Chapter 3
3.1 WOMEN TOO COMMIT CRIME

The definition of crime contains expressly or by implication a proposition as to the state of mind. Therefore if the mental element of any conduct alleged to be a crime is proved to have been present in any case, the crime defined is deemed to have been committed. Further the various acts or omissions, which constitute a crime, does not differentiate between the crimes committed by a man or woman. Hence the sanction imposed for the crime is based on the same rules, regulations and laws which are meant for that act. Every time a crime is committed, ‘Cherchez la femme’, the French say or if they are speaking to their English cousins, ‘search the woman’. With sturdy good sense they believe that behind every successful crime there lurks a woman, a Lady Macbeth, urging her man to pick up courage and commit the crime. But today it can also be the reverse with women coming out of her traditional role and participating in all activities of the society.

Just as criminology in the past concentrated upon the doer and neglected the victim so it has focused on male criminals and totally neglected the involvement of the female in criminal activity. There was also much reluctance on the part of the crime enforcement machinery to take
cognisance of the crimes committed by women resulting in fewer female arrest and conviction. This trend exists in almost all countries and studies relating to female delinquency and crime is also not been systematically conducted. This lack of information is more predominant in India because of the protected cover given to the Indian women. We should note that practically all theories dealing with criminal behaviour are mainly focused on males, their applicability to females are scantily analysed. A systematic study involving women criminality regarding the nature, method and causes is yet to be made.

3.1.1 A Neglected Study

Crime is normal, because a society exempt from it is utterly impossible observes Durkheim. So crimes are committed by men, women, and children.

In the present century, social and economic position of women has changed more drastically than in any previous period of civilisation. In the increasingly industrialised and urbanised society, the status of women as person who looks after the house and nurtures the child has undergone a change. Today she is also the breadwinner of the house. The concept of women emancipation has opened all the doors of free life for women. Though it has improved the personality of the women it has also created
many evil effects. The economic independence coupled with political status made the women to feel that they are not inferior to anybody, especially the men. This has paved the way to women criminality. The growing participation of women in activities previously monopolised by men, in social life in general has increased the volume of female crime although it has not so far in spite of all these status given to women, equalled men mainly because of:

(i) The male crime is on the increase and
(ii) The traditional female role prevents it.¹

In the society as it exists today women gratify their desires through men who bear the economic burdens of life. To William Bonger, women are like hot houseplants sheltered from the icy blasts of life and therefore fewer criminals.² Lombrose an Italian Anthropologist, has held that women delinquents did not portray the same anomalies of the adult male offenders, that they were hardly, distinguishable from the moral women and that a large majority of them were occasional or casual criminals rather than born criminals. Pollak an American Sociologist, after detailed research has concluded that female crime was under-reported, for instance the sex offences committed by women against very young children went unnoticed.

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while they were given loud publicity when performed by men. He further argues that women are the most able criminals as biologically and socially they are well equipped for lying, deceiving and trickery and contends that the low rates of female criminality are misleading as they are more capable than men in concealing their crimes. However the nature of familial and social controls over women and cultural differences in regard to permissible role behaviour are thus the main determinants of their lower criminality.

Having said that women also involve in criminal activities the factors responsible for it are to be looked into. They are motivated by the fear, inhibition, jealousy which are the vices found in any human mind. Other causes like illiteracy, poverty, suspicion, marital maladjustment, individuality cult, emotional tensions, broken families, pervert tendencies, imbalances in sex matters and social disorganisation commonly lead women to criminal tendency. Apart from social and economic problems and rejection of family and social values a woman’s personal traits and attitudes are also equally important causes of women criminality. The quarrelsome nature of a woman, arrogance, discourteous behaviour, pride, disobedience, narrow mindedness, impatience, extravagance, selfishness, stupidity, impoliteness or timidity also play a significant role in a women’s criminal behaviour.
“All these theories emphasise the need for an analysis of causation of criminal behaviour in the following framework which involves different sets of factors:

(a) The socio-economic characteristics of the deviants.

(b) Cultural ends and structural means including personal ambitions and desires.

(c) The specific social situation (economic, interpersonal relations etc.) and the impact of the same on the individual and his behaviour in terms of choosing temporarily or permanently a particular way of life.

(d) The factors such as socialisation and association which play their role in a subtle manner and are subject to change under the stress of the situation”.

3.1.2 Background and Trend

Crime, repression, injustice have always been present in the society. The criminological interest in women offenders can be traced back as far as Lombroso. Thus women are said to have committed crimes from the day of Adam and Eve came on earth. In our culture women are particularly protected against the detection of criminal behaviour on the one hand and

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exposed to a wealth of irritation, temptations and opportunities that may lead them to criminal behaviour on the other hand. To locate female crimes one should necessarily look into the interplay between biological and cultural determinants, which distinguishes their behaviour from that of men. The criminality of women reflects their biological nature in a given cultural setting.\(^4\)

Lombroso asserts that although female born criminals are fewer in number than males, yet they are much more ferocious.\(^5\)

As regards the physical anomalies he pointed out that women criminals were not very different from normal women in regard to the presence of physical anomalies. But according to him the prostitute showed greater number of anomalies.

An Italian proverb goes "rarely is a women wicked but when she is, she surpasses the man".\(^6\) With regard to born female criminal Lombroso observed that she was more perverse than man was and cruelty was more refined and diabolical. They steal or compromise themselves for men's sake without having any direct interest in the act. Excessive temptations in case


of property crimes by occasional women criminals were observed by Lombroso. The presence of excessive luxury items leads to shop lifting among women criminals. Parental neglect, desertion during infancy and childhood are some factor leading to women criminality.

3.1.3 Theories Propounded

According to Otto Pollack, criminality in women is largely marked behaviour incidental to ordinary female roles in society namely the role of mother, daughter, housewife, paramour and nurse. ‘Seek the women’ is the axiom that has been followed successfully in tracking criminals in many cases. Many acts of criminals before and after the commission of a crime as well as in supplying the notice for a crime has been done for a woman or under the instigation of a woman or to satisfy a woman or to be satisfied by a woman.

Pollock found that female offenders are really protected by men even by victims who are usually disinclined to complain to the authorities. He also observed that there are several crime that ordinarily are highly detectable in men but have very low detectability in women. Her role in society permit women to commit crimes easily without being noticed, like slowly poisoning her husband or treating her children abusively. Pollock
further observes that in addition to the law enforcement officers, the Judges and Jury are much more lenient towards women than men.\footnote{Walter C. Reckless, \textit{The Crime Problem, Female Involvement, op.cit.}, p.152.}

Pollock examined the question as to whether specific patterns of crime can be established. Female crime occurs most often in violation of the sex mores. In the areas of crime against person and property, patterns of female criminality are not too obvious. However Pollock calls attention to the fact that they focus on such victims such as children, husband and close family relatives. Pollock found that the criminal liability of women working in domestic service seems to be relatively high than that of women employed in factories among the low classes. He dispensed the theory that the physical weakness of women leads to specificity of crimes. Today it is this role assignment and not physical necessity, which channels their criminal behaviour in certain directions and keeps it away from others. Although many authorities have pointed to the physical precocity of girls to sex delinquency, Pollock contends that: "it is more the increase of opportunity resulting from the fact of over development in girls than the intensity of premature sex urge which cause this differential in delinquency between male and female juveniles".\footnote{\textit{Ibid}, p.153.}
Pollock also notes that there might be some relationship between female liability to crime in the more mature ages and the menopausal syndrome but there is little convincing evidence of any relationship between crime and other generative phases of women such as menstruation and pregnancy. Since Cesare Lombroso's time it was believed by criminologists for reasons that women participated only in a small proportion of crime behaviour. Pollock challenged this illusion and stated that women's participation in crime has not been significantly lower than that of men. He added that the low percentages of crimes committed by women are due to the following reasons:

1. Types of crimes committed by women are less likely to be deducted.
2. Even if detected, they are less likely to be reported.
3. And even if reported women have better chances of avoiding arrest or conviction because of the double standard, favourable to women which is used by law enforcement officers.

Vernon Fox has made his contribution to the study of female criminality. He observes that cultural factor is the relevant criteria to explain the differential crime rate between men and women. Most of the reasons appear to be in the social and cultural factors within the family that reduce the possibility of women being involved in crime in the first place.⁹

The attitudes of society about expected behaviour of girls tend to develop methods of handling problems in ways not considered to be criminal. Further the relationship of girls with home and family tends to decrease their vulnerability to negative experiences that might result in criminal behaviour.

The method adopted by women for committing the offence differs from that of men, because of differences in physical strength and cultural definitions of sex role. Perception of double standard, development of revenge desires created by female occupations in domestic service and other role women are placed, leads to much pent-up resentment, which sometimes leads to aggressive compensation. Because of their family responsibility, duties, exposure, female crimes tend to have greater ego involvement. It is an undisputed fact that seldom women kill strangers. The victims in majority of the cases are close relatives like husband, paramour, children, in-laws, lover or someone. It is generally understood that women use greater deceitfulness in their offence against property and they tend to be more manipulative than men. Women seldom commit

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11 Ibid, p.264.

robbery and burglary although in India we have the case of Phoolan Devi who even out did the men of her group.

Some scholars claim that female crime is caused by physical factors while others maintain that psychological factors dominate, but the biological factor seem to have dominated the theories of Lombroso and Pollock. The basic or fundamental body process has been considered as the motivation reason. First menstruation or the menopause though affecting the hormonal balance in the body is taken to be precipitating factors leading some women to commit criminal acts.\(^{13}\) Second and more significantly the female biology is perceived to determine the temperament intelligence, ability and aggression of women.\(^{14}\) Hence those women who commit crimes are treated pathological and require psychiatric treatment.

Another belief which exist regarding female criminality as an outcome of Lombroso’s theory is that when women become criminal they are far more cruel and sinister than men. This is because they have the capacity to undergo pain and as compassion is seen to be the offspring of sensitivity so women cannot feel the compassion for their victims. Also his contention is that women having criminalistic tendency, lack maternal instinct. This deficiency is psychological and anthropological and


\(^{14}\)Ibid, p.18.
delinquent women of this category belong more to the male than the female sex. Cowie who has also made his study on this aspect has stated that biological determinism only is not the factor but that confusion has crept in between sex and gender. Oakly tries to bring out the difference between sex and gender. According to him sex is a biological term and gender a social, cultural and psychological term “.... that for a woman to act in socially defined ‘masculine’ way does not mean that she is sexually or biologically abnormal”.

However where gender appropriate behaviour is seen as biologically determined women who adopt masculine forms of behaviour become labelled ‘masculine’ themselves and this has connotations of ‘maleness’, which are seen to be linked to hormonal or genetic abnormalities.

These theories so far discussed have one thing in common that women tend to commit less crime than men. Pollock who has contributed his thinking in his book has taken a totally different outlook. His contention is that female criminality is masked or hidden because women are deceitful and cunning. But this generalisation of Pollock in particular cannot be


16 Smart Carol, Law Crime and Sexuality Essays in Feminism, op.cit., p.21.

accepted. In their traditional role as mother or wife they are able to manipulate or conceal their crimes. By way of illustration he states that while preparing food women are able to administer poisons to their victims and as mothers they ill-treat or neglect their children. This theory of Pollak may sound good with reference to the infanticide committed by women. To what extent his theory can explain the dowry death and harassment committed by the mothers-in-law on their daughters-in-law remain a question to be answered. Pollak’s statement regarding female criminality is highly speculative. His theories are more relevant to the treatment of female offenders by the police and the courts, rather than to the treatment imposed in penal institution. Sexual discrimination plays an important role in the differential arrest and sentencing policy where more leniency are shown to women according to Pollak. It is difficult to reconcile the view that 'chivalrous' men staff, the police and legal system with research reports on the treatment of female political prisoners, prostitutes and raped women. Hence biological anthropological, psychiatric and psychological factors play an important role in crime causation. An inter-disciplinary approach to the problem of female criminality is required.

\[18\] Ibid, 21.

\[19\] Ibid, p.28.
3.1.4 Nature and Pattern of Crimes Committed

The changing social values regarding women, their entry into the main stream of society with some roles equivalent to men, such as getting 'into the stress' and more out of the home, some rejection of 'Victorian values', 'Women's bill', 'equal rights' and other 'equalising' movements are bringing the female crime rate closer to that of men, although there is still wide disparity in their respective arrest rates.20

The analysis of the trends in female crime all over the world roughly indicates a general tendency towards an increase of female criminality.21 According to Carol Smart, more research into the aetiology, character and scale of female crime and the treatment of female offenders by the legal and the penal system is required.22 At the same time the significance of the difference between sex and gender has to be appreciated and the persuasiveness and consequences of cultural understanding of female behaviour recognised.

From time immemorial women have been involved in acts like petty thefts, illegal abortions, prostitution and infanticide. These crimes are not easily detectable. All of these acts are either deviant or not deviant from the

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viewpoint of social norms and similarly norms in a society. Women are also members of the same society in which men live and they are also exposed to the living conditions as men are exposed.

Some, to the increase in the status of women, attributes the increase in the incidence of female criminality. The truth probably may lie somewhere in between. It is becoming more visible because there is frequent recording of these crimes unlike yester years. Extensive and intensive studies at the micro and macro levels respectively would reveal the peculiar nature of female criminality and its causation in terms of the systemic and social psychological variables.\(^{23}\) The attitude of the society towards women being different from men and this has its impact on the patterns of social behaviour and influence them in their reaction to the injustices caused to them. Criminality is after all, a child of anger often times generated by supposed or real injustices perpetrated to them or to their near and dear. This study will focus on the crime of prostitution, among the women in our country.

### 3.2 PROSTITUTION

Prostitution is generally defined as an indiscriminate sexual intercourse between a male and a female for compensation and for

emotional indifference. It is considered as “a legitimate form of labour freely chosen by thousands of women”. Prostitutes are viewed as being able to decide their own lies, as having freely chosen their occupation.\textsuperscript{24} This approach is called as a “subjectivist” approach of prostitution. Thus prostitutes are no longer viewed or defined as victims,\textsuperscript{25} also defined as ‘any act of sexual intercourse or any act of deviate sexual conduct for money or it is the offering or receiving the body for sexual for indiscriminate sexual intercourse, or which may or may not be limited to ‘normal’ hetero sexual intercourse or to compensate intercourse.’\textsuperscript{26} The most common interpretation is that these terms are intended to cover commercialised vice cases which might be commonly understood as such by the layman but which might slip through a strict legal definition of prostitution.\textsuperscript{27}

Prostitution and related vices have long been a social menace from time immemorial, which defied solution. An increasing large number of innocent, destitute and gullible women and girls are being exploited by a


\textsuperscript{25}Ibid.


\textsuperscript{27}Ibid.
host of anti social elements for pleasure and profit in every country. Prostitution has and is one of the oldest vices of society. Its origin has been traced to the establishment and recognition of the institution of marriage. In all times and place, it has aroused the concern and annoyance of society resulting into total disapproval of its open manifestation.

3.2.1 Historical Background

Prostitution existed in India from time immemorial. The Rig-Veda and Buddhist Jatakas have a lot of reference to accomplished courtesans. The Mauryans looked upon them as an important member of the royal household. Another type of prostitution, which existed in ancient India, is the system of devadasis dedicating dancing girls to temples. The Vedas, Kamasutras, Artha Shastras, Mahabaratha makes reference to prostitution. Nagar Bandhus, Kinnaras and the Apsaras are examples of such women devadasis. Devadasis system is still prevalent in some communities of Maharashtra, Karnataka especially among the Harijan society. A study of prostitution in parts of Maharashtra and North Karnataka shows that prostitution is wide spread there, in the guise of dedication of young girls and women to Goddess Yellamma.
The type of prostitution which was in adoption and adopted and which was in vogue in traditional India was either associated with religion, that is Devadasis or the art, culture and education.

All action, which flows from and determined by religious experience, is to be regarded as practical expression or cults. The act of worship may be in the form of rituals, symbols, sacraments and sacrifices.\(^\text{28}\) In the case of dedicating women to deity, is in the form of rituals where initiation ceremony takes place. Such women wear certain symbols such as beads and holds ‘joga’ in her hands or forehead. It is a religious act to appease the deity.

The word ‘devadasi’ derived from sanskrit means a woman so dedicated to temple or it literally means female servant of God. The origin of the devadasi cult can be traced to a period earlier than Aryan entry in India. As a result of the system of Dravidian religious custom of dedication to a deity such as Yellamma, originally a Dravidian Goddess was superimposed by an Aryan system of Devadasi.\(^\text{29}\) The system was prevalent in Somanath and Jagannath temple in Puri and other temples where the impact of the Aryans was dominant.


\(^{29}\) Ibid, p.157.
The women were entrusted with the work of cleaning the temple ‘sanctum sanctorum’. As society underwent changes kings also patronised the cult. In the early literature we find abundant references to secular prostitutes, dancers and courtesans. Classics like Vatsayano’s Kamasutra (250 A.D) deals in detail about courtesans. The custom of dedicating girls is common in the 6th century A.D. Several Puranas make reference to the services of singing girls, at the time of worship at temples.

In 1890 anti dedication movement towards the abolition of prostitution emerged. Many legislation were passed. Among these are:

(a) The Bombay Devadasi Act 1934,
(c) The Karnataka Devadasi Prohibition of Dedication Act 1982.

But the custom is still prevailing in many parts of the country more particularly in drought prone poverty stricken border areas of Maharashtra and Karnataka States.\(^30\)

At Soudatti in Karnataka, the shrine of Sri.Renuka Yellamma Punya Kshetra is associated with the initiation of girls to devadasi hood and thus it is contributing to commercial prostitution in places like Pune, Belgaum, Hubli Kolhapur and Bombay.\(^31\) Several myths are connected with the origin

\(^30\)Ibid, p.159.

of Soudatti shrine and the deities here. Devotees take many vows and they are all based on the superstitious beliefs of the devotees. Devotees who visit the temple take vow of dedicating a daughter to the deity to overcome their problems.32

The practice is prevalent among low caste communities. They are backward in every aspect (educationally, socially and economically). They are influenced by various factors like patriarchal ideology of Hinduism. The lower castes are easily susceptible to superstitions, religious beliefs. Childless devadasis adopt female children and dedicate them to the deity to have somebody to look after them at their old age. Another reason for the existence of devadasi system is the vested interests of upper caste and classes to gain accessibility to desirable women of lower castes to appease their extra marital sexual needs.33

But the modern concept of prostitution is purely commercial; one party seeks pleasure and the other money.

3.2.2 Causes for It's Existence

The causes, which force women and girls to pursue this career either voluntarily as in a few cases or forcibly in majority of the cases, are

32 Ibid, p.91.

numerous. Each woman driven to this vice has her own reason to attribute and hence the cause for the prostitution will vary from case to case. But the common cause for these unfortunate women and girls to take up the trade in flesh, are poverty, deserted home, neglected by parents, rape of single or married ladies, adultery, harassment at home, dream of easy life, destitute, revenge, unhappy matrimonial home, low moral values, kidnapping and abduction motivation, environmental influence, elevation of women on par with men, women movement and women liberation, thirst for powers and wide opportunities, conviction and imprisonment of the husband. Any of these above said factors pave way for women to commit crimes.

While it is understood that many men who patronise prostitutes lack other means of sexual gratification as they are either bachelor, army men away from their families and sailors, may not be in all cases. Also number of men who visit prostitutes, if not the majority are married. The craving for variety, for perverse gratification, for mysterious and provocative surroundings, for intercourse free from entangling cares and civilised pretence all play their part.34

The sexual urge exists from the moment of birth. Ways and means have been devised to discipline the sexual urge of human beings and marriage is the universally recognised institution devised to attain the goals.

But even the institution of marriage cannot alter the urge or desire for extra marital sex. Males and females who confine their sexual relationship to each other for any long period of time may gradually become less aroused by each other.\(^{35}\) This psychological fatigue seemingly is the prime source of promiscuity. Hence promiscuity means the desire for more than one sexual partner or for irregular sexual relationships and it is said that men tend to be more promiscuous than women.\(^{36}\) The variation between male and female may be due to cultural, social and moral pressures. Therefore a demand is created for the gratification of the sexual urge. The procurement of sex outside marriage has been made possible by prostitution. All that is needed is money to purchase and it is the consideration he gives for his sexual release, prostitution becomes inevitable.

The common belief is that woman becomes a prostitute because of economic necessity. The emergence of elite class of prostitutes available in star hotels in big cities does not respond to the theory of poverty being the cause of prostitution. In order to achieve higher standards of living, girls from well off families indulge in prostitution. Even the family members including her husband may force her to take up the profession to improve his status. Some of the peculiar causes existing in India for the women to


end up in prostitution is the dowry system, child marriage and restrictions imposed by the religion and society on widow re-marriage. The Committee on Status of Women appointed by Government of India in its report observed "... recruitment to this profession is easy and girls from middle class are also joining this profession and these women practise prostitution often with the connivance of their parents or husbands in order to secure huge sums of money to keep up an appearance of affluence. Educated and outwardly respectable, these women are prompted to take to prostitution because of the undue emphasis on the values of affluence."\(^{37}\)

The exploitation of the girl child is a problem, which requires serious concern. At the centre of the storm over the 14 year old Ameena and her marriage to 60 year old Arab groom is the small but affluent mohlla of Barkas - a bride bazaar for the past 15 years. Elderly Arabs have been visiting the Cashab like enclave of shops and sparkling white washed homes to finalise their marriage transactions.\(^{38}\) The exploitation is not only in the case of Ameena. Many girls of her age especially daughters of rickshaw-pullers, daily wage earners, poor school teachers are trapped for this sort of trade. The girls are forced into prostitution. The sale is justified through a marriage of some sort.


\(^{38}\) Time of India, 8th September 1991.
In order to make both ends meet when unemployment and poverty are the killers, a marriage of a daughter into a family who will take care of the girl in exchange for money is a way out for survival. Later on these girls are forced into prostitution. Pimps are also on the lookout of families willing to sell their children. Even those abducted from fairs and religious places are daughters of poor harijan families powerless to move the law to recover their daughters.\textsuperscript{39}

In India, in all marriages an important element of consideration is that the bride to be should be a Virgin. Myths such as sexual relations with virgins cure venereal disease makes men, especially customers with sexually transmitted diseases to seek virgins.\textsuperscript{40} Automatically the demand for virgins will increase and more virgins will be brought into the trade in flesh.

The demand of the male produces the response among the women who are ready to provide sexual favours for consideration. No single factor can be attributed for the reason as to why women take to this trade.

Although prostitution is one of the oldest professions, the manner in which it is practised is far from being static, for it quickly adapts itself to


\textsuperscript{40} ibid. n 15
changes in the law and social habits.Prostitutes adapt themselves to the new conditions arising from the law and changes occurring in the society. Even they do not want to be addressed themselves as prostitutes but as sex workers so as to recognise themselves as any other workers.

3.2.3 The Harmful Effects

Though prostitution existed in all society, it has been opposed by our society because it is an affront to our sense of decency, it creates a nuisance and it spreads venereal disease. Today because the HIV infection has spread from the sex workers to various section of the population, the lethal disease AIDS is looming large in the Western countries is also spreading to our country. Prostitution has been condemned as an evil by all religions and it is regarded as an act performed merely to satisfy an animal lust devoid of emotional commitment. Though it is despised Christian theologian St. Augustine considers it as a necessary evil. Commenting on prostitution he questions ‘What can be called more sordid, more void of modesty more full of shame than prostitutes, brothels and every other evil of this kind? Yet remove prostitutes from human affairs and you will pollute all things with disgrace and turpitude. Thomas Acquinas further considers it as a necessary evil ‘like the filth in the sea or a sewer in a palace. Take away the sewer,

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and you will fill the palace with pollution, and likewise with the filth (in the sea). Take away prostitutes from the world and you will fill it with sodomy'.

The adverse effect of prostitution is the creation of nuisance on the streets and the disturbance it causes to children and youngsters. A respectable woman of the locality where a prostitute frequents will be unable to walk because some clients may take her to be a prostitute. Prostitutes, loitering in public places to solicit men are a great nuisance. If it were allowed as a trade their names and other particulars would appear in telephone directory, local newspapers and journals. Their availability would be made conspicuous and they would have easy access to customers without loitering on the streets. There is the possibility of them to form group and devise rules and regulation on the pattern of trade union to protect their rights and interests will arise. Again competition cannot be avoided and ultimately they would solicit in streets and public places to the annoyance of residents and passers by. The problem of soliciting had become a serious issue in early fifties in London that the Wolfenden Committee was appointed in 1954. The report was submitted in 1957,

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which provided the basis for the rationalization of legislation on prostitution.

Great danger is posed to the health of the people. Syphilis, gonorrhoea, tricho-nomiasis and non-specific urethritis are some of the diseases, which are spread through prostitution. These diseases are insignificant when compared to the lethal diseases like AIDS now haunting many countries. Carol Smart in her book on Law, Crime and Sexuality states ‘this is a health hazard of course, which might or might not be controlled. A lot of them have cervical cancer or suggestions of it... And the second thing of course is that by the anatomy of a lady it is very difficult to spot the diseases in its early stage...’

The first report of HIV seropositivity in a blood sample in India was from a prostitute in the southern state of Tamil Nadu in April 1986. In India prostitution and attitudes towards it have been far greater significance than homosexuality in defining the cultural and social parameters of STDs and more recently, of HIV/AIDS.

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Research into the backgrounds of the first sixty one AIDS patients examined at the Christian Medical College at Vellore in South India showed that forty seven of the fifty one men had frequent contact with prostitutes; four of the ten women in the sample were themselves prostitutes. It is not only the urban population who contracted the disease. Even people from rural areas had acquired the disease.

In the UK and some European countries prostitutes inject drugs. Prostitute women who inject drugs and share equipment are clearly at increased risk of HIV infection in the same way as other drug injectors. Concern about the risk of infection in women who work as prostitutes is not new. They are considered as ‘reservoir’ of infection to the sexually transmitted disease. The risk of HIV infection would vary widely between different groups of prostitutes and this would reflect wider aspects of the epidemic, such as the degree of heterosexual transmission, along with local conditions for prostitutes including the degree of control over their working conditions, access to health care and the availability of condoms. Thus prostitutes are seen as reservoir of the infection that needs to be controlled.

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46 Ibid. p.31.

47 Ibid. p.143.

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and cleansed. The health issue is slowly taking dominant issue when the discussion on the problems of prostitution is taken.

The damaging effects on children and young persons, as a result of prostitution always exists. At first the child is born out of a mishap and it may be an unwanted child. So the mother is unable to show love and affection. Most of its childhood days are spent in brothels or in the association of pimps, brothel-keepers and other members of the trade. It watches the mother’s customers and visitors and may also observe its mother participating in the sexual act with strangers. If it is a girl she may take up the profession of the mother and if it is a boy he may become a pimp and other under world person. It totally ruins the life of the child of a prostitute. Thus as prostitution is incompatible with dignity of human person, all society must take steps to reduce it.

3.2.4 Legislative measures employed to deal with Prostitution in India

There are three methods identified by the countries to combat the problem of prostitution. They are Suppression, Regulation and Abolition. There are International Instruments in force with respect to the suppression of the traffic in persons and the exploitation of the prostitution of others, which was signed at New York by several nations including India. This led to the passing of the Act in India. The objects and reasons of the
Suppression of Immoral Traffic in women and girls Bill No.58 of 1954 published in the Gazette of India, extraordinary Part-II Serial No.2, dated the 20th December 1954 highlighted, that traffic in human beings being prohibited and punishable by law under Article 23 of the International Convention for the Suppression of Immoral Traffic in persons and the exploitation of the prostitution by others. Under Article 35 such a law has to be passed by Parliament. So, soon after the commencement of the Constitution a central law was desirable and necessary. This would bring uniform law for the nation. The special feature of the Bill is that it provides that no person or authority other than the State Government shall establish or maintain any protective house except under a license issued by the State Government, the purpose being to check such establishment, which are really dens for prostitution.

Constitutional validity of the various provisions of the Act was questioned in Shanta Bai and another v. State of Uttar Pradesh. The constitutional validity of Section 4(2) and Section20 was questioned. The learned Judge observed that even if Section 4(2) and Section 20 could be declared invalid the entire Act would remain unaffected because Section 4(2) and Section 20 can be severed. Article 23 provides the right against

48 AIR 1959 All 57 at pp.61 to 63 and 66.
exploitation. The judiciary in *Raj Bahadur v. Legal Remembrancer*\(^{49}\) held
traffic in women for immoral purposes is prohibited under Article 23.

It must be noticed that none of the provisions of the Suppression of
Immoral Traffic in Women and Girls Act have the effect of stopping the
profession or trade of a prostitute. The issue that is involved is whether the
restrictions, which are imposed upon the trade or profession of a prostitute
by means of the provisions of the Act, are reasonable restrictions. It must be
observed that running of a brothel is prohibited under the Act and a person
who benefits from the income of two or more prostitute is to be punished.

The need for change in the SITA (Suppression of Immoral Traffic
Act) was strongly felt and in 1986 a new enactment under the name PITA
Immoral Traffic (Prevention) Act was passed. Under the new Act the
definition of prostitution has been given an expanded meaning. Like its
predecessor, this Act also does not declare prostitution illegal per se. Under
Section 2\(^{50}\) of the definition of brothel wider meaning has been given. It is
defined in Section 2 as:

'Brothel' includes any house, room (conveyance) or place or any
portion of any house, room, conveyance or place which is used for purposes

\(^{49}\)AIR 1953, Cal. 522.

\(^{50}\)Sec.2 of Immoral Traffic (Prevention) Act 1986.
of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

This broader definition of brothel will make it easier to prosecute the brothel keepers under Section 3\textsuperscript{51} of the Act. Section 3 states:

1. Any person who keeps or manages or acts 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.

Any person who – being the tenant, lessee, occupier or person in charge of any premises, uses or knowingly allows any other person to use such premises or any part thereof as a brothel; or being the owner lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel shall be punishable on first conviction with imprisonment for a term which extend to two years and with fine which may extend to two thousand and in the event of second or subsequent conviction with rigorous imprisonment for a term which may extend to five years and also with fine.

Hence persons like landlords, tenants and other occupants of the premises may not escape punishment for brothel keeping under the defence of

\textsuperscript{51} Sec.3. of PITA, 1986.
ignorance. The saddest part of this evil is that children are lured by their own relatives, near and dear, or by the prostitute mother, to enjoy the ill-earned money.

Section 9 of the Act states that:

Seduction of a person in custody of any person who having the custody, charge or care of, or a position of authority over, any person causes or aids or abets the seduction for prostitution of that 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 judgement, impose a sentence of imprisonment for a term of less than seven years.\(^52\)

All these makes a mockery of section 9 of PITA which claims to punish any persons who has authority, custody or charge over any person and who abets, aids or causes her seduction for prostitution. The Act empowers the Central government to appoint trafficking officers. In practice the children are driven into the profession because they, from their childhood days see their mother selling her flesh. The girls become whores and the boys become pimps. The courts are mostly insensitive to the plight of innocent girls. When the girl was sold to the brothel by her father for

\(^{52}\)Sec.9. of PITA, 1986.
Rs.500/- and trapped by the police on bringing her before the court it ordered custody of the child to the natural guardian, the father.\textsuperscript{53}

The expression 'women' and 'girls' have replaced the word 'person', so that those male customers of the prostitutes may also be the victims of commercial exploitation. The Act has brought persons under three categories i.e. children, minors and adults. Child for the purpose of the Act is 17 years, minor 18 years and major 19 years. Indrani Sinha of Sanlaap an NGO which works with women and children in the red light areas of Calcutta states that there were parents who take affidavits on behalf of girls stating their ages which indicated they were not minors and also that they were entering prostitution willingly.\textsuperscript{54} Under Section 5, which punishes person for procuring, inducing or taking for the sake of prostitution minimum punishment of seven years with rigorous imprisonment has to be imposed. Enhanced punishment is prescribed for offences against minors and children. Thus deterrent effect is created in the minds of prospective offenders in matters relating to exploitation of children and youth for prostitution. But this condition of imposing severe punishment can be minimised to sub minimum sentence of less than seven years if the court is able to give adequate and special reasons. All the efforts made by the

\textsuperscript{53} Saxena Shoba, Crime Against Women and Protective Law, op.cit., p.274.

\textsuperscript{54} Legitimising Prostitution, The Hindu, June 14, 1998, p. IV.
legislatures to protect minors would go shambles if the girl is able to produce fake affidavits in the court.

Inter state trafficking is another racket that is going on in the country. A network is created and police and magistrates are powerless to deal with such offences. Sec. 5 of the Act vests vast powers to them. A minimum of seven years imprisonment and a maximum of life sentence are provided under the Act. Yet the crime goes unabated. The girls trapped are helpless to testify against the dalals who are behind this racket.\textsuperscript{55}

Under Sec. 7 (2)\textsuperscript{56} of the Act licensing authorities have been empowered to suspend licenses of hotels. When children or minors are detected to be used for prostitution the authorities have the power to cancel the license. Such stringent measures if taken properly will go a long way to nip in the bud the involvement of young girls in prostitution. These are some of the significant changes brought about in the Immoral Traffic (Prevention) in Women and Girls Act 1986.

After years of tireless crusade to save girls from all over the country, who were forced into prostitution in Mumbai not withstanding severe hurdles G.R.Khainar accused the police of helping the brothel runners,


\textsuperscript{56}Sec.7(2).
agents and pimps instead of rendering proper support to this cause.\textsuperscript{57} It appears that the system of prevention when applied does not eradicate prostitution but it drives prostitutes underground.

In some countries the system of abolition of prostitution is adopted. The term abolition is a misnomer because, by abolition it is not meant to totally revamp prostitution from the society but the abolition of the laws and public ordinances, which regulate and license the practice of prostitution.\textsuperscript{58} This view has been termed as liberal or puritan discourse.\textsuperscript{59} They coincide with the view of Mill\textsuperscript{60} and view taken by the Wolfenden Report 1954. The function of the criminal law according to the Wolfenden Committee is, to preserve public order and decency, to protect the citizen from what is offensive or injurious and to provide sufficient safeguards against exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind inexperienced or in a state of special physical, official or economic dependence.

\textsuperscript{57}Khairnar G.R. Womans, \textit{The Indian Express}, Police-Sex -Traders Nexus. Oct.21, 1996, p.5.


A society that adopts a system of abolition endeavours to protect public decency and order and make it possible for the prostitute to profess her trade in ways, which are least offensive. The system makes available to prostitutes, psychotherapeutic, economic, educational and other types of public aid and it leaves to the prostitute the choice of whether to avail herself to them or not. The system of abolition appeals to the enlightened section of the society to rely on education and proper medical treatment rather than punishment to solve the problem of prostitution.

3.2.5 Need for their Empowerment: A Different Approach

With the warning given by the W.H.O. and the campaign made by the agencies of the United Nations to prevent the spreading of AIDS the need is felt to change the law in our country. Moreover it is argued that the women’s right over her body confers on her the power to choose sexual work. This view may not be appealing to the public moral but it is stated that it empowers the women if proper measures are taken to avoid health risks of prostitutes, their customers and the public. It is known as prostitute’s right approach in international circles. In this thinking the global programme on AIDS of W.H.O. have cautioned the Government to alter the existing laws so that, prostitutes may not contact from their

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partners, HIV and STD. They have given guidelines to alter the prevailing laws so that prostitution is decriminalised. Further laws should extend occupational safety and health measures in their prostitution business. The bill under the caption 'The Prohibition of Immoral Traffic and Empowerment of Sexual Worker 1993' drafted by Dr. N.R. Madhava Menon and his team has taken a radical step towards re-defining the problem of prostitution. The term sex worker is defined as a woman who has taken to prostitution voluntarily and is doing the activity. This definition includes call girls and models who have taken prostitution as an occupation 'voluntarily'. If the word voluntarily is out of 'free will' then she has taken the profession out of her own clear mind. The devadasi system do exists in India but the women have no other alternative but to take the profession as it is the profession of the family. There are cases where girls are raped and land up in this profession or take up this profession due to unavoidable circumstances. Therefore the term voluntarily has to be clearly defined.

Again there is inclusion of 'models' in the definition to broaden the notion of sex workers. Today modelling is taken as profession by many girls and it has become lucrative business for them due to the influence of the western culture or the changing values of the society. Many times, the models compete in beauty context, which is acclaimed as an entertainment
worldwide. Therefore it is difficult to understand in what way models can be brought within the definition of sex worker.

The second chapter deals with the rights of sex worker and duties of Brothel Keepers. Sec.5a relates to the duty of the brothel keepers to ensure that the customers visiting the brothel furnish their health status particularly with regard to sexually transmitted diseases. The section states as:

**Duty to ensure safe conduct:**

Every brothel keeper has a legal duty to seek and obtain the health-status of customers visiting the brothel particularly in respect of sexually transmitted diseases and to disclose such information to the woman entertaining such customers.

Every sex worker shall have the right to insist on the customer wearing condoms and no such woman shall be forced to participate in sexual activity with any customer who refuses to wear such condoms.

To what extent the brothel keepers can compel the customers to undergo medical examination is a delicate task of the brothel keepers. This method has not proved to be satisfactory because apart from involving an

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62 Sec.5(a) of the Draft Bill The Prohibition of Immoral Traffic and Empowerment of Sexual Workers 1993. See Annexure VII.
unpleasant infringement of individual liberty it may give rise to black mail or to malicious false allegations against sexual partners.\textsuperscript{63}

Another right of the sex worker as stated in Sec.5(b)\textsuperscript{64} of the Act is to insist the customer to wear condoms. Implementing this right may not be that easy as the sex worker is under the control of the brothel keepers and under his supervision the customers frequent the brothel.

The bill seems to be a progressive one but it is difficult to accept the notion that sex is considered as a commodity. In order to extend more legal rights they are overtly made an object of female sexual slave. The helplessness of the lawmakers is most vividly expressed in the remark of Carol Smart as ‘we do not know how to support prostitutes without promoting prostitution’.\textsuperscript{65} Any legislation, if it is made on women, should not be centered around the ideologies of female sexuality more so if it relates to prostitution.

‘... idea about women’s sexuality women’s bodies and women’s place in the family as wives and mothers are central to these debates on the law and how the specific ‘sexual objectification’ of prostitute women


\textsuperscript{64}Sec.5(b) States every sex worker shall have the right to insist on the customers wearing condoms and no such woman shall be forced to participate in sexual transmitted diseases and to disclose such information to the women entertaining such customer.

provides the basis for retaining or 'reforming' the law along lines which are based on a very direct control over women's bodies.\textsuperscript{66}

For the second time in the last two years a conference of women in prostitution was held in Calcutta. The majority of the group being prostitutes from different parts of the country placed their demands which emphasised on sex work to be treated like any other occupation, decriminalisation of sex work, setting up self regulatory boards and recognition of human rights and civil liberties of women in prostitution. Common perceptions about women in prostitution need to be altered first if women are to live a dignified existence.\textsuperscript{67} The question is not whether to legalise or decriminalise prostitution, but whether the women will be allowed to live a secure life without harassment of any sort and not to be treated as criminals\textsuperscript{68}. Hence women working in brothels are to be entitled to all the benefits available under the existing industrial laws and to the facilities and protections available to workers under the existing labour laws, the right to safe working conditions, the right to form collectives, trade unions, associations and have them recognised under the law apart


\textsuperscript{68} \textit{Ibid.}
from basic rights to education privacy and movement as well as redress mechanism for their grievances.

Sex workers movements were no longer exclusive to the United States or Western Europe. The concept emerged in the 1970's through the Prostitutes Rights Movement in the United States and Western Europe. The social organisation of sexual labour has taken a variety of forms in different historical contexts and political economics, whereby there is no numeral form or appearance of either prostitution or sex work. Sexual needs, sexual subjectivity and desires are to be taken into account while analysing prostitution. Wet nursing, temple prostitution, "breeding" under slavery, surrogate child bearing, donor sex, commercial sex and biological reproduction can thus be seen as illustrations of historical and contemporary ways in which sexual labour has been organised for the recreation and replenishment of human and social life.

World wide sex workers have been raising their voice to define and shape their struggles for social change and justice. Identity, rights, working conditions, decriminalisation and legitimacy have been central issues of.


70 Ibid. p.4.
prostitutes for many years. As a counterpoint to the traditional derogatory names, the notion of the sex worker has emerged.

The idea of the sex worker is extricably related to struggles for the recognition of women’s work, for basic human rights and for decent working conditions.\textsuperscript{71} Children both boys and girls are also increasingly evident in prostitution. So it is clear that the study of sex worker should also take child prostitution into consideration.

In India like the Western world the sex workers, mostly prostitutes have been demanding special rights and identity. Among many of the rights they demand is the right to give special privileges to their children. If their demands are met it may segregate their children from the mainstream. One has to be cautious because it will again divide the society into fragments and what sort of social order or unity will be established if there are further fragmentations.

The demand appears to be genuine and to protect the interest of children as a whole but it should not result into creation of another category, which may divide society and affect the social and moral fabric. Assimilation of such children in society by improving their economic and social status can be a better alternative and this delicate issue requires a cautious approach.

\textsuperscript{71}Ibid, p.3.