that “Internet intermediaries” be defined as follows:²⁴⁹

“Internet intermediaries bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties.”

The OECD has also identified few services like to fall under this category-

- a. Internet service providers
- b. Data Hosting and Web-hosting providers
- c. Search engines
- d. E-commerce, entertainment, education
- e. Internet payment systems
- f. Participative networking platforms like libraries.²⁵⁰

However, if we talk about the Indian laws, then section-2(w) of IT act is the best definition of intermediaries. The act has defined the term Intermediaries in detail as- “Intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmit records or provides any service with respect to that record and includes telecom service providers, network service providers, Internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.”²⁵¹

However, this is non-exhaustive and the section 2(w) also includes social media platforms, blogging platforms, message boards, consumer’s reviews and many more. In other words, we can say that any ISP which provides any type of user generated content and large number of internet service provider then it will come under the definition of 2(w) of IT act 2000.²⁵²

²⁴⁹ OECD, Definitions, 9, THE ECONOMIC AND SOCIAL ROLE OF INTERMEDIARIES 2010, [https://www.oecd.org/ Internet/I economy/44949023.pdf](https://www.oecd.org/Internet/I%20economy/44949023.pdf)

²⁵⁰ Ibid.

²⁵¹ Information technology act 2000, No-21 of parliament act (India)

²⁵² [https://sflc.in/sites/default/files/reports/Intermediary Liability 2 0 - A Shifting Paradigm.pdf](https://sflc.in/sites/default/files/reports/Intermediary%20Liability%20-%20A%20Shifting%20Paradigm.pdf)

There are basically two models through which liability lies on intermediaries, the first is the strict liability on the platform providers like in China, the platform providers are responsible for the whole content irrespective of the editorial content. The intermediaries are liable to filter all contents which are going on internet. However, countries like India doesn't host such liability, the intermediaries are only liable for the illegal content which is illegal from the very beginning and if the intermediaries have not the full editorial control then after receiving complaint if the action is not taken from the side of the intermediaries then only, he is liable. According to these divergent models, "Internet Intermediaries: Dilemma of Liability" has come up with three models.²⁵³ These are as follows-

- a. **The strict liability model-** The intermediaries are strictly liable for user generated content; they have to keep the remote access of the editorial content. They can't free from their liability of illegal content by only saying that they have not written the content. The intermediaries are strictly liable for all the illegal content on internet which had passed through his channel they are strictly liable and they have strict duty to keep an eye on the content. They can't differ from their duty; otherwise they can face the consequences like withdrawal of their working license or the penalty in some grave cases. In this type of the model the liability is of 100% and the platform providers can't deny any liability of any of his content. This is like absolute liability; you have to check and edit every content before it goes viral and to the access to the general public. The countries like China and Thailand is the best example for this type of practice.²⁵⁴
- b. **The safe harbor model-** The safe harbor model gives the immunity to the transmitters; they are only liable for the illegal content and that too when they called upon to remove the content and if they removed the content, they are not liable. This is a type of conditional liability on them. In this type of the system only the immediate host intermediaries are liable not the service providers for illegal contents. It is also called 'notice and take down' process, in which a notice has been received and the

²⁵³ Article 19, Internet Intermediaries: basic facts, 7, INTERNET INTERMEDIARIES: DILEMMA OF LIABILITY 2013, https://www.article19.org/data/files/Intermediaries_ENGLISH.pdf

²⁵⁴ Rowe, B., Wood, D., Reeves, D. & Braun, F. Economic Analysis of ISP Provided Cyber Security Solutions, Report prepared for the Institute for Homeland Security Solutions. Research Triangle Park, NC: RTI International, (2011, June)

content is legally taken down from the website. The government gives reasonable time to take away the content from the website and if this process follows then there will be no charges or consequences against the host intermediaries but if not taken down in the prescribed time then the intermediaries may have to face consequences like cancellation of license or compensation. In this model the intermediaries are also encouraged to use the self-filter mode to bifurcate the illegal contents. The E.U and India is the best example for this type of model practices. This model is further divided into vertical and horizontal model. In the vertical model, the liability of the intermediaries has been defined according to the content in subject. The horizontal model, in which the liability of the intermediaries has been determined according to the function he is performing in distributing the content.²⁵⁵

- c. **The broad immunity model-** This model gives the intermediaries every immunity and not make liable for any type of illegal content. The broad immunity model lays that the intermediaries are the only service providers of the internet they only act on behalf of their customers and doesn't have any type of command over the content of the unlawful content and this model also doesn't levied any type of duty over the intermediaries for the monitor of the unlawful content. The United states of America are the best example for this.²⁵⁶

Irrespective of the model whether intermediaries are liable or not but one thing any nation can expect in this regard is that when asked to crack down the illegal content the intermediaries will do that and, in that time, they will not think of their revenues. Google's transparency reports show that there has been a sharp increase in the number of content takedown requests received from governments in recent times. While Google received 1,031 such requests in the second-half of 2009, this number climbed to 15,961 in the second half of 2016, representing a fifteen-fold increase²⁵⁷

The most and foremost problem lies in this regard is the freedom of speech and expression which is the basic fundamental rights of any country and in order to make a balance between the illegal content and the fundamental rights the states authority and the intermediaries has to work side by side.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Google, Government Requests to Remove Content, Google Transparency Report, GOOGLE (Feb. 26, 2019, 2:50 PM), transparencyreport.google.com/government-removals/overview?hl=en

4.3 The provisions, role and liabilities of intermediary's in India

India has changed many laws in IT act and in the IPC also due to the model law on electronic commerce issued by the United Nation commission in which India is the signatory member. The motive of the UN is to fasten the growth of International Trade within the entire globe.²⁵⁸ The Provisions like 2(w) and 79 has explained the intermediaries but actual meaning and role, liabilities are fixed in the year 2008, when the IT amendment act 2008 has been passed. The Avinash Bajaj vs. States²⁵⁹ is the most famous case in the regard of Indian online prostitution and due to this case, intermediaries get immunity and widening the protection of intermediaries and the guidelines passed in 2013. Mr. Bajaj was the director of bajeej.com²⁶⁰ at that time; it is an online selling portal which generally sells households and electronic goods. One MMS clip was listed on the website (e-commerce website) for sale, which contain sexually explicit content, especially meant for Adult person, over 18 years of age. For keeping and selling of the sexual content on the website the Managing Director of the Baze.com Avinash Bajaj was arrested under IT act and under IPC for promoting obscenity. In this case Mr. Bajaj was personally liable to sell the sexual content on the website under 67 of IT act.

The High Court in this regard stated that the Managing Director is liable for the act as they might use some filter to prove that they have used all the means to dis allow the content and he is not negligent in his act. Mr. Bajaj has appealed to Supreme Court in 2012 against the High court decision and S.C clearly stated that the Managing Director is not liable until the company is a party to this case. The court has disallowed the proceeding and rejected the plea by stating that the vicarious liability doesn't arise as the accused company is not a party to the case, and reject the petition subsequently.

After this case, the scope of the act has been enlarged and basically the definition and the scope of intermediary. The IT act has enlarged the scope from intermediaries to the service providers and to all service providers including telecom sectors, search engines, market places like cyber cafes.²⁶¹ It also widened the safe-harbour protection given to these intermediaries under Section 79 from only network service providers to

²⁵⁸ General Assembly of the UN, resolution A/RES/51/162 dated January 30, 1997.

²⁵⁹ Avnish Bajaj v. State, 150, DLT 769, (2008)

²⁶⁰ Fully owned subsidiary of ebay.com.

²⁶¹ Section 2(1)(w) of Information technology act 2000, No-21 of parliament act (India)

all intermediaries and protected intermediaries from all unlawful acts rather than offences and contraventions covered under the IT Act itself.²⁶²

However, the protection is only available to those intermediaries who are only giving the access to the internet system to the common people and the information which is shared on internet will be provided by the third party and neither the intermediaries has initiated the information or nor he has right to control any information. In short if he can't change or modify the information then only any intermediaries can claim benefit in the IT act 2000. The most important and crucial aspect of this protection is that it is available to those intermediaries who-

- a. Observe due diligence and not ignorant in their act.
- b. Follow all the guidelines of the central government in this regard
- c. Not add, induce or conspire the unlawful act or neither help in uploading the illegal content
- d. After actual knowledge of the unlawful act, the unlawful content must be structured down from the websites.

The Government is very much clear in his approach and rightly stated in the IT act by 2008 amendment. After the amendment of 2008 IT act, Government of India on 11th April 2011 issued an intermediary's guideline, in which all intermediaries have to follow the rules for the safe harboring.²⁶³

- a. Publishing of privacy policy and user agreement and other guidelines.
- b. Terms and condition must specify the obstruction of those contents which are harmful for society, minors, infringement of copyrights.
- c. Strict notice and take down process must be there and must specify.
- d. Help to the Government agency in case of emergency.
- e. Appointment and notification of grievance officers.

On 24th December, 2018, Ministry of information Technology released the Draft Information Technology Intermediaries Guidelines (Amendment) Rules, 2018 ("the Draft Rules") to amend the existing Intermediaries Guidelines. These Draft Rules sought to introduce requirements on intermediaries like - tracing out of originator of information for assistance to law enforcement, deployment of automated tools for

²⁶²Sec-79 of Information technology act 2000, No-21 of parliament act (India)

²⁶³The intermediaries' rule, 2011, <http://dispur.nic.in/itact/it-intermediaries-guidelines-rules-2011.pdf>

proactive filtering of unlawful content, takedown of illegal content within 24-hours, and mandatory incorporation of companies having 5 million + users in India.²⁶⁴

Other than this the most important provisions of the draft are the traceability requirement²⁶⁵ in which it is the duty of the intermediaries to trace the originator of the message when asked or required by the Government agency. This is basically end to end encrypted services which are very common in watsapp and facebook now a days. However, in the case of *K.S Puthusamy vs Union of India*²⁶⁶, this move has been criticized and Privacy has been made as a fundamental Right. The second important aspect is the proactive filtering tool²⁶⁷, the intermediaries can deploy a proactive filtering tools which filter the illegal content of the customers, the role of the intermediaries is neutral and to keep out of himself from the discussion. The intermediaries have only role of mediator between the internet users and the government agency.

The second and the most important case of the intermediary's liability is the *Shreya Singhal case*²⁶⁸, in this case a number of provisions of the IT Act were challenged - Section 66A (punishment for sending offensive messages), 69A (power to block websites) and 79 (safe-harbour provision) for severely affecting the fundamental right of free speech and expression as guaranteed under Article 19(1) (a) of the Constitution of India.²⁶⁹ This case has been struck down the section 66A, as it oppose the primary fundamental right that is Freedom of Speech and expression in Article-19(a) of the constitution of India.

This is the first case in which the court has spoken about the freedom of speech and expression of Indian citizens on internet. However, on the part of the intermediaries, the court has interpreted the term "Actual Knowledge" in which the S.C had stated that there must be actual knowledge to the intermediaries of the illegal content and the order must receive from the government authority or the court to struck down the illegal content and this limitation must be restricted towards article 19(2) of the constitution. Other than this all the guidelines and the due diligence policy, privacy policy (as discussed above) will be remain same.

²⁶⁴ To refer to the entire text of the Draft Rules, see https://meity.gov.in/writereaddata/files/Draft_Intermediary_Amendment_24122018.pdf.

²⁶⁵ Rule 3(5) of the draft rules.

²⁶⁶ WP (Civil) No. 494 of 2012.

²⁶⁷ Rule 3(9) of the draft rules.

²⁶⁸ *Shreya Singhal v. Union of India*, 5 SCC 1, (2015) (India).

²⁶⁹ *Ibid.*

The intermediary's liability is primarily governed by the IT act in act section-79 as discussed above. However, the copyright act 1957 is also the act in India whose provisions broaden the scope of the intermediary's liability.²⁷⁰ The section specifies that the technical process used for the storage or the transmission of the public is not an infringement of copyright and providing links and storage of any public shows or anything which is not barred by the right holders will not come under the infringement of the copyright. However, in the Shreya Singhal case the court had given higher obligation to the intermediaries for the IP act in uploading and taking down the content by the order of the court or by any state agency. The intermediary's guidelines also specify that every intermediary shall notify and discourage their user to upload those contents which are in contradiction with any IP act.

However, still the laws in India are not very much clear about the intermediary's liability in India. The intermediaries in India is busy with taking complains about the content and the requirement to take it down is really not in a process. The big players of the digital world like face book, twitter, you tube use automatic filters which definitely harm the freedom of speech and expression of Indian citizens in digital world. The work of these automatic filters is to catch the key words like Bomb, Religion, Private body parts etc. The court has not only tried to determine the role but also tried to mark the liabilities by saying that the intermediaries can't only judge the content that whether it is legal or illegal but it has also a duty to send notices and take down the contents.²⁷¹

In a recent draft policy document issued by the Department for Promotion of Industry and Internal Trade, the government has raised issues around the liability of e-commerce platforms for counterfeit and pirated products. The draft policy has recommended that if the trade mark owners require, e-commerce platforms shall not list their products without prior consent. On the copyright front, the draft policy has recommended that, "Intermediaries shall put in place measures to prevent online dissemination of pirated content."²⁷²

There is a growing need that intermediaries should became more liable is very much evident from the content of the draft. The Government of India knows that the future

²⁷⁰ Section 52(b) and (c) of the Copyright Act (1957), Act no. 14 of 1957, (India)

²⁷¹ Kent RO Systems Ltd. v. Amit Kotak, [240 (2017) DLT3] (India)

²⁷² Draft National e-commerce Policy, India's Data for India's Development, Department of Industrial Policy and Promotion (Feb 25, 2019, 4:15PM) <https://dipp.gov.in/whats-new/draft-national-e-commerce-policy-stakeholder-comments>.

of India is very much based on the digital world and the digital world must be safe and viable for every citizen. With the growing business of these intermediaries, the duty of social responsibility has also been increased towards those customers who are loyal to their connections and the liability also goes to the country as a whole. Another very much requirement of the states is that the authenticity and genuineness must flow from the intermediary's pipeline. So, in order to mature these requirements more harsh and tough laws need to be there.²⁷³

Today is the world of information and in this world of information, most of the information is available on the internet and every person who is working in building the world economy is dependent on the internet information. Generally, states don't compromise with that information and to make it genuine and flow from proper pipeline, states need to implement more responsibility on the intermediaries. However, the states are doing its best from time to time in order to make more viable and the courts are also playing important role with numbers of renowned judgments like in the case of Google vs. Vishaka case,²⁷⁴

In 2009, Vishakha on asbestos manufacturing company filed a criminal defamation case against the ban Asbestos Network India (BANI) and on Google. The Vishakha company has alleged that the Bani Company has posted a blog owned by the Bani on criticism of the company which will harm the reputation of the company in the market and the Google is also made a party to this case because the Google is the host website on which the post has been transmitted. The Google then moved to the Andhra Pradesh High court and contended that he enjoyed the safe harbor protection under section -79 of the IT act. The Google further contended that the Google is only the service provider only, he is not the content writer or he doesn't have any editing rights, so can't be held liable.

The Andhra Pradesh has rejected the contention of the Google and said that the intermediaries has liability to take down the content if it brings to them through proper channel and in this case the petitioner has bring the matter to the Google and Google failed to curtailed down the illegal content, so hence held liable. The Supreme Court on 11th December, 2019 had decided that the Google can't take a plea of section 79 because the case is of 2009 and it is not applied on 2009 case and specially the

²⁷³Rowe, B., Wood, D., Reeves, D. & Braun, F. Economic Analysis of ISP Provided Cyber Security Solutions, Report prepared for the Institute for Homeland Security Solutions. Research Triangle Park, NC: RTI International, (2011, June).

²⁷⁴Google v. Visakha Industries, Criminal Petition No. 7207 of 2009, (India)

defamation case. The Supreme Court had ordered the magistrate of the district court to inquire the matter and go ahead with the case of defamation on Google and decide the case.

In the Kent Ro case, the Supreme Court has rightly used the section 79 of the IT act and give the immunity to eBay company which is only a third party who publish the content and doesn't have any right over the publication and modification.²⁷⁵

In the case of My spaceInc,²⁷⁶ this case is important from a copyright perspective as the division bench of the Delhi High Court in this matter reversed a single judge decision holding Myspace liable for copyright infringement. The division bench held that if intermediaries are tasked with the responsibility of identifying illegal content, it could have a chilling effect on free speech. The court had clearly stated that the intermediaries has the duty to take down the content once complaint by the authority or by the court or any other relevant party and it is now the intermediaries to show that the complaint is not up to the mark to take down the complaint otherwise the intermediaries will lose the rights of the safe harbour.

The section-79 of the IT has given the save harbor protection to the intermediaries against the content of third party. The content has been only taken down by the order of the court or by the order of governmental agency, however from time to time number of cases has been filled in S.C as well as H.C to enlarge the scope of the intermediaries. The Supreme Court has widened the scope of intermediaries to a very minor level with introducing the term of proactive monitoring of content, and Right to be forgotten.

In the case of Kamlesh Vaswani vs union of India²⁷⁷ the PIL is filled by the Indore based advocate against the sexual content on the internet and against the pornography. The section 66,67,69,72,75,79,80 and 85 are argued to declare unconstitutional as they are failed to restrict the pornography on the internet. The petitioner also demanded to declare watching of porn as a non- bailable crime and draft a national plan and a task force to tackle the distribution and watching of the porn.

The petitioner had also argued to enlarge the role of the intermediaries as they are failed to filter the pornographic content. The S.C in this case has ordered the ministry to restrict the pornographic content which have child content or Rape content or any

²⁷⁵2017 (69) PTC 551 (Del)

²⁷⁶Myspace Inc. vs. Super Cassettes Industries Ltd.,236 DLT 478, (2017) (India)

²⁷⁷[W.P.(C) No. 177/2013]

other content which harm the sexual or natural rights of the women. Interestingly 857 pornographic sites have been removed by the government of India. The S.C had in this regard said that whatever citizens do in their four walls is not the look out of the authority but the more harmful porn like child pornography need to be restricted and the intermediaries has self-proclaimed duty to proactively monitor content as like everything should not be explained in this dynamic world of technology, where technology changes on a daily basis and every intermediaries has to use this content in order to claim the harbour right under section-79 of the IT act.

The right to be forgotten means the right of any person to erase from the internet. This is basically a civil right enlarged its scope from the Right to Privacy. The right to be forgotten gives the right to demand from the intermediaries to delete the personal content vis a vis personal information from the internet. This right has been emerged in E.U and Germany in the year 2006 and followed till then. India has not accepted this law officially till now, however the draft of Protection of Data Bill 2018, cover this act but it is still a bill and has not able to pass from the parliament.

The first case in this regard is Laksha vir Singh vs Union of India & others, the petitioner has claimed that the criminal case which is going between their family and their wife always show in the Google search engine which hampers their social as well as professional life which includes the employment opportunity. So, the petitioner has contended to restrict the information of the case from the website. The H.C of Delhi has passed the decision in the favour of the petitioner in the year 2017 but the case is still pending and need to be immediate attention.

4.4 The manila Principle and its approach

On the internet every communication can be made by the intermediaries only. All the social networking websites like Face book, Twitter, Instagram can be only done by the intermediaries. The policy which governs the right of the intermediaries will also impact on the rights of the customers like freedom of speech, freedom of privacy, freedom of expression. In order to protect these rights and safeguard the policies and giving a rightful platform to the intermediaries, a stakeholder conference has been called by coalition of the civil society organisation, internet rights activists in Manila in May 2015 to discuss the rights in liabilities of the intermediaries and specially in the work of 3rd party, where the intermediaries have no control over the content. The

Main Object of conducting Manila principle is to make a harmonious relation between intermediaries and the government and make an ideal law which is friendlier for both states as well as intermediaries.²⁷⁸

The Main Purpose of the Manila Principles is to encourage the development of interoperable and harmonized liability regimes that can promote innovation while respecting users' rights in line with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Guiding Principles on Business and Human Rights.²⁷⁹

The six broad principles are as follows.

- (1) Intermediaries should be shielded by law from liability for third-party content.
- (2) Content must not be required to be restricted without an order by a judicial authority.
- (3) Requests for restriction of content must be clear, be unambiguous, and follow due process.
- (4) Laws and content restriction orders and practices must comply with the tests of necessity and proportionality.
- (5) Laws and content restriction policies and practices must respect due process.
- (6) Transparency and accountability must be built in to laws and content restriction policies and practices.²⁸⁰

In India by introducing section 79 in IT act the first principle has been complied that intermediaries are not liable for third party content. However, the immunity in law to the intermediaries is conditional and dependent on the policy of a nation. Yet the immunity never the less is provided in one or different ways to these intermediaries.

The second principle that the content is not removed until the permission from the court, this principle has also been cherished in India and after the ShreyaSinghal case, the intermediaries is no more liable to take down the content on the request of any third party. The content is only taken down either by the order of the judiciary or by the action of the executives. The previous principle of blaming the intermediaries for third party content is no more in a motion and government has also understood that the liability on intermediaries is indirectly liability on the citizens pertaining to the

²⁷⁸Manila Principle on intermediaries, A global society initiative,(Feb 16, 2019, 7:09PM), (March 24, 2015), https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf.

²⁷⁹ Manila Principles on Intermediary Liability, MANILA PRINCIPLES (Feb 16, 2019, 7:09PM), <https://www.manilaprinciples.org/>

²⁸⁰Ibid.

digital rights. The intermediaries are no more liable from the 3rd party notice for the content and the court had also freed the intermediaries to make his mind for removal of the content.

The 3rd principle that is order for restriction on data is clear, unambiguous and follow due process of law, the Indian system is also in support of the 3rd principle and judiciary and executive who give an order for the content removal issue an order in writing with proper content, laws in contravention with content and the content at what extent be need to be removed.

The 4th principle that is necessity and proportionality must comply within its laws, content restrictions and its practice, the Indian system is not much comply with this principle because it is always seen that the Indian Judiciary system has been ordered the restriction of websites on a large number. It is very obvious that these investigations have not been done properly before closing of these websites and on the basis of similarity these websites have been closed. Like in the case of the Kamlesh Vaswani vs union of India²⁸¹ total 897 websites has been locked down by the government of India in which most of the websites are not actually the porn websites but they are selling adult products or registered massage parlours in which only few contents are sexually motivated on the websites, which may be actually need not to be struck down totally are need to be struck down totally but the government had struck down the whole website and the matter became even worse if it is for the infringement of the IP laws, most of the time it has been seen that the court became biased and there is only need to change the language of the content or to punish the original author but court order to struck down the whole websites. The taking down the websites became so popular in Judiciary that it originally discourages the literary invention in the society and the decisions are also arbitrary in nature.

The fifth principle that is the law and restriction policies must respect the due process of law; this principle is also not followed by Indian legislature up to the mark, because the content developers or the other party has not given opportunity to justify his content. The principle of Natural Justice has not been followed properly and the struck down of the content and fines are quickly levied by the court and the situation is getting worse when the matter is of infringement of IPR laws.²⁸²

²⁸¹Supra-218.

²⁸²²⁸²Manila Principle on intermediaries, A global society initiative,(Feb 16, 2019, 7:09PM), (March 24, 2015), https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf.

The final principle that transparency and accountability will be maintained, this principle has also doesn't found place in the Indian laws, especially under section 69A of the IT act. The government never disclose the reasons, action taken, and URL's struck down, who is the complainant or any other information regarding this. The request under RTI act also failed because of the confidentiality clause and the section 69A directly said that the information receives from the central government, which doesn't have any source.²⁸³

India has improved a lot in the technology system in recent 10 years and with its services and with its laws and regulations but with every improvement comes with the liability, liability of content and the infringements of digital rights. No, doubt India has improved their laws and judiciary system in order to combat the issues but the physical rights are none the less important than the digital rights. So, in order to became a rightful democracy, India need to sustain hundred percentages of freedom and rights guaranteed to its citizens. India has improved due to the manila Principle but it required more attention towards the principle to raise the role of intermediaries. The content, intermediaries, government are the three pillars of the internet and everyone should need to be in a respectable state. The role of government is more because they are the state actors. So, the government has to achieve the manila principle in near future to increase the role of the intermediaries on internet for safe and prosperous digital world.

4.5 Intermediaries liability and Sexual offences against women in Digital world Vis-a-vis online prostitution

The online crime and the intermediary's liability are always in a debate because of its changing structure with the changing technology. The intermediaries are generally referred as the internet service providers or the content providers. Section-79 of the IT act has given certain immunity to the intermediaries in India, when the intermediaries have no control over the content. However, the intermediary's liability is not restricted to this only because they are the main content transfer unit and the option of last resort lies to them only. Their role is always in the term of debate and especially when it comes to violence against women. The internet is always a tussle field for the expression and private rights. However, it needs to be balanced and there must be a

²⁸³ Ibid.

harmonious balance between bad content and the rights infringed in order to bring a healthy social media atmosphere in a country.²⁸⁴

There are generally two types of intermediary's regime in the intermediary's liability. First the safe harbour policy that is followed widely in countries like India and EU countries, in which the intermediaries are not liable for the unknown content or those content which he is not an author or he doesn't have any right to change or modify. The another one is the strict liability which is basically followed by China and Thailand, which lead to the contributory liability of the intermediaries with the author, this includes heavy censorship and content blocking which unjustified verges the rights of expression of the citizens. Both mode of liability has its own pros and cons, no mode is perfect and the best way is to change the mode according to the need and situation of the society because of the ultra-dynamic nature of the digital world.

In short if we classified the intermediary's regime then we get these three approaches²⁸⁵ -

1. The internet intermediaries need to take down the content only on the request of the judicial body and on the request of the proper executive body (India and Chile)
2. The intermediaries and the user have the vast responsibility this is called the notice and take down regime in which the notice has been given by the user and the content must be taken down by the intermediaries if the nature of the content is violence, sexual, harassment or if it infringes any state laws.(U.S.A)²⁸⁶
3. The third approach is the notice to notice approach in which, if any notice has been received from any users and that notice must be send to the writer of the content and if any suitable answer doesn't received from the author like why the content should not be taken down from the internet, then the content has been struck down by the intermediaries. However, this process takes times but follow the principle of natural justice which is also the very basis of the Manila Principle as discussed above. (New-Zealand).

India has adopted the Safe harbour technique, which provides immunity to the intermediaries, especially in section-79(3) (b), It talks about the actual Knowledge of the content, order from the judicial authority or any administrative authority and if any intermediaries fails to comply with this then only he is punished under the

²⁸⁴Ibid.

²⁸⁵Ibid.

²⁸⁶Ibid.

intermediaries liability, actually this is the exceptional clause to the intermediaries and the term actual knowledge is also discussed in the Shreya Singhal case.²⁸⁷

The two important aspects-

1. The struck down of sec-66(A) of the IT act struck down because of the violation of basic fundamental rights like Freedom of speech and expression in digital world.
2. The intermediaries should act on the unlawful piece of the content²⁸⁸ only on the advice of proper judicial and executive orders

These two-obiter dictums have been come from the above -mentioned case.

The cases of VAW²⁸⁹ is very much misogynistic in nature in the digital world, the most popular social media platform that is face book has allowed a number of pages like sexy girls, fun for men, I wanted sex, virgin girls etc. which is degrading the status of women in the society but they usually block those pictures which have boobs feeding by a mother to his child or women giving birth to a child which are very natural in the nature. So, we can say that they are very arbitrary and illogical approach of nature in this regard. Another issue is the privacy policy the trolley knows that the face book will never reveal their identity because of the privacy policy between them and the face book. However, this is the situation with more or less every online social media platform including Instagram and Twitter.²⁹⁰

Basically in India it has been seen that the user of these social media platform only knows the basic things like sharing pictures, chatting but they didn't follow or know about the licences, user guide to handle the prescribed social media platform or specially what to do in the crisis whom to approach and report in the social media websites. The problem doesn't end here, the users of the country like India also faces the linguistic problem. Language is the barrier for them to solve the disputes relating to the social media. The 77% of the male total population in India uses the face book and total literacy rate in India in March 2020 is 72% including women. So, number

²⁸⁷ Supra-210

²⁸⁸ Unlawful content, according to Rule 3(2) of the Information Technology (Intermediaries Guidelines) Rules 2011 is content that "(a) belongs to another person and to which the user does not have any right to; (b) is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, pedophilic, libelous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever; (c) harm minors in any way; (d) infringes any patent, trademark, copyright or other proprietary rights; (e) violates any law for the time being in force; (f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature; (g) impersonate another person."

²⁸⁹ Violence against Women.

²⁹⁰ Mueller, Milton L. (2010). Networks and States: The Global Politics of Internet Governance. MIT Press.p. 61. ISBN 978-0-262-01459-5.

speaks for itself.²⁹¹ The method of complaint solving by these social media platforms are also not open to anyone and it was also claimed sometimes that they are biased towards those accounts who shares the most posts and advertisements on the social media and suspend those accounts on a very severe charges only and sometimes make delay in problem solving in order to avoid the problem.

The research has shown that where the liabilities to curtailed down the content is on courts basically; the violation of the legal content is more in the country and it is obvious that in strutting down the content the state will take more time because of the nature of the court procedure and specially in India. On one hand the intermediaries like face book, twitter, you tube has been encouraged to perform the Zero tolerance level over the illegal content by the U.N guiding principles on Human Rights and Business.²⁹² But on the other hand these social media platforms which are the most important connecting platform in society will run their business on the basic of profit and lost and least concerned about the unlawful content. However, there is another method required to make a submission between zero tolerance and profitability of these social media. The states like New Zealand has adopted the third approach like assigning the arbitration body to limits the work of the intermediaries and see the unlawful content and specially related to the sexual offences against women and online prostitution. The intermediaries if found any complain about the content can ask a report from the author in this regard within 48 hours that why your content should not struck down on internet and if the permission is given by the author then only the content is struct down, in this case the complainant has to go to the judicial arbitrator who is specially assign to see this type of case. If the author has not reply within the prescribe time that is 48 hours then the case is transferred to arbitrator only and he is the last authority to decide whether the content will sustain or struck down. However, this method is also not very much approachable and good in the context and doesn't help much to restrict the unlawful content.²⁹³

The debate is still a valid and open for discussion that which method will be used or which method will not be used but one thing which is very much clear is that the role of society, intermediaries and government are very important in this regard. None of

²⁹¹ Geiger S. and Martin S., The Internet as a Relationship Marketing Tool-Some, Irish Marketing Review, 12, 2, (1999).

²⁹²Boyle, B.A. and L.F. Alwitt, Internet use within the US plastics industry', Industrial Marketing Management, vol.28, no. 4, pp. 327-41. Reprint, (2019)

²⁹³Ibid.

the role is less than anyone. If we want to attempt this problem then the approach of all three will have to be change together. The society has to take the very first crime like abusing online very seriously from the very beginning, the authority has to take stalking and other online crime as a real-life crime then only there will be change towards a better generation.

It is true that the liability of the non-states actors like intermediaries has not been defined anywhere properly and specially in India but it is also true that their actions are very much important for society. The states actors like the police authorities whose actions has been cleared defined but it is also true that they don't take this as a serious offence. The police authority has to take this a serious offence and specially the VAW offences as par with the real-world offences. Despite of the many trainings and the awareness camps by different NGO's and other organisations the police authorities are still indulged in the victim blaming game. The making of the special cyber cell has not sufficed the matter up to the mark and the meaning of consent in the digital world has been changed completely.

In the 2019 study, Violence Online in India, out of the 500 respondents interviewed about their experiences of online VAW, 1/3 reported that they had approached the police. Among those who went to the police, 38% expressed the view that "they were not at all helpful" and over half (52 percent) said that officials do not take complaints of online harassment seriously.²⁹⁴

However, the small steps like in 2014, the National women commission has advised the government for the necessary recruitment of the women in the cyber cell and the cyber cell will function under the home ministry both the recommendation has been taken by the government but these changes had barely make any differences in the cases of the online harassment and the cyber prostitution. The exploitation of a girl or women in the online platform has been increasing every day and it is also very evident that these steps are not very helpful. So, there are two important changes which need to be done in this regard are as follows-

(1) The Police Complaints Authority must function more effectively to be able to address complaints of police in action. A Police Complaints Authority needs to be set

²⁹⁴Pasricha, Japleen (2016), op.cit.

up in every state, an agenda that is long pending, despite the decade-old Supreme Court order mandating this.²⁹⁵

(2) Police and Cyber Cell officers who fail to take cognizance of incidents of technology-mediated VAW brought to their notice must be penalized.²⁹⁶

It is also mandatory by the Ministry of Child and Women to make a separate adjudicating body with all the powers of the Judiciary body to specially tackle the technology matters, specially pertaining to the offences against women on internet with special power to take suo-moto action. In India, the intermediaries have been understood in two ways, the first one is the Network, which provides access to the internet and the other one is the 3rd party content provider like Google, who doesn't have the control over the content but only transmit the 3rd party content to the customers. The internet and the role of the intermediaries are changing their perspective every day and the amendment which is more than 9-year-old can't suffice every need of the dynamic society in India. One fit formula for any problem of the society is the main approach of any legislation but here the problem is different because of the everyday technological advancement in the country. The notice and take down approach might suit the other digital issues but the online prostitution issues specially child prostitution doesn't suit the notice and take down approach. There must be removal when uploaded, approach only suits the assigned problem and for this the intermediaries have to be more cautions in his liability and must use better content filter approach. This problem needs a better attention in more positive and abrupt way because of its serious nature. The Facebook or the Google when invented they were acting as the mere content translator but with passing of times, they are now the main caretakers against the government to express the fundamental right of Speech and Expression and many more.

There are the different stages of players on the internet, on the first stage, the big companies like Amazon, Apple, Google, Face book and on the second labels the dating websites like tinder's and some small online grocery or Pay tm and so on.

The law always prefers to approach one problem with a single act but the liability has been changing on the different levels, more customers more liability approach. Like in

²⁹⁵Kashyap, Nitish (2016), Bombay HC frowns at state's delay in setting up police complaint authority, <http://www.livelaw.in/bombay-hc-frownsstates-delay-setting-police-complaint-authority/>

²⁹⁶ Such action needs to be treated as an offence that is equivalent to the failure to report offences listed under Section 166 A of the India Penal Code and Section 19 and 20 of the Protection of Children from Sexual Offences Act (2012).

India 76% of the total youth population is on Facebook. So, the liabilities and duty of Facebook is far more than the different other small websites. However, this approach is difficult to follow in the context of state in India but in present situation. There is no other option to tackle the same problem and in somewhere or other, the ISP has to also understand the concern of state and profit maximization has to compromise on some point.

The online prostitution in India and specially the child prostitution is no doubt the most emerging exploitation in India and most heinous in nature. The most important aspects in this regard is that the government should not interfere under the 4 walls of the house but to make the good moral of the society and well-being of the others this has to be done somehow with good approach. The right and well-being of the vulnerable class of the society is the out most priority of any nation and India is not an exception to this. However, watching pornography in private is not an unlawful offence, except the child pornography. Basically, publishing and transmitting the obscene material in electronic form is punishable offence.²⁹⁷

Child Pornography is an extent where there is a need of special attention and no doubt the government as well as the social media websites has given a special attention to filter the website with these types of content. Google has spoken about how they have been using machine learning algorithms to block 40% of such content and Microsoft is also working on a similar process.²⁹⁸ Some of disbelieve is that the social media companies based on the foreign land is liability of that land only but this is not the reality. The companies should act according to the laws of the land in which it is working.

The recent trend in the media is completely different in the world. The media is divided into traditional media and the new media. The traditional media is still playing the blame game in between the intermediaries but the new media has started changing their content according to the need and substances and making use of the content filter mechanism to filter the illegal content on the social media platform. Taking the example of the rape victims and the sexual harassment victims, there is a special need to be taken care of like in the case of the Katua rape 2018, the High

²⁹⁷Section 67(A) and 67(B) of Information technology act 2000, No-21 of parliament act (India).

²⁹⁸Akriti Bopanna, Intermediary Liability and Gender Based Violence, Report of the roundtable discussions conducted at the Digital Citizen Summit, (Nov 2018), New Delhi, The Centre for Internet and Society, India, <https://cis-india.org/internet-governance/files/intermediary-liability-and-gender-based-violence-report>

Court of Delhi had given notice to both twitter and the Facebook for disclosing the details of the case, which will ultimately hamper the victim in getting justice.

Further and most important question which arises is that what these intermediaries do to prevent the online prostitution and what are his liabilities.

Registration and other obligations of Internet service providers

(1) Every Internet service provider shall

(a) Register with the Board in the manner prescribed by regulations made under this Act;²⁹⁹

(b) Take all reasonable steps to prevent the use of their services for the hosting or distribution of advertisement of prostitution and pornography and precisely the child pornography.

(2) If an Internet service provider has knowledge that its services are being used for the hosting or distribution of illegal content, such Internet service provider shall³⁰⁰

(a) Take all reasonable steps to prevent access to the illegal content by any person;

(b) report the presence thereof, as well as the particulars of the person maintaining or hosting or distributing or in any manner contributing to such Internet address, to a police official; and

(c) Take all reasonable steps to preserve such evidence for purposes of investigation and prosecution by the relevant authorities.³⁰¹

(3) An Internet service provider shall, upon request by the authority shall, furnish the particulars of users who gained or attempted to gain access to an Internet address that contains child pornography.

(4) Any person who fails to comply with the provisions of this section shall be guilty of an offence."³⁰²

The liability of the intermediaries is needed to be monitored very carefully because of the nature of the content and the haste to which the content is circulated among the social media account holders. Uploaded, downloaded and at a mass rate, it is impossible to control the data and filter the illegal content. Another problem with the

²⁹⁹ Alison Adam, "Cyber stalking and Internet Pornography: Gender and the Gaze" (2002) 4:2 Ethics and Information Technology 133; Michael Salter & Thomas Crofts, "Responding to Revenge Porn: Challenges to Online Legal impunity" in Lynn Comella & Shira Tarrant, eds, *New Views on Pornography: Sexuality, Politics, and the Law* (Santa Barbara: Praeger, 2015) 233.

³⁰⁰ Ibid.

³⁰¹ Van der Merwe "Computer crimes against children" SAPS Journal May/June 2005. www.saps.gov.za/docs_publs/publications/journal/mayjun05/computercrimel, (16 May 2019, 4.05 pm.

³⁰² Ibid.

intermediaries is that the content is at the most of the time come with the private files or with some very confidential documents which are very private in nature. Say for example it is not possible for the intermediaries to check every one's emails. It is morally and ethically not corrected as well as it infringes the fundamental rights of the privacy. However, the S.C in Shreya Singhal case has given reasonable steps to be followed by the intermediaries in case of the illegal content.

One more issue is there with the government that is the issue of the Jurisdiction, the internet is a border less concept, so it is very difficult for the government to identify that when the crime has been committed and what will be the proper law which applies on the crime. It is also not possible many a times to say that where and when the crime has been committed. The virtual surface is always used by the criminals. The concept of online brothel is very famous in which the materials are uploaded from any other country and the real girls are provided in some other country and the process became even more confusing when the country in whose the content is uploaded has the policy of legalisation of the prostitution then the matter became very tough for the intermediaries as well as government to identify and punish the offenders. Another question arises in the same context is that if some foreign citizens has uploaded the content in some other foreign servers but maintained in India then who would be liable and whom to be punished and under whose country's laws.

The technologies are very dynamic in nature, they change its dimensions from one to another every day and with changing technology the society is also changing. The 90's kids were fascinated by television but now a days the kids are not gratified with the smartphones. The 10-year boy/girl knows much more about technology then his 40-year father. The role of the state as a government has been increased to a great extent because of the changing moral values; the state has to keep the pace of society in a positive way by changing the laws which specially pertained to the moral laws without interfering in the privacy rights of their citizens.³⁰³ It is very clear now that the crimes such as rapes, outraging the girl's modesty and other types of crimes be committed not only by physical means but also on the virtual world. It was previously understood that these types of crimes which are mentioned above required the physical contact but a boy and girls can be humiliated by anyone in his private chat room and this too is equally dangerous, because it hampers the minds of the child and

³⁰³Rathinasabapathy,G&Rajendran L, Cyber Crimes and Information Frauds: Emerging Challenges For LIS Professionals, Conference on Recent Advances in Science & Technology, 4, 15-17 (2007)

make him anxiety patient and less confident person.³⁰⁴ These things are very common in these cases and the situation even get worse, when the parents doesn't feel the seriousness of the crime because of their generation gap and many a time it has seen in many of the cases that the police authority has also not taken the matter very seriously and make fun of the incident, they also denied to lodged an F.I.R sometimes. Presently in India the intermediaries are not purely liable because they are not considered as the writer of the content but on the other hand, we also can't deny that the content is increasing every day. The contents are increasing with a rapid rate which not only hampered the ethical and moral values of the Indian society but also hampered the generation to come. So, the government has to think about some solid rock stand solution for this problem. The government has to make a balance between the freedom of speech expression, privacy and the illegal content. However, the problem is big and everyone including parents, intermediaries, government and other non-states actors would have to unite and fight with this problem in order to save our next generations.

It is also interesting to note here that, the sex workers had hard hit by the Covid-19 pandemics in India, Sex workers are among the world's most marginalised and downtrodden people, and because of the stigma attached to their line of work, they are forced to live outside the law. The vulnerable group of sex workers is neglected in the COVID-19 reaction, particularly in the COVID-19 vaccine effort, while the entire globe is focused on the derangements brought on by the COVID-19 pandemic. Sex workers all around the world are calling for improved access to COVID-19 vaccines as they are further down the priority list for COVID-19 vaccines.

The ongoing COVID-19 pandemic has brought attention to a number of social and health injustices that the community of sex workers must address. The virus requires physical and personal touch to spread, working puts people at higher risk of catching it. However, it might be challenging to live day to day if a sex worker decides to quit working. The English Collective of Prostitutes claims that moms make up the majority of sex workers. More than 75% of sex workers in Chile are the only source of income, and most of them have at least one dependent.

According to one study, the COVID-19 outbreak in India is predicted to leave 90% of commercial sex workers in red light districts in debt, which they will never be able to

³⁰⁴ Ibid.

pay off. In addition to being at risk of contracting COVID-19, sex workers are also more vulnerable because to their financial situation, the stigma, discrimination, and abuse they encounter in society, as well as a lack of information, services, resources, and support. During this outbreak, the bulk of sex workers operate in person without any personal protective equipment; even wearing a mask is not preferred by their clients. Female sex workers have been unable to negotiate sex terms because they are afraid of losing clients. Instead, they have worked without any personal protective equipment to get money. These worries have made people more likely to hide their illnesses and deter them from seeking care. As a result, an important "epidemiological bridge" is created.

Therefore, it is the responsibility of the government to safeguard and immunise sex workers against COVID-19. Both the government and the broader public will gain from this action. The following measures could be used by governments to immunise sex workers: Add them to the COVID-19 vaccine priority list first. The WHO roadmap for COVID-19 vaccine prioritisation emphasises explicitly the need to include at-risk socio demographic groups like the underprivileged, members of racial and ethnic minorities, those who live in abject poverty, those who are homeless, low-income migrant workers, vulnerable migrants in irregular situations, nomadic populations, and populations that are difficult to reach.

1.6. Conclusion

Online prostitution is the reality of today's world, not a single country denies this fact including India. India is considered as the new democracy that means the population is not so mature and not so open minded in this regard. Other than this we have the social and religious stigma attached to this. However, the major stakeholder in this regard is the government but the role of the other agencies in the society is also major in this regard specially the parents of the teenagers. However, the government is trying to regulate these things at a major part, in this regard the Government of India has also issued many guidelines to the intermediaries the Section like 2(w) and 79 in the IT Act is specially for the role and liabilities of the intermediaries in India. However, these sections need to be a broader aspect and need to be elaborated because with the changing technology this need to be change. If we talk about the international level than the Manila Principles in this regard is the father law for the

intermediaries. However, which countries are following which principle in the liabilities of intermediaries is also very important in this regard. So, we are in the stage of fixing the liabilities of intermediaries and regulating the content and this has to be done quickly and on part of government as well as the judiciary.

CHAPTER-5

JUDICIAL APPROACH TOWARDS ONLINE SEX WORK

5.1 Introduction

"The judiciary is one of the most important sectors that need to be sensitised on gender issues and violations of rights of women due to trafficking. An analysis of the attitudes of judges reveals a protectionist approach rather than a substantive approach in their judgment of criminal cases against trafficking."³⁰⁵

In democratic rule administration of India viz-viz world where it exists, Judiciary assumes a significant job which is best in class. Truth be told, by righteousness of its significant errand of sitting on judgment on the activities of the two different constituents - and getting a charge out of the benefit of deciphering the protected arrangements, the legal executive accept a prime and exceptional significance. The researcher in this chapter wants to discuss the courts verdicts on the online prostitution and how the verdict of court has been changed from the Physical Prostitution to the online prostitution. In this regard, the foreign case has also been taken into consideration while discussing this chapter.

5.2 Online Prostitution, law and Judiciary

The point of making sure about an equitable society is one such point which has been with us some time before, It is also the role of the judiciary to change the society according to the changing societal customs and traditions. As an establishment, the Indian Judiciary has consistently instructed impressive regard from the individuals of this nation. Law set somewhere around the Legislature can't guarantee total equity in all reasons for our general public. Legal authorities with their imaginative vision have tried to top off the clear existing among law and just by method for articulating their

³⁰⁵Combating Human Trafficking in Asia: A Resource Guide to International and Regional Legal Instruments, Political Commitments and Recommended Practices, Economic and Social Commission for Asia and the Pacific, United Nations,P.39, New York, 2003.

new understandings. Incomparable Court in the process set out a few new lawful standards to alive and initiates the arrangement of equity so as to guarantee assurance of human rights and social equity.

One very significant structure of the legal system is represented by the courts. Courts are a body that is in authority to take decisions. Provisions in various laws, which are presently in practice, guide these decisions.

Sex worker have over some undefined time frame gained a negative picture and a mediocre status in the general public. The state of ladies in this calling began disintegrating sifter the approach of British in India. A calling which was once viewed as good at this point procured a disgrace to itself. In spite of the fact that the strategy of British was to condemn the exercises related with sex-work yet in reality it was simply the British officers who were the driving power behind the development of this calling during the British that is all. These two fold principles received by the British as it were brought down the previously intensifying picture and state of ladies engaged with sex-work. When our nation drew closer autonomy, the state of ladies when all is said in done and of ladies in sex-work explicitly had gotten hammered.³⁰⁶ Dealing of ladies from nations, for example, Nepal and Bangladesh only for the reason of sex-work had brought about further disintegration of status of ladies in this calling. The composers of our Constitution were mindful of this situation.

The founding fathers of our constitution were very much aware of the more fragile situation of female sex-workers in the calling just as in the general public; hence, certain arrangements were remembered for the Constitution to improve their parcel. Subsequently, it turns into even more important to allude to the constitutional approach on the issue picked.

The Constitution of India requires positive steps to be taken by policy-makers for the protection of weaker sections of the society.

The Fundamental Rights enshrined in the Constitution also take care of the special position of women. The Directive Principles serve as a guiding star for various social welfare legislations passed in favour of women. They assert that all the citizens have the right to adequate means of livelihood. The philosophy underlying the Directive

³⁰⁶ Cameron, Samuel and Alan Collins, Estimates of a Model of Male Participation in the Market for Female Heterosexual Prostitution Services, *European Journal of Law and Economics*, vol. 16, pp. 271-288, (2003).

Principles of the State Policy is very progressive. It endeavours to prohibit every kind of exploitation of women and children in all walks of life.³⁰⁷

Articles 14, 15(3), 19(1) (g), 21, 23, 39(e), 39(f) and 51(a) is directly or indirectly involved in respect of women, prostitution of matters concerning them. Article 14 which guarantees the fundamental right to equality provides that, the state shall not deny any person equality before law or the equal protection of law within the territory of India.³⁰⁸

Article 15(3) of the constitution empowers the state to make special provisions related to women and children.³⁰⁹

Article 19(1) (g) again laid down on same footing, and very important article of the constitution of India, provides the right to citizens of the country to practise any profession or to carry on any occupation, trade or business.³¹⁰ Article 21 which is most significant article and is strength of the constitution of India says that "No person shall be deprived of his life and personal liberties except according to the procedure established by law".³¹¹

The most important Art- 23 of the constitution of India directly deal with the problem of trafficking of sex workers. Art. 23 Article 23(1) of the Constitution says that, "Traffic in human beings and beggar and other similar forms are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."³¹²

The main thrust of Article 23 is thus, to make trafficking in human beings a punishable offence. Moreover, Article 35 of the Constitution provides that law punishing Acts prohibited by this Article shall only be made by Parliament and extends protection to the existing laws.

Apart from Article 23 there are certain other provisions in the Constitution which though not directly touching the problem of trafficking do provide for women welfare

³⁰⁷ShobhaSixena, *Crime Against women and Protective Laws*, 23, (2001, lsted.)

³⁰⁸Article 14 of the constitution of India, 1950 (India)

"The State shall not deny to any person equality before the law or the equal protection of law within the territory of India."

³⁰⁹ Article 15(3) of the constitution state as follows:

"Nothing in this article shall prevent the state from making any special provisions for women and children".

³¹⁰ Article 19(1)(g) state as follows:

"All citizens shall have the right to practice any profession or to carry on any occupation, trade or business."

³¹¹ Article 21 of the Constitution of India 1950

³¹² Article 23, the Constitution of India, 1950.

and up liftmen. Article 39(e) and (f) in Part IV of the Constitution, touch the problems of women in general. Article 30(e) requires the state to protect the health and strength of its workers and especially children and to ensure that children do not enter into professions which are not suited to their age. Article 39(f) directs the state to protect the children and youth against moral and material abandonment.³¹³

Article 51(a) which contains fundamental duties also contains in its clause (e) which specifically aims at up liftmen of women. Thus, the Constitution of India contains many important provisions meant for betterment and up liftmen of women.³¹⁴

5.3 Judicial Activism regarding Cyber Prostitution Vis-à-vis its Origin and Establishment

Advancement in technology introduced a new role of prostitution in the 21st century worldwide. In the late nineties, form of entertainment known as cyber pornography and cyber prostitution emerged on a great level worldwide and a new form of sexual advancement arose. Cyber pornography is the prohibited or unlawful representation of human body or human sexual behaviour with the goal of sexual stimulation over a new medium called the internet, Such as social networking sites which allows users to create a personal profile for watching pornography, sex chat, and shares it with their friends, it also enhances the chance of sexual exploitation through internet.

Often the term “pornography” is used in context of obscenity. However, it has to be understood that obscenity is broader concept, which includes all those acts that are offensive to modesty or decency.

It has been traced back to 1893 when Justice Mahmood Allahabad High Court delivered a dissenting Judgment.

It was a case of under trial prisoner who could not afford to engage a lawyer, so the question arose that the case can be decided by the court, merely looking his papers,

³¹³ "The State shall in particular direct its policy towards securing: (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by Economic necessity to enter avocations unsuited to their age or strength, (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation against moored and material abandonment..."

³¹⁴ Article 51(a)(e), the Constitution of India, 1950.

"It shall be the duty of every citizen of India to provide harmony and spirit of common brotherhood amongst gill the people of India, transcending religious, linguistic or sectoral diversities, to renounce practices derogatory to the dignity of women."

Justice Mahmood held that the pre-condition of the case being “heard” would be fulfilled only when somebody speaks.

Meaning: -

The word activism means “being active” ‘doing things with decision’ and activist is the ‘one’ who favours intensified activities Justice Krishna Iyer observed ‘every judge is an activist either on the forward gear or on the reverse’.

In India, online pornography has been prohibited indirectly through different sections of Information Technology Act 2000, Like Sec. 66E, 67, 67A, 67B.

Janhit Manch & ors. v. The Union of India³¹⁵ A Public Interest has been filed by the Petitioner by the present petition and he approached to the court in relation of, seeking relief to direct the respondents to make coordinated and sustained efforts, to have a blanket ban on websites which according to Petitioners are displaying material pertaining to sex and which is harmful in their opinion to the youth of the country in their formative years. Mr.Jalan, Petitioner No. 2 appearing in person drew the attention of the court u/s Section 67 and 67A of the Information & Technology Act, 2000. *U/s 67 Punishment for publishing or transmitting obscene material in electronic form.—Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakhs rupees*³¹⁶ and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakhs rupees. Section 67A pertains to publishing or transmitting or causing to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct can be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakhs rupees The Act therefore, makes provision for punishment of a person against whom a complaint is filed, if such person commits the offence which falls within the purview of section 67 or 67A as the case may be. Such person can be tried

³¹⁵ JanhitManch&Ors. v. The Union of India, PIL No. 155 of 2009, Bombay H.C, <https://cis-india.org/internet-governance/janhit-manch-v-union-of-india/view> 28/04/2020, 8:03PM

³¹⁶ Information Technology (amendment) Act 2008(India).

and convicted. For that prosecution will have to establish that an offence has been committed.

In the light of the above circumstances, the court set the petitioner at liberty to the petitioners whenever they come across any websites which according to him publishes or transmits any act which amounts to offence under section 67 or 67A of the Information & Technology Act, 2000³¹⁷, it is up to him to file a complaint. Accordingly, the high court of the Mumbai step forward, curbing the online prostitution, setting at liberty to the petitioner for filing petition/ complaint against the pornography sites.

Ritu Kohli Case³¹⁸

Ritu Kohli's case is the first case in India which is centered on cyber stalking, wherein issues were raised as to what cyber stalking is; why India doesn't have a law regarding it. Recently, the Delhi Police apprehended Manish Kathuria, the culprit of the case. In the said case, Manish was accused of stalking a woman named Ritu Kohli on internet by illegally chatting on the website *www.mirc.com* with the name of Ritu Kohli. He used to frequently interact with her using obnoxious language, and was distributing her on her telephone number. Later on, Ritu started receiving calls from various persons, prompting her to report the matter to Delhi police. The police registered the case under Section 509 of the Indian Penal Code for outraging the modesty of Ritu Kohli. However, section 509 of the Indian Penal Code only refers to words, gestures or acts intended to insult modesty of a woman.

However, the section didn't apply to virtual world Ritu Kohli's case was an alarm to the government, forcing it to amend the section and enlarge the ambit of it. As a result, Section 66A of the Information Technology Act, 2008 (ITAA 2008) states, "Punishment for sending offensive messages through communication service.

Any person who sends, by means of a computer resource or a communication device,

- Any information that is grossly offensive or has menacing character; or
- any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation,

³¹⁷ Punishment for publishing or transmitting obscene material in electronic form and Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

³¹⁸ <http://www.acadpubl.eu/hub/> Special Issue International Journal of Pure and Applied Mathematics Volume 119 No. 17 2018, 1489-1501 ISSN: 1314-3395 (on-line version)

enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device,

- any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient (Baltrusaitis 2017) about the origin of such messages (Inserted vide ITAA 2008) shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation: For the purposes of this section, terms “Electronic mail” and “Electronic Mail Message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

The State of Tamil Nadu vs. Suhash Katti³¹⁹

The case pertained to posting of obscene, defamatory and annoying messages about a divorcee woman in the yahoo message group. E-Mails were also forwarded to the victim for information by the accused through a false e-mail account opened by him in the name of the victim. The posting of the message resulted in annoying phone calls to the lady in the belief that she was soliciting. Based on a complaint made by the victim in February 2004, the Police traced the accused to Mumbai and arrested him within the next few days. The accused was a known family friend of the victim and was reportedly interested in marrying her. She, however, married to another person. This marriage later ended in divorce and the accused started contacting her once again.

On her reluctance to marry him, the accused took up the harassment through the Internet. On 24-3-2004 Charge Sheet was filed u/s 67 of IT Act 2000, 469 and 509 IPC before The Hon’ble Addl. CMM, more by citing 18 witnesses and 34 documents and material objects. The same was taken on file in C.C.NO.4680/2004. On the prosecution side 12 witnesses were examined and entire documents were marked. The Defence argued that the offending mails would have been given either by ex-husband of the complainant or the complainant herself to implicate the accused as accused

³¹⁹[http://www.acadpubl.eu/hub/Special Issue International Journal of Pure and Applied Mathematics](http://www.acadpubl.eu/hub/Special%20Issue%20International%20Journal%20of%20Pure%20and%20Applied%20Mathematics)
Volume 119 No. 17 2018, 1489-1501 ISSN: 1314-3395 (on-line version)

alleged to have turned down the request of the complainant to marry her. Further the Defence counsel argued that some of the documentary evidence was not sustainable under Section 65 B of the Indian Evidence Act.

However, the court based on the expert witness of Naavi and other evidence produced including the witness of the Cyber Cafe owners came to the conclusion that the crime was conclusively proved. The court also held that because of the meticulous investigation carried on by the IO, the origination of the obscene message was traced out and the real culprit was brought before the court of law. In this case Sri S. Kothandaraman, Special Public Prosecutor appointed by the Government conducted the case. (Owen) Honourable Sri. Arulraj, Additional Chief Metropolitan Magistrate, and more, delivered the judgment on 5-11-04 as follows: “The accused is found guilty of offences under section 469, 509 IPC and 67 of IT Act 2000 and the accused is convicted and is sentenced for the offence to undergo RI for 2 years under 469 IPC and to pay fine of Rs.500/-and for the offence u/s 509 IPC sentenced to undergo 1 year Simple imprisonment and to pay fine of Rs.500/- and for the offence u/s 67 of IT Act 2000 to undergo RI for 2 years and to pay fine of Rs.4000/- All sentences to run concurrently.” The accused paid fine amount and he was lodged at Central Prison, Chennai. This is considered the first case wherein the accused got convicted under section 67 of Information Technology Act 2000 in India.

Avnish Bajaj vs. State³²⁰

The case pertains to an IIT Kharagpur student named Ravi Raj, who secured placement in baazee.com – a listing company engaged in offering obscene MMS video clips for sale with the username alice-elec. Despite the fact that baazee.com had a filter for posting of objectionable content, the listing, nevertheless, took place with the description, “Item 27877408 – DPS Girls having fun!!! Full video + Baazee points.” The item was listed online around 8.30 pm in the evening of November 27th 2004 and was deactivated, around 10 am on 29th November 2004.

The Crime Branch of Delhi police took cognisance of the matter and registered a FIR. Upon investigation, a charge sheet was filed showing Ravi Raj, Avnish Bajaj, the owner of the website, and SharatDigumarti, the person responsible for handling the

³²⁰(2005) 3 CompLJ 364 Del

content, as accused. Since, Ravi Raj absconded; the petition was filed by Avnish Bajaj, seeking the quashing of the criminal proceedings.

Contentions-

Petitioner

- Since the MMS was transferred directly between the seller and buyer without the intervention of the website, they can at most be responsible for the listing placed on the website which by itself was not obscene and did not attract the offence under Section 292/294 IPC or Section 67 of the Information Technology (IT) Act.
- Due diligence was taken by the website to immediately remove the video clip once it was brought to its knowledge that it was objectionable.
- The scope of Section 67 of the IT Act is only restricted to publication of obscene material and does not cover transmission of such material.

State

- Offence under Section 292 of Indian Penal Code (IPC) includes not only overt acts but illegal omissions within the meaning of Sections 32, 35 and 36 IPC.
- The failure to have adequate filter in a system which is entirely automated entails serious consequences and a website cannot escape such legal consequences.

The fact that payment was made to the seller even as on 27th December 2004 shows that no attempt was made to prevent or stop the commission of the illegality by the website.

HELD

The court observed that a prima facie case for the offence under Section 292 (2) (a) and 292 (2) (d) IPC is made out against the website both in respect of the listing and the video clip respectively. The court observed that “by not having appropriate filters that could have detected the words in the listing or the pornographic content of what was being offered for sale, the website ran a risk of having imputed to it the knowledge that such an object was in fact obscene”, and thus it held that as per the strict liability imposed by Section 292, knowledge of the listing can be imputed to the company.

However, as far as Avnish Bajaj was concerned, the court held that since the Indian Penal Code didn't recognise the concept of an automatic criminal liability attaching to the director where the company is an accused, the petitioner can be discharged under Sections 292 and 294 of IPC, but not the other accused.

As a regard to S. 67, read with Section 85 of the IT Act, the Court however, observed that a prima facie case was made out against the petitioner Avnish Bajaj, since the law recognizes the deemed criminal liability of the directors even where the company is not arraigned as an accused. The judgment, however, did not declare Avnish Bajaj guilty.

Prostitution is morally insupportable as it treats girls merely as a way to guys' physical delight.

Today, it has taken the face of violence due to commercialization and has emerged as a difficulty of human rights. Sexual interest is the mode to meet the sexual urge of a man or woman which is essential in preserving the intellectual fitness of dwelling being that's both organic and psychological in nature. It has also been proved that unfulfilled sexual urges ought to cause a spate of crimes.

As far as the court is concerned, the Supreme Court has vast power of making the law. It is also pertinent to include that the court can give directions of making the law against the prohibition of online prostitution. As article 141 of the constitution gives the power to the Supreme Court, that the law declared by the Supreme Court be binding to all courts of India.

Similarly, in the case of Vishal Jeet vs. Union of India³²¹, the Supreme Court while taking this issue is very disappointed about the regular exploitation of the young women and children for the prostitution despite the stringent provisions and rehabilitation schemes the desired results has been not achieved till now. The Supreme Court ordered for an objective "multi-dimensional study and a searching investigation into the matter relating to the causes and effects of these evil and requiring most rational measures to weed out the vices of illicit trafficking".

The observation of the Supreme Court in this regard is very important and unique. The S.C had observed that this is not only a socio but also socio-economic problem now because the prostitution in India has already established them as a fully-fledged business. The S.C had also observed that the measure in this regard due to socio-economic problem should be taken as more preventive than punitive. The S.C has given a very clear direction to the government in this case by stating that on one hand the government has a duty to punish the pimps, brothel homes owners and other associates and on the other hand the government has also duty to take measures,

³²¹1990 AIR 1412, 1990 SCR (2) 861

medical facilities and rehabilitation schemes to the children's and to the women specially. The government has to make a survey to the brothel homes at a regular interval and must take care about the new joiners.

The S.C had also given direction to every state to make an advisory body to every state and to the central for making programmes against the trafficking. The S.C in this case had also drawn attention to the laws available for combating this problem and well mentioned that the government has to give directions to their enforcement agencies to work best and fast in the prescribed provisions and a specially network need to be developed under the agency for this issue.

The S.C had also given a structure of the Advisory board with the member of child commission, welfare board, secretary of law department, sociologists, criminologist, members of women welfare boards, members of various social voluntary services and such other members as the government deem fit. However, still this need to be achieved by all of the states in India. The main objective of the advisory committee is to make advice to the state governments for the welfare measures and for the rehabilitation measures and the child prostitution needs to be special taken care of. In this direction every state government should make a special force who only administers the working of trafficking and prostitution. 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.”

The S.C in this regard had also directed the central government to develop its own machinery for the proper implementations of the suggestion made by these committees. This case is basically a landmark judgement in this regard but due to bad enforcement policies in India this couldn't be implemented at all and the situations remain the same.

In **Madhu Kishwar v. State of Bihar**³²², this case is very renowned and can be remembered for the classic judgment of the Supreme Court in which the SC had said that the provisions of the CEDAW, 1979³²³ will be regarded in the basics of the fundamental rights and the Directive Principles of the state policy in every member country of CEDAW and India is the founding member of CEDAW. CEDAW is basically a multi-lateral agreement which works for the gender-based discriminations and for the empowerment of the women in the field of social, economic and cultural.

³²²(1996) 5 SCC 125

³²³Convention on the Elimination of All Forms of Discrimination against Women.

Basically, Article-3, 14 and 15 of CEDAW read with section 12 of Human Right act gives the powers to the human right council to ensure the proper care and take all the precaution for the smooth function and non-discrimination act. The act further prevents the violations of fundamental freedom and human rights.

In Gaurav Jain v. Union of India³²⁴, this case is the eye-opener in the case of the prostitution in India. The SC had given various directions and guidelines to the government, before this the SC had never interpreted the matter of prostitution and trafficking in such detail. This case basically concentrates on the rehabilitation schemes of the child of the prostitutes and given a guideline to the central government to invoke a committee and do a thorough research in this regard and suffice the issue with urgent need.

The SC in this case also discourages the prostitution as a profession and said that it can be claims as modern-day slavery and not as a full-fledged profession. In the country like India more than 90% women and girls adopted this profession because of poverty, humiliation, rape and by other means. The SC had also given the interpretation of Article-21 and said that it is available to each and every one and child of prostitutes or prostitutes itself is not an exception to this.

The SC has recommended to set-up an all new committee only for the purpose of the prostitution in every state to make the policy for their rehabilitations, study, retirement schemes, shelter schemes and many more. The SC basically ordered the Central government to form the National plan of action and add them in the states mission and budget.

A permanent body of secretariat is formed to review the present-day scenario and proposed the best rehabilitation schemes from time to time and a different scheme for them who want to come in the main society. The SC had basically focused on bringing the children of the prostitutes in the mainstream of the society.

In **Prerna v. State of Maharashtra**³²⁵ the division bench of Bombay High Court has given a direction or guideline while applying the role of the magistrate for the trafficking juvenile victims-

1. No magistrate can exercise his jurisdiction until and unless it is determined by that magistrate that the child is a juvenile or not. If she is a juvenile than it must be returned to the juvenile board or if such child needs special care and protection than to

³²⁴(1997) 8 SCC

³²⁵2003 (2) Mah.L. J. 105.

the child welfare and care board of the state. So, the magistrate must ensure the age before determining the child's jurisdiction.

2. Any juvenile rescued from the brothel homes under the Immoral trafficking prevention act can be only released after the inquiry has been completed by the probationary officers.
3. The said juvenile can be released to the prescribed Guardian only and after the inquiry of the child welfare committee that the found guardian/parents are fit for the child.
4. If the Parents/Guardians are not fit for the care of the child then the process under the Juvenile Justice (Care and Protection of Children) Act, 2000 for the care of children should follow.
5. No Private advocate should appear in this regard before the child welfare committee, only the parents or Guardians of such juvenile or the prescribed advocate by the states for such purpose can be appeared.
6. An Advocate appeared for the pimps or the sex workers can be barred from appearing for the juvenile or victims under the ITPA act.

The above observation is very important and meaningful for the smooth functioning of the Magistrate in the case of rescue of Juvenile.

Similarly, in the case of *Munni vs. State of Maharashtra*³²⁶ the abuse or kidnapping of a child for the work of prostitution is an old age phenomenon in India and this must be tackled by the Central and State government with outmost priority and precaution. Poverty, illiteracy and helplessness of the parents are the most important issue behind the prostitution. The government must play its minimum role at least and give at least basic education to these children so at least they realised that what is good and bad for them in the preliminary stage. Protecting these children from the real danger is necessary. It is like reducing any kind of vulnerability to the children. The S.C had further enhanced that the government must ensure that no child falls out of the social security and safety net and those who do, receive necessary care and protection to be brought back into the safety net by child-friendly measures.

Further the judgment in this case has enhanced on the working of juvenile board and child welfare committee. The court had said that the working and the liabilities of the child welfare committee must be increased, and the government should give extra power on these bodies and the working of these bodies must ensure that every child is

³²⁶CWP No. 227/2011

special and need extra care and attention. So basically, the working of these committees will be on the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs, protection and restoration to their family.

In the case of **Kamlesh Vaswani vs union of India**³²⁷ the PIL is filed by the Indore based advocate against the sexual content on the internet and against the pornography. The section 66,67,69,72,75,79,80 and 85 are argued to declare unconstitutional as they are failed to restrict the pornography on the internet. The petitioner also demanded to declare watching of porn as a non- bailable crime and draft a national plan and a task force to tackle the distribution and watching of the porn.

The petitioner had also argued to enlarge the role of the intermediaries as they are failed to filter the pornographic content. The S.C in this case has ordered the ministry to restrict the pornographic content which have child content or Rape content or any other content which harm the sexual or natural rights of the women. Interestingly 857 pornographic sites have been removed by the government of India. The S.C had in this regard said that whatever citizens do in their four walls is not the look out of the authority but the more harmful porn like child pornography need to be restricted and the intermediaries has self-proclaimed duty to proactively monitor content as like everything should not be explained in this dynamic world of technology, where technology changes on a daily basis and every intermediaries has to use this content in order to claim the harbour right under section-79 of the IT act.

The right to be forgotten means the right of any person to erase from the internet. This is basically a civil right enlarged its scope from the Right to Privacy. The right to be forgotten gives the right to demand from the intermediaries to delete the personal content vis a vis personal information from the internet. This right has been emerged in E.U and Germany in the year 2006 and followed till then. India has not accepted this law officially till now, however the draft of Protection of Data Bill 2018, cover this act but it is still a bill and has not able to pass from the parliament.

In GeetaKancha Tamang vs State of Maharashtra³²⁸ The S.C while considering the fact that the traffickers should be released on Mercy ground that have been served the imprisonment of 14 months is that the Article-23 of the constitution says that the trafficking is prohibited and heinous in nature and the fundamental right of every

³²⁷[W.P.(C) No. 177/2013]

³²⁸CA No. 858 of 2009.

citizen that they will not be trafficked by anyone. Such act constitutes the highest violence of human Rights against the children in India.

Despite the specific provision under Section 18 of the ITP Act, the learned APP states upon instructions, that the prosecution has not taken any steps for closure of the brothel or for eviction of the offenders from the brothel premises. In fact, the Applicant's Advocate also stated to Court that the brothel has not been sealed, as required under Section 18 of the ITP Act. The same offence, albeit for violations upon other persons, including children, is liable to be committed if the Applicant is released, since she is the owner of the brothel which has not even been closed/sealed."

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

In Prajwala v. UOI, W.P(c) No. 56 of 2004, the Supreme Court in its order recorded the submission of Ministry of Women and Child Development, that the centre has to form a committee to address all the existing laws and loopholes in it and draft a comprehensive bill which must cover all the aspects of trafficking wholly.

At present time the laws in hand which address the trafficking of persons were:

1. 370-370A, 371, 372-373 of IPC, 1860
2. The Immoral Trafficking Prevention Act, 1956
3. The Juvenile Justice (Care and Protection of Children) Act, 2015
4. The Bonded Labour system (Abolition) Act, The Contract Labour (Abolition and Regulation) Act, 1970; etc.

The new bill which came into effect has much of those contents which already exist in our legislation, like Explanation 1 to Section 370 states what Exploitation means and covers all the aspects of the same and also section 370 of IPC prohibits all forms of exploitation for trafficking. Instead of covering the loopholes of other laws it defines a so-called new form of

Offence named as aggravated forms of trafficking which is defined as trafficking for the purpose of bonded labourers, begging and marriage or bearing a child, while under the head

Of aggravated form of trafficking it does not cover trafficking for purpose of sexual exploitation, slavery and practices identical to these ones. And the punishment for aggravated

Forms trafficking is proposed for 10 years which is similar to what is given under section 370

Of IPC when trafficking results in pregnancy or with HIV and also, the offence of committing trafficking by administering alcohol or drugs or by administering hormones is similar to the offence being punished under Section 328 of IPC which says “ whoever administers to causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years.”

This bill has a number of vague provisions which are confusing also as to their applicability as it establishes a parallel framework, furthermore it authorises the closure of places used for trafficking, and for owner of such places it creates a presumption of guilt without providing any safeguard to them, while the same is being provided with safeguards for such owners under different laws. It also criminalises all that electronic information which may lead to an offence of trafficking.

One of the major drawbacks of anti-trafficking organizations is associated with the problems of victims, such that they must not be treated as criminals or prosecuted for those acts done in furtherance of coercion or threat, but the bill fails on this part also as it has no such provisions regarding protection of victims or for distinction of victims and accused of those trafficking. And it only provides immunity to victims when they are prosecuted for an offence punishable with 10 years or more, they are also such victims who are charged for petty offences and those are unable to match themselves with this threshold and lack immunity and thus the purpose of the act gets defeated. It also punishes those who distributes or publishes materials which may lead to trafficking, like electronic publication or solicitation, taking or distribution of obscene photographs or videos and solicitation of tourists.

5.5 Trafficking of Girls and Women for sexual abuse

The 21st c is the world of trade in Misery; the trafficking industry is more than 8 billion each year. The trafficking business is one of the most organised business of the globe, it is not only organised the trafficking and prostitution business but also it organised the arm and terrorist industry. The funds and almost every profits of

prostitution in this globe have been referred to drugs and arms business in this world. The countries like Mexico, Cuba and some of the African countries are playing important role in this regard and in these countries the government is also making profits through non-state actors and in few cases the country is run by these non-state's actors also.

Today almost every criminal organisation in this world has invested their money in this trafficking business and they are actively involved in the trafficking and prostitution. The organisation involved in these crimes are increasing every day because of the profit margin and the nature of work is very profitable and of low risk. The increase in demand and supply had emerged as the main reason for the increase of the prostitution and trafficking business. In India the one and only one reason for the increase in the prostitution business is the low rate of prosecution or the low risk of prosecution. The judicial system in India is relatively very time taking in India and of course the enforcement mechanism is also relatively very lethargic and not very much technological driven in this regard.

The next important factor for the increase in the prostitution in India is the law or provisos which have many loopholes and they are not very much enforceable. Like in ITPA act which is the main act for the prostitution matter does not talk about the punishment to clients or it doesn't have a proper definition that talks about who is prostitution. So, in that case it is very difficult for the enforcement agencies to decide and corroborate.

The internet has made the work easier and well planned and helpful in connecting every business with each other. Now, the women sitting in New-York can be easily trafficked for the person sitting in New Delhi and the old process of dumping is also followed in this business. The girls of Bangladesh and Nepal dumped into India and the Indian girls are dumped into Arabian countries and from Arabian countries to European countries. So, the chain is continuing as it was continuing in the dumping process. Many of the girls are from the Bangladesh and Nepal in the Brothels of Kolkata and Mumbai. They have been trafficked by the agents in the search of good jobs in India and same process goes with the agents of Arabian countries and European countries to India. The agents are basically trafficked for the good jobs, modelling and many more. However, the trafficking of girl child is more but the trafficking of Boy is also increasing in India.

The trafficking is all about the recruitment and misappropriation of a person. The trafficking is also modernised and well planned now a days. It requires a process of identification, selection and transportation. A whole network will work towards this process. Now a today's including in India, the trafficking business is all run by the mafia's and the person who is involving in helping the mafia's people will get the payment in cash instantly and rest of the person who all are part of the racket gets the share of percentage on the basis of profit.

Basically, the first is the identification of a girl (whose family are poor and needy) then they trick their parents and guardian to send her with them or in a big city like Mumbai and Delhi to make more money. Then it transported to the cross border most of time outside the country and hand over to the brothel mangers. So, basically the brothel manager is the persons who make the most of the profits from the girl.

The United Nations development fund for women maintains that every year seven million women and children are trafficked across the globe. The UN Development Programme, (1999) estimated that about 50,000 women and girls were trafficked annually for sexual exploitation to Western Europe alone. Though there is no concrete data on earnings from the sex industry, there are country reports that reveal significant profits. An analysis of the Thai economy shows that the earnings from trafficking Thai women to Japan, Germany and Taiwan are close to \$3 billion. In the United States of America, available data suggest that the traffickers earn about \$ 60 million per year from trading in women and children.³²⁹

According to the central intelligence agency in Japan the organised mafia called Yazuka controlled the trafficking business in whole Japan. The local vendors only target the women and inform to the members of the syndicate.³³⁰

The International organisation of Margi nation has also reported that the Russian Mafias controlled the half of the European trafficking business such as in Poland and Germany. One major Russian crime syndicate, Mogilevich, owns nightclubs in Prague, Riga and Kiev and are engaged in trafficking women and children and force them into prostitution in these clubs.³³¹ Russian traffickers, according to one report, have gone so far as to set up career booths in institutes and universities that promise

³²⁹Dr. Barindra N. Chattora, Sex related offences and their prevention and control measure: an Indian perspective, 133rd visiting expert paper resource material series no. 72, https://www.unafei.or.jp/publications/pdf/RS_No72/No72_13VE_Chattoraj.pdf

³³⁰Gertler, Paul, Manisha Shah and Stefano M. Bertozzi "Risky Business: The Market for Unprotected Commercial Sex." *Journal of Political Economy* 113(3): 518-550, (2005).

³³¹ Ibid.

work abroad. Traffickers also provide women with the necessary counterfeit travel documents.³³²

The United Nations development fund for women maintains that every year seven million women and children are trafficked across the globe. The UN Development Programme, (1999) estimated that about 50,000 women and girls were trafficked annually for sexual exploitation to Western Europe alone.³³³ The increase in the Sex tourism in the countries like the Malaysia, Singapore, and in some part of India like Goa had played a major role in the increase of the trafficking and prostitution in the entire globe.

The prostitution is all about entertainment in now a day, the public go to massage parlour to relax them or to the strip clubs to relax themselves. The prostitution has changed its aspects and now the latest is the online prostitution.

5.6 Human Trafficking in Prostitution and the legal rights available to the Sex workers

India is the largest democracy in the world and with the largest democracy it doesn't allow the exploitation of its citizens in any form in his constitution.³³⁴ It has enshrined in the form of Fundamental right in the constitution of India. India was one of the earliest parties to the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others of 1949.³³⁵ India has not only adopted this treaty but also made implemented in their domestic laws in the year 1956³³⁶ and subsequently amended in the year 1986.³³⁷

Human Trafficking in India is vast issue and it is generally done in India for sexual or bonded/forced labour exploitation. Human trafficking is a vicious circle, the men or women of Bangladesh and Nepal exploited and bring to India and the Indians go to the Arab countries and Arab National into European countries. In India humans are trafficked for the purpose of sexual slavery, commercial sexual exploitation, extraction of organs or tissues, forced marriage, forced labour or domestic

³³² Ibid.

³³³ Ibid.

³³⁴ Article-23 of the Indian constitution, 1950 (India)

³³⁵ India acceded to the Trafficking Convention on January 9, 1953.

³³⁶ Suppression of Immoral Traffic in Women and Girls Act, 1956, No-104, Acts of parliament, 1956, (India)

³³⁷ Immoral Traffic (Prevention) Act,1986 (amendment), No-104, Acts of Parliament, 1956, (India)

servitude.³³⁸ Human trafficking after drugs and the arms trade is the third largest organized crime across the world. Human trafficking across the world is mainly done for sexual exploitation where women and children turn as victims to it.³³⁹ The ITPA³⁴⁰ act is only taking care about the human trafficking and prostitution but if the purpose of human trafficking is different than we have to look into IPC³⁴¹ and other related laws. In spite of these laws, thousands of these girls are trafficked and forced in the work which they don't want to do in their entire life. Most famously these works include the Sex worker, domestic helps, and child labour in factories. Most of the victims are in the age of 14 to 18 and they are basically from the marginalised sections of the society including sociological deprivation and economical depravation. They are basically from the secluded area and from the lower class of the society other victims in India are trafficked mostly from Nepal and Bangladesh.³⁴² The extensive growth of the women and girls in the brothels in India has also questioned the legislature and executive body of the state and its commitment towards the international laws in India. Human trafficking is one of the most serious problems in today's modern India. Men, women and specially children are trafficked for various reasons in India and especially for the prostitution. Many boys and girls are trafficked in India for commercial sexual exploitations and forced marriage especially in Haryana, Bihar and Rajasthan.³⁴³

The trafficking is also for the purpose of household work especially in Delhi and Mumbai.³⁴⁴ A significant portion of children are subjected to forced labour as factory workers, domestic servants, beggars, and agriculture workers, and have been used as armed combatants by some terrorist and insurgent groups also.³⁴⁵ India is also a destination for women and girls from Nepal and Bangladesh trafficked for the purpose of commercial sexual exploitation. Nepali children are also trafficked to India for

³³⁸ Supra-13

³³⁹ Michael Shively, Kristina Kliorys, Kristin Wheeler, Dana Hunt, A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, US department of Justice, Cambridge publication, 15, June 2012.

³⁴⁰ Immoral Traffic (Prevention) Act, 1956 (amendment), No-104, Acts of Parliament, 1956, (India)

³⁴¹ The Indian Penal Code act 1862, No- 45, Acts of Parliament, 1862, (India)

³⁴² CRS Report 98-649 C, Trafficking in Women and Children: The U.S. and International Response, 5, by Francis T. Miko and Grace Park (updated March 18, 20012), available at <http://fpc.state.gov/documents/organization/9107.pdf> [hereinafter CRS Report on Trafficking]

³⁴³ Submission to the HRC on the Situation of Child, Early, and Forced Marriages in India, KHUSHI-INDIA,

<https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/KHUSHIIndia.pdf>

³⁴⁴ Ibid.

³⁴⁵ Ibid.

forced labour in circus shows. Indian women are trafficked to the Middle East for commercial sexual exploitation. Indian migrants who migrate willingly every year to the Middle East and Europe for work as domestic servants and low-skilled labourers may also end up their life as part of the human trafficking industry. Basically, the persons who want to go to the middle -east and different European countries in search of good job and good life end with the fraudulent recruitment process by the agencies. These people generally struct down by the debt-bondage of recruitment fees, unlawful withholding of passports which generally leads into physical and sexual abuse.³⁴⁶

The most importantly the Indian judiciary has played a very weary role in this regard, it has always saved the higher class of the society and always punishes the sex workers and pimps only but the customers are never punished or call into action in any of the cases which are related to the Prostitution. It is not wrong to say in this regard is that the insensitive approach of the Supreme Court had make a growth of girls and women in the brothel houses.

The first and last thing in this regard is we all know is that the all the 3 pillars has to work together in order to dismantle this inhuman problem in the society. The most drastic change in trafficking as according to my study in this regard is that now the trafficking is most organised in India as it was never this organised. The mafias have been entered into this profession. It has been divided into units and every unit will perform their work. The person who noticed every day function of the girl will pass the routine to the person who abduct that child then the person who abduct will pass to some other group of people and they will pass to the pimps and pimps will pass finally to the brothel managers of Mumbai, Kolkata, New Delhi. So, its s an ongoing process and it will work as a chain like making members in some organisations. This system not only protects from the enforcement agencies but also helps in not identifying from the victim. According to my study the most important work of this system is to spread the money from prostitution in the market very easily and into some other business and also most important through this system it is also difficult for the agencies to trace the revenue earned from the prostitution.³⁴⁷

³⁴⁶ Brian Robert Brehman, factors influencing attitudes towards prostitution, university of nevada publication, unlv thesis, 210, 5, 2010.

³⁴⁷ Anne Gallagher, Contemporary Forms of Female Slavery, in 2ndwomens international Human Rights: A reference guide, 487, 500 (Kelly D. Askin&Dorean M. Koenig eds.) (2000) [hereinafter Contemporary Slavery].

The lives of the trafficked girls are all depended on the brothel owner and in the way that sometime they can't even refuse to have sexual intercourse with those men who are seriously ill by communicable disease. This result into STDs like Aid's/HIV's and it is very communally practice in the brothels of India that the sex workers are kept without adequate food and medical facility.³⁴⁸ Many of the Indian brothels have given a single meal a day and for the second meal they have to rely on the tips from the customers. Every day they have to satisfy at least 20-25 customers a day and their work hours is also not fixed mostly from the 8 am to 2 pm which is very common in metropolitan cities and during the festivals or weekend the customers would come at any time. The exploitation from the abuse of the customer is very common in the brothels and they can't do anything about it.³⁴⁹

This can be rightly characterised as the modern-day slavery; the lives of these women are purely depending on the owner of the brothels. The brothel owners control the life and fate of the women in the brothel. These acts directly violated the provisions of the constitution in India as well as the provisions of UDHR.³⁵⁰ Literally thousands of these women and girls are trapped, sold, coerced in to the situation which ultimately leads to the prostitution and these girls are basically from the developing countries like India and in India basically from the Bangladesh and Nepal. Most of these girls are never escaped from prostitution in their entire life and hence victims of contemporary form of slavery.

According to my study of case laws from SITA to ITPA act, the approach of the SC is discriminatory in nature starting from 1960's with regard to the sex workers in India. The SC had always shown as over protective to all the class in the prostitution business other than the victims. The Indian Judicial activism is very famous in the world but India has not received any guidelines in the regard of clients or pimps or any other persons included in prostitution. In my view the most punishable person is the clients but regarding the clients in the prostitution India doesn't have a single provision which deals with the client in this business.

This has come at a heavy cost to the victims and marginalised the chance of getting justice to them. These girls are most discriminated in the form of socio and legal

³⁴⁸ Ibid.

³⁴⁹ Human rights watch/Asia, Rape for profit: trafficking of a Nepalis girls and women in India's brothel, 1 (2005), Re-Print, available at <http://hrw.org/reports/pdfs/c/crd/india957.pdf> [hereinafter TRAFFICKING OF NEPALI GIRLS].

³⁵⁰ Universal Declaration of Human Rights, art. 4, Free from slavery and servitude, GA. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc.A/810 (Dec. 12, 1948) [hereinafter UDHR].

structure. However, the most important aspect is the weak executive body or the less trained executive body or the most importantly the corrupt executive of enforcement agencies. Still, I believe that the role of the judiciary is very much important in this regard and judiciary should take a step forward in this regard and do all aspects to get justice to these marginalised sections of the society.

It should protect the various rights of the trafficked women and girls, such as freedom of movement, the right to life, the right not to be deported, the right not to be discriminated against or stigmatized, and the right to essential services. The Supreme Court can effectively direct by constitutional norms and by the recommending changes if its feel that the present laws are not adequate. The poorest of the poor and the weakest of the week should get the justice; this should be the approach of any court. The Indian courts have lack in the seriousness of getting justice to these marginalised sections of the society and this is not only morally incorrect but also legally unsustainable.

5.7 The Real face of Prostitution: The only women in India who owes her body

The issue of prostitution in India is basically the socio-legal framework of the society which considers the body of a woman as a property of her husband. The body of a prostitute have no owner and can be used for the purpose to earn money. The women basically used a source of Income. The prostitute is the perfect opposite to the ideal house wife in India. The India society had changed drastically from Manu to Macaulay but the situation for prostitute and physiological aspect to see her as a beast of society has not changed since ages. There are many Sanskrit words such as pumscali (a woman who moves around among men), varavanti (a woman for many) and sadharni (public woman) has been denoted to them. There are many so-called intellectuals in the Indian society from ages have defined them as the only bad elements of the society. For Gautama, even the murder of a prostitute is no crime.³⁵¹ Manu believed all prostitutes to be thieves and swindlers.³⁵² According to my study

³⁵¹ Gautama Dharmasūtra, in *The Dharmasutras: The Law Codes of Ancient India* xxII.2 (Patrick Olivelle ed., 1999). For the original Sanskrit, see Gautama, *Gautama Dharma Sūtram*, (Veda Mitra ed., 1969).

³⁵² Manu, *The Ordinances of Manu*, V.148 (Arthur Coke Burnell & Edward W. Hopkins trans., 1971). (Wherever, Manu has been quoted this translation has been used. For the original Sanskrit passages,

and observation they are many among one most important element in the society which is necessary to keep peace in the society.

It is worth exploring that the approach of the modern society has changed towards these prostitutes or not. So, in order to answer this question, the situation has been changed but very little bit. Now, due to the repeated S.C judgments the prostitutes are now seen as the victim not the wrong doer but again the percentage of punishment of the prostitute is very high then some other person related in the prostitution business like pimps and brothel owners. However, the prostitution as a profession is not punishable if it is carried outside the area of 200 yard from public place and with the consent of both the parties and both the parties should be major and until and unless the prostitute should perform some seductive behaviour in the public place provided in ITPA act.

It is hard but true that the prostitution is directly related with the exploitation, often the prostitution is influenced by force, cheating, blackmail, and by other force and now the latest trend is by way of fake love. However, there are laws to protect the women and their children from these effects but it is very difficult to say that if any woman uses her body to earn more money or earn money out of the poverty then how she became immoral and exactly from what time she became immoral to the society. The physiology towards the prostitutes has to be change in the society and the only way according to my study is the literacy.

Despite the denial of the civil society and stringent laws in India, the Prostitution is a harsh reality of every urban area and also few Un-urban areas. People know where the Red-light area is and how to operate that Red-light area. The social and original reality is bit different in India. The law enforcement agency as well as the other governmental bodies who have the responsibility in this regard knows very well about the prostitution in society but they rather choose to keep their mouth shut and see this as an opportunity to make money out of the exploitation of prostitutes. This is hard to believe but this is true that every brothel home gave a fixed share of its monthly income in their local police station to support them in their business and keep their eyes closed on the exploitation of the girls.

Basically, according to my study today's Prostitution has been divided into two forms first the will of the women who wants to work or not (freedom of her body) second,

see Manu, Manusmṛiti with the commentary Manubhāṣya of ĀcāryaMedhātithi, (GanganathJha ed., 1998).(pg no.259-260)

the exploitation in the hands of brothel owner. In India, the first type of prostitution has not been emerged till now. It exists but in a very nutshell, only in the high society. So, most of the prostitution business is still depends on the exploitation of the women and on the will of the men. Men always use its sociological and economy power to get the body of the female in the Indian society and again it is with the prostitution in India.

The first part of my study, that the women not only enter this profession because of the exploitation but also because of the money attached to it. One think is very clear in this regard is that the prostitution business can give lots of money in an hour which other business can't pay. However, the Indian society is not very much full of the examples of that type of women who choose this profession independently but still if we study the autobiography of sex workers like Manoda Debi of early twentieth century Bengal, Nalini Jameela of late twentieth century Kerala, and Sapna Gayan of present-day Sonagachi in Kolkata.³⁵³ These three women come from different times have chosen this profession for different reasons but unanimously their right of recognition is the same.

Thus, Manoda Debi writes in her autobiography *Shikshita Patitar Atmacharita* (1929): *"If we have to sell our beauty and youth, then why secretly like thieves...we will enter the market directly, bargain for the right price and sell it at a suitable price."*³⁵⁴

She says that there is no wrong in selling the beauty because everyone sells his intellect and beauty is just an intellect. She has an education and she can easily live a normal life but she chooses this profession only because of quick and lots of money.

Similarly, Gayan, in the Sex Workers' Freedom Festival, Kolkata (2012), said:

*"I chose this work. It's like any other job, but still I have no rights because society judges me and prevents me from having recognition."*³⁵⁵

So, she has also talk about the legal and social recognition like other normal work in the society.

Manoda further writes:

"I had to learn the art of getting to assess people side by side with being fake. Who has come with the aim of stealing, who was infected with ugly diseases, who was a

³⁵³Manoda Debi, *The Auto biography of an Educated Prostitute* (2011); Nalini Jameela, *Autobiography of a Sex Worker* (2007).

³⁵⁴See Supra note pg no-47.

³⁵⁵Re-presenting the 'Fallen': The Unconventional Life Stories of Manoda Debi and Jameela, *LV* (1-2) *J. Asiatic Soc.* 70 (2013).

wicked man, who was a simpleminded good man, all we have to understand by looking at their faces, at times I had fallen into dangers also? There are groups of people who go to the houses of prostitutes for dacoity. Sometimes they even murder prostitutes. A fallen woman has to trade in this way with her life in her hands."³⁵⁶

Gayan also points out that police have repeatedly arrested her, and clients have hit her when she asked them to wear a condom. Sex workers have no freedom to protest the abuses they faced.³⁵⁷

Whether it is Gayan and Mandona or someone else or whether they have entered this profession by themselves or by their reasons one thing which is common to all of them is the exploitation. The fate of these girls is in the hands of their customers and in the hands of their brothel owners. Therefore, now is the time to question the stereotyping of the society and we have to understand that any one will be there in the place of those sex workers, as because we born in the good family with no economic issue doesn't give the right to exploit the prostitutes or make a fun of them.

However, the biggest question is still approaching the Indian Society, the question of rights- right to profession, dignity, equality and more. The mind-set of the citizens has to be changed in this regard and this can be only done by the acceptance of these women in the society and this acceptance can be only done by education and by knowing more about them. Now, the sex worker is a taboo for India. Everybody wants to know less about them. However, everybody wants to use them but nobody wants to talk about them in the society.

It is not wrong to say that the change can be only come with the recognition to them in the society. The government have to include them in every house scheme, pension scheme, food scheme, the government and their agency must see that they have voted and used their all rights as a normal citizen. It is true to say in this regard that the change will not come in one day but the joint effort of citizens, government, judiciary, NGO's and other important members, the change will come and the sex workers will be considered as a normal citizen one day. The one thing which we can't deny is that the existence of the sex workers is important for our society because due to brothel homes, the crime against women has been controlled and we also can't deny that they

³⁵⁶Supra notes-279 at 57.

³⁵⁷Sulagna Khan, Re-presenting the 'Fallen': The Unconventional Life Stories of Manoda Debi and Jameela, LV (1-2) J. Asiatic Soc. 48 (2013).

are present in the society. So, it is easy to change the wrong elements from the society than to change the whole society.³⁵⁸

The legal rights of sex workers have now been transformed to the digital age. However, this has not only made business convenient but it also adds some rights to the sex workers. The rights of the sex workers are not a new question to the society. The sex workers are struggling from Vedic age for their minimum human rights also. According to my research the legal rights of sex workers in cyberspace has been increased and due to the technology, the sex workers became more informative towards her legal rights. The sex workers are not only mature against their legal rights but they also very caution about their hygiene and other health related issues. Many of the sex workers have the phone number of the lady police station and women cell of Human Rights and the NGO's and this all possible only through the invention of cyber space in prostitution.

Human Right in the cyberspace is relatively a new concept in the UDHRC, The United Nations Human Rights Council has stated that the freedoms of expression and information under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) include the freedom to receive and communicate information, ideas and opinions through the Internet.³⁵⁹

The basic right of privacy in the cyberspace is encompassing with the right of speech and expression. The Privacy in the cyberspace means and includes the work which is done in the cyberspace without the fear of the third party. This right is very much embedded in Article-21 of the Indian constitution. The right of privacy also includes not to be abused by third party on the cyberspace.

On the other hand, the right of expression in the cyberspace has also given the right to share the pictures, personal data on the internet without getting abused by some other person. The rights are the basics of any enjoyment. If the sex workers have to move their work on the digital platform, they need more rights, however it is not a business or profession in India but as it is truth that it is carrying in India. So, the basic thing that at least they should get the basic human rights in the cyber space in India.

³⁵⁸Lever, Janet and Deanne Dolnick, *Call Girls and Street Prostitutes: Selling Sex and Intimacy, Sex for Sale: Prostitution, Pornography and the Sex Industry*, ed. Ronald Weitzer. Routledge Press, second edition, pp. 187-203, (2010)

³⁵⁹ United Nations Human Rights Committee, International Covenant on Civil and Political Rights, General Comment no.34, note 4, para 12, (Sep 2011, Geneva), (29/08/2019, 11.05 am), <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

However, the things have started changing in India a little bit although. The people have started understanding that they are also human being and they require a mutual respect. As because they are sex workers doesn't mean they don't have a basic right or they are the personal property of the clients or they don't have the right to say no to the client as only because you are paying her.

However, there are many types of cybercrime against women or sex works in India but among many the cyber stalking is very common and most popular in India. The most dangerous and discussed type of cyber harassment is the sexual harassment and unfortunately the number of cases in the cyber harassment is more of the sexual harassment in India. The new act³⁶⁰ defined sexual harassment as the physical contact and advances involving unwelcome and explicit sexual overtures; or

- (i) A demand or request for sexual favours; or
- (ii) Making sexually coloured remarks; or
- (iii) Forcibly showing pornography; or
- (iv) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature³⁶¹

The IT act³⁶² has also provided the sexual harassment as the publication of the sexual content in the electronic form of any person and specially the child pornography as a sexual harassment. The next very common type of sexual harassment in India is through E-mails, hacking someone's email and retrieved all the personal pictures of the victim and blackmailing the victim for the same.³⁶³ However, it is very difficult for the authorities to crackdown these cases because the people who are indulge in these types of crime use their fake profile and fake id.

The provisions in IT act like sec-66A, 66B, 66C, 66D, 66E, 67, and 72 are sufficient in combating the problems in Cyber Harassment but the main problem lies in the enforcement agencies and in the judiciary. Now is the time when a special cyber protection group and the different cyber court is required from very low level and cyber police is well tainted will every minute details of the cyber-crimes.

The most common and destructive type of internet maltreatment is the cyber stalking and it is one more step forward then normal cyber bullying or harassment. Cyber bullying or harassment includes the harassment on the internet like false publication,

³⁶⁰Criminal Law (Amendment) act, 2013, No-13, acts of parliament (India)

³⁶¹Stark Christine &Whisnant Rebecca, not for sale: Feminists Resisting Prostitution and pornography, spinfex press publication, ISBN-1-876756-49-7, 149, 176, (2eds., 2019)

³⁶²Sec-67(a) and 67(b) of Information Technology (amendment) act 2008 (India).

³⁶³ Manish KathuriaVsRituKohli, C.C.No. 14616/2014 (India)

allegation, accusation only but in cyber stalking include monitoring, identity theft, bullying, interruption, solicitation for sex, or flock information that may be used to terrorize or harass. Cyber stalking is a continuing offence, it is the interruption of the life of the victim without permission or unwontedly with the person to whom he has no connection or might be some connection in the past. The whole continuing process is an offence. Cyber stalking is technological based control on the victim for the reasons of anger, revenge, habitual offender or control or might be some other reasons. It includes-

1. Annoyance, humiliation and disgrace to the victim.
2. Theft in the victims' bank account and to its credit and debit cards.
3. Distressing family, friends and employers to isolate the victim.
4. Playing a scare tactics to feel fear in the victim.³⁶⁴

With the increase in the technology and the new method of stalking, the stalking became the bitter truth of the Indian society. The parents often stalk their children's social media account to keep track on them and it is also very often that the spouses keep track on each other's to check their loyalty. The police enforcement agency always keeps a track on the offenders to keep the society safe and it is also very common for the police agencies to keep track for the terrorist attack but these are lawful stalking and it doesn't crime against the society as well as individual.³⁶⁵ It is basically described as a behavior in which other persons also wants to keep track on the other person either for the harassment, terrorizing or for the benefit of that person like in the case of family relations. The most important thing is the mode of harassment; on what mode the offender has its control like chat rooms, emails, open publishing websites or many more.³⁶⁶ It is very difficult to punish the offenders because basically they are well worsted in the technology and basically, they stalk through fake profile and very cleaver to keep their profile anonymous and most of the countries and India is not an exception to this, they don't have the specific laws for cyber stalking. Like in India, the offender of Cyber stalking is punished under the section 441, 509 of IPC and 72 of IT act.³⁶⁷

³⁶⁴ Moore, Alexis A, what is cyber stalking, (2019) (29/07/2019, 4.05 pm), About.com.

³⁶⁵ Miller, Jody, "Gender and Power on the Streets, *Journal of Contemporary Ethnography* 23: 427-452, 1995.

³⁶⁶ Ibid.

³⁶⁷ Criminal trespass, outraging modesty of women and breach of privacy and confidentiality respectively.

The one of the most common type of the crime against the sex workers in now a day is the MMS, the clients go in the brothels and make a video of the sex workers and upload on the websites like X videos and X hamsters and make money from these videos. The most recent example is of Delhi Metro CCTV footage leaks case, where the CCTV recording couples getting intimate in metro station etc. which has been recorded by police security cameras has been leaked on internet.³⁶⁸ Unlike the different crimes like cyber stalking, defamation, spoofing and many more this has to be considered as the most wicked and heinous cyber-crimes against women. In spite of different provisions like 67 of IT act and Section 290 for committing public nuisance, section 292 for sale of obscene books etc., and section 292A for printing or publishing grossly indecent or scurrilous matter or matter intended to blackmail, section 293 for sale etc. of obscene objects to young persons and then section 294 for doing or composing, writing etc. of obscene songs and finally under section 509 for outraging the modesty of women in IPC act. The heinous crimes against women are not only exists in India but also growing at the drastic rate and this is mostly because the people are losing faith in the concept of respect for women.

Another very important problem which a sex worker is facing is the defamation on cyberspace. The people thought that the girl who is working as prostitute is of bad moral character and this has given a right to defame her on the cyberspace. However, there are many provisions are there in the IPC (sec-499³⁶⁹, 500³⁷⁰, 469³⁷¹, 503³⁷²) and IT act (previously 66A)³⁷³ Now, anyone can complaint defamation to cyber unit cell in the cyber investigation department. The problem doesn't lie in the intention of the legislature but it lies in the mechanism of the complaints, the victims are generally the women who have the thread of society, so they choose to be exploiting in private then to raise the voice against the wrong doer. The second problem lies with the attitude of the police officers and the society specially the parents they consider this as a trifling

³⁶⁸ Zee News bureau, *Porn MMS from Delhi Metro*, *Zee News (Jul 10, 2013)*, (10/08/2019, 6.04 pm) http://zeenews.india.com/news/nation/porn-mmses-from-delhi-metro-cctv-footage_860933.html

³⁶⁹ “Whoever by words either spoken or intended to be read or by signs and visual representations makes or publishes any imputation concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said, except in the cases hereinafter excepted to defame that person.”

³⁷⁰ “Any person held liable under section 499 will be punishable with imprisonment of two years or fine or both.”

³⁷¹ Deals with forgery. If anyone creates a false document or fake account by which it harms the reputation of a person. The punishment of this offence can extend up to 3 years and fine.

³⁷² Deals with the offence of criminal intimidation by use of electronic means to damage one's reputation in society.

³⁷³ Struck down in 2015 in Shreya singhal case.

act and doesn't allow their children to indulge in the legal affairs and this is because of the hectic nature of case disposal in India and the society approach on the girl, usually the Indian society always feel the women who is the wrong doer.

The most distressing problem with this issue is to track the person who is making the statement in the internet because generally this type of people doesn't do these types of things with their own account but with fake id and profile. It is very difficult to track that person who is seeing the content or who is leaving the comment on that content because generally people use their nick name or famous names to use the social media like Facebook and also if it is published on the popular social media like Facebook then it get spread and reach to the last people on earth within a fraction of seconds.

The very first instance of cyber defamation in India was recorded in the case of SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra-JogeshKwatra³⁷⁴, in which an employee start publishing the derogatory words about his Managing Directors in order to lower the reputation and the good will of the company. Another famous case was the State of Tamil Nadu vs Suhaskatti³⁷⁵, in which the obscene and private photos has been circulated by the person through the emails, which results in derogatory phone calls to the victims and generally in the odd hours. The other type of the cybercrime, which the sex workers have faced in the recent time in India, is the cyber morphing which are now become very common in India. Morphing basically means the face of one person is attach on the other person in the videos and in the photos of the person with the intention of either defaming that person or extorting that person. Section 43³⁷⁶ and 46³⁷⁷ of IT act and 509³⁷⁸ of IPC can attract in this case. Similarly, the SITA act as well as the ITPA act also talks about some specify rights to the sex workers which is discussed through the case laws-

1. State of Uttar Pradesh v. Kaushalia, AIR 1964 SC 416

Article 14 of our Constitution talks about equality i.e. equality before law and equal protection of law, and Article 19(1) (d) and (e) says citizens shall have the right to

³⁷⁴ 2014,SCC 1279,65/14(India)

³⁷⁵ 2004, C.C.NO.4680/2004,(India)

³⁷⁶Sec-43 of IT act 2000, download or destruction of any picture or data without the permission of the owner.

³⁷⁷Sec-46 of IT act 2000, grants authority to central government to investigate the matter through authority.

³⁷⁸Outraging the Modesty of Women.

move freely throughout the territory and to reside and settle in part of the territory of India,

In the above case various appeals were filed before the court from the judgement of *Kaushalia v. State* (AIR 1963 ALL 71), where High Court struck down the Section 20 of SITA Act, which violates fundamental rights granted under the Constitution, where Broomie J. said that when a profession is of such a nature that it is immoral and not socially acceptable, like prostitution then for carrying on such profession, no one can claim fundamental right over it, the state can impose a complete ban on it, but section 20 of SITA imposes restrictions on the place of residence and controls the movements of prostitutes. According to this section the magistrate has the power to remove any girl/woman which he believed to be a prostitute from his jurisdiction and also prohibit from re-entering into his jurisdiction.

Then in 1965, Supreme Court decided this case and set aside the decision of the high court and said that restriction imposed by section 20 of SITA is reasonable and in welfare of the society as a whole. Court said that it does not violate Article 14 as the classification is reasonable and based on the purpose of legislation which has the rational relation with the object sought to be achieved by the objective of SITA, because there is certainly a specific difference between a woman who is a prostitute and one who is not. And for the purpose of Article 19 there is reasonable restriction provided in clause (5) of Article 19 in the welfare of public at large, there reasons were such as removing prostitutes from public area is the only way to get rid of prostitution.

2. Begum v. State, AIR 1963 Bom 17

This judgement is also focused on Section 20 of SITA where Judge Patel suggested to amend the laws for the betterment of prostitution, instead of removing them from the place of their residence, because these victims doesn't volunteer voluntarily for this profession, it is already recognized that most of them were professing it against their will, they were forced to do it because of their social conditions. The Bombay High Court was of the view that this section not only violates Article 14 and 19 (1)(d) and (e) of the Constitution, but also Article 21, which protects the right to life and personal liberty of a person, they further added if want to put an end on the prostitution, then they must amend the laws which support victims and criminal laws

should be designed in such a way that it punishes those who were making benefits out of these.

3. Upendra Baxi and Lotika Sarkar v. State of Uttar Pradesh: The Agra Home Case, 1983 2 SCC 308

In this case a PIL was filed in 1981 by Upendra Baxi & Lotika Sarkar to Supreme Court, which later on turned into writ petition regarding the deteriorated and inhuman condition of protective home, whose basic aim is to provide shelter to the victims of prostitution, established and working under section 17, 19 and 21 of SITA in Agra, India. The Hon'ble court ordered an investigation to the superintendent of protective home and demanded a clear explanation regarding the allegation imposed by the professors. According to the letter, the place which is being used for the victims, which is basically a corrective and protective home for those who escaped from prostitution, has a strength of women more than its capacity, where there is no basic standard of living is provided, no proper ventilation or sanitation, the hell like condition of this protective home is beyond the imagination, as many of them were being held illegally and suffering from physical and mental illness without any basic medical facilities. While the hearing begins in Supreme Court a number of inmates disappeared from the home without any resources to maintain their life and livelihood further just to avoid the inquiry by the court, this act of superintendent to let go a number of victims clearly shows lack of professionalism towards his duty and his corrupt practices. And it clearly indicates the violence and torture faced by the victims in the place, where they need to be protected and live freely. There person living there has no connection with fundamental rights enshrined under the Article 21 of Constitution that is the right to live with dignity.

The Court also ordered to transfer the mentally retarded inmates to health care's where they will be under medical surveillance and the expenses incurred will be covered the government of Uttar Pradesh and also said to keep mentally retarded inmates separate from normal inmates as it is not desirable keep them both together as it likely to give adverse effect on both the categories. Later on, in 1997, this case was transferred to the National Human Rights Commission for future observation.

Supreme Court in the recent judgment on 22 May 2022, using its power under article-142 converted into suo-moto cognizance the panel appointed for rehabilitation of the

Sex workers in India 2011. The S.C had strictly marked to the police authority not to forecullly act on the consensual sex among the adult as sex work is considered as the profession and valid work as the sex workers have also Right to live with the dignity under Article-21 of the Indian constitution. The court pointed out that the sex workers should not harras in terms of search of brothel homes as voluntary sex work is not a crime is illegal only the running of brothel is illegal. S.C has also issued few directives in this regard. The S.C has also pointed out that the administration should not discriminate among the sexual crimes and assault to the sex workers and the basic eminities like the health care should be provided promptly when required. Utmost care has been also taken during the arrest and the identity should not be revealed in the normal condition. However, the matter is still pending before the Supreme Court and court ordered the Central government to file their part of reply in the next hearing.

5.8 Conclusion

The Prostitution is not a new thing for the Indian society and for the judiciary, After Independence, the biggest question lies in the Indian judiciary is that the judiciary is not able to determine the blend of prostitution in many cases. With the changing of the time the mode of the prostitution has also changed but the question remains the same, the judiciary is still not able to determine the prostitution in many cases because of technical disadvantage to the judge in our judiciary system. The lengthy and costlier process of court system is also one of the disadvantages in taking these social issues lies in the Indian society. This gave chance to destroy the evidences. Any society has to achieve two things, first is the Law making process and most important is the successful implementation of those laws in the society and judiciary is the part of the implementation process. The judiciary has to be strong in order to deal with this social evil. However, government has taken many steps to advance the judiciary but still the judiciary in India is lacking behind many ways.

CHAPTER-6

COMPARATIVE ANALYSIS (INDIA, BANGLADESH, USA)

6.1 Introduction

Cyber sexual abuse is not a new concept for any country now a days and it is always changing its pace from might to teach with the changing technology. The changing technology has clearing the more streets for clever and smart abuse to the victim's especially young girls. In simple terms if we define then it means the harmful sexual abuse with the facilitation of technology. Such harmful behaviours can include non-consensual pornography and other image-based sexual exploitation, online sexual harassment, cyber-stalking, online gender-based hate speech, and the use of a carriage service to arrange/attempt to arrange a victim's sexual assault. This is not a new phenomenon and from time to time it has changing its perspective. Initially it is physical and now it is digital but that doesn't mean the physical violence has been end but it has changed its perspective from physical to digital. In India the irony of the digital sexual abuse is that the relatives don't understand the concept and not agree that there is any type of exploitation. The states administrative are also very ignorant in lodging F.I. R³⁷⁹ and investigating the offences.³⁸⁰ In this chapter the researcher wants to do a comparative analysis between the developed, developing and under developed nation. For this purpose USA, India and Bangladesh has been taken into consideration. Both merits and demerits points of the countries has been discussed separately and lastly the points which they all have in common.

6.2 General perspective of the globe and international agencies

The invention of the internet has no doubt many positive points and especially with the invention of WWW.³⁸² It has given all together a new life to the revolution of those

³⁷⁹First information report to the police in the police station.

³⁸⁰Especially cybercrime in India.

³⁸¹³⁸¹World Wide Web.

women's, who are fighting for the rights of the women. No doubt the internet has made world a global village and with the invention of the smartphones these works became more easier but we all know that every coin had its two face, the internet has also its negative face and sexually exploitation of women in cyberspace is one of the darkest face of the internet.

With the invention of the digital platform the exploitation of the women and girls has been increased by many aspects like chat rooms, emails, social networking sites, blogs and through private messages, porn, private photos, photo shops, sharing personal details and many more. However, the elements of physical abuse are absence in the above-mentioned crimes but it is no less dangerous than the physical abuse.³⁸³

It is very difficult to identify the offender in these cases because of the threat of the defamation to the victim and the lack of the evidence because any person who is technologically sound can erase the evidences.

Women have been victim of the various types of sexual offences in the society right from the sati paratha to the most famous Nirbhaya case. The United Nations defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". Acc. to Swapna Majumdar, "Violence against women is neither culture nor region-specific; it cuts across community and class. Shocking though it is, the fact is that violence against women has become an acceptable norm of life because women accept violence as a part of their married life until it becomes intolerable".

The UN Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation 19 defines gender-based violence as "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty"³⁸⁴

³⁸²TanayaSaha and AkanchsSrivastava, "Indian Women at Risk in the Cyber Space: A Conceptual Model of Reasons of victimization, International Journal of Cyber Criminology, vol. 8 No. 1, Jan, pp. 57-58, (June 2014) <http://www.cybercrimejournal.com/sahasrivastavatalijcc2014vol8issue1.pdf> (6/3/2019 at 5.05 pm).

³⁸⁴ CEDAW (1992), "General Recommendation No. 19" (11th session, 1992),<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>

The UN General Assembly (UNGA) 2013 Consensus Resolution on protecting women human rights defenders contains language on technology-related human rights violations: “information technology-related violations, abuses and violence against women, including women human rights defenders, such as online harassment, cyber stalking, violation of privacy, censorship and hacking of e-mail accounts, mobile phones and other electronic devices, with a view to discrediting them and/or inciting other violations and abuses against them, are a growing concern and a manifestation of systemic gender-based discrimination, requiring effective responses compliant with human rights”.³⁸⁵

We all proudly celebrate women’s day to celebrate the contribution made by women in the society in every field and in the Hindu mythology also the place of women is very high but in reality, it is not so. Actually, the women are no more than a mere animal in most of the parts of India and harassment of mental peace, physical abuse, emotional imbalance are very common in India and the situation are getting worse with the advent of the new technology. The constitution of India has provided laws in the preamble, F.R, DPSP and where not but in realities, these are only the dead letters of the constitution nothing else and in spite of these great provisions till now women are not treated as the par with the man and the situation in few states like Bihar, Uttar Pradesh, Rajasthan, Haryana are even worse.

The number of cyber abuses is increasing with every day in India and in near future these numbers will not decrease. Almost 75% of the victims in cyberspace are women and girls but still the law is not very much strict towards the approach of victimization in cyberspace. The cyber-crimes are needed to be studied in great detail both by the citizens and by the authorities in order to tackle this problem. The most important aspect which needs a quick revitalization is the mentality of the citizens, specially guardian and parents of the girl child. They need a counselling and awareness in this aspect by the government and have to understand that these are also come under the category of the crime and the small crimes like stalking will leads to the bigger crimes like Cyber prostitution and this needs to be controlled in the very first stage only.³⁸⁶

³⁸⁵ UNGA (2014), “Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting women rights defenders”. (A/RES/68/181).online: <http://www.gender.cawater-info.net/publications/pdf/n1345031.pdf>

³⁸⁶ RutgerLeukfeldt, Sander Veenstra, et.al., High Volume Cyber Crime and the Organization of the Police: The Results of Two empirical Studies in the Netherlands, International Journal of Cyber

According to the UN Committee on the Elimination of Discrimination against Women, discrimination against women includes gender-based violence, that is, “violence which is directed against a woman because she is a woman or that affects women disproportionately, and, as such, is a violation of their human rights.” The Committee also states that gender based violence against women includes (but is not limited to) physical, sexual, psychological or economic harm or suffering to women as well as threats of such acts.³⁸⁷

Today’s the online exploitation is basically the gender-based violence, these issues require comprehensive response because this is a societal problem not the individual problem. The violence against the women in online is not the limited to the one aspects only but it also includes the targeting and abusing words including comments on her race, caste, sex, identity but the most dangerous thing is the sharing of the videos and photos of private moments of any girls and women without her permission.³⁸⁸

It is important to note that violence and abuse online can take place in many different contexts. In November 2017, Amnesty International commissioned an online poll with Ipsos MORI about women’s experiences of abuse and harassment on social media platforms across eight countries including the USA and UK. The findings showed that nearly a quarter (23%) of the women surveyed across the eight countries said they had experienced online abuse or harassment at least once, including 21% of women polled in the UK and 1/3 (33%) of women polled in the US. In both countries, 59% of women who experienced abuse or harassment said the perpetrators were complete strangers.³⁸⁹

These online messages are mostly used for the revenge after the breakup or marriage from the ex-gf and ex-wife. The plan is to keep them in fear and exploit them either monetary, socially or emotionally. More than 75% of these messages and exploitation is done by their family members, relatives or by their ex-boyfriend and husband.³⁹⁰

Criminology, vol. 7 No. 1, Jan.- June, 2019, p. 1, available at: <http://www.cybercrimejournal.com/Leukfeldtetal2013janijcc.pdf> (19/07/ 2019 at 5.20 pm).

³⁸⁷United Nations Manual on the Prevention and Control of Computer Related Crime, 1994, p. 5, http://216.55.97.163/wp-content/themes/bcb/bdf/int_regulations/un/CompCrims_UN_Guide.pdf, (March 19/07/2019 at 5.25 pm).

³⁸⁸Jyoti Rattan, *Cyber Laws & Information Technology*, 2014, p. 261.

³⁸⁹Amnesty International, *Women experience on twitter*, (2017), (9/08/2019 at 6.05 pm)

<https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-3/>

³⁹⁰Ibid.

The advent of the internet and the World Wide Web in India has prejudiced significantly the distribution, watching and downloading of pornography. It has also made clear that there is a loophole in the legal system because the distribution of the pornography is increasing every day in India. Law enforcement investigations are among the most prominent means to combat online child sexual exploitation and abuse. National, Regional, and International law enforcement agencies investigate online child sexual exploitation and abuse and cooperate in the investigation of these cybercrimes. For example, in Operation Tantalio, INTERPOL, Europol, and law enforcement agencies from 15 countries in Europe, Central America and South America cooperated in the investigation of child sexual abuse material distributed via Whats app.³⁹¹

Undercover law enforcement investigations have also been conducted to identify, investigate, and prosecute perpetrators of online child sexual exploitation and abuse. A case in this aspect is the undercover operation of the *Kids the Light of Our Lives* Internet chat room, which served as a platform for live streaming child sexual abuse and to upload and share child sexual exploitation and abuse material.³⁹²

Cooperation between the private sector government agencies is also essential in counterfeiting online sexual exploitation and abuse. There are many sociological reasons also which leads to the growth of the rise in the sexual exploitation of women in India. The most important reason is the fear of defamation of family members, this fear of defamation is commonly seen in most of the developing and underdeveloped countries. Most of the times, the women considered herself responsible for the crime which is done to her, this is because the non-supportive nature of her family members and society around her. Internet has proved sword and flower for the women in this 21st c. they have more chance to express themselves with more freedom and the women are the most vulnerable sections of society on the internet also because of the nature of the internet is very suspicious in nature.³⁹³

IT is also because it is very difficult to identify the predator on the internet; the predators can blackmail the women or girl with anonymous account without revealing their identity because generally the person with this intention used the fake account

³⁹¹ Online child sexual exploitation and abuse, Presented to UNODC, (part of a lecture), 14/08/2019 at 6.30 pm), <https://www.unodc.org/e4j/en/cybercrime/module-12/key-issues/online-child-sexual-exploitation-and-abuse.html>

³⁹² Ibid.

³⁹³ Cyber Pornography, available at: <http://www.lawyersclubindia.com/articles/Cyber-Pornography6396.asp> (12/10/2019 at 7.10 pm).

and fake name. The women are also in the fear that the anonymous persons may harm the family members or What the family members will say to her and these problems are basically arise in developing and under developed countries and because of this the case was not reported in a police station and nor supported by the society, which will ultimately lead to the rise in the courage of perpetrators and in number of cases it is seen commonly that it leads to the suicide also.

In India and the other Asian countries, the police and the other enforcement agencies doesn't take the crimes related to the cyberspace seriously, which not only demotivate the victims but also increase the courage of the perpetrator. The government has to take a front seat in this regard and not only punish the police officers but also make a stringent law for the punishment of the perpetrator and make ISP more liable.³⁹⁴

The chief problem of cyber-crime lies in the modus operandi, the police, judiciary, investigating agencies has to make them updated from time to time with the latest development³⁹⁵ so that they can identify and punish the perpetrator. It is the role of these agencies to see that these new technology does not become the mode of exploitation to the users. Government has to take superior care of this matter and especially with the rights of women.

However, it is also the responsibility of the government to educate and aware its people about the cyberspace and specially cybercrimes to their citizens through different ways. On the other hand, it is also the responsibility of the citizens to became techno savvy and use the cyberspace in most useful and positive manner and must aware about their rights and duties in cyberspace and what steps should be taken in case of emergency in cyberspace.

Now, the most important part which has to be played by the guardians or by the parents of a child is that they have to teach their children about the rights of the others and it is the duty to respect others rights in the cyber space and most importantly respect the girl and women in the cyberspace system.

Hence to counter cybercrime against the women there must be requirement of huge changes and that change is made by everyone in the society and especially in the education system. This change will not come in one day, this is a multi-layer approach in it that will take a generation but if we try together then no doubt it will change and

³⁹⁴ Hunter Moore gets 2.5 Years for Revenge Porn Hacking, available at: <https://www.cmagazineuk.com/hunter-moore-gets-25-years-for-revenge-porn-hacking/article/535569/> (14/10/2019 at 5.07pm).

³⁹⁵ Ibid.

in a positive manner. The day in which the women do not fear to talk to the strangers on the internet like men, then only both genders will be treated equally in real sense.³⁹⁶

6.3 Position in United States of America

Cyber Space is a boundary less territory which doesn't have the physical boundary. It is basically depending on the users of every country and it is unwritten ethical rule that the one user can't curtail the other user's digital rights. The states have only duty to protect his citizen's technological rights. Till the last decade the progress of the community is measured on the safety in the society but now the role of the state has changed and it is more than a police state. Now the state has to take the role of the welfare state and one of the important parameters of the welfare states is also depends on the sound and safe accommodation of its citizens in cyberspace.³⁹⁷

Now, the time has been changed the countries which has more territory and the more powerful army is no more the strongest country. The small countries like Israel have hold a special position in the powerful lists of the country and this is only because of the development of its Information technology and the cyber security. There is not a single example that the Israeli government websites has been hacked. So, in today's world it is basically the cyberspace who decides the countries growth.

Information and communication technology are the integral part of any one's life now and it is more than business now. Every transaction, whether personal like shopping, banking or any business transactions like purchasing selling of shares etc. involves internet services. The nations have also understood that the rights of their citizens have gone up to later stage from physical to technological rights and the government has to protect these rights and maintain their citizens' rights in cyberspace in order to maintain the growth of their country.³⁹⁸

Cyber-crime is not a new concept for any nation and all the countries of this globe are going through the same issue of the cyber- crime and the most drastic problem of the

³⁹⁶RituDhanoa, Cyber- Crime Awareness, International Journal in Multidisciplinary and Academic Research, vol.2, No.2, 2014, p. 7, available at: <http://ssijmar.in/vol2no2/vol2no2.24.pdf> (22/11/2019 at 3.28 pm).

³⁹⁷Susan W. Brenner, "At Light Speed: Attribution and Response to Cybercrime/ Terrorism/ Warfare", Journal of Criminal Law and Criminology, vol. 97, No. 2, 2007, p. 386, <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7260&context=jclc> (13.01.2020 at 4.06 pm).

³⁹⁸Ibid.

cyber- crime in every nation is to protect their women and girls' rights on internet, to make them free and safe on the internet. Every country knows that the aspects of cyber- crimes are way more dangerous than the conventional crimes. The impact of the cyber- crime is very wider in its aspects, the crime committed in one country and it affects the other country. The whole world has turned into a global village in this regard.³⁹⁹

The other aspects of the cybercrime are the problem of the jurisdictions in the crime it may be legal in one country and might be illegal in other country. Say for example the online prostitution, the prostitution may be legal in one country but may not be illegal in other country. So here the problem arises about the jurisdiction.

The countries like America, is not only leading the internet world but also prove to be the most efficient player in the technology. The internet is all depends on the invention, the safer the internet surfing, the good the technology of any country. The USA is always proved to be the king of the internet because almost 60% of the globe total websites has its origination from USA; however the first internet act has been passed in UK in 1990. The computer misuse act 1990. In the USA the main purpose of the internet is the transactions, whether it is bank, shopping, payments or any other thing. PayPal has been invented by the America in 1998; the first customer was the prostitutes. It gives is clear picture that how American's are very much dependent on the internet services for their economic growth. It is not incorrect to say that the cost of one day loss in internet connection may cause thousands of billion dollars to the USA. The economy of America is more or less 100% dependent on the internet, starting from share trading to the bank transaction everything is secured through internet password and username.

In the 21st century, the criminals have changed their mode of work especially in the developed countries like America, now the drug trafficking and specially the prostitution has been carried on internet. The work of the human trafficking is all carried on the internet. The agents of the Middle East and the agents of the big cities like Mumbai and New Delhi contact to the victim with the help of the internet. The identity theft, card fraud, IPR frauds are very common in the America but in all these crimes the most dangerous is the sexual offences against women. The persons who generally target the women, who are in a need of money or drug addicted or the

³⁹⁹ Ibid.

adolescent girls, who wants money to fulfil her material desire. However, they target anyone but generally they follow this agenda.⁴⁰⁰

The person first sends the images and videos of those items which is generally loved or liked by the teenager girls and it can be easily observed by the products which are liked on the social media platform. Say for example the girl is interested in expensive dress then the videos and photos of expensive dress, jewellery, watches is shown in the knowledge feed of her account and now the person who wants to trap that girls start talking to her in her personal chat box and start chatting according to the interest of that girl. Say for example the person will only talk about the expensive dress and jewelleryes and if the girl doesn't like her father or family then he will also pretend that he also doesn't like his father or he doesn't have a good relation with his family. So basically, he tried to be one among them. Once the person get her faith then, he starts dominating her on the internet and make them feel that it is fine to take some pleasure on the internet and it is cool to have private chat and private shows, nothing wrong in it and everyone does that because it is in the fashion.

Sometimes it also goes one step beyond and the person meet the women and girl and invite for sex in lieu of money and the girl who all started for fun ends up in the prostitution, humiliation, blackmail or porn industry sometime. For over three decades, Congress has been concerned about cybercrime and its related threats in America. Today these concerns often arise among a larger discussion surrounding the federal government's role in ensuring US cyber security⁴⁰¹The US legal system has enacted various laws regarding cybercrimes because more than 60 % of the sites on the World Wide Web are located in the USA. To curb the menace of hacking the US Government has enacted various stringent legislations. The Wire Fraud statute being the first law used to prosecute computer criminals in USA. It was seen that the communication wires were used in international commerce to commit fraud.⁴⁰²

The Computer Fraud and Abuse Act, deals with the issue of unauthorized access in the U S legal system. The legislation was first enacted in 1984, revised in 1994, and the last amendment was made in late 1996.⁴⁰³

⁴⁰⁰B. Muthukumar, "Cyber Crime Scenario in India", Criminal Investigation Department Review, Jan., 2008, p. 43, http://www.gcl.in/downloads/bm_cybercrime.pdf (17/01/2020 at 2.05 pm).

⁴⁰¹ Cybercrime: Conceptual Issues for Congress and U.S. Law Enforcement. Kristin M. Finklea Specialist in Domestic Security. January 9, 2013.

⁴⁰² Ibid.

⁴⁰³ Cyber Crimes: Law and Policy perspective: Dr.K.S.Manikyam (2009) Hind Law House, Pune. Edi Page 56.

The USA has passed several enactments because of its nature of the society in which almost 80% of its functions are carried out on the internet. The USA has also passed federal laws for the protection of cybercrimes; these federal laws had been bringing to introduce the amendment in the US federal code. The major laws in criminal cases in USA have been discussed in the following heads:

1. Computer crimes in federal criminal code
2. Intellectual Property Rights specially pertaining to Federal Statutes:
 - a) Copyright Offences
 - b) Copyright Organization offences
 - c) Trademark offences
 - d) Bootlegging offences
 - e) Trade Secret Offences
 - f) Offences concerning the integrity of IP System
 - g) Offences concerning the Misuse of Dissemination system
3. Cyber Stalking
4. Search and seizure of Computers
5. Guidelines concerning sentences Relevant to cyber crime⁴⁰⁴

The USA has not only enacted the provisions with great due diligence but also made his police and investigating team more effective specially FBI and sound with the help of the general public. The number of cyber offenders in the country has been increasing every day because of the prevalence of the internet in a very large number in the country, but unlike India it does not have the issue of making understand the citizens about its seriousness and it is because the citizens are very much concern about their technological rights and the people are well equipped and aware about the basics of internet at least. The government had also played very important role regarding this in the late 90's.

However, everything is not fine in the USA regarding the cybercrime or not it is possible. According to the report of the congressional service, the USA doesn't have the basic definition of most of the cybercrimes like cyber prostitution, phishing and many more and basically, they used interchangeably with real physical world definition. Similarly, they have also the issue of the jurisdictions because in USA every state has different federal laws on every subject, which really have very bad

⁴⁰⁴ Ibid.

impact at the time of the investigation. The USA has also doesn't have the separate investigating agency, which is dedicated on the investigation of the cyber-crimes and that too specially with sexual offences against women and it also gives extra burden on local police and the FBI agents because they have to first solve the issue of jurisdiction. However, they have their special courts for the cyber-crimes in their state laws.

The United States of America doesn't have the special strategy to combat the cybercrimes. However, they have strategies to combat the other organised crimes and in order to protect the other organised crimes they are using to combat the cybercrimes which are related with that organised crimes. Say for example, the authorities have guidelines and orders to stop the prostitution and if any prostitution is running on the internet, then they will control the internet and caught that prostitute and pimps but specially the USA agencies doesn't have the plan to combat the online prostitution or trafficking.

However, there are many attempts has been made by the congress of the USA to make it in a structured and strategically wise but it has not achieved till date. Due to this lacuna several data and its impact is absent in the process of combating this problem in the society. Due to the lack of the pressure on the intermediaries, most of the crimes are not reported by the citizens and if some of the crimes are reported also then they are reported by the citizen and they don't understand the nature of the cybercrime committed. Sometimes, the crime is reported so late that the wrong doer has become non traceable by the agencies because generally the crimes are committed with fake names, id's and account number and if the devices are destroyed after committing the crime then they are non-traceable for their whole life by the state agencies.

Some of the federal acts pertaining to the cyber security in USA have been discussed below-

1. The Counterfeit Access Device and Computer Fraud and Abuse Act of 1984, specially made to protect the computers from attacks on federal computer systems, which are specially used by banks and in interstate and foreign commerce.
2. The Electronic Communications Privacy Act of 1986 (ECPA) prohibits unauthorized electronic secretly listing to someone else conversation.
3. The Computer Security Act of 1987 gave the National Institute of Standards and Technology (NIST), this act is basically responsible for security of the data except the

national security data including the military websites. This act basically sets the security standards for all the federal computers.

4. The Paperwork Reduction Act of 1995 gave the Office of Management and Budget (OMB) responsibility for developing cyber security policies.⁴⁰⁵
5. The Clinger Cohen Act of 1996, this act basically authorised the role of the agencies and authorities, information security policy, procedures and establishment of Chief information Officer.
6. The Homeland Security Act of 2002 (HSA) gave the Department of Homeland Security (DHS) some cyber security responsibilities in addition to those implied by its general responsibilities for homeland security and critical infrastructure.⁴⁰⁶
7. The Cyber Security Research and Development Act enacted in 2002, this act had established the role of the research in cyber security for National Science Foundation (NSF).
8. The E-Government Act of 2002, this act has served its primary role as to guide federal IT management and inventiveness to make data and services available online, and includes various cyber security necessities.
9. The Federal Information Security Management Act of 2002 (FISMA), this act has made the NIST⁴⁰⁷ more powerful and establishment of central federal incident centre,⁴⁰⁸, rather than the Secretary of Commerce, responsible for promulgating federal cyber security standards.

Till 1960; s computers and internets has been used by the researchers and academicians but after 1960's the United States of America invented Internet Corporation of Assigned Names and Numbers (ICANN) and Protocol system.⁴⁰⁹The internet has developed significantly in United States of America from defence department to a global communication till 1969. Basically, in USA there are three types of cybercrimes firstly one computer is used to commit crime from another computer like hacking. Second is computer and internet are used to commit some traditional form of crime like terrorism and prostitution and thirdly, the computers are used to store some illegal content or the stolen data.

⁴⁰⁵R.C. Mishra, *Cyber Crime: Impact in the New Millennium*, 2002, p. 54.

⁴⁰⁶ Ibid.

⁴⁰⁷ National Institute of standard and technology.

⁴⁰⁸ Office of management and budget.

⁴⁰⁹ M. Das Gupta, *Cyber Crime in India- A Comparative Study*, 2009, p. 129.

On the 9th of February 2009, the President of United State Barack Obama has directed the National Security and Homeland Security Advisors to conduct a review of the plan, programs, and activities underway throughout the government dedicated to cyber security, including new regulations to combat cybercrime.⁴¹⁰The cyber treat in the USA is more than any other threat, it is basically the intelligence game, in which one intelligence hack the other intelligence network for some secret messages.

6.4 Online Prostitution vis a vis Online Trafficking in United States of America

Prostitution in the websites may have different forms but the most dangerous among them is the child prostitution on internet. The child prostitution is most important market for the porn industry. They exploit the children and circulate it through various electronic media. These things can only deprave the minds of the society people specially children but also corrupt them. The pornography is widely used for exciting the sexual desire of any one through books, films, audio and many more, this not only effect the personal life but also the social life of the person who is seeing the content on a daily basis. Like many Asian and European countries, the USA is also very much focused on prohibiting the child pornography, doesn't have much recorded for other women exploitation.

The USA has two laws against the child pornography, The Child Pornography Prevention Act, 1996 and the Child Online Protection Act, 1998. The first act basically focus on the computer technology involves in the production of the child pornography and latter basically focus on the role of the intermediaries to focus on these types of content and make filtration of those websites who are giving this type of illegal content. The Communication Decency Act, 1996 has been passed to protect minors from pornography. The CDA states that any person, who knowingly transports obscene material for sale or distribution either in foreign or interstate commerce or through the use of an interactive computer service, shall be liable to imprisonment up to five years for a first offence and up to ten years for each subsequent offence.⁴¹¹

According to section 2256 child pornography prevention act 1996, child pornography means any depiction, including any photograph, film, video, picture, or computer or

⁴¹⁰ <http://www.whitehouse.gov> (10/02/2020 at 3.05 pm)

⁴¹¹ Parthasarathi Pati, Cyber Crimes, available at: http://www.naavi.org/pati/pati_cybercrimes_dec03.htm (13/02/2020 at 4.08 pm)

computer-generated images or picture, whether made or produced by electronic, mechanical, or other means, or sexually explicit conduct, where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct; such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct. In 1998, the protection of children from sexual predators act, this act basically targeted the commercial pornographers and those persons who give the advertisements.

In the USA the online prostitution is the part of the drug lord mafia, these drug lords are basically from the Mexico because the USA is the most important and biggest market for drugs in that region. So, the gangs which are basically involves in the drug businesses uses the girls for prostitution and internet for its online advertisement and the revenue which are generated from the prostitution again go in the drugs. So, basically the money rolls from drugs to prostitution and prostitution to terrorism in America. However, there are very few small gangs also, who only carries the prostitution business as their sole business but they are very few in numbers.

The other part of the internet prostitution is the cyber stalking and the USA laws are also very much strict about the cyber stalking. Cyber stalking is the use of internet or online means to stalk someone and this term is interchangeably with online harassment and online abuse.⁴¹² Mostly cyber stalking involves following a person's movement across the internet by posing threatening messages to the victim or by entering the chat-room and abused to the victim or by constantly bombarding the victim with the e-mails etc.⁴¹³

Cyber Stalking is a criminal offence under anti-stalking, slanders and harassment laws. Cyber Stalking is basically addressed in U.S Federal laws, the violence against women made Act 2000, made the cyber stalking as a part of the federal interstate stalking statue, before then cyber stalking was never discussed. However, still in

⁴¹²B. Muthu kumaran, "Cyber Crime Scenario in India", Criminal Investigation Department Review, Jan., 2008, p. 18, http://www.gcl.in/downloads/bm_cybercrime.pdf (13/02/2020 at 2.05 pm).

⁴¹³Ritu Dhanoa, "Cyber- Crime Awareness", International Journal in Multidisciplinary and Academic Research, vol.2, No.2, 2014, p. 3, <http://ssijmar.in/vol2no2/vol2no2.24.pdf> (13/02/2020 at 2.10 pm).

America there are lacks of central laws to address this issue and cyber stalking is still a subject matter of state.⁴¹⁴

In USA almost every state is dealing with the cyber stalking, US federal Code 18 under section 2261 A (2) states that whoever with the intent uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury shall be liable under section 2261 B (b) for a imprisonment which may extend up to life imprisonment if the death of the victim results; for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results; for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense.⁴¹⁵

In USA there are many cases which are dealt by the federal agencies in which the paedophiles use the personal chat rooms, emails and other communication online services with the purpose of making sexual activities. However, the most important problem of USA has not lies in laws but it lies in the issue of their jurisdictions capacity, The Black's Law Dictionary defines jurisdiction as "the power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a state of facts, proved or admitted, referred to the tribunal for decision and authorized by law to be the subject of investigation or action by that tribunal and in favour of or against persons (or res) who present themselves or who are brought before the court in some manner sanctioned by law as proper and sufficient"⁴¹⁶

The jurisdiction is basically the jurisdiction of the court to define the aspects of the cases; the court must actively hear a case and render effective judgments. The very basics of the justice system are the jurisdiction is always threatened by the internet in the cyberspace. Everything is available on one click and from anywhere in this world. In a simple term, we can say that the cyber world jurisdiction is very fast-growing jurisdiction and it's a dynamic space. It is the ever-growing international law jurisdiction.

⁴¹⁴Cyber Stalking,[http://en.wikipedia.org/wiki/cyber stalking](http://en.wikipedia.org/wiki/cyber_stalking) (13/02/2020 at 2.20 pm).

⁴¹⁵ Christa Miller, "High-Tech Stalking", Investigation, Magazine,<http://www.officer.com/article/10233633/high-tech-stalking> (13/02/2020 at 2.50 pm)

⁴¹⁶ Anirudh Rastogi, Cyber Law-Law of Information Technology and Internet, 2014, p. 17.

Cyberspace has no geographical boundaries and it doesn't have any aspects which depends on the boundary system as in traditional laws, it happened basically. Due to the globalisation also, this jurisdiction has been blurred everywhere in the globe. However, the General Assembly have adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce in 2001 but this has brought very slight change and doesn't solve much of the jurisdictions approach. The United States of America has divided the cybercrimes in two parts; firstly it is the criminal offence in cybercrime including the traditional crimes prostitution in cyberspace and other white-collar crimes in the cyberspace. There are many laws in the United States to control the cybercrimes in America; there are federal laws as well as state laws.

However, the issues and offences well defined in both the federal and state laws but some time the jurisdictions overlap in these two courts, like mostly in the cases of white-collar crimes, it is very difficult to differentiate what crime has been committed and who will take charge of it. The most important mistake in this regard, it has treated the cybercrime as a normal federal crime. However, USA has updated with his cyber department but it has not updated with the judges and the trial system. The same judges are seeing the matter, as like it is a traditional federal crime and the judges are basically not well worse with the technicalities of the cybercrimes which ultimately hampered the basic nature of the crime. However, there is United States Sentencing Guideline (USSG) in this direction but it is not sufficient because it is only a guideline and not an enforcement document which has sanctions.⁴¹⁷

In the case of *Norway v. Tvedt*⁴¹⁸ the post was there in the social media platform about the Neo-Nazism and about racist comment, the court had decided that the person who is responsible for the post is punishable despite of the fact that the post is not from the USA and the registered website is from another country.

In *Stratton Oakmont, Inc. v. Prodigy Services Company*⁴¹⁹ case, the publisher of book claimed that the person who is publishing the re-print or making it published with some content change, is liable for the publication to the original publisher, the court in

⁴¹⁷ Catherine D. Marcum, George E. Higgins, et.al., "Doing Time for Cyber Crime: An Examination of the Correlates of Sentence Length in the United States", *International Journal of Cyber Criminology*, vol.5, No.2, July. - Dec, 2011, p. 827, available at: <http://www.cybercrimejournal.com/marcumetal2011julyijcc.pdf> (15/02/2020 at 2.50 pm)

⁴¹⁸(2002) Asker and Baerum Distt. Court.

⁴¹⁹(1995) N.Y. Misc. LEXIS 229

this regard says that it is impossible for the intermediaries to monitor each and every publication in this large cyber world.

In *United States v. Hilton*⁴²⁰ the plaintiff was charged with the obscene CD and DVD, the CD and DVD containing the pornography, especially child pornography and some personal contacts which shows of the prostitutes. The first time the plaintiff in any case has claimed his Right of privacy, and to check his private objects is unconstitutional. However, the federal court had decided that the protection of children and vulnerable class is the first priority of the USA and they will protect in every aspect, the court had also agreed that the definition of the child pornography is also very vague and need to be curtailing down.

In *United States v. Mathew's case*⁴²¹, the courts had given a historical judgment and make liable the offender with its each transaction as a separate transition and book for every transaction separately. The court is of decision that the transfer of each picture of child pornography and share of every female with details for the prostitution is considered as the single transactions and the offenders are booked for each transaction.

6.5 Position in India

In India the year 1992 was very important because in this year India had opened their economy and takes his first step towards the Globalisation. No globalisation can be done without technology so it also come into picture and more and more business were run by the computer system and with the invention of the internet, India had noticed the vast market of the e-commerce products and suddenly the emails are getting the momentum and everyone is conscious about the storing of their own data.

The United Nation Commission on International Trade law has adopted the e-commerce model law in 1996; the General Assembly had passed this model law on 30th January 1997 and suggested the member states to pass the same laws in their country with few modifications which suits to the respective countries⁴²².

As a result of this, India has passed its very first legislation regarding technology in 2000, the Information technology act 2000. There are many other rules and regulations also which come from time to time after passing of the IT act 2000. These

⁴²⁰(1999) 167 F.3d 61 (1st GR.), [cert. denied, 120 S. Ct. 115].

⁴²¹(1998) 11 F. Supp 2d 656 (D. Md).

⁴²²J. Rattan, *Cyber Laws & Information Technology*, 63 (2011).

rules and regulations are basically considered with one special area, these laws are mostly come from the parliament acts or also from ordinances from the ministry of technology. These laws and regulations are as follows-

- i) The Information Technology Act, 2000
- ii) The Information Technology (Certifying Authorities) Rules, 2000
- iii) The Cyber Regulations Appellate Tribunal (Procedure) Rules, 2000
- iv) The Information Technology (Certifying Authority) Regulations, 2001
- v) The Cyber Regulations Appellate Tribunal (Procedure for Investigation of Misbehaviour or in capacity of Presiding Officer) Rules, 2003.
- VI) The Information Technology (Other powers of Civil Courts vested in Cyber Appellate Tribunal) Rules 2003.
- vii) The Information Technology (other standards) Rules 2003.
- viii) The Information Technology (Qualification and Experience of Adjudicating Officers and manner of holding enquiry) Rules, 2003.
- ix) The Cyber Regulations Appellate Tribunal (Salary Allowances and other terms and conditions of service of Presiding Officer) Rules, 2003.
- x) Ministerial order on blocking of Websites
- xi) The Information Technology (Use of Electronic Records and Digital Signatures) Rules, 2004;
- xii) The Information Technology (Security Procedure) Rules, 2004.
- xiii) The Information Technology Amendment Act, 2008.
- xiv) Information Technology (Procedure and Safeguard for monitoring and Decryption of Information) Rules, 2009.
- xv) Information Technology (Procedure and Safeguard for monitoring and collecting Traffic Data or Information) Rules, 2009.
- xvi) Information Technology (Procedure and Safeguard for Blocking Access of Information by Public) Rules, 2009.
- xvii) Information Technology (Electronic Service Delivery) Rules, 2011.
- xviii) Information Technology (Reasonable Security Practices and Procedures, and sensitive personal data or Information) Rules, 2011.
- xix) Information Technology (Intermediaries guidelines) Rules, 2011
- xx) Information Technology (Guidelines for Cyber Cafe) Rules, 2011.
- xxi) Information Technology (Guidelines for Cyber Cafe) Rules, 2011.

xxii) Information Technology (Recognition of Foreign Certifying Authorities Operating under a Regulatory Authority) Regulations, 2013.

xxiii) Information Technology (Intermediary Guidelines (Amendment) Rules) 2018

xxxiv) Personal Data Protection Bill, 2019

The Information and communication revolution have challenged the world system in every aspect whether it is monetary barrier, political boundaries or even the old fixed laws and India is not an exception to this. The cyberspace is challenging every aspects of the society and every aspect includes the social norms and established institutions. With the advent of the cyberspace, the mode of crime committing in India has been changed and it also increased the cybercrime in India. The Annual Reports of Computer Emergency Response Team (CERT) a security department under the Ministry of Communication and Information Technology has revealed that there are numerous increases in the cyber-crime after 2009.⁴²³ India is still considered as very slow in the growth of the measures to combat the cyber technology attack and failed to come up with the aggressive technology to combat this problem.

The problem of Indian cyberspace is little bit different from rest of the world. As India is facing the problem of cyberspace as well as the problem of generation gap, the invention of the cyberspace in India is very late, as a result of this there is a gap between the technological understanding of parents and the children. The PayPal is invented in America in 1998 and India started its payment app in 2015 by Phone Pay app. So, the basic problem lies here is the technological illiteracy. The guardian and parents do not want to understand that there is a crime called cyber stalking, cyber defamation, and cyber bullying which might take ultimately their child on the risk of depression, anxiety, low confidence and what not. They considered this as a fun game among friends; the parents don't understand this issue because of generation gap. So, they don't discuss with the children and if the children want to discuss also then also, they don't understand it as problem and called it as a trifling Act.

The investigating agencies are not really experts in investigating, it has generally seen that in most of technologically driven crimes they are lack behind the wrong doer and it is generally observed that the authorities generally don't understand the importance of crimes and they start blaming the women and their family. However, there are no

⁴²³A. Viswanathan, Cyber Terrorism, Cyber Law, Indian and International Perspectives, 2-6 (2012)

issues with the jurisdictions on the judiciary in India like USA but still like USA, Indian judges are also not very much trained or advanced in this direction.

However, the government have taken many initiatives to trianed the judges and the investigating officers and to promote awareness about the cyber-crimes among the general public through electronic and print media, campus and with the help of NGO; s and University students. However, the results are not up to the mark and we can say that the internet is still in its growing stage in India. Basically, the Indian laws have played its part and evolved constant change according to need and invention in technology in the society from time to time since 2000, India gets its first IT act under the obligation of General Assembly in 1997. However, India has also its reason for slow growth; firstly with the increasing online transaction on a daily basis, it is difficult to control the advancement of technology for country like India. Secondly the courts are facing the inadequacy in provisions while dealing with the laws which relates to the technology like most of the cyber -crimes are not discussed in IT act till now. The most important object for passing of this act is to facilitate e-commerce and tackled the cyber-crimes. The IT act 2000 has under gone under the amendment in the year 2008 and come with the Information Technology act, 2008. Being the first IT act of the country, it has many criticism and the loopholes, so in order to fill that loopholes, the IT act 2000 had gone under amendment in 2008, the main objective behind the amendment is to come in the parity with the increasing technological advancement and India is the most growing technological advanced country in the Asia. Bangalore was established as the cyber hub of the country till then and most of the country business involves the internet. Cyber Crimes are also increasing on a daily basis and new cyber-crimes were emerged on a daily basis. However, the increase in the sexual contents, cyber terrorism, and theft of data and to increase the prosecution level is the most important factors behind the amendment of the IT act 2000 in 2008.

The enactment of these IT act has been solved the problem in many aspects but still there is need for the vast change in the provisions. Despite of the amendment in the Information technology act 2008, there is need for change in-

1. There is no proper protection available in the IT act 2008 for the intellectual property rights in cyber laws.
2. The IT act 2008, doesn't talk about the domain name related issues like rights and liabilities of domain name holders.
3. The IT act doesn't talk about the Anti-trust laws.

4. The IT act doesn't talk about the regulations of the electronic payments.
5. The IT act had not created any special police station for this act and the traditional police station system and the officers are not well equipped with the latest technology. However, there are separate IT cells in every district under the control of Superintendent of Police but again they are not so well worse and running on the same old traditional method of investigation which doesn't work in the cyber law cases. The condition of cyber cell in states like Bihar, Uttar Pradesh and Jharkhand are worse except their capital towns.

6.6 Cyber Prostitution and other sexual offences against women in India

The internet has become one of the essential ways of life to the teenagers in India. The teenagers in India can't think his life without the internet. The internet is a two-way entity in India, it gives immense power of knowledge but also restrict the users with different cyber related offences. The most heinous among them is the sexual crime against women in cyberspace. The teens basically in India used to chat and develop the friendly relations with strangers on the internet, generally without the knowledge of their parents. The chats are basically cyber privacy protected and in their private chat rooms, which create difficulty for the intermediaries and the enforcement agencies to tackle these types of crimes. Hangouts in the chat rooms are the common place for the teenagers in India, everything in the modern India is more or less technological driven, starting from home works, assignments to online exams for the school going children's in India.

This gives a good opportunity to the paedophiles and other utter motives people in India, so that they get close towards the teenagers and specially towards the girl child and used them for their bad motives. These persons generally used fake profile pictures, fake name, fake id's and chat according to the likings of the girls or women and they try to build a love and affection relationships. Which generally leads to the sex chats; video calling includes sharing of pictures and videos also. The person also tries to meet in person and have sex with the girl or women and the social media platform like Face book, Instagram, twitters are generally used to do such heinous acts. While personal sharing in cyberspace provides emotional support for some teens,

there is evidence that on-line peer support could reinforce off-line antisocial behaviour⁴²⁴

The prostitution in India goes beyond the imagination in 2020, the prostitution in brothel homes are the legacy of old century. Now everything is technology driven and prostitutes are the first technology savvy in India because they know that technology not only save them from jail and humiliation but also give them more opportunity to spread their business free of cost generally and to the masses in any corner of the globe. Previously, they have access till their town only but now they have the access to the whole world.

The websites like red light secret.com, hookers.com, Victoria Milan are used frequently and in most of the countries the dating apps are also used to share the information of the prostitutes. The prostitutes have been given a room in the websites to describe everything starting from their colour of eyes to the sexual position they perform during sex. The person sitting in New York can buy and have sex with some Indian girl sitting in New Delhi.

The other most common way of prostitution in India is the marriage websites and the massage parlours, the advertisements of massage parlours are actually the modern brothels of India. Prostitution in India is well defined and formally acknowledged everywhere now days in India. It is also correct to say that the mafia is controlling the prostitution market in most of the cities like in Mumbai and Delhi and is it very common and everyone knows that most of the brothels are run by the D company in Mumbai and the money which are gained from these brothels are gone to different countries and used in the terrorism. So, every crime is related to each other and the prostitution is the main and easy way to make the investments. However, it is always claimed that the police know everything about the prostitution but they are corrupted so they don't take action against them. This presumption is not totally wrong.

However, there are many sections like 67,67A, 67B, 67C, 67E, in IT act and 354A, 354C, 354 D in IPC against the sexual offences against women in cyberspace but most of the provisions in India focuses on the cyber pornography and specially child pornography. No provisions in Indian laws basically focus against the prostitution in cyberspace, which is the most growing and heinous crime in India.

⁴²⁴S.J.Genius, "Internet interactions Adolescent health and cyberspace," Vol. 51, Canadian Family Physician, 329 (2005).

One of the recent reports has been shown that the person who has chosen their partners through internet have the higher rate of transmitting sexual diseases.⁴²⁵ The younger generations who use the internet and online technologies extensively for staying connected for all his day to day works and entertainments, including information, e-mails, social networking, e-banking, e-shopping, web-TV, news, education, home-work research, online gaming, downloading music, videos, movies and other contents etc., are more vulnerable to targeted cybercrimes.⁴²⁶ This often happens in the form of cyber stalking, cyber bullying, child pornography, online harassment, hacking of emails or social networking accounts, identity theft, unwanted exposure to sexually explicit material, in appropriate contents, etc.

These risks are not confined to their local areas but also occur from people all around the world. Parents and teachers generally in India don't have the direct experience with the risks posed by new media technologies. There must be some innovative solutions for these problems now because of daily growing websites in India. The Multi-layered approach must be taken care in this regard to monitor the growing dimensions of the internet in India. The more dependency on internet requires more modern approach to safeguard the interests and rights of individuals. The online prostitution in India has not developed in a single day, the development has been emerged in late 60's with the advancement of the print media and in late 90's with the invention of the internet it has become a full-fledged business with advertisement as its main concern. Previously it was done secretly in four walls but now it is well advertised and has access to anyone.⁴²⁷ There is one thing which is very much evident that despite of the illegal work, the prostitution is running in India as an occupation and this can't be possible without the collusion with the government agencies. So, it is not incorrect to say that the agencies are corrupted in this regard. Any nation whether developed or developing is depend on its younger and future generation. This social problem has the ability to destroy the present as well as the future generations.

The country like India has more threat because India is the 2nd largest population and most young population in the world and still India is lacking in the better enforcement of law against prostitution. The internet has not only made the prostitution safe from police but it also restricts the elements of humiliation in the society. This social

⁴²⁵M.McFarlane, S.S.Bull, C.A.Rietmeijer, "The Internet as a newly emerging risk environment for sexually transmitted diseases," Vol. 284, JAMA, 443 (2000)

⁴²⁶Ibid.

⁴²⁷Ibid.

problem, not only destroyed the physical health of the population but also destroying the very nature of the Indian societal structure that is the marriage system and the respect to the women. The government has to think and do something in this regard as soon as possible.

6.7 Position in Bangladesh

Bangladesh is one of the most important countries in south Asian region and it is one of the most important allies of India because of the language and the culture, which it is sharing with India and especially with states Indian like West Bengal, Orissa. Bangladesh is basically a poor country and under-developed in South Asian region and not so developed in enhancing the rights of the women in their country. If we talk about the Internet prostitution in this country then it is not incorrect to say that the Bangladesh is not very much well-worse in the technology and this is basically because Bangladesh mostly follow the Islamic law and in Islam the technology is considered as against the Islam as it was what happened in Middle- East in 14th c when the printing press has been invented there.

In Bangladesh basically men dominate and exploit women with the help of public and private patriarchy. The Private patriarchy basically believes to be within the family and public patriarchy is in the society. The one more problem with the Bangladeshi community is that of the teaching of Islam by Malawi is presented in a very distorted way in Bangladesh in most part of Bangladesh, which not only delivered women as the mere object of the men in the society but it also gives right to harass and exploit women if she argues against the words of their husbands.

The participation in social networking websites in Bangladesh had increased drastically with the advent of social networking websites like face book and Instagram in Bangladesh. However, the report says that it effects the more male citizens then a female citizens like the white collar crimes, specially related with the finance has increased drastically but the other crimes like sexual offences against women had also increased in Bangladesh and specially the revenge porn and personal information on website out of revenge by the ex- bf and husband has increased at a very fast rate in Bangladesh. The social media like face book has vast information about the user and this might sometimes lead to cause of harassment. This social networking websites has opened its arms for the identity creation and relationship building to every people all over the globe and Bangladesh is not an exception to this.

These social media websites have given opportunity to connect to any people of this globe, it has made a global village to whole globe but at the same time it has the risk of privacy breach and especially to the women because of the large information available on these websites. According to the authors Jones and Soltren,” Facebook is undermined by three principal factors: users disclose too much, Facebook does not take adequate steps to protect user privacy, and third parties are actively seeking out end-user information using Facebook”⁴²⁸The Facebook should take more important decisions to make understand the users about their rights and duties on social media. It has been observed from the Facebook research that women are more active on the Facebook and they want to share more photos, videos, and their thoughts on face book. So, they are the most vulnerable sections of the society. In Bangladesh, the women 90% of women doesn’t know the terms and conditions of the women and they even didn’t read at least once before making her account and 75% of the women didn’t know about the private setting of the account a key feature provided by Facebook.⁴²⁹

If we talk about the online prostitution or pornography in Bangladesh then most of the pornography is revenge porn or MMS like in other part of South Asian country. Many a times the partners post their photos and videos to take revenge or sometimes it’s a business deal also to take money out of the photos and videos by uploading on the porn websites. Bangladesh is facing massive destruction of privacy rights to their most vulnerable class that is women. As a result of this, victim become weak, harassed, mentally ill and sometimes lose their control on their life and tried suicide attempt or elope from their home and community.

The nastiest thing about this is the Bangladeshi society who does not considered this as a crime and the parents or the guardians are not with the girl child, they don’t accept that it is a crime against their girl child and it is better for the women or girl if she get support from their family and community. It helps in getting justice and mentally normal for that girl or women. The society in Bangladesh is still very much depended on the traditional methodology and most of the families are running with

⁴²⁸ Harvey Jones, Jose Hiram Soltren. Facebook: Threats to privacy. Massachusetts Institute of Technology, December 14 2015.

⁴²⁹Limor Kisseem, “2016 Cyber Crime Reloaded: Our Prediction for the Year Ahead”, (Last Modified on Jan. 15, 2016), available at: <https://securityintelligence.com/2016-cybercrime-reloaded-ourpredictions-for-the-year-ahead/> (Limor Kisseem, “2016 Cyber Crime Reloaded: Our Prediction for the Year Ahead”, (Last Modified on Jan. 15, 2016), available at: <https://securityintelligence.com/2016-cybercrime-reloaded-ourpredictions-for-the-year-ahead/> (15/03/2020 at 6.03 pm).

the traditional mind-set and it is very difficult to understand the technological advancement.

Most of the families in Bangladesh has not adopted technological advancement in most of the parts in the country and most of the family in Bangladesh are with traditionally Islamic mind set, this not only disallow but also felt shame for the children to share their stories of harassment with the parents which they had faced. The posting of photos with Photoshop technology⁴³⁰ on Facebook is very common in Bangladesh and most of the girls have never complain about this because of the non-supportive nature of society, parents and law enforcing authorities. The problem in Bangladesh is the society which is hard course patriarchy society and their literacy and due to this the women are not very much open for the frequent report to cybercrime because of the humiliation of the family by the society and law enforcement agencies.

However, like most of the European countries, cyber prostitution is not done by the mafias or by organised gangs but the process is almost same. Firstly, the male person started saying sexy or attractive, which is actually more like a food for fish on the social media website which is actually the beginning of the cyber harassment but this doesn't understand by the women and girl. The men then slowly take the women into the confidence by sharing his personal problems which are basically illusory in nature and then start making them feel special by saying exaggerated things to the women or girl. In many of these occasions they successfully take the internet friendships into the strong bond among them and gradually proceeds to send the obscene messages and the obscene photos and videos and if sender get into the real love and support a little bit then it became easier or it will be continued for longer times. The most drastic irony is that the women doesn't understand in many of the cases or realise very late that the men to whom she is talking is making money from their private photos and videos by uploading on websites.

However, in my research I had found that the bringing prostitution through internet is not very much common in Bangladesh and advertisements of Scott services are also not very much common in Bangladesh. However, the capital city old Dhaka is more or less influenced by this but the most of the users is the foreigners basically Indians

⁴³⁰Cyber Morphing.

who Found Bengali women attractive. The sex work either continues through Brothel (daulatiya) or through massage parlour which is not allowed.

6.8 Online Prostitution and pornography In Bangladesh

The Information and communication technology of Bangladesh had come into force in 2006 and according to section-57 of the amendment act in 2013, if any person deliberately publishes any material in electronic form that causes to deteriorate law and order, prejudice the image of the State or person or causes to hurt religious belief then the offender will be punished for maximum 14 years and minimum 7 years of imprisonment. It also suggested that the crime is non-bailable in its nature. In the original act, the imprisonment is of 10 years which is now increased up to 14 years. In the recent ICT law in Bangladesh, it is a crime to publish any obscene photos and videos of any person without his/her permission but in most of the cases the girl or women are not ready to go to the enforcement agency because of the various reasons and societal humiliation is one among many of them.

In 2013, with a motive of making drastic change in this regard, the Bangladesh government had established the special court with the motive to try the cases of cyber-crimes within 6 months. However, the government had not completely failed with his motive but still in Bangladesh, the work in this regard has to be made from the ground level and the government had to change the mentality of the people and teach them with the internet ethics and the awareness among the people and specially among the women internet users and what they will do in a situation where their internet rights has been hampered. With the increasing technology and the advancement of the communication system, the Bangladesh has emerged towards the development but this development process has also ignored the basic socio-equal rights, expression, privacy rights of the women and many more.

The internet has not only victimised the women and teenagers of the Bangladesh but also it stops their mental growth in order of more socially responsible. In one way the internet technology has proved a successful development indicator in Bangladesh but in other way the technology has exploited more women in the society. The other phase of internet prostitution in Bangladesh unlike in India is that the girls used webcam to show their body to the different people sitting in different parts of Arabs or European countries. This is basically because they are very poor, this is a different

way of prostitution in Bangladesh which not only depend on the clients but also on the agents. The agents who get connected to these girls are the many suppliers and they keep most of the money what they get from the websites. The websites like Hamster.com are very popular in Bangladesh for cam live sex. In most of the parts of the Dhaka, this is a common phenomenon in cyber cafes and the most ironical part is that everyone knows this fact and even the enforcement agencies.

Access to internet in Bangladesh is growing very rapidly, and most of these internet users are connected with the internet through their smart phones. According to one of the surveys the total number of internet subscribers has reached 85.918 million at the end of April, 2018. More than 93 percent of these subscribers use internet on mobile phones, rest of them are ISP or PSTN users.⁴³¹ Among this percentage at least one-third of the users will be women in Bangladesh. Unwanted and wanted exposure of online pornography among the young population led to other associated risks such as image-based abuse of users, where women are highly disproportionately targeted in the Bangladesh. In 78% of these cases related with digitally manipulated images with pornographic materials, the victim is found to be a woman. It may be noted that, almost 77% of the country's teenagers watch pornography on a regular basis.⁴³²

Bangladesh National Women Lawyers Association has claimed that the online harassment is one of the major crimes against the women in Bangladesh and the poor law enforcement mechanism makes it easier for the wrong doers. The police officers hardly understand the nature of the graveness of the cyber-crime because they are not trained in this direction and they hardly investigate the matter and if they investigate also, they didn't get the technicalities of the crimes, which generally lead to the poor investigation and the inappropriate delivery of the justice. The court a directive like formation of committees to this regard and the installation of a complaint box in this regard in every educational institution and at workplace have been hardly observed and in the condition in rural area is worst then it can be ever thought.⁴³³

The hacking of social account and uploading of private photos originally or photo shops are the common phenomena of Bangladesh information technology. However, in Bangladesh unlike in European and other Asian countries, the internet has not been

⁴³¹Farhana Akhter, Cyber violence against Women: The case of Bangladesh, Gender IT. Org, (June-2018), (17/03/2020 at 5.09 pm) <https://www.genderit.org/articles/cyber-violence-against-women-case-bangladesh>

⁴³²Ibid.

⁴³³Bangladesh National Women Layers Association vs. Government of Bangladesh & others, (5916 of 2008)

widely used to make the real-world prostitution. The Scott services or the advertisement on internet is not very common phenomena in Bangladesh and other than Dhaka which is the capital city of Bangladesh; no other big cities are influenced very much by the advertisement on internet. Still visiting the Brothel homes are the most common way of getting prostitutes services. However, face book is the most important platform in Bangladesh to approach a girl for prostitution or for the prostitutes to advertised or be in connect with the clients. Basically, there are two patterns which are noticed cyber prostitution in Bangladesh, firstly the women have been raped and recorded and blackmailed for the submission of her and for other reasons like money and ego satisfaction. The other type is the recording of the video through spy camera in hotel rooms or in some other private places.

However, it is not incorrect to say that the legislation had not played its best role in Bangladesh and Bangladesh has not a proper law to fight against the Violence against women on Internet. However, few of the major laws in Bangladesh dealing with Information Technology are as follows-

1. Provisions in the Penal Code 1860 (sections 302-326, 375 and 509)
2. Women and Children Violence Repression Act, 2000: (Sections 14, 9K and 10)
3. Information Communications Technology Act 2006 (section 57)
4. The Pornography Control Act 2012
5. Bangladesh Telecommunication Control Act, 2001 (section 69)
6. Children's Act 2013 (sections 28(1), 54(3) a, b, 81(1))
7. National Broadcasting Policy 2014 (Section 4.4.6)
8. Proposed Digital Security Act 2016
9. Metropolitan Police Ordinances (Section 76 and 78 of Dhaka and Chittagong Ordinances)
10. Guidelines by Supreme Court of Bangladesh in many different important cases.⁴³⁴

Other than these laws, the police department has their cyber cell in every district, especially for the investigation and solving the cyber security matters. The Bangladesh telecommunication regulatory commission is also working towards the monitoring and blocking of the websites in the Bangladesh, but it is commonly blame by the citizens that the government is actually curtailing their freedom of expression

⁴³⁴Technology vitiated crime against women in Bangladesh, Tahmana Rahman, (Feb 2018) (17/03/2020 at 12.05 pm), <https://itforchange.net/e-vaw/wp-content/uploads/2018/03/Tahmina-TMVAW-PPT-Mumbai.pdf>

right by blocking the websites which basically review and challenge the policy of the government. The best example is sec-57 of the act which not only punishes the person who sends or posts derogatory messages, pictures or post against women but it also punishes those people who post or comment against the government.

However, country like Bangladesh has many loopholes in their laws and especially in the enforcement mechanism like varieties of cybercrimes like cyber bullying is not recognised and mentioned in the IT act of Bangladesh, the matter of consent and data protection is not recognised by any of the Bangladeshi laws. Lack of clear direction to the enforcement agencies and protection in social media is also missing in every laws of the Bangladesh. However, it is reasonable to have less laws but it is never reasonable to have weak enforcement mechanism, So this is the major problem on which the Bangladeshi government have to think and in most of the cases it was found that the enforcement officials are corrupt, they take bribes and doesn't investigate properly and help the wrong doer also sometimes to destroy the evidences. In my view the most important think which Bangladesh has to take in this regard is create awareness, which they need to communicate among their society members and specially to their younger generations. Strong implementation of the laws and the strong implementation of guidelines is also need of the hour. The Bangladeshi agency is also lacking behind in the technological aspects which need to be uplifted in every aspect, whether judiciary or enforcement agency, everyone should be well trained and well equipped with the technology to solve the cases. The government has to work more towards the changing attitude of the people of the society by organising workshops and by organising awareness programs. The religions gurus should play a major role in this regard.

So, government should think in this direction. The role of the parents has to increase and this can be only done by the government with different schemes. The society as Bangladesh is very much different and traditional in its nature from the European society. The society in Bangladesh is very intact and everyone is related with everyone. So, everyone should need to try together to combat this social issue.

6.9 Comparative Analysis - USA, India and Bangladesh

The laws in USA, India and Bangladesh have almost identical with respect to the online prostitution. However, there are few points of distinction which is discussed in brief as follows-

1. The word Cyber Crimes has nowhere defined in IT act 2000 in India, nor in IPC and in the laws of USA it is defined in prevention of computer crimes act 1994 and not in Bangladesh in the act of Information technology act 2006.
2. The USA has not provided any categorisation of Cyber Crime in his IT act, while in Indian IT act 2000, chapter XI of the IT act under the head of offences dealt with this, however, in the Bangladeshi IT act 2006 also doesn't provide for any categories of crimes.
3. The offence hacking is illegal in India and well covered under Sec-66⁴³⁵ of the IT act, Indian laws doesn't discriminate in any private hacking and public hacking but in the laws of USA, the America computer and fraud act 1986, hacking is only illegal per se if it is done with those computers which are used by the federal government in rest of the personal computer normal fines are there only. In the laws of the Bangladesh, like in the case of India, there is no difference between public and private hacking.
4. The term cyber pornography is very common in all these countries. However, in India there is no special act to deal with this social issue. In India the IT act 2000 is the only laws for all the IT related issues particularly section- 66E,⁴³⁶67A⁴³⁷, B⁴³⁸,E⁴³⁹ and 292⁴⁴⁰ and 294⁴⁴¹ in IPC dealt with this act but in the case of USA and Bangladesh they have separate pornography act like Child pornography prevention act 1998 and the pornography control act 2012 respectively.
5. In India and Bangladesh, there are separate agencies like cyber cell in both the countries for the investigation purpose but in USA, there is no separate agency for investigating the cyber security issues. FBI⁴⁴² is primarily responsible for the investigation in cyber security matters in USA.
6. Cyber stalking is the first step for cyber prostitution or for the pornography. In India, cyber stalking is not a separate offence, it is covered under 66A, 72⁴⁴³ and 72 A⁴⁴⁴ of IT Act, 2000. In Bangladesh, there is no mention of the cyber stalking, cyber stalking includes in the sharing of obscene messages and pictures. However, unlike in India

⁴³⁵Computer related offences.

⁴³⁶Punishment of violence of Privacy.

⁴³⁷Offence to send electronic mails.

⁴³⁸Punishment for publishing and transmitting of material depicting of children sexually.

⁴³⁹Violation of privacy.

⁴⁴⁰Sale of obscene books.

⁴⁴¹Obscene acts and songs.

⁴⁴²Federal Bureau of Investigation.

⁴⁴³Punishment for access to any electronic media in pursuance of sexual act.

⁴⁴⁴Punishment for disclosure of information in breach of lawful contract.

and Bangladesh, USA has all total a separate law on cyber stalking, Anti-cyber stalking, slander and harassment act.

7. The term cyber Privacy has been used in the IT act in section section-66E after the amendment in 2008, the cyber privacy is punished in three stages in India capture, publication and transmission, in USA the online privacy protection act 2000 as a separate laws for the privacy matters but in Bangladesh there is no privacy laws or even word privacy has been used in their IT act. In short there is no concept of privacy in Bangladesh.
8. The judicial system all these countries are same, in India, USA and Bangladesh, no proper training is they're for the judges to decide the matter, the judges know minimum of the technicalities of the IT act in all these countries. However, there are attempts in India, to appoint only trained persons as a judge in cyber court but it has not at all implemented seriously till now in India.
9. In India and Bangladesh, there is no matter of jurisdiction because the problem is dealt by the central act and states are not really divided unlike in USA. In USA, every state has their own primarily federal laws on IT act, which create issue about the jurisdiction sometimes.
10. If we talk about the dependency of judiciary then the Indian judicial system is dependents on the precedents of USA cases, and the Bangladesh judiciary depends on the Indian cases.
11. The term cyber prostitution is total an alien concept for all the three countries and there is no specific provision in this regard but one thing is very clear that all these three countries are very much concern about the advertisement of prostitution and the girls who are indulge in cyber prostitution. However, all the three countries have provisions or laws on child prostitution.

Whatever, the different process these countries follow in order of the provisions or acts or the safeguards measures but one thing is common in all these countries is that they don't ignore this social issue. However, the development for this is very slow in all these three countries but with the growth of technology, it is also moving in a correct direction. The one very important thing which needs to be taken care is the mentality of the people in all these countries. The people are not ready to understand that this problem may hamper the lives of their child and this must be taken care on an urgent basis.

The one more important thing which the society as a whole can understand is that it is acceptable to take pictures of the private moments but it is not acceptable to publish them for whole world, the girl or women are the real victims in this regard. So, there is no point in humiliating their family as well as the girl child. The most required think will be change in the mentality of the society and for this governments should take a serious initiative because this social problem has the capacity to destroy their generations.

6.10 Conclusion

The prostitution in these developed, developing and under developed countries is almost same. The role of the government is not up to the mark and the advancement of the technology regarding the same has been taken in a very positive way. Whether it is USA or the Bangladesh, the country has to go far way in this direction. The countries like USA has been dealing with the territorial aspects, India is dealing with the enforcement basis and in the Bangladesh, the absence of proper provisions is absent in the regard is absent. However, the basic problem lies in the rapid technological advancement in this regard. With the passing of every year the technology has been advanced in the online prostitution and the watch dogs of the society have failed to effectively monitor and implement the provisions in the society. The prominent obstacles are that the conventional approach towards crime and criminality is rendered ineffective in the wake of technological advancement which very often than not results in exploitation of the victim and easy rescue option for the criminal. It is the need of the hour to stream line the existing legislative framework and the law enforcement machinery in the light of evolving concepts like online prostitution and to ensure sensitisation and awareness on every level of the society.

CHAPTER-7
CONCLUSION, RECOMMENDATION AND
SUGGESTED MODEL LAW

7.1 Conclusion

Prostitution is one of the oldest professions in the world it is as old as human civilisation, where women are merely treated immorally for the purpose of men's physical pleasure. Sexual activity is a manner to satisfy the needs of an individual by psychologically and physically. The main problem behind prostitution is how it should be analysed or defined such that whether as sin, crime, enslavement, or a productive work as because during the reign of Chandragupta Maurya, his famous economist of that time Kautilya levied tax on it, for the upliftment of their economy. It has its traces from Ancient India also, since the time of Indus valley Civilization. From time to time rulers had given them their prerogative rights and duties, even the state at that time protects the interest of sex-workers and considered them as a source of governmental revenue and there were the important players of states in terms of political aspect.⁴⁴⁵

During the medieval period, concept of Devadasi came into existence, where at that time temples were considered as the employer of large number of religious and non-religious functions, as they were the owner of major portion of land property. The parents offered their girls for religious purposes of god but due to unavailability of morals and incompetency among priests they started misusing the temples girls, the sun temple of Multan is the best example of this custom at that time. Later during the Islamic period, many temples were destroyed due to which status of temples starts falling and also temples lost their kings, the Devdasis working there has no place left for them to go and hence they became poorer and were forced into prostitution.⁴⁴⁶

While in earlier days it was always argued that prostitutes were doing a social work

⁴⁴⁵VijayashriSripati, Human Rights in Indian Fifty Years after Independence, 26 *denv. j. int'l l. &pol'y* 93 (1997); Robert B. Charles, American Influence on the Indian Constitution: Focus on Equal Protection of the Laws, 17 *colum. hum. rts. l. rev.* 189 (1986).

⁴⁴⁶*Ibid.*

and prostitution was treated as important and necessary evil practice because it helps in retaining the modesty of other women of the society and it was treated important to make a social balance between the societies at that time. But as time passes, conditions change and it starts getting commercialized and turned into trafficking of women and girls of the society and results in making it the third biggest money-making crime. As this profession has been practised since time immemorial in the society but still it has neither any status nor it had any legal recognition in the Indian society. So, to deal with these problems there are basically three systems which were being used to deal with sex work, these are as follows-

- (a) Suppression,
- (b) Regulation and
- (c) Abolition.

System of Suppression: Suppression refers to complete prohibition, it imposes complete prohibition on prostitution and all other activities related to prostitution. The system of Suppression or Prohibition makes Prostitution a heinous offence and also penalises very rigorously all over the country. It also punishes all those who are somehow associated with the same, such as all the parties including sex workers and those who make profit out of it like traffickers, managers, pimps, etc. It also punishes the prostitutes and the clients even if they are adults and committing sexual act in private places. It also punishes land lords who lend their buildings or any private premises, with the knowledge that sphere are being used for prostitution.⁴⁴⁷ It also covers act of taxi drivers and cab drivers who provide their services for transportation either to the prostitute or the customers for the purpose of committing such acts. Hence this system of suppression or prohibition make each and every act punishable irrelevant of fact that whether it is directly or indirectly related with the prostitution. The major motive behind application of this system is to prohibit the spread of Sexually Transmitted Disease (STD), states following this system have established separate health centres and departments to find out such persons and quarantine them until they are cured. Countries like United States, China, Philippines, Romania, Sri

⁴⁴⁷ Khan M.Z, Singh D.R: Prostitution, Human Rights, Law and Voluntary Action; the Indian Journal of Social Work, Vol. XLVII, (1987).

Lanka, and Vietnam follow this system of suppression in dealing with system of sex work.⁴⁴⁸

System of Regulation: This system is of the view that that prostitution is a never-ending act, so under this scheme to protect the health of sex workers and public at large they decriminalize prostitution by setting up a series of regulations, it basically aims to protect the health and safety of sex workers and the public at large. It also limits the operations of brothels at limited places and eliminates the sexual exploitation of children.⁴⁴⁹ This system requires mandatory and compulsory registration of sex workers with the local government and also takes their consent in submitting themselves to a regular check-up for vulnerable disease or sexually transmitted disease at government health centres. If a woman is found to practice prostitution without registration then she will be liable for punishment and mandatory registration, whether voluntarily or involuntarily. This registration includes a complete check and balance on the work and will only be provided to work, if the sex workers has attained the age of majority, it refers to decriminalization with controls. Countries like Australia, Austria, Netherlands, Europe, Germany, Greece, and Switzerland follow this system of regulation.

System of Abolition: This system was adopted in United Nation Convention of 1949, it has been described as the middle ground between prohibition and legalization, under this scheme prostitute may allow choosing the trade of prostitution as long as it does not infringe the public safety and order. Under this system neither the prostitute nor the client is punished for participating in acts of prostitution in private spheres. Such that prostitution per se is not illegal but soliciting in public places, operating brothels, or services of middlemen who controls prostitutes and arranges clients for them, and taking percentage out of their earnings in return are illegal.⁴⁵⁰

Owning and managing the work of brothels are illegal but it is not illegal to work as a sex worker because a sex worker plays no role in maintaining brothels. According to this system, laws are organized in such a manner that a prostitute can carry on her profession in private sphere without any offence being committed, such that decency must not be violated, disorder must not be created and the neighbours should not

⁴⁴⁸ Broken bodies, shattered minds Torture and ill treatment of Women, Amnesty International Publications, 1 Easton Street, London WC1X ODW, UK, p.-6, (2001)

⁴⁴⁹ Ibid.

⁴⁵⁰ Bhattacharya Sukumari, Prostitution in Ancient India; Women in Early Indian Societies, (ed. By Kumkum Roy), Delhi, p. 197, (1999).

disturb either mentally or physically by any act of there. This system is mostly followed in England under their sphere of Sexual Offences Act, 2003.⁴⁵¹

India stepped in globalisation and digitalisation in almost same time, people explore more and more advanced way of communication to make their life easy and wants to bring their close one closer. The intention of the internet makers is to use the communication system in case of emergency and make the life of citizens more comfortable and easier but today this purpose has failed and now person using it as a fun game and attended almost every strange people on the internet with zero protection measures. Digital space has not opened door only for technological growth but also to the criminal minded people. The easiest target is women and teenage girls and online prostitution is one among the cyber sexual exploitation against women.

The condition of Asian countries especially the under-developed is very pathetic in controlling the cyber based sexual harassment to the women and specially prostitution.⁴⁵²

However, there is no doubt that government is not serious about developing the safety measures in new technology and as a result it is more flexible in usages than before without any firm safety measures. Cybercrime has emerged as the most controversial issue in the today's world and the most vulnerable class in this regard is the women and children. The enforcement agencies of any country have major role to play in this regard but it is also correct to say that due to the technicalities of cybercrimes, the enforcement agencies have not succeeded up to the mark.

However, there is a need for the constant evaluation in the cyber laws, technology and procedure due to the safety of the women and the teenage girls and they also need to take a precise safety measures like changing of password at a regular intervals, read the safety measures carefully before downloading any software or application in their smartphone or personal computer. However, according to my view the basic problem lies in the way of doing things and the perseverance of cybercrime. There is need for the change in solving the cases of traditional crime and the cybercrime. The government has to change the technique to solve the cases as the enforcement agencies are solving it and as the judiciary is deciding it. There is need for special

⁴⁵¹Ibid.

⁴⁵²Quayle E., Holland, G., Linehan, C. & Taylor, M. The Internet and offending behavior. A case study, *Journal of Sexual Aggression*, 6, 78-96, (2010).

training especially to the investigating agencies and judicial officers at least the initial level training, so that, they will understand the technicalities of the matter at least.⁴⁵³

It is the primary responsibility of the enforcement agencies and the judiciary to keep the pace of the society and these new technologies can't become a tool for the explicator to exploit the most vulnerable class of the Indian society that is women. In the country like India, the role of Judiciary and executive is not only to protect the citizens but also to educate and communicate about the rights to the citizens in the digital world and especially with the privacy rights and the rights of expression and thin line between them.⁴⁵⁴ At the same time, individuals are also responsible to know about his rights and take a good care while exploiting the online resources and must know where to go and what to be done in the case of infringement of their rights. There are several difficulties in dealing with cyber-crimes like loss of evidence, unreal identity and others. However, most of the difficulties are taken care in the 2018 amendments but still there are few important measures which need to be taken care of like need of the cyber savvy judges are still a major issue in the Indian judiciary system.⁴⁵⁵

Cyber-crimes in India are still in its infantry stage in India; in my view the main issue is not the cyber-crime but the attitude of the society. Still in India, posting a picture of someone else without the permission is not considered as crime. The situation is even worse that the society and even parents posts all the liability on the women, when she was humiliated on the internet. The India as a country now has a more responsibility because it is the second largest country in the globe population wise and second largest country to use the internet after China.

This is the most crucial time of the Indian society; people have to understand the rights of the other and people have to understand that what constitutes as crime and what not. The people have to understand that every one's private space should be respected and we have duty not to disturb any one's private space. This can be done from very childhood and by the parents only. The child has to be taught that they must respect women both in the society as well as in the virtual world also. In short there is a requirement of complete social advancement in the Indian society. Hence in order to

⁴⁵³Debabrata Roma, *Lost Childhood, A first study of child prostitution in Delhi*, Commissioned by National Commission for Women, 4, Deen Dayal Marg, ND, p1, (1997).

⁴⁵⁴*Ibid.*

⁴⁵⁵ Shah, Svati, *Seeing Sexual Commerce: Sex, Work, and Migration in the City of Mumbai*, unpublished PhD dissertation, Department of Socio-medical Sciences, Columbia University, New York, (2005).

combat the problem of cybercrime and specially the sexual exploitation of women in cyberspace, the only stricter penal provisions will not suffice the cause but side by side there is huge requirement to change the whole education system and the societal monitoring of a child and this change will not come in a day and not by one person or by institution. Everyone is important to bring this change, every block should be worked together like government, Ngo's, parents, religious gurus and many more blocks has to come together to fight this social problem.⁴⁵⁶

It has been rightly said that sex work is the oldest profession of this world and we can't deny that it has taken many forms since its existence. Any provisions or laws who is controlling their behaviours must recognise the modern trend in this profession and only those laws should be enforce or recognise, who gives the best solution for the modern trend of this profession. The online prostitution is not a new concept for many countries and specially for the European countries but the best solution can still not be found by any countries and in this ever-growing internet presence, every country is struggling in some way or other to combat the technicalities in the cybercrime and specially sexually motivated crimes against women. The ever-growing society prostitution system is now move to the internet, the growing of the dating websites and most popular social media websites like face book is now not only shifting the prostitution from dark stage to main stream but also legitimisation for younger generation. It gives opportunity for the prostitution to come deepen in our culture.⁴⁵⁷

Internet has given a boost to this business, brothels still exists but the internet has given the opportunity to advertise, work from home and sometimes screen their clients on the internet only. The internet has taught the professional behaviour and ethics to the sex workers and above all it provides safety from prison and humiliation. Now the sex workers have understood that the in order to run the business successfully, they need to advertised properly and behave properly with their clients. The prostitution is not only an exchange of sex in lieu of money but it is more than a sex now. The role of clients has been changed from sex to pleasure, now the client come for physiological peace and emotional support also. There are many other

⁴⁵⁶ Hubbard, P, Out of touch and out of time? The contemporary policing of sex work, in R Campbell and M O'Neill (eds), Sex Work Now, Cullompton: Willan Publishing, (2006).

⁴⁵⁷ Ibid.

elements also which is related with the sex like dance, drink, massage and many more which also sometimes satisfy customers and bring back to them.⁴⁵⁸

The internet has not only given an enhancement to the prostitution but it has changed this profession all together. There is no longer existence of the shady streets and the customers are also known where to go directly, there is very much less chance to getting caught and humiliation. It has made this profession more attractive and charming. However, it is not good for government agencies because it will be very difficult to track down the internet prostitution. The prostitution are now increased from location base to the global now. Any person sitting in any corner of the globe can have access to any girl in this globe.⁴⁵⁹ The next issue is, due to the increase in the digital money, it is also very difficult for the agencies to track down the money because now every sex workers is accepted the online payment mode, which became very easy to transfer the money from prostitution to any drug business or to any terrorism business.

The prostitution is now not only concentrated to the 4 walls of a room, internet has not only changed the mode of doing this business but it has also changed the sex workers completely. Now the part time workers are more in this business, the college going girls and house wife's are also engaged in this business, they are registered with any of the city escort services and working 1 or 2 hours a day and make money for their personal necessity or family necessity. The internet has not only changed the previous model of the brothel visit but it has also enhanced the business of hotel industry.⁴⁶⁰

Like everyone knows that the hotel like most of the OYO rooms is inviting the couple without valid documents and most of these couples are not the actual couples but the sex workers. The prostitution business is now in a new phase and the countries have to think about their strategies to combat this problem.

According to the McKeganey and Barnard (1996) identified five aspects that motivated clients into 'paid sex'.

1. These were the capacity to specify particular acts that they wished to perform, or have performed on them;

⁴⁵⁸Soothill, K Parlour games: the value of an internet site providing punters views of massage parlors, *Police Journal*, 77, 43, (2004).

⁴⁵⁹Strangelove, Michael E., Internet advertising review: The Internet has hormones, selling sex in Cyberspace. *The Internet Business Journal*, p. 10, (1995, January).

⁴⁶⁰Ibid.

2. The capacity to have sex with a range of different women;
3. The ability to seek out women with specific physical attributes or displaying particular images;
4. The thrill of doing something that was socially frowned upon and the limited; and
5. Unemotional nature of the contact with the prostitute.⁴⁶¹

These aspects are looking very satisfying if we look on today's perspective with internet prostitution. Actually, internet prostitution not only gives adventure of real time but it is also creating a habit of prostitution because it is very much available with you in your personal computer.

Sadly, internet has turned heaven to some and hell to others; sadly it is women who have been harmed in a long run more than men in losing their reputation. Furthermore, we have to understand that the physical crimes such as rape, sexual molestation has given a new significance due to development of new cyber communication technology. There are incidents of rape and molestation or revenge sex after breakup or divorce by ex-bf or husband and these incidents have been taped and circulated by the wrong doers and they are also uploaded in a form of porn movie on an adult site. This has not only hampered the basic fundamental rights that are right to life and right of privacy but it has also hampered the basic confidence of that girl or women. The society has to become more adoptive and more generous towards that women and girl. They have to understand that the victim is the girl and they need more support and care and the wrong doer has to punish.⁴⁶²

Also, the patriarchal society in India plays a vital role in the harassment because the wrong doer knows that the girl will never tell about the harassment to their parents because the parents will never support her and due to the societal harassment they even restrict the girl for not using the internet and smart phone or not to talk to any of her friends.⁴⁶³ The societal norms are always pressurising and play a very bad impact on the victim's emotions. There is a psychology in the Indian society that the whole reputation of the family in India depends upon the character of a girl and if she is unmarried then this will have more impact and the person who is doing wrong knows these things very well and he knows that the publication in the cyber space will not

⁴⁶¹ Sharp, K and Earle, S, Cyberpunters and cyberwhores: prostitution on the Internet, in Y Jewkes (ed), Dot.cons: Crime, Deviance and Identity on the Internet, Cullompton: Willan Publishing, (2003).

⁴⁶² Ibid.

⁴⁶³ Ibid.

only destroy the reputation of the girl but it also destroy the reputation of the immediate family members like father, mother, brother, husband.

Basically, in India the Information Technology act 2000 and Indian Penal Code plays a vital role in crime against women in India. However, the punishments which are given in these crimes are not very much stringent and not having a very wider impact on the wrong doer. So, in my view punishment for these types of crimes must be increased because the impact of the crimes is more heinous in nature and the punishment is the only thing which bought the deterrence among the wrong doer. It is interesting to share that IT act was never made for protecting the common people right in digital world, it was coming into operation to suffice the interest of e-commerce.

If we talk about the IT act before the 2008 amendments then it has only two sections which talk about the sexual offences against women. Section-67⁴⁶⁴ and 72⁴⁶⁵ of the IT act. After the amendment of the act in 2008, section 66E has been added, but it also doesn't cover every aspects of the cyber prostitution.⁴⁶⁶This section reads as follows- *'Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both'*. So, as I was discussion in my above paragraph that the punishments need to be increased and my **first hypothesis the Cyber Prostitution needs a separate act stands correct.**

However, prior to the amendment of IT act 2008, Indecent Representation of women (prohibition) of 1986, was used along with the section-293⁴⁶⁷ and 509⁴⁶⁸ of IPC and for pornography and obscenity section-67 of the IT act 2000.

The next big thing is the anonymity in the internet, most of the cybercrimes against the women has been done with the wrong IP address, anonymous account and diverted servers. In India, there is no protocol to follow this instruction. In China, it is compulsory that you must register with your own mobile number even if you are opening a Facebook account. In China no person has more than one social media

⁴⁶⁴Obscenity.

⁴⁶⁵Breach of Privacy.

⁴⁶⁶Intervention of sexual privacy of individuals and distribution of the same in the internet.

⁴⁶⁷ Selling and distributing.

⁴⁶⁸'Whoever intending to insult the modesty of a woman, utters any word, makes any sound, or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman.

account but in India as we can see one person has many numbers of Facebook accounts and again referring to China, India must follow the strict model policy for the liability of intermediaries, that intermediaries are liable, no matter they had acted negligently or not.

The government has to make new policies or need to substitute the old policies regarding cyber prostitution because with every increasing computer this crime will increase. The government need a better and advanced technological aspect and a better law to keep a sharp look on this issue and to save their most vulnerable section of society that is women.

Here it is important to analyse section 67 to get the correct meaning of internet obscenity-

1. Anything which is transferred either audio and video or both.
2. The material which is transferred must be in an electronic form.
3. The material must reveal the sexual feeling or desire.
4. The material either read, seen or heard.
5. The material must be sexually explicit material.

It is also important to analyse section-67A of the IT (amendment) act 2008 in order to get the true meaning of the obscenity in cyberspace-

1. The file which is transferred must contain sexually explicit material, which is not covered under the right of expression.
2. It must cover uncensored act like sexual intercourse.
3. If not covered sexual intercourse then the private parts must be revealed.
4. Act must be published or transmit on the web.

It is being observed that both the section talks about the prohibition and communication of both the obscene and sexually explicit material. Indian laws don't cover the selling and distributing the obscene and sexually explicit material under the Fundamental Right of Expression. As we can observe from the word of the provisions that these sections have broader perspective and cover almost every aspect of publication or communication but still in a larger interest these laws do not covered every crime against women in cyberspace.⁴⁶⁹

In my observation till now, the primary role of the judiciary system is not only to punish the wrong-doer but also to build a confidence among the people that the laws

⁴⁶⁹Dave, Dhaval, Illicit Drug Use among Arrestees, Prices and Policy, Journal of Urban Economics, vol. 63(2), 694-714, (2008).

are well capable in protecting us. If anything happened, you have to follow the process and you will get the justice. For say murder, people have faith in Indian justice system that if anyone murdered me or my family then I will get justice and I know what I have to do and where I have to go and what justice I will get and this believe has come by a proper and clear law on murder and of course by the precedents set by the courts of India to punish the wrong doers in murder cases, but if we see the cases of cyber-crimes in India, women doesn't have any faith in the judicial system and they don't realise what happened next. The justice system should make believe to them that the government is very much protective with their rights in the cyberspace. The women are the most vulnerable sections of the Indian society and now in the cyberspace also. Generally, the crime against women is the sex-based crimes like, targeting young girls for prostitution, online harassment, online stalking bullying and many more. These crimes have a pattern in India, the wrong-doer generally follows, they targeted their clients with emails or they messaged or published on social networking websites. So, basically India need a separate act to tackled the problems of women in the cyberspace and the punishments should be higher in nature because they crimes are very much heinous in nature and secondly government should follow strict policy as followed in China with the intermediaries instead of Safe harbour policy with the intermediaries because they are well capable in eliminating the illegal content on the internet and also as an internet service provider they have more responsibility towards the society. There must be some strict rules for opening a social media account also in every country because it is seen that the wrong doer generally used these social media platforms to attract their teenage customers.⁴⁷⁰

Generally, in India, the sexual crime against women include the revenge porn, leaked videos by ex-bf; s and husbands in order to defame the girl and their immediate family members like father, mother, brother, husband. In India, the behaviour of the cyber criminals are altogether different from the Europe countries. In European countries the cyber prostitution includes mafias and they have fixed pattern to target the girls to indulge in pornography, this is more professional then Asian countries.⁴⁷¹ it's all together a full-fledged business in the European countries but in India, this happens on a personal levels by small groups because in India, there is still many

⁴⁷⁰Gertler, Paul, Manisha Shah and Stefano M. Bertozzi, "Risky Business: The Market for Unprotected Commercial Sex." *Journal of Political Economy* 113(3): 518-550, (2005).

⁴⁷¹Logan, Trevon and Manisha Shah, *Face Value: Information and Signaling in an Illegal Market*, NBER Working Paper No. 14841, (2009).

restrictions on the girls to use the social media sites and the age of marriage is also very less in most of the cities and villages in India.

Another type of the cyber prostitution is the actual advertisement which the prostitutes or the escort's service members do. In every city there is an escorts services and it is very easy to find a girl for one night in any part of the Indian cities.⁴⁷² All you have to type escort agency near me on a Google, then you get everything. Actually, it is like ordering pizza or renting a car. As we all know that it is very difficult to curtail the rights of the intermediaries but it is the work of the government that they will make a balance between the intermediary's right of broadcast and the citizen's right of expression and privacy. It has been generally seen by me when I was doing research on this topic that not only the Indian government but also the government of the USA has compromised many times with the citizen's fundamental rights like right of expressions and right of privacy. The main reason for giving benefit to the intermediaries in India is the advertisement policy of the governments and the elections. The government only want that the intermediaries always do a good campaign about their government. This is a very common phenomena, the presidential election in USA in 2016 is the best example for this. Generally, in India, when any matter taken to the intermediaries for defamation of women's rights or any hate speech against the women community, then they receive a very cold response from the intermediaries and generally not promising note to take action against that writer or artists.⁴⁷³

However, in India intermediary's liability is not a main concern, in India first of all it needs a separate law for this type of offence, and we have to still depend on CRPC and IPC for these types of crime. Secondly, the major problem lays with the collection of electronic evidence which need an altogether different approach of investigation in which India is not proved to be a very generous player. There must be cooperation between the intermediaries and the police in regards to the collection of evidence.⁴⁷⁴ The more times take in investigation the less chance of getting good evidence. What I mean to say is that every blocks of Information technology like cyber cafés, ISP's, internet providers, social media persons, police have to be connected through a single platform in order to curtail this problem and thirdly of

⁴⁷²Ibid.

⁴⁷³ Hubbard, Phil. 1998. 'Sexuality and Immorality in the City: Red Light Districts and the Marginalization of Female Street Prostitutes', *Gender, Place and Culture*, 5(1): 55–72.

⁴⁷⁴Ibid.

course there is an issue with the jurisdiction, however, this jurisdiction problem is more with the USA rather than India.

However, one thing must not be ignored here, there must be a requirement of confidence building and make them comfortable (girls) about lodging F.I.R in the police station, there should be awareness among the police, victims, society and other society members in order to tackle with the cybercrime against women in India.⁴⁷⁵

Cyber laws have emerged in India in 2000 and from then, it has changed a lot but the irony is that still after the 20years of evolution of our first IT act, Indian laws are not very much prejudiced in undertaking the problems in society. The most important issues like cyber prostitution has no were used in the act and of course less reporting and less awareness plays a very important role in this regard. It is important to mention here that the orthodoxies approach in the Indian society is almost the one of the biggest reasons for the cyber-crimes in India against women and cyber prostitution is one of them among the cybercrimes against women in the society.

In my view India need broader aspects in covering these crimes. India needs laws on stalking, emotional cheating, grooming, harassment and many more. In India unlike USA and other European countries, the problem is not only simulated till law making but it goes wider. In India implementation is bigger issue than making the laws and also the problem of awareness among the society regarding the cyber-crimes and especially against the women is much lesser than any European countries.⁴⁷⁶ The problem of cyber prostitution is not a new concept for many countries and the countries which I took for my observation doesn't have a law or even a single provision which dealt with this problem. However, what I believe is that the sexual crime against women is all start with the gender based insults, which is done by the male to the female and the most ironical thing is that the liberals of European as well as the Asian countries call it as the right of personal expression and this gender based comments turned into abusive harassment and harassment into defamation and so on. So, there must be a clear embarkation between the harassment and personal fundamental freedom of expression. Every porn websites have a column of leaked MMS, in which almost 99% of the videos are uploaded by not taking the consent of the girl and most of the cases even they don't know that they had been filmed. So, if

⁴⁷⁵Chatterjee, B.B, Pixels, pimps and prostitutes: human rights and the cyber-sex trade, in M Klang and A Murray, Human Rights in the Digital Age, London: The Glasshouse Press, (2005).

⁴⁷⁶ Hughes, D The use of new communications and information technologies for sexual exploitation of women and children, Hastings Women's Law Journal, 13(1), 129, (2002).

government is allowing the porno movies then they must have to see and pressurise the intermediaries not to promote the online prostitution vis-s vis rape on internet. In order to tackled this problem every blocks of the society should be important and strong and the primary role of the government to make this bond among every blocks of the society.

Internet and social media have played a vital role in prostitution in India. The old days of brothels has been finished now. According to the report of 2019 India is the second largest state in terms of internet usage⁴⁷⁷ after China and this makes India a great place for advertisements in Prostitution. The rapid growth of the information technology and specially the internet has been both good and bad impact in many ways in the society and online prostitution is one of the bad impact due to the internet. There is no doubt that internet has not only changed the communication style but it has also changed the life style of almost every people of this country and with the coming of the smart phones, the people whatever wants to do is everything now in their pockets. The people are much more dependent on their mobile phones and with the evolution of their school groups, sports group, colony groups and many more they don't have even need to go outside their mobile phones.

Like any other crimes in India, the prostitution is also gone internationally through internet; everybody has access on any prostitution from anywhere. Prostitution is now not a closed business which is only restricted to some filthy places in the city. Now, prostitution is more than a work now, it is a work with brand, now proper advertisement, membership card, offers, services, registration cards and what not, everything is available on the internet. The only thing which a person has to do is to pick a girl and paid her the correct price and she is at your doorstep and it is very safe and harmonious because of less change to be caught by police agencies and less chance of societal humiliation.

According to Charles Soukup in Little John, cyber space has given a pseudo meeting place which creates a new social world.⁴⁷⁸ It creates a new knowledge of assets and provides a place to share the views widely. The new media has not face to face interaction, but it has more personal relation than in a physical world. The internet has not only changed the face of the prostitution but it has also changed the face of

⁴⁷⁷ Internet world stats, usage and population statics, (last updated- 7 may 2020), 17/04/2020 at 11.45 pm), <https://www.internetworldstats.com/top20.htm>

⁴⁷⁸S. W. Little and K. Foss, Theories of human communication. London: Cengege Learning Asia, (2008).

human trafficking. The girls who are trafficked are photographed and advertised on the internet. By the end of 2010, the internet has grown widely for the advertisements in prostitution. Most of the prostitution advertisement is done by the agents and it was also used widely by the customers.⁴⁷⁹

One thing which I found commonly is that in every Indian city, there is a Scott service in their names like Mumbai Scott services, Delhi Scott services. However, I failed to find out that whether, this all belongs from same clown or this is just a coincidence. Internet has also given an opportunity to the sex workers individually; there is no role for the whole brothel system. They just make an account and post pictures and videos on the websites with her details and she can work individually. The internet has not only given a growth in the prostitution business but it has also given a growth in the part-timer sex workers. These sex workers are generally the single mothers or college going girls who work individually and only for one or two clients in a day.

However, there is no doubt that the business of the internet has emerged at a very influential level due to the internet, so some of the pros of advertising prostitution business on internet as follows-

1. Advertising on the internet has no doubt a cheap process and it is almost free in India.
2. Online media is considered as the most forward media, in online media there is a change of editing, it can be done anywhere and the evidences of the transactions will be easily erasable.
3. The internet has provided a safe house because it has very less chance to be caught by the police agency and very less chance of facing societal humiliation.
4. The actors (sex-workers and customers) in this business they don't have to come upon from the homes.
5. The internet prostitution has not only provided the safe mode of transaction but it also has a wider aspect in terms of quality and quantity of sex-workers.
6. There is no requirement of the middle man in this business now.
7. The sex workers have more time to analyse the customers now.
8. The sex workers will decide that they will sleep with this person or not.
9. The internet also helps to dominate the market because; it has more power to reach to the rich customers.

⁴⁷⁹Cunningham, Scott and Todd D. Kendall, Prostitution, Technology, and the Law: New Data and Directions," Handbook on Family Law and Economics. Edward Elgar, (2009).

10. The internet has made business competitive which makes shift the prostitution business to the small brokers, which ultimately decreased in the cases of prostitution and number of sex workers.

The internet has not only made the transaction easy but it has also made the whole new chain of demand and supply. The prostitution is not like that as it was before coming of the internet. The internet prostitution is not about only sex now, but it also about the fantasies, other activity other than sex like massage etc. it is whole together a different level of business. It has not only made the promotion of business cheaper and easier but it has also made more available than before.⁴⁸⁰ The customers have more idea and more availability to choose among themselves according to their demands and needs in which sometimes money plays a good role in deciding.

The customers also don't need to come to the brothels, they can also come directly to the hotels or the prescribed centres and the payment of these arrangements can be also be done online. However, the fooling around on these websites is also increased day by day. The photos are generally different on the internet as it doesn't match with the real face of sex workers. There is always threat to robe the customers by these sex-workers and by their agents at any hotels or prescribed places. There are many fake agents also which not only charge the amount in advance and then elope but they also give a continuous threat of societal humiliation and make more money out of these treats.

Sometimes, the person who if not used the payment mode carefully while dealing on the internet, then it might lead to the deduction of all the money from their account. The online prostitution is not only sexual offence but it has also conducting more offences like if you have to play a sexual game which are very common in India on an adult website then you have to open an account and deposit some money through your credit or debit card and once you shared your bank information your money will disappear. So, it is basically leading towards other crimes.

These types of cyber-crimes are very common and normal in the online prostitution and the person to whom this type of crime has been committed, rarely go to the police station because, the chance of humiliation from police and in the society is more and never get his position back.⁴⁸¹ In the society in terms of societal values as it was before going to the police and the persons who are doing these types of crimes knows very

⁴⁸⁰Ibid.

⁴⁸¹Ibid.

well about this. However, the Indian society has not opened to the internet prostitution as it is in the European countries. The brothels are still the foremost home of the sex workers and they are increasing day by day. India as a country has also seen the increase in another types of prostitution that is the car-picking, it is also very famous now a days and the cities like New Delhi and Mumbai is quite famous for the car-picking.

However, it is very limited in numbers and not approached by the customers due to costly affairs and not approached by the prostitutes also because this is a highly perilous to go with someone strange in car. The prostitution in now a days is more than a need, till the mid-70's and 80's only those persons are the regular visitors of the brothels who had a sex addicted or to those persons who are living far from their wife's or girlfriends but now it becomes a show of thing then a habit among the teenagers. Every adolescent boy wants to try at least once in his life times, sometimes to show off to their friends or sometimes for the life time experience.⁴⁸²

It is no more a taboo for the Indian society that to have sex with the prostitute and the person who belongs to good family never does that thing. The generation has changed a lot and with every changing generation the taboo has decreased in the Indian society.⁴⁸³ The teenagers or adults of this generation doesn't consider it as a taboo now, they considered this as an amusing game and this only became due to the online prostitution because they know that in online prostitution there is a less chance of humiliation by the family and society and of course there are very little chance that the police agency will caught them.

Till the late 80's prostitution is a business which is run by the most ethical ways like the school boys are not allowed in the brothels and the persons who are drunk are not allowed in the brothels and Prostitutes will never charge extra amount other than their usual rates but with changing time and the market of competition, brothels have become a hell on the land. The cheating with the customers and the robbery are became the common face of the brothel homes. The people are not comfortable to go with their costly affairs in the brothel homes like with their gold chains and rings or with extra money other than the amount which will be paid the sex worker.⁴⁸⁴

⁴⁸² Cunningham, Scott and Todd D. Kendall, *Prostitution, Technology, and the Law: New Data and Directions*, Handbook on Family Law and Economics. Edward Elgar, (2009).

⁴⁸³ Ibid.

⁴⁸⁴ HughesD, *The use of new communications and information technologies for sexual exploitation of women and children*, Hastings Women's Law Journal, 13(1), 129, (2002).

However, the second thought is that if the prostitution will be legalized it will at least solve the problem of exploitation, rape but it is not a correct thought in my view in this regard as legalisation will give a boost in human trafficking. India has the world second largest population that will also play a very crucial role in increasing the prostitution. In my research the countries like New Zealand and Australia where prostitution has been legalised has hardly changed the position of prostitutes or their children, they had only increased the revenue of states and the gangs who are indulged in this business are not afraid of the agency now. Due to the legalisation, it also became very difficult to make a difference between the prostitution by own will and the prostitution by exploitation and it will also increase the exploitation rather than decrease the exploitation. The pimps will become businessmen with tax cards, else everything will be the same. It is a big fairy-tale that by legalising the prostitution, the situation will change. The societies like India, which are driven by their own values and customs, where honour killing is a normal phenomenon in the name of inter-caste marriage. We can't imagine the market of flesh trade backed by sanctions of government. The legalisation of the prostitution not only destroys the basic customs and values of any country but it also brings a number of STD's⁴⁸⁵

The legalisation of the sex industry is very much demeaning for the female because it promotes specially male persons to buy sex for dollars and this gives a notion in their mind that the girls are made for the pleasure of a man only and we can buy them as just a commodity and they are nothing more than a commodity. This not only increases the disparity between the two genders but it also violates the basic family structure of the society. There are increases in the human trafficking cases after the legalisation of prostitution in Australia.⁴⁸⁶

The government should think about the future of the children of the prostitutes and the prostitutes who want to come to a mainstream society should be given a proper facility to do so. However, Supreme Court in *Gaurav Jain vs UOI*, the court has given guidelines and directions to the central government to take necessary steps for the livelihood of the children of sex workers but many guidelines are still not followed till now.⁴⁸⁷ So, my second hypothesis, *de-criminalization never solve the problem of*

⁴⁸⁵ Would Legal Prostitution Decrease Sexually Transmitted Diseases?, Procon.org, Last updated on: 1/3/2018, (24/04/2020 at 9.08pm) <https://prostitution.procon.org/questions/would-legal-prostitution-decrease-sexually-transmitted-diseases/>

⁴⁸⁶ Ibid.

⁴⁸⁷ (1997) 8 SCC 114, SC 3021 (India).

prostitution is stand correct and it is rightly researched that the problem of prostitution is only solved by strict legislation and controlled administration by the enforcement agencies and above all, the society needs an awareness about prostitution and specially about the cyber prostitution. The Judges and investigating agencies should need some more technical knowledge and capacity building training to solve the matter of cyber prostitution. Hence, every block of the society including government, NGO; s, Society, Judiciary, legislature should work together to combat this social issue.

7.2 Suggestions/Recommendations

Crime in any form shall affect the society as a whole, in every country whether developing or developed cyber-crime is increased at an alarming rate with the advent of internet in every place starting from country economy to glossary shops for billing. Now, especially in India, the penetration of the technology and particularly smartphone is so much high among the younger generation in India is that a person especially younger generation can't think his life without the smartphone for a single day.⁴⁸⁸

Furthermore, it has to be understood that the traditional crimes like prostitution has get net mode due to the development of the Information technology. There are other crimes also such as rape is now recorded and circulated on the mail and other social media platform and last on the porn websites. So, information technology not only gives boost to these crimes but produce a new crime in these physical crimes.⁴⁸⁹

Moreover, the present patriarchal society plays a major role in making women weak in the society. Honour, pride and reputation of the society all depends on the women and many a times the wrong doer takes the advantage of this opportunity and blackmail the girl and demands money and sex in the favour of compromise. This is also one of the reasons for the low report of the sexual offences against women in cyberspace.

The questions and debates are relatively same in India for the prostitution that whether it would be legalized because after legalization the exploitation will be

⁴⁸⁸ Hunter Moore gets 2.5 Years for Revenge Porn Hacking, available at: <https://www.cmagazineuk.com/hunter-moore-gets-25-years-for-revenge-porn-hacking/article/535569/> (14/10/2019 at 5.07pm).

⁴⁸⁹J. Rattan, *Cyber Laws & Information Technology*, 63 (2011).

reduced or whether it is not legalized because it may destroy culture, values and family structure. The question remains the same and the debate holders are also the same. However, the Supreme Court from time to time tries to solve the matter but this is something which can't be settled in the court room, it is the societies which have to decide that what type of future they want for themselves.

India is a country where Gang Rape, Domestic Violence and other crimes against women are common things to the society and when the question arises for women who are engaged in prostitution the situations are more miserable. The question here arises, that why not India should stand with those countries who established this as a real or legal profession. The conditions of women who are engaged in this profession are becoming wretched day by day. They are forced to live like animals and even the larger part of their income is taken by the pimps. They are suffering from much communicable or sexual disease like STDs and even they are not allowed to walk outside their four walls and even not to talk with the strangers.

In my view at least the legalization of prostitution will solve the problem of Human Trafficking to some extent because it will give freedom to walk in and out to the women and the person who buys sex can also feel safe to these brothel homes which will give freedom to many aspects like the society at least start talking to them in open air and thinking about them. The legalization will also lead to increase of health conditions to these prostitutes. No doubt legalization will increase the working condition and brothel homes became safer home to them. The women who are commercial sex workers can do easily their business and they can also take an account to the amount which is taken by their pimps. We can also say that it can also reduce to violence. Due to the legalization of the prostitution, when the prostitution as a profession came under the main stream industry then obviously there is a tax implement system which will obviously increase the profits of Indian revenues.

This will also lead to acceptance of prostitutes in the Indian society and upliftment of their quality of life. The legalization not only solve the issue of upliftment but it also gives strength to the prostitutes to raise a voice against the exploitation and directly go to the police. They will come to the main stream of the society which will improve their education, medical facility and many more. The other most important benefit for de-criminalization is that the prostitutes were not exploited in the hands of the authorities. Not only the pimps or the other male exploiters but it also gives a blow to the police authority because liabilities also arise to these authorities because they also

take their income forcefully and exploited them physically also sometime. It will also give rights to prostitute to approach to proper authority in case of exploitation.

The prostitution will be legalizing because it will separate the Legal prostitution and illegal prostitution and it will give a setback to most of the persons engaged in this industry. The future of children to these prostitutes will also safe and the human trafficking for the purpose of sex will decreased too few extents at least. It is beyond any doubt that the prostitution is running as billion-dollar industry in India. These industries are very well carried out in almost every cities of India. In the above discussion we can conclude that the criminalization of prostitution is never a solution for the Indian society.

It is regulated and recognized as a form of work. In my view the prostitution has not only given the legal profession status but also required the free education guaranteed by the Government like as it is given in Fundamental Rights under Article-21A. More important legalization of prostitution will bring these persons to main stream and give their rights or chance to live their normal lives. But of course, it will only happen when government legalize the rights of sex workers, which will give them protection to their work and dignity.

Prostitution is always a blistering topic for the Indian democracy, many scholars are in the favor of legalizing many are against the legalization but the subject matter is remaining the same, whether it should be legalizing or not. However, there is no evidence that the situation will change for the prostitutes and their children but there is one thing which will certainly happen is that there will be an increment in government and sex industry revenues. It is a big myth that overnight the things will change after legalizing the prostitution.

The only change will happen is that the illegal act became legal and the pimps will turn into businessman. The real change will come when Government will think out of the box and actually think about increasing the quality of life to the prostitutes and their children. If Government will legalize prostitution then the enforcement mechanism should become more active because the risk of exploitations and other sexual diseases will increase. Actually, if we say then it's a reward to the pimps, traffickers and sex industry. Everything will do under the legal banner of prostitution and it becomes the easy money-making market for both pimps and young ladies.

The countries like India were moral values and morality takes prior place then the laws. How can we image a situation where flesh trade is everywhere and supported by

Government? Besides the morality ground it also increased the Human trafficking and it helped in expanding sex industry. Not only this due to legalization of prostitution other type of exploitation like dancing, pornography, phone sex, pip shows etc will expand and increased in much more profitable way then it was before.⁴⁹⁰

If we talk about countries like Malaysia, Thailand, Singapore, Denmark, and Sweden the sex industry is now became the integral part of the tourism. It will also increase the street sex, and absolutely there will be a problem relating to the health issues of the prostitute. One of the bad countenances of prostitution is the child prostitution. It will also increase the child prostitution. In countries like India where corruption is highly observed by the Indian Bureaucrats, it will be very difficult to stop child prostitution in countries like India and this child prostitution is never accepted and especially in Countries like India. The countries like Australia where Prostitution is legalized in one part of the state and criminalized in another part of the state.⁴⁹¹

In Australia, the states like Victoria have already decriminalized the prostitution. It is observed that there is increase in Child prostitution. Legalization of the prostitution will increase the demand for sex and it will promote the male customer to buy female for sex in a most promising social and legal setting. It gives an open message to the young men and boys that the women are the buying commodities and anyone can buy them and do whatever they want to do. They will take sex as a harmless game. It will definably degrade the social values of women. The Government should think of their health, children and future rather than depending on the revenues of the prostitute industry by legalizing it. It is very much needed to take them in the main stream of the society by creating opportunity to them because no one wants to be a prostitute. It's a big question where this industry should legalize or not. However, the discussions are on and the question is still pending.

In India, ITPA, IT act and IPC are primarily responsible for the prostitution in India, however these laws are also not self-sufficient in dealing with the online prostitution in India, even the word online prostitution is not defined anywhere in these laws. It is totally new and different mode of prostitution for India. Online prostitution on fake

⁴⁹⁰Palash Krishna Mehrotra, Legalization of prostitution will help protect vulnerable women in India, Daily Mail, 19 October 2014.

⁴⁹¹KaurGagandeep, Law and Changing Private Morality in India, Journal of Law Teachers of India, Volume II, Issue 1-2, 2011, p. 126

web servers and IP address, advertisement through the fake identity is a normal phenomenon of this crime. The government should take major steps in this regard.⁴⁹²

The Indian society must change his perspective of seeing a woman as a commodity, there must be awareness among the society regarding the rights of the women especially in the small towns of India. This will not only lead to the increase in the report of number of Internet sexual abuse cases but also women feel them safe in the society.⁴⁹³ However, from the above discussion it has been seen that there are many loopholes in the Indian laws regarding the online prostitution, it is no were mentioned in the IT act.

On the basis of my research following points are suggested in this regard as follows.

1. There is no mentioning of the Women cell or the women investigating agencies in the IT act 2000, it is very important to have a women centric investigating agencies or the women centric police station in every district for the sexual crimes against women in cyber space and especially when it comes to the matter of the cyber prostitution then the matter became more important to have a women centric investigating agency or police station. Everyone knows that women are more open with women and they can share all the details very easily and especially if the matter is of sexual harassment then they can share easily with the women like in the rape case. There is a provision in the IPC that the medical examination can be only done by the women. So, if there is a provision for examination of prostitute victim or the other sexual harassment victim by the women then it will be easy for the women to approach the police agency and come with more cases rather to avoid and tolerate the abuse. There is a social stigma, due to which women don't want to talk to the police and to the judicial officers. So, it is required to have women wing in the police station especially for the women who are victims of sexual exploitation in cyberspace.
2. There is a requirement of all together a different act regarding the sexual exploitation of women in cyberspace and there will be a separate chapter for cyber prostitution in it because according to my study till now, every crime against women are related to each other in some or other ways and above all crimes such as cyber stalking, morphing, spoofing, cyber prostitution are not mentioned in the IT act. There is also

⁴⁹²Ibid.

⁴⁹³Ibid.

need to amend the ITPA act in this regard, if any person who use video camera in brothels then what happen and if any person makes an MMS with any sex worker in brothel. So, these issues must be dealt in the separate provisions.

3. The responsibility of the intermediaries is clarified in a very first instance. This is one of the most important and essential aspects in combating the cyber prostitution in India. However, section-79 gives a light on the role of intermediaries but this section is very confusing and ambiguous in its part. Section-79 of the IT act gives immunity to the intermediaries on the same line as the US federal provisions give in section-512(c).⁴⁹⁴The due diligence has been dealt by the S.C in the Shreya Singhal case⁴⁹⁵ but one thing which we have to be understood is that the intermediaries are the first barrier in the case of illegal content on the internet. In my view it is also wrong to put a strict liability on them like in China because many a time the content is not in the hands of the intermediaries but it is also true that there is need of more compelling the liabilities on the intermediaries with proper sanctions from the government. It is also important to note that the most of the illegal content is transmitted from the server of Google and yahoo, which include private chat rooms or emails, or most of the time the social media like facebook, twitter, Instagram and dating app like tinder. More over the responsibility in hosting the adult websites in any country is very important like the categories of child pornography, rape or MMS should not be encouraged by the porn intermediaries. Unless the role and liabilities of the intermediaries in India will be fixed the victimization of the women and especially online prostitution will never stop.
4. There is a requirement of separate penal laws for cyber prostitution in India, because the investigation and the preservation of the evidence require the special knowledge of the technicalities in Information technology. This is a most unique type of cyber-crime because one of the oldest crimes of the civilization has got a new taste that is technology. So, the investigating officers are of such level that he knows everything about the prostitution as well as technically sound in dealing with the technological matters. The penalties are much harsher than it was ever before, this can not only work as daren't but it has also like a real sanction of the society because most of cases are not reported in these crimes. More-over, as I suggested we require a new all together a different law for this but not only this we require a comprehensive totally

⁴⁹⁴Digital Copyright Millennium Act, 42 USC, 9601-9645, (2009).

⁴⁹⁵Shreya Singhal v. Union of India, (2015), 5 SCC 1.

different laws, which made in comparison with other developed countries. Many cyber-crimes which will leads to the cyber prostitution is need to be included in the IT act also as we all know that the Indian IT act was a by-product to fulfil the e-commerce requirement of the country. However, in my view firstly, it is more important to define the words properly, there is no definition of cyber-crime in IT act, cyber prostitution, cyber mopping, cyber stalking and many more.

5. There is a need for the more sensitization in every blocks of the society and every block has to face this together. There is no NGO's in India who are working against online prostitution. They are working for prostitution but not for the online prostitution or the girls who are brutally trafficked in online prostitution, no one is thinking about them. Next is the police official there must be special training for this subject to the police officer in the academy. So, they became more sensitized towards this matter and they feel the pain of these girls. The police officers have to understood that they have a very bad image that why the women and girls doesn't want to see them in police station. So, they have to work in this regard and they have to change that image and show the soft corners of their work to these victims' girls or women. Next the mentality that the women have done something wrong that why they are trapped by the trafficker, this is the wrong mentality of the society and unfortunately most of the enforcement agents think in the same direction. The parents also have to adopt the changing trends of the society, they have to believe that this can happen to anyone and this is not a sin that their child obscene image is in the internet and this is not a parameter to live with honour and pride in the society. They have to understand that this is an organised crime and this can be only corrected if we fight for the punishment of the wrongdoer together and specially in support of the victims. Last but not least the intermediaries should also take some serious measures to identify the illegal content in their servers because they are the first who dealt with the illegal content. Hence intermediaries should be more responsible. Every blocks of the society should work together to combat the problem of cyber prostitution. However, the government has major role to unite every blocks of the society through the awareness and strict legislations and by prescribing duties on every block.
6. The brothels and the red-light areas should be specially taken care off in this regard. From time to time, the investigating agencies need to visit the places and make a list of all the sex workers there. With the help of drone, it can be also taken. The agencies

have to tap out generally the teenager girls or the child girls because they are generally the cases of online prostitution.

7. There must be an awareness camps and through the pamphlets or through any other means especially to the parents that they must keep a track of the online work of their children and specially to the girl child's. There must be an awareness in a larger scale like in "Maan ki Baat" by Prime minister of India or a must campaign by every District Magistrate in every district and this campaign must be target based. So that every District magistrate reach to the largest number of the people and every campaign should be in the hands of the Chief Minister in every state.
8. There must be a need of a special helpline number in which, every girl or every parents of their child should ask question in any complexity regarding the online harassment or bullying or any other crimes, which leads to online prostitution and that helpline number should be free and must be attendant by a lady and the service will be 24/7. The helpline number should be connected to the local police station and if the victims want to make complaint online or at her home place then, she would get this facility. The concept of zero FIR must be there in this case as it is in the case of rape victim. So, from any place in India, the victim can file the FIR.
9. Now, it's time to view the crime of cyber prostitution very seriously and all together a different crime other than prostitution because this problem has a tendency to destroy the whole societal structure of India. So, there is a need for a separate Ministry all together like Ministry of online sexual crime (OSC) in which the cyber prostitution is a separate and important department because if we have to combat the issues of cyber prostitution than we have to understand that it will required a whole new approach of sexual offences against women in cyber space. Now, the ministry of Information technology or the ministry of women and children has not undertaking the issues of sexual offences against women in cyberspace separately and if ministry is not serious about this crime then how we can expect from the enforcement agencies.
10. There must be a review committee which at least in every 6 months review the work of the police station, NGO; s, intermediaries and others and present a report to the government and the government must review the area where there is a special attention needs to be taken off. This review committee will work under the opposition leader of Lok Sabha. The government should always need to change the policies regarding this because the technology is the most dynamic area which is changing every day, so government need to plan accordingly. For e.g. The virtual mode of

payment is very much famous among the prostitutes now a days, so due to the cash less business, it is now very difficult to take a track on them. So, government has to take track on their account numbers. Now, the bitcoin is also very much famous among the prostitutes.⁴⁹⁶ However, there is no evidence in India that the prostitutes are taking the bitcoins. So, the government should always make new tracking devices and software's and other machines to keep track on them and this committee will help to keep update about the emerging dimensions in online prostitution.

11. Cyber cell needs to be set in every districts of the state and in every union territory for reporting and investigation of the cybercrimes and there must be a separate department in that cyber cell, which relates with the online prostitution. However, there are guidelines for the setup of cyber cell but it is not taken seriously yet by the most of the states and especially states like Bihar, Jharkhand, and Uttar Pradesh are lacking behind. These cyber cells must act in the control of the highest rank of police in that state and not under the Supernatant of Police of that district because the S.P has always tendency to show the less crime in their district and for that reason they might not report many of the cases. There must be also a separate Superintendent of Police in every district for the cyber-crimes and specially to deal with the online prostitution. The S.P must have a special knowledge about the investigation and evidence in their training period itself and for this post there must be all together separate post in the UPSC exam by the government.
12. The process of the online FIR should be relaxed and made it very simple, like now the requirement of email account is mandatory to lodge the FIR. So, these things should be taken care of and relaxed by the government.
13. For the purpose of training and investigation to the judiciary and investigating agencies, the state should set-up forensic training and investigating labs in every state.
14. There is a need for the special police in this regard, the cyber police like CBI, CID, ED and other specialised agencies. The cyber police will be altogether different posts by the government and the young people who have special interest in the information technology can come under this scenario and served the nation.
15. There should be “no contact order” as a civil remedy to restrict the stalker from contacting the victim for a considerable period as contained in US and U.K laws.⁴⁹⁷

⁴⁹⁶VIP scott service of England is the first to accept bit coin as their virtual payment option.

⁴⁹⁷Centre for Feminist Legal Research, Report on Cross Border Movements and Human Rights. New Delhi: CFLR (2004)

16. Punishment needs to be increased for persons keeping or managing brothels from 1 year to 3 year and in the event of second or subsequent conviction it must not be less than 7 years.
17. The interstate trafficking is still not a major issue for the states but it has been seen that the trafficking is also a major cause for the online prostitution. The girls who are indulging in the brothel prostitution are also indulging in prostitution through internet. In one way or other they are indulged in the cyber prostitution. The prostitution has changed its way but the trafficking is still the same. Hence government should make strict provisos in this regard.
18. India needs to sign the international treaties regarding the cybercrime, the first international convention on cybercrime or the convention of Budapest on cyber-crime address the cyber-crimes such as illegal access, illegal interception, data interference, system, misuse of devices, computer-related forgery, computer-related fraud, offences related to child pornography, and offences related to copyright and neighbouring rights. The convention has been effective from 2004 and the optional protocol to this convention is from 2006 but India has not become a party to this convention till now. The reasons are not so much clear till now but India is not a party to this convention. The most and foremost reason why India should join is that when India ratified this convention then many European as well as American countries has same laws as it will be in India after the amendment in the IT act 2000. So, the problem of inter-state law has been solved to the few extents. Next the signatory countries will help in extraditing the offender if present in different states. It is very logical to say that this is a cross-border and can't be neutralise without the help of the cooperation with other countries. There is no country in this globe who wins the war against wrong doer in cyberspace alone.
19. The today's technology world is all about technological loopholes. The wrong doer is only playing by these loopholes and the agencies will never caught them, when they are one step above them in the technology and this can be only done when the enforcement agencies have a good relationship with global service providers and for this government has to take front seat and try to make a good relation with service providers and between investigating agencies.
20. The cybercrimes against women and specially the cyber prostitution will need to be a part of the syllabus in school, there must be a special class and specially for the girls that how the strange persons on the internet commit crime against them and specially

how the strange people slowly attract them towards the internet abuse. There must be a special class to boys also that they must respect the girls not in the physical world but also in the virtual world. There must be a special training session for the girl child by the local cyber cell in the school. So, they know what they have to do to combat this problem. There must be an involvement of guardians or parents in those exercise so that they will also know the seriousness of the cybercrime and how they will keep their daughters and there family away from this problem.

21. The ITPA act has not talk about the religion-based prostitution like the Devadasi system. There is a report which revealed that there are around 450000 devadasis in all over India⁴⁹⁸ and alone in Andhra Pradesh and Telangana only there are more than 80000 devadasi women.⁴⁹⁹ These are evidences that these devadasis are still working as a part time in the scott services or personal services. So, there is a need to curtail this problem from the society and the government has to think about this issue very seriously. However, there are state laws in the states but these state laws are not sufficient. So, there is a requirement of the special central laws or the special mentioning in the ITPA act.
22. Establishment of Anti-trafficking bureau, we all know that the major problem of prostitution lies in the human trafficking, so there must be an establishment of the anti- trafficking bureau in India. So that the government will be modernised and make himself up to date in this regard. The problem of trafficking need some special attention and the problem will be taken seriously. The traffickers are using different ways for kidnapping or trafficking like now the concept of love and elope is very common in India and specially, in the rural village, where the person became friends to teenagers and elope with her with the intention of selling her in brothels in Mumbai or New Delhi and it is very shocking that the whole racket system is working behind this.
23. There is a need of the special fast track courts to combat the problem of the prostitution and there is also need to have fixed time and there is also need to make all the crimes related to prostitution non-bailable and more harsh in the punishment and there is also requirement of taking clients or customers in the purview of the prostitution, if they are using the services of the sex workers and specially for the red

⁴⁹⁸National human right commission report in 2013.

⁴⁹⁹Commission led by Justice Raghunath Rao.

light areas there must be a committee who will take care and make a report and submit on the situation of red light areas time to time.

24. There is need to create the special funds for the upliftment of the sex workers and their children's.
25. There will be a different special scheme and especially in the budget for the sex workers and specially the retirement schemes, policy schemes, housing schemes, loan schemes and any yearly fund for the sex workers because we can't ignore the mass population for our society as because they are not the vote banks for the states.

The internet is not a new concept for the Indian civilization. India is the second largest country to use the internet after China.⁵⁰⁰ So, this mass interaction of Indian people on internet has resulted into the large number of contents on the internet including videos, photos, and many more. The internet is full of advertisements on the prostitution, all you have to do is to pick one of them and paid the correct price then in few hours she will be in your bedroom. The internet has a wider scope for the prostitution and it is in an unthinkable manner and it is more than an experience now. The businessmen or the other elite people including politicians and others are using this service very much. According to my research up to 30% of the prostitution business has been increased in the last 10 years in India.⁵⁰¹ The average age to use the sex workers service in India has gone from 25 to 15 due to the internet services. The teenagers are using it as an experience to their life but when they will get into the addiction of this fun game, it is hard to understand.

The one and only thing which attract the prostitution through online is the availability of the information's about the sex workers and the less chance of humiliation and arrest. These online messages designate prices, locations, personal characteristics, preferences about the sex positions, services they are trained with and other information that is useful for the customers to arouse. However, these messages and information's are basically fake in nature; it is only for the customers to not go to some other agency.

The unregulated internet rules and technological advancements have opened a door for the men to use the new services or what we can say exploit the women or girls for their own pleasure. The sex industry has used every means to give access to the

⁵⁰⁰Internet world stats, usage and population statistics, Minimats marketing group, last updated-30 June 2019), (28/05/2020 at 12.05 pm), <https://www.internetworldstats.com/top20.htm>

⁵⁰¹ HIV and Aids in India, Global information and education on HIV and AIDS, (28/05/2020 at 12.05 pm), <https://www.avert.org/professionals/hiv-around-world/asia-pacific/india>

women and girls to those men who are ready to pay. The role of the government is important here and especially the police agencies but it has been always seen and especially in India that the police are charging from the brothel owners and from other pimps to continue their business.⁵⁰² However, the role of the government and legislature is very important here. There is no strict rule against these crimes and most of the issues are not touched by the legislation yet. Say for example the ITPA act is silent about the customers, who are using the sex workers services. We can't assume that the prostitution will end in the society without punishing the customers who is using the services of sex workers.

We as a society can't deny that the relationship of the prostitution and the internet has proved very beneficial and important to the sex workers. The internet has opened the new advent for the sex workers like online strip shows, internet voyeurism, sex shows and most importantly the advertisement on the internet is almost free and reach to the last men of the society. These internet websites who contain the high rate of nudity and violence, these forms not only increase the exposure of girls and women to the large extent but also justify the act of men on the websites by sharing the experience and the review of the services.⁵⁰³

These forums normalise the exploitative and abusive behaviour of man these all new combination of the internet and the sex are giving tremendous fun to many of the users both to the pimps in terms of money and to the customers in terms of new sex experience. The viewing and having a sexual description of private parts on the internet through camera has not only ruined the family relations in the society but it has also lost the empathy of being a normal human being. Women's are exploited in the internet as the same way as in the normal brothel but with a new experience and charm. Sometimes, this abuse and exploitation became worse than the real sex. However, it is the least classified research for government till now in India but this is the most rising issue of the younger generation in India which requires immediate attention by the government and specially by the legislature and by the police agencies.

The sex industry had used very wisely to the new technology and they have given out of best result from this and in some cases, they had invented the technology also as I

⁵⁰²Morrison, T G and Whitehead B W, it's a business doing pleasure with you: an interdisciplinary reader on male sex work, *Journal of Homosexuality*, 53(1/2), 1, (2007).

⁵⁰³ Scott Service in Delhi, (28/05 at 3.04 pm), <http://www.meghamalik.com/>

had discussed about the VIP escort services of London which use Bitcoin as the virtual currency coins for their transactions in the prostitution services. There are many transmission devices that transfer the files like emails, chat rooms, dating apps and many more. However, the most common and the most usable is the private video calling and it can be used and share with the other customers also who can't afford the personal online chats. In these types of personal chat shows, the girls and boys are basically seen their private parts and the girls have to perform certain moves on demand of the boys or men.

These girls are basically from the lower-class family, who even can't afford their personal computers. So, either they have to depend on the cyber cafes or to their pimps or managers who provide the computers with internet. Websites and specially the WWW⁵⁰⁴ has been facilitated the pimps and managers to advertised the sex workers on the internet. Now brothels are also on the internet, the prostitution business is no more the customer-based business, it is all about the marketing and your skill that how you market your commodity and attracts others customers.

The pornography industry is one of the elements of the online prostitution in whole globe and India is not an exception to this. Once the photographs or the videos are captured and gone viral, the women have no control over this and due to the internet, a boy sitting in some village of Bihar, know everything about the model sitting in New York. Now the game is different in the online prostitution, the customers in the online prostitution now demand the online pornography. Two couples are doing the real sex and the person who is controlling them on a webcam directing them about the positions and about the other thing he wants to see and for which he is paying. This is very common in the Arabian countries.⁵⁰⁵

The government is also equally responsible for the emerging dimensions of the online prostitution because anyone has its fake account on the internet and there is no requirement of any documents other than fake information to have a social media account, to have an email account, to have a dating account and what not on the internet.⁵⁰⁶ There is no requirement of any documents and we all know that only one account say for social media account will not only hampered the hundreds of others fundamental rights but it has also capacity to do cyber terrorism.

⁵⁰⁴World wide Web.

⁵⁰⁵Kellog Bob, Number of Internet porn sites, victims rising. Focus on the Family, (28 February 2002).

⁵⁰⁶Ibid.

Internet is prevalent because it not only gives the wide access to the men but it also gives a control over the body of women and they also give ultra-privacy to the customers. Previously, they have to visit videos parlours and DVD parlours to visit the pornography but now everything is on your figure tip. The increased privacy and anonymity on the internet have not only gives the open field to increase their heinous work but it has also given protection from social stigma and law enforcement agencies both to the customers and to the sex workers.

The internet has not only provide the women and the girls for the sex but also provided the like-minded girl or women for the people who wants to go beyond one-night stand. They also provide the women or girls for other services like for gf, marriage, long relationship and many more. The information is very much logical and supportive in nature. For example, if the customers prefer soft sex then the girl's women who had registered with soft sex will appear in the private space of the client.⁵⁰⁷

We can assume from the very basic concept that how women are miserable in the world of prostitution. These websites have rating system so, if any women want to get the 5-star rating then she has to comply with all the directions of the clients then only she will get 5-star rating and on the basis of these ratings her next customers will choose her. So, the basic identity of being a human being has lost to these women and there is no option to say no to these customers. They are no more than a street dog for the society. There is also a wide range of the customers who are using these services starting from the lonely customers who is bachelor in life to the person who wants to betray his wife.⁵⁰⁸

The prostitution is not the product of the other sexual offences against women in the society. After the deep research in this topic, I had reached to the conclusion that the other sexual offences against women like cyber stalking, cyber abuse and others are totally different thing and are not dependent upon each other. The online prostitution is all together a different crime which originates in the following forms in India-

1. The advertisements for the brothels and the Scott services(basically sex)
2. The advertisements for the massage parlours and strips show and others.
3. The online voyeurism and command or instructions for sex.

⁵⁰⁷Soothill, K, Parlour games: the value of an internet site providing punters views of massage parlours, *Police Journal*, 77, 43, (2004).

⁵⁰⁸Quayle E., Holland, G., Linehan, C. & Taylor, M. The Internet and offending behavior. A case studies. *Journal of Sexual Aggression*, 6, 78-96, (2000).

4. The paedophiles or the whole racket is working to attract the adolescent girls and drag them in the online prostitution in lieu of money or love.
5. Pornography.⁵⁰⁹

So, basically these are the things which are going in the Indian internet space regarding the online prostitution and the sexual offences against women are totally different in India. In India, it is basically the revenge porn or the revenge voyeurism. The ex- bf or ex-husband is spreading the photos or videos on the internet with the intention to defame the women and their immediate family like Father, Mother, Brother, Husband and others. In India, as I already discussed the honour of the family in India is all depends on the character of his daughter in the family. So, in my study it was found that the cyber against women in India is totally different thing and not have any connection with online prostitution.

Basically, in India the online prostitution is the modern version of the brothel prostitution and with more spice of modernity in it. However, the internet has been started as a shield for prostitution, basically to protect them from the enforcement agencies but now it became a necessary evil because the persons specially teenagers never visited the brothels but they dovis its these websites and booked the scott services at his place and above all it provides protections from the enforcement agencies and from the humiliation from the society and there are numbers of story that the person who visited the brothels has been robbed.⁵¹⁰ So the persons who are not a hard core addict never prefer to visit the brothels and with the increase in the part time sex workers basically college girls for their fess and the house wife's working from home for 1 or 2 clients in a day have changed the scenario completely and this market has been emerged as a very competitive market, the demand and supply because almost equal now. So, in order to be in a game, the internet prostitution is a necessary evil.

However, the government is taking steps from time to time like blocking these websites but these steps is not sufficient as number of cases is increasing every day. This is being a social problem slowly in our Indian society and in order to curtail this problem every blocks of the Indian society including Police, Government, NGO's,

⁵⁰⁹ Church, Stephanie, Marion Henderson, Marina Barnard and Graham Hart (2001), "Violence by Clients Towards Female Prostitutes in Different Work Settings: Questionnaire Survey," *British Medical Journal*, vol. 322: 524-525, (2001).

⁵¹⁰ Hughes D, The use of new communications and information technologies for sexual exploitation of women and children, *Hastings Women's Law Journal*, 13(1), 129, (2002).

Parents, ISP and many more have to fight together against this possible social problem.

SUGGESTIVE STRUCTURE OF A MODEL LAW

The Prevention of Sex Work in cyberspace Act, 2022

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Chapter-1

Preliminary

Section-1

Short title, extent, commencement

- a. This act may be called as The Prevention of Prostitution in Cyber Space Act, 2020
- b. This act may be applied to whole of India including Jammu and Kashmir
- c. It shall come into force on..... by the central government in his official gazette.

Section-2

Definitions-

In this act, unless the context otherwise requires.

- (a) Cyber Crime means the crime in the cyberspace, which is carried out with the help of computer or network or which is specially carried out to target the computer.
- (b) Cyber Prostitution means obscene and indecent act carried by two people basically male and female generally through message, photos, videos out in virtual world with the main purpose to stimulate the sexual feelings and fantasies.
- (c) Cyber harassment means the publication of hate speech, making sexual remarks, posting rumors or posting the personal information about the victim and this information is not meant for the public, especially on the internet or some social media platform.
- (d) Cyber Stalking means harassing, stalking or humiliating someone in cyberspace through repeated use of cyber communications with the purpose of threaten, harass or embraces.
- (e) Cyber Morphing means the change of the pictures using the morphing technology in the cyber space with the intention of defaming women.
- (f) Intermediaries mean the network providers which act as a link between consumers and the information providers. Generally, the internet service providers, WWW and Links providers are the intermediaries in India.
- (g) Internet Pimping means the person who is advertising on behalf of a woman and generally he is the person who manages cash in her behalf.
- (h) Appropriate government means
- (i) Investigating Agency in thus act means the police official specified for the investigation of online prostitution.

- (j) Tribunal means special tribunal appointed by state government in every district for the purpose of Online Prostitution.
- (k) Private area means the private body parts of men and women for this act.
- (l) Capture means any photos or videos captured by any person in any private moment between them which specially reveals their private body parts.
- (m) Publish means publication of any photo or videos on the internet without the knowledge of permission of the women and that photos or videos specially reveals the in appropriate body structure of the women.
- (n) Privacy in cyberspace means not in faring the internet rights of any person.

Chapter-2

Types of advertisements in online Prostitution

Section-3

Digital Evidence

Digital Evidence basically means the photos, videos, sound recording, letters or emails transferred by electronic evidence and it is used as a data by the investigating agencies.

Section-4

Advertisement for the purpose of online prostitution for the purpose of sex.

Any Person referred under this act, who is advertising any audio or Video clips including photographs of any girl who is minor or major solely for the purpose of sex in any print media including newspaper, magazines, radio, or television or through internet then he or she will be liable to punish under this act.

Section-5

Punishment for the advertisement for the 1st time offender and second time offender.

The person who is caught for the 1st time in advertising any women profile with or without permission for the prostitution then he shall be imprisoned up to 3years and fine up to 50 thousand or both and if the person is caught for the second time or more than up to 7years and fine upto1 lakhs or both and in case of minor the punishment may be extent up to 15 years or 5 lakhs or both for 1st time and life imprisonment or 10 lakhs fine or both.

Section-6

Advertisement for the massage parlour and strip shows.

If any person advertised in any print media or in any television including radio or any internet including private chat rooms or social media with the purpose of arousing sexual enticement but not for the purpose of sex then he shall be liable for the punishment in this act.

Section-7

Punishments for the massage parlour and strip shows

The person who is caught for the 1st time in advertising any women profile with or without permission for the massage parlour and strip shows then he shall be imprisoned up to 2 years and fine up to 25 thousand or both and if the person is caught for the second time or more than up to 5 years and fine upto 1 lakhs or both and in case of minor the punishment may be extent up to 10 years or 2 lakhs or both for 1st time and 20 years or 5 lakhs fine or both.

Section-8

Advertisement for Advertisement for Sex chats and Online Voyeurism.

Any person advertised in any print media or in any television including Newspapers, radio, magazines or any internet including private chat rooms or social media with the purpose of arousing sexual enticement but not for the purpose of sex then he shall be liable for the punishment in this act.

Section-9

Punishment for Advertisement for Sex chats and Online Voyeurism.

The person who is caught for the 1st time in advertising any women profile with or without permission for the massage parlour and strip shows then he shall be imprisoned up to 2 years and fine up to 25 thousand or both and if the person is caught for the second time or more than up to 5 years and fine upto 1 lakhs or both and in case of minor the punishment may be extent up to 10 years or 2 lakhs or both for 1st time and 20 years or 5 lakhs fine or both.

Section-10

Convincing for showing the private parts of body on internet.

Any Person who is found to convince any girl or women to show the private body parts or sex chats on the internet through any of the electronic platform including social media, emails or private chat rooms or more than he shall be punishable in this act.

Section-11

Punishment for showing the private parts of body on internet

The person who is caught for the 1st time in convincing any women to show his private body parts or do sex chats to him then he shall be imprisoned up to 5 years and fine up to 50 thousand or both and if the person is caught for the second time or more than up to 10 years and fine upto 1 lakhs or both and in case of minor the punishment may be extent up to 10 years or 2 lakhs or both for 1st time and 20 years or 5 lakhs fine or both.

Section-12

Punishment for sending Emails and Private messages for the purpose of prostitution

Any person who caught approaching any girl or women on the cyberspace for the purpose of prostitution then he shall be punishable up to 5 years of imprisonment and 2 lakhs of fine or both and in the case of minors he shall be imprisoned for the purpose of 10 years and fine up to 5 lakhs or both.

Chapter-3

Other Sexual offences against women

Section-13

Punishment for Child pornography

Any person who is related with the acts which primarily means possession, transportation, receipt, distribution and possession with intent to distribute child pornography shall be punished with upto 10 years of imprisonment or 2 lakhs of fine or both for their first time offence and 20 years or 5 lakhs fine or both for their 2nd time offence or more.

Section-14

Revenge Porn

Revenge porn generally included the distribution of intimate photos and videos, generally by the ex bf and ex-husbands of any person generally women without her permission. The images and videos are distributed with the intention of blackmailing, end up relation, silence them or punish them for ending relationship or with any other reason. The photos and videos are made with or without permission is immaterial here.

Section-15

Punishment for Revenge Porn

Any person who print or cause to print in any hard copy, post on websites or cause to post the photos or videos on website primarily with the intention in above mentioned section and which primarily causes the harm of the reputation of that women and her family members. Any person who indulge in doing this thing may be punished with the imprisonment up to 7 years or fine up to 5 lakhs or both and any person who is abetting this may be punished with 3 years' imprisonment and 1 lakh of fine or both.

Section-16

Punishment for cyber stalking

Whoever stalk any person generally women for the purpose of online prostitution generally through social media, emails, SMS, dating sites, mobile app or any other ways through pictures, videos, contacts or any other way then that person is punished for 3years and 1 lakh or both for 1st time offence and 5 years and 3 lakhs for 2nd time offence.

Section-17

Punishment for Cyber bullying

Any person with the intention of online prostitution send any message (through a computer or a communication device) which he knows false, but with the intention of insulting her, annoyance, criminal intimidation or any more shall be punished with up to 5 years of imprisonment and 2 lakhs of fine or both.

Section-18

Punishment for cyber morphing

Whoever changes any person's image, generally women from one image to another image without any corrections using morphing tools available on internet with the intention of taking advantage from that image by exploiting the pictures of women, morphing and misusing them to promote online sex chats, scott services and pornographic content. The person who does or cause to done this crime shall be punished for up to 7 years or 10 lakhs or both.

Chapter-4

Punishments and warrants

Section-19

Role of intermediaries

The role of the intermediaries in this regard will be the strict liability or the Notice and Take Down and after notice from any person the intermediaries has been given 15 days' time and in during 15 days, they have to either take down the content or the written reason for not taking down the content. Any intermediaries who don't follow this rule shall the liable for the compensation according to the committee which review the complaint.

Section-20

Search without warrant

Any person which is not below the rank of Senior Inspector or any person authorised by central government or state government in consultation with central government may enter and search the computers or personal data in any public place and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act.

Section-21

Cognizable and non-bailable

The offences under this act are cognizable, non-bailable and triable by Court of Session.

Section-22

Punishment for Pimps

Whoever indulge in printing, publishing or posting the pictures, videos or any other information of women generally for sex or other form of online Prostitution and whoever living on the income of the women who is indulged in online prostitution (excluding aged parents, husbands, bf or any medical problem of any family members) will be considered as pimps for regard of this act and shall be punished with imprisonment up to 5 years and fine up to 2 lakhs or both.

Section-23

Punishment for customers

Whoever buys the service of these girls either for sex or other types of online physical pleasure, and then he shall be punished with 3 years of imprisonment and 1 lakh of fine for 1st time offenders and up to 5 years and 3 lakhs of fines for second time and onwards. This offence is non bailable and compoundable in nature.

Section-24

Punishment for abetment

Any person who found to be abated in any offences either advertisement, getting customers, collecting cash or any other help which facilitate the online prostitution shall be punished with up to 3 years of imprisonment and 2 lakhs of fine or both.

Chapter-5

Jurisdiction and Establishment

Section- 25

Jurisdiction

The state to which IP address belongs that state have the primary jurisdiction over the cases, however the jurisdiction may be changed according to the direction of the central government.

Section-26

Establishment of Training Schools for Judges and investigating officers

For the smooth function and to bring the technical advisement in this crime, it is the duty of the central government to establish training schools in every state with consultation with the state government for judges and investigating officers to help in getting technicalities in the advances of Information Technology.

Section-27

Separate exams for the posts of investigating officers and judges by PSC

There will be appointment of separate investigating officers and judges for this purpose by the exam process conducted by the PSC every year.

Section-28

Separate cyber tribunal in every district

The central government by notification in the official gazettes shall appoint a separate cyber tribunal for the purpose of sexual offences against women cyber space which also includes online prostitution.

Section-29

Composition of Cyber Tribunal

The cyber tribunal must consist of one chairman and one vice-chairman and such other numbers of members as notified by the central government from time to time in their official notification. The vice-president will act as a president in the absence of president. The president must be qualified as a judge of High Court and the members must be qualified as a district judges and will retired at the age of 65 or 5 years whichever is earlier.

Section-30

Powers of cyber Tribunal

The Cyber Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely –

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Requiring the discovery and production of documents or other electronic records;
- (c) Receiving evidence on affidavits;
- (d) Issuing commissions for the examination of witnesses or documents;
- (e) Reviewing its decisions;
- (f) Dismissing an application for default or deciding it ex parte
- (g) Any other matter which may be prescribed

However, the tribunal is not fully guided by the laws of the CPC they are only bound by Natural justice in this regard.

Section-31

Resignation and Removal

The chairpersons or other members of the tribunal shall not the removed by the any authority except by the central government and if he particularly proved mis-appropriate or incompetent then by the inquiry of the judge of SC. If any member who wants to resign from his post, he may send it to the chairperson and if chairperson

wants to resign, he may resign in his hand and seal to the ministry of Information Technology.

Section-32

Powers of Chairperson

Chairperson has primarily 4works-

1. Powers of Supersets and other directions to the members.
2. Distribution of work among members.
3. Filling of vacancies temporally.
4. Powers to transfer cases

Section-33

Salary and allowances

Salary and other allowances of chairman is as the salary and allowances of HC judges and members as the salary and allowances of District judges or may be decided by the central government from time to time and published in their official gazettes.

Section-34

Appeal to High Court

Any person aggrieved by any decision or order of the Cyber Appellate Tribunal may file an appeal to the High Court within ninety days from the date of order of the decision.

Chapter-6

Powers and Identifications

Section- 35

Power of Central government to establish special court

The central government in consultation with the state government can establish more than one court in the district of any state all over India as from time to time as situation require and consulted. The information must be notified in the official gazette of the central government.

Section-36

Power to make Rules

The central government is the appropriate authority for this act and the primary role to make laws in this act lies with the central government. However, the state government may from time to time as instructed by the central government through his ordinance

may make any bye-laws for the smooth functioning of this act. In the case of contradiction, this act will prevail on the laws which are made by the state government.

Section-37

Punishment for using some other computers and networks

Whoever, uses some others computers or network without his permission shall be punished be punished up to 20 thousand of fine.

Section-38

Compulsory identifications before opening in any social media or emails

Whoever, opens any account in any social media websites or email account, any dating app, any marriage app, and any other online platform then everyone shall have to do a compulsory identification through mobile number and adhar number.

Chapter-7

Other Provisions

Section-39

Extradition

It is the duty of the central government to make a treaty and agreements in this regard with the other nations to improve the extra-territorial jurisdiction of India stronger and more durable in this regard.

Section-40

Constitution of Advisory Committee

It is the duty of the central government to establish an advisory committee with the purpose of making a yearly report of every states and submit to the central government and to advise the state government whenever required, it is basically act as a bridge between Central government and the state government in this regard.

Section-41

Removal of Difficulties

If any difficulties arise in this regard shall be discussed by the central government from time to time in their official gazette. However, the matter must not be under the observation of any High Court and Supreme Court.

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OBSERVATION STUDY

The survey of 641 UK sex workers

The study by academics at the universities of Leicester and Strathclyde found that more than 80 percent of the sex workers had used the medium of internet to find their client in 2018, it not only give them control over the clients but also faced less violence from the clients humiliations from the police personals. Only 5 percent of these girls have faced the abuse in the form of physical violence. Teela Sanders, professor of criminology speaking to BBC Radio 4's Today programme, she said: "One of the really interesting findings is that the types of crimes that sex workers are experiencing have changed. So there was a much lower incidence of violent crime, sexual and physical assault than in other studies. But there were high levels of digitally facilitated crimes – harassment by email and text, for example."⁵¹¹

Almost 80 percentage of sex workers have chosen that their working conditions have improved a lot they can choose the clients wisely with the support from the peer groups. The reports have also clarified that there are agencies like National Ugly Mugs⁵¹² which provide them a complete data base of the clients and sex workers can choose among them. Almost every third has chosen that they had less stress in the work and more almost 50 percentages has chosen that they had earned more in the online sex work. Charlotte Rose, a sex worker, said the internet had made her job much safer. She told Today: "It still doesn't take away the dangers that sex comes with, but as a sex worker I feel a lot safer knowing that I can vet my clients.

⁵¹¹The guardian, Matthewwarrier, 23 January 2018, 11.34 GMT, Available at- <https://www.theguardian.com/society/2018/jan/23/internet-making-sex-work-safer-report-finds>

⁵¹²Organisation to work against the violence in sex work, <https://nationaluglymugs.org/>

CASE STUDY-1



Nicki Minaj Anaconda song in 2014

Nicki Minaj is one of the famous favourite rapper of all times, but the most controversial video she had released in the year 2014, in which she sing a song in her lust voice and repeatedly saying o my gosh, look at her butt, with the girls around in her videos dressing swim suits to biknies. The song ends up walking from that person to whom he has given a lap dance in all through her video. The question arises here whether it's a music video, pornography or a sex work in the online mode because there are male character also in all through this video. There is not a hard and fast forward rule to determine that whether it's a porn video or just a music video or something else. The question here arises that who will demarcate these lines. Society, government or someone else. The debate was simple but although very complex what is sex work in online mode, it indicates that something has crossed an invisible line, it's gone from being art, literature, music videos. It is beyond the acceptable digital interactions to being something quite else or something which exists in excess beyond the society morality.

CASE STUDY-2



Cyber Sex trafficking- A 21st century scourge

Story of Andrea- A Phillipian Girl

Andrea was in her 14 in 2013 when she 1st faced the mark of cyber-sex trafficking in her life. She first heard the voice of any person on the internet asking her to remove her clothes on webcam when she was 14. As stated to CNN, dated-18 July 2013-“I was so embarrassed because I don't want others to see my private parts,” she said. “The customer told me to remove my blouse and to show him my breasts.”⁵¹³ Andrea is from high flung area of mountains in Philippines, her city is known for the scenic beauty of mountains and rivers but she doesn't have the beauty of the glance but these things never mind in the online sex work. The only thing which matters is the revealing nature of the girls and women and how much she adore the clients with her role play on webcam. She was promised a good life and highly paid job of baby sitter in the city by her cousin but ended up living the life of misery and another victim of cyber-sex trafficking newest but not less sinner exploitation of modern days or we can say it as a modern day slavery.

⁵¹³Cyber sex trafficking- A 21st c scourage, sunshine de lean for CNN, july 18, 2013, Available on-
<https://edition.cnn.com/2013/07/17/world/asia/philippines-cybersex-trafficking/index.html>

For the few days Andrea is one among the many girls who served their clients on the webcam, performing various acts as demanded by their clients all over the world and sometimes clients force them to watch the acts which is performed by the clients on the webcam like biting themselves, cutting their hands and other body parts. Analea was forced to live a life of misery for almost 5 years. Whenever, she asked from her uncle and cousins to left him to him village, they beat her to death, locked her in a dark room and tell her that the police would kept him in a jail if she escape from here. She was convinced by her uncle and cousins that this is the only way that she can end the poverty of her family and support her family in the village. She forced herself to work in all the situation round the clock. But "doing whatever the customer asked" eventually took its toll. "I wanted to cry but I could not. I wanted to cover myself with a blanket. I had goose bumps because of the shame. I would feel like I was floating," she recalled.⁵¹⁴

Andrea is one of the story among the many through out the world, the major concern for these types of girls are that they never come back in their life from the agony they faced during this period. The rampage of widespread of these types of exploitation is due to lack of education, poverty, and health security and above all the law which is not only in the moribund state but also its implementation due to highly corrupt officials.

⁵¹⁴ibid

CASE STUDY-3

Mr.Ankit from Bangalore

Mr.Ankit is a middle aged single man of aged,40 living alone in Bangalore and working in some MNC's. Mr.Ankit had received some porn in his watsup freinds group chat, he started seeing the pornography on a regular basis to curtail his free timings and boredom. Initially it was for 20-30 minutes in the late evening in twice or thrice in a week but eventually it increased to the 7 days a week and always ended up in masturbation. The timing for watching the porn has also increased to 2-3 hours a day sometimes trice in a day. It not only hampered him health wise but it also harm him emotionally, it felt that he was attracted towards the hard core porn and the respect for the females colleagues in her office decreased to few extent. He always imagined his female colleague in his office naked, ethic not only curtailed his memory but also his family values. He always felt guilty about it but could not able to leave it. The situation become even worsed when he get to know about the women working through webcam and do as per the instructions of the clients. Firstly he used the websites who are free then he started paying for the same and eventually it ends in loss of his all savings. He always skip the timing to chat with his family and chat with the models. Mr.Ankit had scored 84 out of 100 in his internet addiction which is quite a good number. He tell the researcher that it took 6 months to come to the normal phase of life and enhance his working ability.⁵¹⁵

⁵¹⁵Pathways to Cybersex: Case-Report-Based Exploration, Volume: 2 issue: 1, page(s): 96-99, Article first published online: April 24, 2020; Issue, published: January 1, 2020

APPENDIX-I

Annexure-1(A)

RELEVANT EXTRACT FROM IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section-3: Punishment for keeping a brothel or allowing premises to be used as a brothel.

Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

Section-4: Punishment for living on the earnings of prostitution.

Any person over the age of eighteen years who knowingly lives, wholly or in part, on the earnings of the prostitution of²² any other person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both²³ and where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for a term of not less than seven years and not more than ten years.

Section-6: Detaining a person in premises where prostitution is carried on.

Any person who detains any other person, whether with or without his consent,

(a) in any brothel, or

(b) in or upon any premises with intent that such person may have sexual intercourse with a person who is not the spouse of such person,

shall be punishable on conviction, with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

Section-7: Prostitution in or in the vicinity of public places.

Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

- (a) which are within the area or areas, notified under sub-section (3), or
- (b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.

APPENDIX-I

Annexure-1(B)

RELEVANT EXTRACT FROM INFORMATION TECHNOLOGY ACT, 2008

Section- 66A: Punishment for sending offensive messages through communication service, etc

Section-66B: Punishment for dishonestly receiving stolen computer resource or communication device

Section- 66C: Punishment for identity theft

Section- 66D: Punishment for cheating by personation by using computer resource

Section- 66E: Punishment for violation of privacy

Section- 66F: Punishment for cyber terrorism

Section- 67: Punishment for publishing or transmitting obscene material in electronic form.

Section- 67A: Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form

Section- 67B: Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form

Section- 67C: Preservation and retention of information by intermediaries

APPENDIX-I

Annexure-1(C)

RELEVANT EXTRACT FROM THE INDIAN CONSTITUTION, 1950

Article 23- Trafficking in humans and forced labour is prohibited and is punishable in accordance with law.

Article 24- It states that any child under the age of fourteen years shall not work in any hazardous employment like factories or mines.

APPENDIX-I

Annexure-1(D)

RELEVANT EXTRACT FROM THE INDIAN PENAL CODE, 1860

Section- 372: Selling minor for purposes of prostitution, etc

Section- 373: Buying minor for purposes of prostitution, etc

APPENDIX –II

Research Paper Publications:

1. Specialusis Ugdymas, ISSN-1392-5369, The Upwing of Online Prostitution in India, Scopus Indexed Journal.
2. Journal of Positive School Pschology, ISSN-2717-7564, Scopus Indexed Journal, Cyber Sex trafficking-A new way of Exploitation
3. Kala Sarovar, ISSN-0975-4520, 2021, UGC Care Journal, Rights and liabilities of Internet Service Providers in Online Prostitution: A question on Digital World.
4. International Journal of Recent Research and Aspects, 2017, vol-4, issue-4, pg no-34-37, ISSN-2349-7688, Legalisation of Prostitution in India-A question for Indian Society.

APPENDIX-III

Details of the Seminar Paper Presented

1. Paper Presented in 3rd world conference on Human Rights by All India Law Teachers congress on the topic- Online Prostitution- A modern day slavery in ILI, 2019.
2. International E- conference on Criminal Justice System and International Aspects, Intermediaries liability in cybersex work, organised by SGT University, 2020
3. Paper Presented in International conference on human Rights & Criminal Justice system in contemporary world held in School of law, Sharda University, 2021.

APPENDIX –IV

SUPERVISOR’S PROFILE

Name- Dr. Namita Singh Malik

Post- Professor & Dean, School of Law, Galgotias University

Educational Qualification- PhD (Net Quaified)

Experience- 14 years

Book- Two (2)

Book Chapter-Four (4)

Important Research Published- Eleven (11)

Important Paper Presentation- Fifteen (15)

FDP/ Workshops-Fifteen (15)

MOOC Course- Nine (9)

PG Student Supervise- Twenty (20)

PhD Students Supervise- Eight (8) ongoing

Patent-One (1)

APPENDIX –V

AUTHOR’S PROFILE

Name- Mr. Pranay Prakash

Qualification-LLM (UGC NET)

Paper Published-Eight (8)

Paper Presented-Twelve (12)

Experience-6 years