CHAPTER - IV

Hawkers, Slum Dwellers, Prostitutes and Begging: A Case of Economic Marginalisation

The economic disparities between the rich and the poor were expected to be abridged in the welfare state adopted in India; and with this vision India ushered in the new era after independence. Even after so many years of independence, the vision has fallen flat on the ground realities of life and the gap is widening with every passing year. The village was expectedly the focal point of development but the industrialization has shifted the focus of development to the larger cities. The shift has attracted the people of the villages to the cities with the dream of making good bucks, but the dream has found them wandering in search of food, work and shelter. The desperation of economic stability lures them to adopt the undignified professions including street vending, begging, prostitution, criminal activities, etc. In the absence of a place to live in, they occupy every place where they can be accommodated.

Hawkers, Street Vendors popularly known as Peddlers and stall holders and slum dwellers are ubiquitous, but the least flourished class of Indian society. They suffer from the disability of abject poverty. Though they too have human right to human dignity, but they live in dignified life contra to constitutional culture. State’s failure to securing the right to work, making adequate provisions for securing just and humane conditions of work, and endeavoring to secure a living wage results into the profession of “shopping forum” in terms of hawking, street vending and slums as their living homes. Hawkers, Street Vendors and slum dwellers consider their profession better than “Beggar Hunting”. A “Street Vendor” is a person who offers goods or services for the sale to the public in a street without having a permanent built – up structure. There are three basic categories of street vendors:

a. Stationary

b. Peripatetic

c. Mobile
Stationary Vendors:

They are those vendors who carry out vending on regular basis at a specific location, e.g., those occupying space on the pavements or other public places and/or private areas.

Peripatetic Vendors:

They are those vendors who carry out vending on foot for selling their goods and services; and include those who carry baskets on their head/slung on their shoulders and those who sell their goods on pushcarts.

Mobile Vendors:

Mobile street vendors are those who move from place to place vending their goods or services on bicycle or mobile units on wheel, whether motorized or not. They also include vendors selling their wares in moving buses, local trains etc.

“Urban Street Vendors” incorporates all other local/regional specific terms used to describe them, such as hawkers, pheriwallas, rehri-patri wallas, footpath dukandars, sidewalk traders, etc.

Street has been all pervading in the Indian society since time immemorial, and history affords testimony to it. Ancient historical records also unfold that though such street vendors were local people, but there were also such vendors who came from far off places like Afghanistan, Tibet and China. Be that as it may, today the hawking and street vending is the most viable in the urban informal economy. Poverty and lack of gainful employment in rural areas and in smaller towns drive large number of people to the cities for work and livelihood. These people generally possess low skills and lack the level of education requires for the better paid jobs in the organized sector. Besides permanent protected jobs on the organized sector are shrinking, hence even those having the

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requisite skills are unable to find proper employment. For these people, work in the informal sector offers the only means for their survival\textsuperscript{2}.

There is another section of the urban populace that has taken to hawking and street vending. This section of the population including their spouses “once engaged in better paid jobs in formal employment, has become “internally and externally displaced persons” due to deindustrialization in cities in India and many of the developing countries, and have become hawkers and street vendors in order to eke out a living. An empirical research study conducted by SEWA unfolds that 70\% of the retrenched textile mills workers in the city of Ahmadabad (Gujarat) have taken to street vending with honour and dignity; 30\% of the street vendors in Mumbai; 50\% of the street vendors in Kolkata were earlier employed in the permanent/substantive jobs in the organized formal sector and they took to street vending after they lost their jobs.\textsuperscript{3}

Street vendors are those millions of people who come to cities as economic refugees holding to provide basic necessities for their families and at the same time they also are the victims of the economic apartheid. The term street vending brings in mind two definite activities: that of the trader who walks around the city offering goods and services without a fixed place from which to operate, and that of the trader who sell merchandise or provide services from a fixed point on the public thoroughfare\textsuperscript{4}. Instead of creating an enabling environment, government policies are wrecking the livelihoods of these people, depressing their incomes and thwarting their entrepreneurial potential. Street Vendors are routinely beaten and drive out of public spaces. No one can vend on the streets without a valid license. But, getting a license from the municipality without strong political patronage and massive bribes is near to impossible. The studies shows that the plight and the sight of these segments seems that they are the victims of extortion rackets paying between Rs 500 and Rs 800 per month to the municipal officials, police and local gangs as “protection money”\textsuperscript{5}. Those with regular license pay a little less, but

\textsuperscript{3} Ibid.
\textsuperscript{5} See, Madhu Kishwar, Blackmail, Bribes and Beatings, Manushi, Number 124, p.7, 2010.
are not spared the humiliation. In addition, the police often take away their goods without payment, whenever they so desire. This results in a major loss of income for them. The hawkers and vendors of various cities have fought long drawn battles both in the street as well as in the courts to assert their rights to a dignified life.

**Myths about street vending**

There are two myths about this profession. One popular myth is that all the existing vendors, and those coming into business will cause a lot of space problem and it is difficult to accommodate them within the space limits\(^6\).

Another myth is that vendors are a source of leakage to neighborhood news such as a vacant house etc. However, according to road safety expert Dinesh Mohan, Street Vendors bring safety and security to the neighborhoods. Wherever clusters of open shops on pavement are settled, the crime rate is low\(^7\).

**Case against the street hawkers**

Some elites bore the feeling that peddlers’ and stallholders’ presence on the street and even pavements is a menace and nuisance for commuters. It is also a fact that urban elites raise their eyebrows treating them as eye sores. Nevertheless the civic authorities and law enforcement agencies treat them as intruders, trespassers and infiltrators in public spaces and a chief source of public nuisance\(^8\). For the elites, civic authorities and law enforcers they are bane. Such banners are easy prey of extortion, exploitation and deprivation of their basic right of sustainability.

**Case for the hawkers**

However, on the other hand, the urban poor, concede the hawkers and street vendors as a boon, because these small vendors/street traders provide cheap food, vegetables, fruits, clothes, utensils and other commodities of daily use. It seems surprising that how one section of the urban poor are easily accessible to the other section of the urban poor, viz.,

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\(^6\) See, Supra note 4.  
\(^7\) Supra note 2.  
\(^8\) Supra note 1
one urban poor providing commodities and goods at subsidized rates to the other urban poor for the need of their survival- a task that should be performed by the governments.

Be that and may it seem a quest for survival and sustainability with human dignity. Though wide interpretation has been given to the fundamental rights in according the dignified life to human beings, but the right to livelihood has been made subservient to the economic resources of the State. Yet one cannot deny the fact that a vast populace needs a people centric approach from the State in providing or regulating a profession; and to provide shelter to the people who cannot afford it in big cities.

**Constitutional Mandate**

Indian Constitution provides the Indian citizen a fundamental right to practice any profession, or to carry on any occupation, trade or business except for reasonable limits or restrictions in the interest of general public, a citizen’s right to carry on a trade or profession of his choice is guaranteed<sup>9</sup>. Hawkers and Street Vendors including artisians, construction workers are among the self employed people in India. Some belong to the informal or unorganized sector, they enjoy little or no legal benefits, and they do not have access to finance as easily as the organized sector<sup>10</sup>. The pheriwala is one extraordinary class of citizens that the development or liberalizing state in India produces as a vulnerable category of persons. Pheriwalas are entrepreneurs, but they remain marginal and dehumanized. What becomes controversial is not the inhuman treatment of pheriwalas or the grotesque form of modernization. They seem to be the sufferers of power structure under the spell of market liberalization<sup>11</sup>. This poor lot of the society continues to be in chains viz, license, has borne no fruits for them<sup>12</sup>. The Railway’s policy of 1992 allowing multinationals and big Indian companies for setting up shops and kiosks at the railway stations proves detrimental to the business interests of the hawkers<sup>13</sup>.

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<sup>9</sup> See, Article 19(1) (g) of Indian Constitution.


The hawkers and pavement dwellers are also human beings entitled to the benefit of the wider interpretation of Article 21, i.e., the dignified life\textsuperscript{14}, shelter\textsuperscript{15} privacy\textsuperscript{16}, livelihood\textsuperscript{17}, education\textsuperscript{18}, etc. Furthermore Article 41 enjoins constitutional policy that provides that “The State shall, within the limits of economic capacity and development makes effective provisions for securing the right to work, to educate and to public assistance in cases of unemployment, old age sickness and disablement and in other cases of undeserved want. The state is also duty bound to make provisions for securing just and humane conditions of work and maternity relief\textsuperscript{19} as well as to endeavor in securing living wages and decent standard of life for all workers\textsuperscript{20}. There are a number of laws that seeks to give effect to constitutional policy contained in Directive Principles of State Policy. The most recent is the NREGA, 2005 which requires the State not only to identify a “poor household”, but also to provide one able bodied member of such household one hundred days of work to tide over the severe problem of rural unemployment during the non agricultural seasons. Furthermore the purpose of the Act is to stop people from moving to the cities and enjoy the umbrella of the facilities at the grassroots.

Apart from it, all the municipal corporation Acts contain the provisions for the eviction of the hawkers, viz. The BMC Act, 1888, contains in Chapter XI entitled “Regulation of Streets”:

Section 312- Prohibition of structures or fixtures which cause obstruction in streets.

1. No person shall, except with the permission of the Commissioner under Section 310 or 317 erect or set up any wall, fence, rail, post, step, booth or other structure or fixture in or upon any street or upon or over any open channel, drain well or tank in any street so as to form an obstruction to, or an encroachment upon, or a projection over, or to occupy, any portion or such street, channel, drain, well or tank.

\textsuperscript{14} See, Maneka Gandhi v. Union of India, AIR 1978 SC 597
\textsuperscript{15} See, Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180
\textsuperscript{16} See, Kharak Singh v. U.P, AIR 1963 SC 1295
\textsuperscript{17} See, Delhi Development Horticulture Employees’ Union v. Delhi Administration, AIR 1992 SC 789.
\textsuperscript{19} See, Article 42 of Indian Constitution
\textsuperscript{20} See, Article 43 of Indian Constitution
Section 313- Prohibition of deposit, etc., of things in streets.

1. No person shall, except with the written permission of the commissioner,-

a. place or deposit upon any street or upon any open channel drain or well in any street any stall, chair, bench, box, ladder, bale or other things so as to form an obstruction thereto or encroachment thereon.

Section 314- Power to remove without notice anything erected deposited or hawked in contravention of Section 312, 313, or 313A.

The commissioner may, without notice, cause to be removed-

a. any wall, fence, rail, post, step, booth or other structure or fixture which shall be erected or set up in or any street, or upon or over any open channel, drain, well or tank contrary to the provisions of sub section (1) of section 312, after the same comes into force in the city or in the suburbs, after the date of the coming into force of the Bombay Municipal Act, 1950 or in the extended suburbs after the date of the coming into force of the Bombay Municipal. Further Extension of Limits and Schedule BBA Act, 1956;

b. any stall, chair, bench, box, ladder, bale, board, or shelf, or any other thing whatever placed, deposited, projected, attached or suspended in, upon, from or to any place in contravention of subsection (1) of Section 313;

c. any article whatsoever hawked or exposed for sale in any public place or in any public street in contravention of the provisions of Section 313A and any vehicle, package, box, board, shelf or any other thing in or on which such article is placed or kept for the purpose of sale.

Similar provisions are there in ss. 320 & 322 of the Delhi MC Act.

Judicial Attitude

The judicial attitude can be judged from the observations of the Supreme Court when the court opined that the right to live with Human Dignity enshrined in Article 21 derives its
life breath from the Directive Principles of State Policy, particularly from clause (e) and (f) of Articles 39, 41 and 42; and at the least, therefore, it must include protection of the health and strength of workers, men and women and of the tender age of children against abuse, as well as to provide opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of enjoyment of these essentials.

Further the judicial trend has been to bridge the gap between the non-enforceability and enforceability, so that is enforcing the social rights through Article 21 of the Constitution of India by giving prominences to Directive Principles of State Policy over Fundamental Rights to building up a social order in the Indian Society.

In *Pyare Lal v. Delhi Municipal Committee*\(^{22}\), the question before the Supreme Court was whether the sale of cooked food on the public streets by the vendors in an unhygienic condition comes with the domain of Article 19. Answering to this question the court opine that no person carrying on the said business of selling cooked food has any fundamental right to carry on street vending in a manner which creates unsanitary and unhygienic conditions in the neighbourhood.

The Supreme Court bench comprising Justice G.S. Singhvi and Justice A.K. Ganguly has asked the government to come up with a law to regulate the right of hawkers, as they have the fundamental rights to carry on their business on the public streets\(^{23}\). It is unequivocally stressed that no restrictions could be imposed on hawkers through non-statutory schemes and policies, as fundamental rights can only be regulated by law. A constitutional bench of the Supreme Court had held in 1989 that hawkers and squatters

\(^{21}\) See, *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802
\(^{22}\) AIR 1968 SC 133
had the fundamental rights under Articles 19 (1) (g) to carry on their business on the public street.

The Supreme Court in a landmark judgement held that Street trading is an age old vocation adopted by human beings to earn a living and comes with in the protection guaranteed under Article 19(1) (g) of the Indian Constitution which guarantees the right to earn a living as a fundamental right.

The issues regarding the legality of street vending and the right to carry on their business have plagued vendors for long. A significant breakthrough came with the Supreme Court judgment in Sudan Singh’s case, wherein Mr. Singh, a vendor in New Delhi’s Janpat area was frequently evicted and his goods confiscated. He appealed to the Supreme Court through the Public Interest Litigation claiming that the action violated his fundamental rights, more specifically his right to carry on business or trade. In a significant judgment, the Supreme Court ruled that the small traders on the sidewalks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. An ordinary person, not very affluent, while hurrying towards his home after a day’s work can pick up these articles, without going out of his way to find a regular market. The right to carry on trade or business mentioned in Article 19(1) (g) of the Constitution, on street pavements, if properly regulated cannot be denied on the ground that the street are meant exclusively for passing or re-passing and no other use.

The judgment emphasizes several important aspects of street vending and use of public space. It notes the positive role of street vendors in providing essential commodities to common people at affordable prices and at convenient places. Street Vending cannot be denied merely on the ground that pavements are meant exclusively for pedestrians. The most important aspect is that street vendors are exercising their constitutional right to carry out trade or business; what is required is that it should be regulated properly and not abolished. Irrespective of this judgment, municipal authorities continued to harass street vendors.

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25 Ibid
27 See, Dharam Singh v. Municipal Corporation of Delhi, 124 (2005) DLT 466
vendors. This is a significant judgment which states that town vending committees should be appointed to regulate street vending and ensure that they are allotted proper public space. The court has directed the government to pass the bill by 30th June 2011. In the light of Supreme Court ruling and the deadline it has given for enacting the law, there should be no predicament ensure that the model bill becomes a law so the provisions that protect the fundamental right of the street vendors. Be that as it may, passing of this bill became imminent with recent Supreme Court judgment in Gainda Ram v. Municipal Corporation Delhi28.

The judgment emphasized that the hawkers and squatters or vendors right to carry on hawking has been recognized as a fundamental right under Article 19(1) (g). At the same time the right of the commuters to move freely and use the roads without any impediment is also a fundamental right under Article 19 (1) (d). These two apparently conflicting rights must be harmonized and regulated by subjecting them to reasonable restrictions only under the law.

It further held that the fundamental right of the hawkers, just because they are poor and unorganized, cannot be left in a state of limbo nor can it is left to be decided by varying standards of a scheme which changes from time to time under orders from this court.

However the Act concerning Street Vending was passed in the year 2014, known as The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act. The chief objective of the proposed legislation is to provide and promote a supportive environment for earning livelihoods to street vendors and hawkers and also to ensure absence of congestion and maintenance of hygiene in public places and streets.

The Act was the result of the struggle by the National Alliance of Street Vendors of India (NASVI) which was formed in Ahmedabad in 199829. It was initiated by the SEWA but soon emerged as an independent federation of street vendors organization. Based on the findings NASVI and SEWA jointly with the Ministry of Urban Development held a

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national workshop on problems faced by the street vendors on 29-30 May 2001 at Vigyan Bhawan, New Delhi. The findings of the above mentioned survey was a central theme of this workshop. The Minister for Urban Affairs announced on a second day that a National Task Force on Street Vendors with an objective of drafting a National Policy on Street Vending would be set up. This policy was drafted by September 2002 and in January 2004 the union cabinet accepted it. The government accepted the need for a national policy for street vendors the task of finalizing this and also drafting a model law was given to the National Commission on Enterprises in the unorganized sector. A new version of the policy was framed and a model act was also framed in 2009 by the Ministry of Housing and Urban Poverty Alleviation.

The rationale of the National Policy on Urban Street Vendors, 2009 is succinctly as follows:

**Recognition of hawker’s right**

- Street Vendors forms a very important segment of the unorganized sector in the country. It is estimated that in several cities street vendors count for about 2 percent of the population. Women constitute a large segment of these street vendors in almost every city. Street Vending is not only a source of self employment to the poor in the cities and towns but also a mean to provide “affordable” as well as “convenient” services to a majority of the urban population.

- Street Vendors are often those who are unable to get regular jobs in the remunerative formal sector on account of their low level of education and skills. They try to solve their livelihoods issues through their own meager financial resources and sweat equity. The Report on conditions of Work and Promotion of livelihoods in the unorganized sector, 2007 of the NCEUS, suggests that the vendors earnings are very low although they vary from trade to trade and from location to location. The men’s average daily income is around Rs.70 in most cities. Women can earn considerably less Rs.40 per day. The monetary problem is compounded by the fact that the vendors have scarce resources for their trade and they need to obtain credit by borrowing. Most of the street
vendors report having borrowed from money lenders who charge exorbitant interest rates. This policy also aims to reflect the spirit of the Constitution of India on the right of citizens to equal protection before the law as well as their right to practice any profession, occupation, trade or business; and the duty of the state to strive to minimize the inequalities in income, and to adopt the policies aimed at securing that the citizens have the right to adequate means of livelihood as enshrined in Articles 14, 19(1)(g), 38(2), 39(a), 39(b) and 41 of the Constitution.

- Public authorities often regard street vendors as a nuisance and as encroachers of sidewalks and pavements and do not appreciate the valuable services that street vendors render to the common man. This policy recognizes that street vendors constitute an integral and legitimate part of the urban retail trade and distribution system for daily necessities of the general public. As the street vendors assist the government in combating unemployment and poverty, it is the duty of the state to protect the rights of these micro-entrepreneurs to earn an honest living. Accordingly, the policy aims to ensure that this important occupational group of the urban population finds due recognition at national, state and local levels for its contribution to the society. The policy is meant to foster a congenial environment for the urban street vendors to carry out their activities. It is conceived as a part of a major national initiative towards the alleviation of poverty in cities and towns.

Classification of Zones

This policy recognizes that to be able to practice any profession or to carry on any occupation, trade or business is a fundamental right of every citizen in our country. Thus it would be desirable, other things being equal, that such a right is not circumscribed unless reasonable restrictions are warranted in public interest.

- Accordingly, the starting point for this policy is the recognition of the positive role of street vendors in providing essential commodities to people at affordable prices and at convenient places. It also recognizes the need for regulation of street vending by way of designated “Restriction – Free Vending”, “Restricted Vending” and “No Vending” zones based on certain objective principles. Such regulation is consistent with
the imperative to ensure free flow of traffic, smooth movement of pedestrians and maintenance of cleanliness and public hygiene while facilitating vendors/hawkers to sell goods/services at convenient locations frequented by the public.

- It will be impracticable that every hawker be provided a permanent site because most cities/towns suffer from severe constraints of land for commercial vending. However, it should be possible to demarcate vending zones and vendors markets where peripatetic and mobile vendors can sell their wares within certain time restrictions and subject to regulatory stipulations. Vendors markets/outlets should be developed in which space could be made available to hawkers/vendors on a time sharing model on the basis of a roaster. Let us say that there are 500 such vending places in about a 100 new vendors’ markets/push cart markets/motorized vending outlets. Let us also assume that there are 5,000 vendors who want to apply for a vending site on a time sharing basis. In addition to vendor’s market/outlet, it would be desirable to promote weekend market in public maidans, parade grounds or areas meant for religious festival. The weekend markets can run on first come and first serve basis depending on the number of vending sites that can be accommodated in the designated area and the number of vendors seeking vending places. However, in order to be equitable, in case there is a heavy demand from vendors, the number of weekend markets a given vendor can be allocated a site on the first come first serve basis can be restricted to one or two in a month depending on demand. A registered vendor can be permitted to vend in designated vending zones without restrictions, especially during non-rush hours. Again in places like verandahs or parking lots in areas such as central business districts.

The Street Vendors (Protection of livelihood and Regulation of Street Vending) Act, 2014.

The Act is primarily based on the recommendation of the policy and contains the following significant features:-
Town Vending Committees

The Act recognizes the role of town vending committee to be constituted at city/town level. A TVC shall be coordinated by a convener who should be nominated by the urban local body concerned. The chairman of TVC will be the commissioner/Chief Executive Officer of the concerned urban local body. The TVC will adopt a participatory approach and supervise the entire process of planning, organization and regulation of street vending activities. Further it will provide an institutional mechanism for due appreciation of the ground realities and harnessing of local knowledge for arriving at a consensus on critical issues of management of street vending activities.

The term “Town Vending Committee” means the body constituted by an appropriate government for protecting the livelihoods of street vendors while at the same time imposing restrictions which are reasonable, if necessary, for ensuring flow of traffic and for addressing concerns relating to public health and hygiene in the public interest.

The Act provides for and promotes a supportive environment for the vast mass of urban street vendors to carry out their vocation while at the same time ensuring that their vending activities do not lead to overcrowding and unsanitary conditions in public spaces and streets.

All allotments of space, whether temporary or permanent should be based on payment of a prescribed fee fixed by the local authority on the recommendations of the Town Vending Committee.

The following are the key elements for regulating the vending activities:

Spatial Planning Norms:

Following are the Supreme Court orders, some cities have drafted guidelines for regulating urban vending activities. However, the provisions made so far do not generally

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30 Section 22 of the Act.
31 Section 26 of the Act.
32 Section 15 of the Act.
33 Ibid
34 Sections 8 & 9 of the Act.
recognize the fact that demands for the wares/services of street vendors are highly specific and vary with location and time. This manifests in the natural propensity of the street vendors to locate at particular places at particular time. Spatial panning norms should not disregard such “natural markets” but fully take them on board. There is a need for master/zonal/local/layout development plans to be “inclusive” and address the requirements of space for street vending as an important urban activity through norms for reservation of space for street vendors in accordance with their current population, projected growth of street vendors, based on the rate of growth in the previous five years and the average number of customers that generally visit informal markets in vending zones. It is equally important that the provisions made in zonal, local or layout plans for street vending are implemented in an equitable and efficient manner.

Spatial planning should take into account the natural propensity of street vendors to locate in certain places at certain times in response to the patterns of demand for their goods/services. Municipal Authorities should frame necessary rules for regulating entry of street vendors on a time sharing basis in a designated vending zones keeping in view three broad categories- registered vendors who have secured a license for a specified site/stall; registered street vendors in a zone on a time sharing basis; and registered mobile street vendors visiting one or the other vending zones;

Municipal Authorities should allocate sufficient space for temporary “Vending Markets” whose use at other times may be different. These “Vendors Markets” may be established at suitable locations keeping in view demand for the wares/services of street vendors. Timing restrictions on vending should be in accordance with the need for ensuring non-congestion of public spaces/maintaining public hygiene without being ad hoc, arbitrary or discriminatory. Rationing of space should be resorted to if the number of street vendors exceeds the number of the space available.

**Quantitative Space Norms**

These refer to the norms on the amount of space to be provided for “Vending Zones” in plans and to vendors in designated vendor’s market. Every land use has a carrying capacity ceiling or threshold limit for the users and the same is true of the number of
vendors operating in a clearly demarcated area. Overuse can cause congestion and reduction of public hygiene. Thus there is a need to fix space norms at both city/zonal developmental plan and local/layout plan levels. Each city/town may, however, evolve its own quantitative norms but only after conducting proper surveys and evaluating actual needs, and taking the help of professional institutions/agencies. The principle of “Natural Markets” should be followed in designated areas as Vending Zones and their maximum holding capacity should be determined based on this principle.

**Provisions for Civic Facilities:**

Municipal Authorities need to ensure the maintenance of the basic civic facilities in Vending Zones/Vendors’ Markets which will include:

1. Provisions for solid waste disposal;
2. Public toilets to maintain cleanliness;
3. Aesthetic design of mobile stalls/push carts;
4. Provisions for electricity;
5. Provisions for drinking water;

The TVC should ensure that the provision of space for vendors’ markets are pragmatic, consistent with formation of natural markets, sufficient for existing demand for the street vendors’ goods and services as well as likely increase in accordance with anticipated population growth.

The TVC should monitor the provision of civic facilities and their functioning in Vending Zones and Vendor’s markets and bring shortcomings, if any to the notice of the concerned authorities of the urban local body. The TVC should also promote the organization of weekly markets, festival bazaars, vending festivals on important holidays etc. as well as take up necessary improvement of infrastructure facilities and municipal services with the urban local body concerned.
Functions of Town Vending Committee

The TVC has to perform the following functions:

i. Undertake periodic survey/census to assess the increase or decrease in the number of street vendors in the city/town/wards/localities

ii. Register the street vendors and ensure the issuance of Identity Cards to the street vendors after their preparation by the Municipal Authority

iii. Monitor the civic facilities to be maintained by street vendors in vending zones/vendors’ markets by the Municipal Authority

iv. Assess and determine maximum holding capacity of each vending zones

v. Work out a non-discriminatory system and based on the same, identify areas for hawking with no restriction, areas with restrictions with regard to the dates, days and time, and, areas which would be marked as “No Vending Zones”

vi. Set the terms and conditions for hawking and take corrective action against defaulters

vii. Monitor to ensure that those allotted stalls/vending spots are actually using them and take necessary action to ensure that these are not rented out or sold to others

viii. Ensure that the quality of products and services provided to the public is as per standards of public health, hygiene and safety laid down by the local authority

Eviction, Relocation and Confiscation

If authorities come to the conclusion in any given instance that genuine public obstruction of a street, sidewalk etc. is being caused by the street vending, there should be a mechanism of due notice to the street vendors. The vendors should be informed/warned by way of notice as a first step before starting the clearing up or relocation

35 Section 3(2) of the Act.
36 Section 4 & 7 of the Act.
37 Section 16 of the Act.
38 Section 4 (3) of the Act.
39 Sections 12(2) & 18 of the Act.
40 Section 10 of the Act.
41 Section 5 (1) (c) of the Act.
42 Section 28 & First Schedule of the Act.
43 Section 18 of the Act.
process. In the second step, if the space is not cleared within the notified time, a fine should be imposed. If the space is not cleared even after the notice and imposition of fine, physical eviction may be resorted to. In case of vending in a “Non Vending Zone”, a notice of at least a few hours should be given to a street vendor in order to enable him or her clear the space occupied. In case of relocation, adequate compensation or reservation in allotment of new vending site should be provided to the registered vendors.

With regard to confiscation of goods the street vendors shall be entitled to get their goods back within a reasonable time on payment of prescribed fee, determined by TVC.

In case of peripatetic vendor or vendors occupying space on a time sharing basis, the vending activity will be regulated in such a manner that the vendors remove all their wares every day/on expiry of the time-sharing period allotted. In case of mobile vending outlets, suitable regulations should be put in place for ensuring flow of traffic and public health and hygiene in the public interest.

**Slum Dwellers**

Poor economic conditions are the primary factors which are responsible for the growth of slums in the country. After independence of India adopted and preferred the Nehru’s Model of growth over Gandhi’s model of growth which led to the establishment of industries at the city level. The skilled and unskilled work was in order to look for greener pastures migrated to the cities. These migrants were not having enough money to erect houses or such accommodation on rent, therefore, they occupied spaces in little hutment developed in private or public land. These developments latter on gave birth to slum cultures in India. The slums are considered to be the shelter homes for the poor but such shelter homes lack the basic facilities sine qua non for a dignified living that is sanitation, ventilation, bathing area, clean environment etc. Moreover these slum houses ultimately become the breeding grounds for the undignified profession that is crime, Prostitution and Begging etc.

The slum dwellers are also the citizens of independent India requiring the state help for dignified living for themselves and their progeny. Often, the slums are looked as scars on the beautiful face of the city and are often subjected to demolition drives by the state
actors/private players. The significant protection of the Constitution is also available to
the slum dwellers viz, the equality clause, the freedoms under Article 19, Right to life and
Personal Liberty, and benefits under the Directive Principles of State Policy. Apart from
these provisions, the role of the State is not positive towards the plight of the slum
dwellers. All the Municipal Acts incorporate provisions for their eviction from the public
area/ State land without realizing that it is the duty of the State to provide housing
facilities with the assistance of the private players to these migratory people. The
significant Act which deals with the slum dwellers is “The Slum Area (Improvement and
Clearance) Act 1956.

The Slum Area (Improvement and Clearance) Act, 1956

The main purpose of the Act is to improve the conditions of the slum areas which are
developed on the private land or to order for slum clearance, but the protection of the Act
is not available to the occupier of the State land. Under the provisions of the Act the
competent authority can declare any area to be slum area if the buildings in that area are
in any respect unfit for human habitation; or by any reason of dilapidation, overcrowding,
faulty arrangements and design of such buildings, narrowness or faulty arrangement of
streets, lack of ventilation, light or sanitation facilities or any combination of these
factors, are detrimental to safety, health or morals. The Competent authority can direct
the owner of the building to execute the works of improvement to make the building fit
for human habitation. If the owner fails to make the repairs as required, the competent
authority can itself execute the works and recover the payments from the owner of the
building. In case the owner is not available or is unable to make the payment, the
competent authority can recover it from the occupier of the building. However if the
competent authority is satisfied that the building cannot be improved by carrying out the
necessary repairs in order to make it fit for human habitation, the competent authority can
pass an order for the slum clearance after declaring the area to be clearance area.
Whenever the area is redeveloped or the building is revamped, the existing tenants of the

44 Section 3of the Act
45 Section 4 of the Act
46 Section 5 of the Act.
47 Section 6 of the Act.
48 Section 10 of the Act.
building shall have the right to reoccupy it. Even in certain situations the competent authority can redevelop a land in public interest\textsuperscript{49}. The land so acquired can be utilised for any public purpose by the Central government\textsuperscript{50} after paying the compensation to the owners and occupiers of the building\textsuperscript{51}. Though the Act was passed for making the life worth living for the slum dwellers but it has the propensity of being misused to the detriment of the rights of the slum dwellers.

The decision of the Supreme Court of India in \textit{Olga Tellis v. Bombay Municipal Corporation}\textsuperscript{52} is the most significant case of judicial policy concerning the slum dwellers. The judicial policy unequivocally emphasizes that they too, have right to equality in terms of Article 14, it recognizes the affirmative action in their favour in terms of Article 15; they have a right to live with dignity peaceably in terms of Article 21. It is a case of PIL that lays down a law in terms of Article 142 read with Article 32 of the Constitution of India\textsuperscript{53}. It portrays the plight of lakhs of persons who live on pavements and in the slums in the city of Bombay. They constitute nearly half the population of the city. Those who have made pavements their homes exist in the midst of filth and squalor, seen to be believed\textsuperscript{54}. They cook and sleep where they ease, for no conveniences are available to them. Their daughters come of age, bathe under the nosy gaze of passersby, unmindful of the feminine sense of bashfulness. It was pleaded that these men and women should not be evicted from their squalid shelters without being offered alternative accommodation. They do not contend that they have a right to live on pavements. Their contention is that they have a right to live, a right which cannot be exercised without the means of livelihood. They have no option but to flock to big cities like Bombay, which provides the means of bare subsistence\textsuperscript{55}. They only choose a pavement or a slum which is nearest to the place of work. In a word, their plea is that the right to life is illusory without a right to the protection of the means by which alone life can be sustained.

\textsuperscript{49} Section 11 of the Act.
\textsuperscript{50} Section 13 of the Act.
\textsuperscript{51} Section 14 of the Act.
\textsuperscript{52} AIR 1986 SC 180
\textsuperscript{53} Id., p. 53
\textsuperscript{54} Id., p. 54
\textsuperscript{55} Id., p. 63
On July 13, 1981 the Chief Minister of Maharashtra, Shri A.R. Antulay, made an announcement which was given wide publicity by the newspapers that all pavement dwellers in the city of Bombay will be evicted forcibly and deported to their respective places of origin or removed to places outside the city of Bombay. The chief Minister directed the commissioner of Police to provide the necessary assistance to the Bombay Municipal Corporation, to demolish the pavement dwellings and deport the pavement dwellers. The apparent justification which the Chief Minister gave to his announcement was: “It is a very inhuman existence. These structures are flimsy and open to the elements. During the monsoon there is no way these people can live comfortably.” The Corporation removed the ramshackle shelters on the pavements with the aid of police, the pavement dwellers flee to less conspicuous pavements in by lanes and, when the officials are gone, they returned to their old habitats. Their main attachment to those places is the nearness thereof to their place of work.

The decision or the respondents to demolish the huts is challenged by the petitioners on the ground that it is violative of Articles 19 and 21 of the Constitution. The petitioners also asked for a declaration that the provisions of sections 312, 313 and 314 of the Bombay Municipal Corporation Act, 1888 are invalid as violating Articles 14, 19 and 21 of the Constitution. The reliefs asked for in the writ petitions are that the respondents should be directed to withdraw the decision to demolish the pavement dwellings and the slum hutsments and, where they are already demolished, to restore possession of the site to the former occupants.

New constructions of commercial premises, small scale industries and entertainment houses in the heart of the city, have been permitted by the Government of Maharashtra contrary to law and even residential premises have been allowed to be converted into commercial premises. This, coupled with the fact that the State Government has not shifted its main offices to the northern region of the city, has led to the concentration of the population in the southern region due to the availability of job opportunities in that region. Unless economic and leisure activity is decentralized, it would be impossible to

56 Id., p. 64
57 Id., p. 66
find a solution to the problems arising out of the growth of squatter colonies. Even if squatter are evicted, they come back to the city because, it is there that job opportunities are available.

One of the grievances of the petitioners against the Bombay Municipal Corporation Act, 1888 is that it is a century old antiquated piece of legislation passed in an era when pavement dwellers and slum dwellers did not exist and the consciousness of the modern notion of a welfare state was not present to the mind of the colonial legislature.

The argument which bears on the provisions of article 21 is elaborated by saying that the eviction of pavement and slum dwellers will lead, in a vicious circle, to the deprivation of their employment, their livelihood and, therefore, to the right to life.

The right to live and the right to work are integrated and inter dependant and therefore is a person is deprived of his job as a result of his eviction from the slum or a pavement, his very right to life is put in jeopardy. It is urged that the economic compulsions under which these persons are forced to live in slums or on pavements impart to their occupation the character of a fundamental right.

Supreme court provided that it is far too well-settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Article 21 must be fair, just and reasonable. Just as a malafide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike, it is therefore essential that the procedure prescribed by law depriving a person of his fundamental rights, in this case the right to life, must confirm to the norms of justice and fair play. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: the action must be within the scope of the authority conferred by law, is found to be unreasonable, it must

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58 Id., p. 74
mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which is prescribed for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Therefore, “He who takes the procedural sword shall perish with the sword.”

Having given our anxious and solicitous consideration to this question, we are of the opinion that the procedure prescribed by Section 314 of the Bombay Municipal Corporation Act for the removal of encroachments on the footpaths or pavements over which the public has the right of passage or access, cannot be regarded as unreasonable, unfair or unjust.

Footpaths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with reasonable measures of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing the encroachments to be made on the pavements.

Slums which have been in existence for a long time say for twenty years or more, and which have been improved and developed will not be removed unless the land on which they stand or the appurtenant land, is required for a public purposes, in which case, alternate sites or accommodation will be provided to them, the “Low Income Scheme Shelter Programme” which is proposed to be undertaken with the aid of the World Bank will be pursued earnestly; and, the slum Upgradation Programme (SUP)’ under which basic amenities are to be given to slum dwellers will be implemented without delay.

**Trafficking and Begging**

Trafficking and begging are the social evils in India. The victims of these social evils are the maximum sufferers in the Indian Society. These victims are not only the prey of lust

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60 See, J. Frankfurter Vitterall v. Seton, 3 L.Ed. (2 series) 1012.
61 See, Nihal Singh v. Ram Bhai, AIR 1987 MP 126. See also, Times of India, 5th August 2011; See, 146th Report of Law Commission of India on Sale of Women and Children, 1993
of sex, but trafficking in the form of sexual exploitation and begging both amongst women and children occur due to poverty, and as such they become easy victims of trafficking. These victims of social evil are looked down upon and treated as chattel even in the twenty first century of modernity of free economic market, privatization and globalization. This is not the only condition in India, which is now a developed nation by international parameters, but trafficking amongst women and children is seen more all pervading in the least developing countries, of the globe. Such victims are disposed of by way of sale or other mode of transfer, hire, and purchase or let out. These victims of trafficking are vulnerable to exploitation; and as such are living in utter disregard to the principles of human dignity.

**Trafficking:**

Human trafficking is a tremendous abuse of human rights and human dignity. It has in some form continued to exist throughout the world and is experiencing a dramatic resurgence in recent years. Be that as it may, human trafficking is the coerced use of human beings as objects of commerce. It is visibly seen to be a re-emergence of slave labour and extreme form of sexual exploitation of fair sex- women and girl child. There is no concrete definition of trafficking, it could be said that trafficking involves movement/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end- users, etc. exploit the vulnerability of the trafficked person. Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sexual and (b) Non Sexual. The former category includes trafficking for prostitution, commerce, sexual abuse, pedophilia, pornography, cyber sex and different types of disguised sexual exploitation takes place in some of the massage parlours, beauty parlours, bars and other manifestations like call girls racket, friends clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labour, industrial labour, adoption etc. organ transplant, marriage related rackets, etc.
Meaning of Trafficking

The *Oxford* English Dictionary defines traffic as trade, especially illegal. The word trafficked or trafficking is described as “dealing in something, especially illegally”\(^{62}\). Trafficking has been defined to mean: “The illicit and clandestine movement of persons across national borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption. The most comprehensive definition of trafficking is one adopted by the UN office of Drugs and crime 2000, known as the “UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000”, under the UN Convention against Transnational Organized Crime (UNTOC) which defines human trafficking\(^ {63}\):

(a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, abuse of power or of a position of vulnerability or of the giving or of receiving of payments or benefits achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms, sexual exploitation, forced labour services, slavery or practices similar to slavery, servitude;

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in subparagraph of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

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\(^{63}\) See, Article 3, United Nation Convention against Transnational Organized Crime.
(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in person” even if this does not involve any of the means set forth in paragraph (a) of the article;

(d) Child shall mean any person under eighteen years of age.

Trafficking in women and children is the gravest form of abuse and exploitation. Thousands of Indians are trafficked everyday to some destination far from their home place and are forced to lead life of slavery. They live till ashes in brothels, guesthouses, dance bars, farms, sex workers and even in the homes as call girls. Trafficking thus shows phenomenon increase with globalization on account of increasing profit with little or no risk.

Be that as it may, growing traffic in women and girl is principally for the purpose of the prostitution. Prostitution is an international problem which can be found in both developing, least developing and industrialized nations. This is abominable crime against women as fair sex. Women and girls are hired under the pretext of false promises of jobs or marriage or settlement. Probably the three common methods are false employment promises, false marriages and kidnapping. But what makes women and girls vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions. However, the predominant reasons are poverty, unemployment, lack of proper reintegration services, lack of options, stigma and adverse attitudes, family expectations and pressure, resignation and acclimatization to the lifestyle. Though the law prohibits trafficking in persons, but trafficking in person is a significant intriguing problem. NGO and the National Commission for Women has reported that this organized crime has played a significant role in the country’s sex trafficking trade and that women and children are trafficked frequently and are subjected to extortion, beatings and rape. How women are trafficked varies widely. Most are trafficked through false offers of marriage, employment, or shelter, poverty, illiteracy and lack of employment opportunities contributed to the trafficking problems. Thus organized crime is a common element in all trafficking incidents.

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According to United States State Department data, an “estimated 600,000 to 820,000 men, women, and children are trafficked across international borders each year, and approximately 70 percent are women and girls and out of it, 50 percent are minors. The data also illustrates that the majority of the transnational victims are trafficked into commercial sexual exploitation.\(^{65}\)

India is a country of destination, origin and transit for trafficking of women and children. In addition, there are several indications of internal trafficking. Of the 74 million South Asian women reported as missing, 20 million are said to be working in Indian brothels. As estimated 25 percent of women trafficked to India are under 18 years of age.\(^{66}\) The main destination points in India for trafficked women and children are the metropolitan centers of Mumbai, New Delhi, and Calcutta.\(^{67}\) For the purpose of sexual exploitation, Nepali and Bangladeshi women and children are trafficked mainly to Mumbai, where 20,000 Nepali women and girls are in prostitution.\(^{68}\) Each year, somewhere between 10,000 and 15,000 Bangladeshi women are trafficked to India, as are an estimated 5,000 to 7,000 Nepali women for purposes of prostitution.\(^{70}\) According to nongovernmental organizations (NGOs), at least 200,000 Nepali women and girls are in prostitution in India.

Twenty percent of Nepali females trafficked to India are younger than 16 years of age. Young women from remote parts of India also are trafficked to Mumbai for purpose of


sexual exploitation. An extensive Bengali syndicate recruits underage girls from the eastern Indian state of West Bengal.

Thus the causes and facilitators of trafficking include:

Lack of employment opportunities; Organized crimes; Regional imbalances; Economic disparities; Social discrimination; Corruption in government; Political instability; Armed conflict; Mass resettlement for large projects without proper Resettlement and Rehabilitation packages; Profitability; Insufficient penalties against traffickers; Minimal law enforcement on global; Legal processes that prosecute victims for prosecution instead of the traffickers; Poor international border defense.

Sexual trafficking includes coercing a migrant into sexual act as a condition of allowing or arranging the migration. Sexual trafficking uses physical coercion, deception and bondage incurred through forced debt. Trafficked women and children, for instance, are often promised work in the domestic or service industry, but instead are usually taken to brothels where their passports and other identification papers are confiscated. They may be beaten or locked up and promised their freedom only after earning- through prostitution- their purchase price, as well as their travel and visa costs. Thirty of the children had been adopted by foreign couples and 114 by native couples. Seventeen of the children were extremely ill, and one died shortly after the raid. More than 40 percent of Indians live in absolute poverty. Struggling to meet basic needs, parents often sell their children into some form of debt bondage, either domestic labor or prostitution. Half of the 20 million children are subjected to abuse, harassment, rape and torture. An estimated 15 million children have been sold into labor by their parents to moneylenders in return for paltry loans.

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72 Ibid.
Poverty and lack of equal opportunity reduce the status and quality of life for many girls in India. Although the customary practice of providing a dowry is now illegal, the improvised parents of a young girl still may be tempted to abandon or sell their daughter for fear that they will be unable to pay such a dowry. It is estimated that more than 5,000 women are murdered each year because their in-laws consider their dowries inadequate.\(^{77}\) In the north western India state of Rajasthan, girls as young as 11 are sold into marriage to 60 years old men. Although marrying a minor is an offence under Indian Law, complaints registered either by the affected persons or by the authorities are few. Indian women and girls are trafficked into Kuwait and other Middle Eastern countries for purposes of prostitution.\(^{78}\) Disabled Muslim Children, primarily girls, are trafficked to Saudi Arabia for the purpose of begging.\(^{79}\) An Indian Parliamentary Committee charged that a large number of Arab men were marrying young Indian Muslims women and taking them to Persian Gulf countries with the intent of selling them into brothels.\(^{80}\)

**Prostitution**

The prostitution is defined as the act or practice of engaging in sexual activity for pecuniary benefits. Thus the very definition rules out the mere engagement in sexual activity by a person from definition of prostitution and it can be classified as adulterous or bigamous or promiscuous sexual activity. Prostitution as a profession requires the involvement of money or its equivalent or commercialized sex. The prostitution can blossom out in any society on account of various causes which can be classified as:

- Biological
- Natural phenomenon
- and Socio-economic
- Creation of society

\(^{77}\) See, UNICEF Targets Violence against Women, 8\(^{th}\) March 2000.


Biological

The biological course operates through sex urge in human beings. It is only by applied efforts that a man can control his sex desires, but it is not possible to do so in all cases. It is also the reason that man like the anthropoid apes can prostitute his sex by introducing sexual stimuli into intrinsically men sexual situations, which is not possible in other lower species and thus creating a class of deviant prostitutes.

Socio-Economic

Among the socio-economic factors the most important being the poverty of the female who in the absence of any other means of support for herself or for her children resorts to prostitution and thus creating a class of poverty ridden prostitutes.81

Davis Kingsley has explained prostitution on the basis of dominance and subordination.82 In most of the societies the male is the dominant factor in sex equation and this dominance is based upon both superior physical strength and certain traditional social norms. The female attempts to equalize this situation by attracting and holding the attention of the male by the use of only power at her command –sexual stimulation and satisfaction and thus creating a class of jealous prostitutes.

Among other socio-economic factor one may be include modern industrialization and rapid urbanization which have affected the sex ratio in the cities, lack of family and social control, lack of moral teachings, more interaction between men and women during employment, over-crowding, commercialized recreation including cinemas and dancing hall, drinking and late marriages to keep higher standard of living.

From the causes discussed above the most predominant cause which operates among males is the sexual urge and among females is their economic dependency.83

Wilson said that generally speaking, the men who go to prostitutes are those who cannot find elsewhere the satisfaction for their physical needs or get the pleasures that they are

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83 Id., para 1
looking for. Prostitutes are commercially impersonal and impartial, simply providing
grouping for sexual satisfaction for a price, with no emotional obligations. There is no need for men to
court them, spend time with them, or even attract them and thus creating a class of free or
street prostitutes\textsuperscript{84}.

**Causes for Prostitution**

The research relating to prostitutes has identified twenty-six causes for prostitution and
they divided these causes into the following 6 groups depending on their nature and
origin\textsuperscript{85}.

**Group- I**

Death of father/mother/guardian/husband/relatives.

**Group- II**

- Poverty
- Destitution

**Group- III**

- Ill treatment by father/mother/guardian/husband/relatives.
- Neglect by father/mother/guardian/husband/relatives.
- Otherwise unhappy family relations.
- Unfaithfulness of the husband.
- Deserted by the husband.
- Otherwise unhappy marriage.


Group- IV

- Connivance of parents/husband/relatives.
- Introduction by parents/husband/relatives.
- Bad influence.
- Deception.
- Kidnapping
- Tradition or heredity.
- Environmental influence.

Group- V

- Sexual urge and sex curiosity.
- Illicit sexual relations
- Illegitimate pregnancy
- Rape.

Group- VI

- Desire for easy life.
- Love of adventure.
- Hatred by marriage.
- Ignorance.
- Low moral values.
- Desire for revenge.
Classification on the sex basis

On the basis of sex the prostitutes are of two types:

(1) Male Prostitute  (2) Female Prostitute

Male Prostitute:

Prostitution is not limited to female but male also pursue it: Male prostitution has always been a prominent feature in Indian native races. There are male prostitutes in all large cities, and, although, owing to the different way in which they are regarded by society and by the law. They pursue their profession much more surreptitiously than do female prostitutes. Actually, male prostitution is as old as female prostitution. In Bible also there are given many references to the existence of male prostitution.

In all classes of society, and especially wherever men have been segregated, sodomy has been rampant through the ages. The causes of male prostitution come under headings:

- The demand for the services of male prostitutes, owing to women being unavailable, usually where the sexes are segregated as in army camps, barracks, prisons etc.

- A preference for male as in cases of true homosexuals who are antipathetic to the female sex;

- The acquirement of sexual perversions by those seeking abnormal forms of sex stimulation, and in certain cases as a means of contraceptive method.

- It is being a safe sex, the sex between two consenting male for money or other valuable consideration is significant of male prostitution. The carnal experiences in such situation are considered to be safe because the client and male prostitute had not to undergo the traumatic experience of pregnancy. Since it breeds in isolation and the chances of overt exposition of male prostitution are minimal.

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86 See, George Ryley Scott, *History of Prostitution from Antiquity to Present*, p.177, 1936.
87 Id; p. 180
88 Id; p. 184
In old and sexually impotent men, the male prostitute really finds the bulk of his clients. There are numerous young men who bear exactly the same relation towards wealthy women, as female prostitutes bear towards men. They provide nymphomanias and other passionate or sex starved women, with the sexual passionate or sex starved women, with the sexual excitement they require. These male prostitutes also frequent smart dance hall, night clubs and restaurants which women patronize. The modern trend exhibits that the profession of prostitution is not only to females but males are also entering into the profession on account of following reasons:

(i) Easy life style.
(ii) Sexual urges.
(iii) Paying clientele.
(iv) Safe sex, etc.

Therefore, we find a large variety of prostitutes in the society.

Female Prostitutes

The involvement of females in the profession of prostitution takes place on account of various reasons:

(i) As a mean of survival
(ii) On account of stigmatized life.
(iii) Involvement in religious ceremonies.
(iv) Unsatisfied sexual urge.
(v) Unwelcome environment.
(vi) Curiosity of sexual experience etc.

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89 Id; pp. 186-187
These significant causes play pivotal role in attracting the females towards the profession of prostitution which ultimately becomes hereditary feature. Most prostitutes who offer their services to men for monitory purposes are referred as female prostitutes. The English word whore, referring to female prostitutes, is taken from the old English word ‘hMra (from the Indo-European root k meaning ‘desire’). Female prostitution has existed in the world from time through its institution has never been recognized by the society as such.

According to H. Benjamin, the following are the important types of prostitute found in modern societies:

1. **Call – Girl**: Greenwald describes in his book the term ‘call-girl’ in the special way. They live in the most expensive residential sections of our large cities; they dress in rich, good taste. They charge a minimum of twenty dollars per sexual contact.⁹⁰ Because her income is greater and she spends more time with each customer and not so many men are able to afford her services, in the call girl typically has fewer sex contacts than do other financially successful whores. Some call girls deny that they are prostitutes precisely on this basis; the prostitute is indiscriminate; they, so they say, are not.

2. **The Street Walker**: Street walking is probably the most ancient of prostitute operating methods. In the nineteenth and early twentieth century’s, prostitutes were sometimes permitted to work in Bawdy houses specifically with the aim of getting them off the streets, where they would not be able to solicit, or even have to be seen by, ‘decent people’. Historically, since earlier times, the street walkers have been regarded as being at or near the bottom of the prostitution ladder. Her fees have traditionally been lower than those received by most other types of prostitutes and she has been, in general a less attractive type, of course there have been striking individual exceptions, and still are today.

3. **Camp Followers**: Camp followers, in the broad sense, are simply prostitutes who gather and operate where large numbers of soldiers, and other servicemen are stationed,

and who serve principally the sexual needs of those males, although civilians are seldom
discriminated against. They are usually prostitutes of the bar girl and brothel girl
varieties, more attractive than the average street walker, not up to the standard of the too
expensive call- girls

4. **Internal Prostitutes**: These are those women who intentionally specialize in a
race or races different from their own, taking advantage of such racial barriers as exists,
or unconsciously exploiting the radical difference in the service of neurotic goals. The
great majority of interracial prostitutes in the United States are Negro females
specializing in white males, and white females specializing in Negros and sometimes
Latin Oriental males.

5. **Fleabag**: The fleabag or prostitute, whose customers are skid row males, is the
lowest of the low in the hierarchy of American whore-dum. Typically, she is aging,
unattractive and alcoholic. She cannot, of course, afford to be a narcotics addict. She
works skid row because she no longer can attract any but humanities flotsam and jetsam.
The fleabag leaves skid row and her ‘profession’ only who she dies or in placed in an
institution.

6. **Dance Hall Prostitution**: These women either dance or ‘sit it out’ with males
purchasing tickets entitling them to a stipulated number of minutes of the hostess time.
Girls and women employed in these establishments range in age from late teens and early
twenties up into the forties and fifties, with a rather surprising number in the older age
groups.

7. **Beat Prostitutes**: Some girls twig as member of the ‘Beat Generation’ and
subscribing to the values characteristic of that sub-society, reportedly engage in
prostitution as a matter of principle and in accordance with an ethic which may or may
not be rigidly adhered to.

8. **Gimmick Prostitution**: These include auctions and raffles, bull board and
newspaper advertisements, and call-girls directories, credit-card schemes, traveling
brothels, window displays of harlots and so on.
9.  *Adolescents:* A great deal is heard today about high school girls living at home with their parents and pursuing prostitution as an avocation, sometimes for ‘kicks’, sometimes for money, probably most often for both. The tendency seems always to regard this phenomenon as something unprecedented—which of course it is not—and to serve it up as evidence of the ‘widespread moral decay’ in U.S.A.

10.  *Child Prostitutes:* Child prostitutes apparently are as ancient as civilization. Temple prostitutes were sometimes no older than 7 years, as in Babylonia, where they practiced their calling in temples of venues at that age. In ancient Egypt, also, the prostitution of young girls was a religious practice, so that, according to Strabo, some of the most beautiful and highest born Egyptian as prostitutes their first menstruation. The profession of prostitution not only involves prostitutes, but there are other persons involved in it who contribute, encourage and shelter prostitutes i.e., procurer, pimps and brothel keepers. The male component of the prostitute is known as a procurer or a pimp. Pimp is the person who makes business contacts for the prostitutes and generally acts as her ‘guide’ friend and philosopher. These pimps mostly live upon the earnings of the prostitute.\(^91\)

In the ancient Greece and Rome, the prostitute or harlot stood or sat before the *lupanaria* in the afternoons and negotiated the piece. As soon the settlement was reached, and the money was paid in advance, she shut the door and a ticket was put over the house saying occupation (engaged). The walls inside the room were decorated with the obscene paintings. These, houses were called ‘houses of joy’.

**History of Prostitution**

The prostitution has its root in the history of every country and every religious practice.

**Greece**

The attitude of the male population of Ancient Greece towards the prostitutes is full of significance and worthy of more than passing attention. Women, respectable women—that is, wives, daughters and relatives—were looked upon as pieces of property, much as

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the furniture, the house and the farm stock were looked upon. The place for a wife, in the full literal significance of the term, was in her home. Her function in life was to look after the household, to procreate children and to see them. While the respectable married women, virtuous to a degree, went about her menial duties, her lord flaunted away his leisure hours in the company of painted women of joy.

The highest call prostitutes, known as hetaerae, secured respect, attention and honour, without being compelled to have recourse to subterfuge or to disguise their true calling under euphemistic terms. These hetaerae were the companions of the wealthiest, most cultural, and most exalted Greeks of the time.\(^{92}\)

**Rome**

Unlike the Greeks, the Romans were ashamed of being seen in open companionship with avowed harlots—they skulked and sneaked into the brothels or houses of assignation unknown to their friends and relatives, much in the way in which a respectable man today makes overtures in one of the darker and less frequented side streets of the Leicester Square district. Under Roman law attempts were made at registration of prostitutes. “Once a prostitute, always a prostitute was the dictum of the Roman authorities.

**Egypt**

*Hans Much* in his remarkable book Egyptian Nights has given an existing description of ancient Egyptian sexuality. Egypt also had its *Eros*, the God of love, like the *Cupid* of Romans—and the God of love in Greek mythology. *Hans Much* reports, “in Egypt, *Eros* was part of the very being of the aristocracy for thousands of years. In Egypt the man wears only an apron; but the woman always appears veiled in a garment which conceals her, and yet reveals her more subtly—slim, yielding, exciting. The Egyptian ladies allowed no hair to grow anywhere on their flesh nor did the men, except the hair on their head and sometimes that on their chin.. It was not illegal in Egypt of olden days to forcibly rape a slave girl. In the temples of Egypt, Phoenicia, Assyria, Canaan and

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Persia, the worship of Isis, Moloch, Baa, Astral etc., consisted of the most extravagant sex orgies, there girls were raped and used in most sadistic ways.  

England

Throughout the rural areas of Great Britain, a form of courtship known as ‘Bundling’ held sway. Parents would not allow daytime visits by young men coming accounting, but at night it was all right. In barns and out houses the lasses and their suitors would be literally “rolling in the hay” with the full approval of parents. Bundling, in its oldest form, might be defined as “courting in bed”\(^{94}\). Owning to the hypocritical attitude adopted by many governments, and especially all the English speaking peoples, towards prostitution, such a state of affairs as prevailed in the middle ages appears extra ordinary vulgar and immoral. At that time intercourse with a common prostitute, or openly visiting a brothel, was look upon with no more reprobation than one looks upon a visit to a night club or carousal in a public house.  

Sir John Simon had estimated that there were 18,000 prostitutes in London in 1868 and there were 3,000 prostitutes admitted into hospitals for various diseases. In his report to the Priory Council, Sir John called ‘prostitution a great evil’ in English life.  

India

The evidence from the remote period of Indian History indicates that prostitution was an accepted profession to which were attached certain definitive prerogatives rights, and other duties.\(^{97}\) It is observed that prostitution found its way into India from Egypt sometime or the other during the Brahmans period.\(^{98}\) The prostitutes of the Brahman period were known as Vaishya. The term vaishya of the Brahmana period gradually

\(^{93}\) See, Paripurananada Varma, Sex Offences in India and Abroad, p.126, 1979.
\(^{95}\) Scot Ryle, op. cit., p 85
\(^{96}\) Supra note 52, p. 129.
changed into *Beshya* which means one who is approachable to and by all or who nicely adorn herself.\(^{99}\)

The earliest mentions of the prostitution occur in the *Rigveda*, the most ancient literary work of India. Clearly, even in earliest vedic age, love outside wedlock was a familiar phenomena and unions promoted by mere lust are mentioned in quite an uninhibited manner.\(^{100}\)

The terms *Sadharanior Samanya*, synonyms for prostitute, distinguish her as women not possessed by one man; this is the desideratum. When a woman does not belong to one man but obliges many, as the term *varangana*, *varastri*, *varavadhu* and *varamukhya* signify. Since she is not the responsibility of any one man, she looks after herself. She does by accepting payment from each of the men she obliges, she then become *panyastri*, one whose favours can be brought with money.

The process of emergence of prostitution must have been slow, varying from region to region and from age to age. By the later Vedic age; i.e. around the eight or seventh century B.C., there are references to a more regularized form of prostitution recognized as a social institution.

In the vedic literature, especially in the *Aitareya* and *SankhayamaAranyakes*, the prostitute is mentioned in a apparently obscene altercation with the neophyte (*Brahmacarin*). In the *Vratyasukta* of the *Atharvaveda*, she follows the *magadha*.\(^{101}\)

In the *Brahmavaivarta Purana*, it is given that a woman loyal to her husband is ekapati (wife to one); if she goes to another she is a *Kulata*.; If she goes to three she is a *vrsali*; *a pumscal* with a fourth; *a vesya* with a fifth and sixth, *a yungi* with a seventh and eight and above that she becomes a *Mahavesya* whom no one of any caste may touch.

\(^{99}\) Id; p.22.  
\(^{101}\) Id., p.198
The Juristic Trends

The juristic attitude puts forth three systems of prostitution-related laws as having been formulated and applied in legal strategies and these vary considerably both in effectiveness and appropriateness. These systems are classified as: Criminalization, Decriminalization and Legalization, also known as Prohibitionist system, Tolerationist system and Legalized Prostitution.

The Criminalization or Prohibitionist system aims at changing criminal sanctions in order to control the social evil of prostitution and to countenance it by amending the criminal law. It perceives prostitution as immoral and aims at its eradication for which it bans prostitution per se, by criminalizing the activities of all categories of people involved in prostitution: brothel-keepers, pimps, procurers, clients and prostitutes.

Under decriminalization or Tolerationist system, prostitution is not regarded as either a crime or a licensable activity; it is based on voluntariness and considered an act between two consenting adults where the role of the state is limited to eradicate coercive prostitution. The state can only bring in certain measures to curb excessive exploitation and preserve public health. This system does not seek to abolish prostitution per se, but is only targeted at trafficking in women and girls for prostitution, brothel-keeping, pimping, procuring and renting premises for prostitution; here prostitutes are not criminalized for their work and they have more or less the same rights as other citizens in the society. Decriminalization will enable sex workers to practice their work without police harassment; this is seen as a major issue with many sex workers in India. It is at least a partial solution to some of the problems suffered by men and women within

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104 Id.
105 Jean D’ Cunha, op. cit.
106 Frances M. Shaver, op. cit
107 Jean D’ Cunha, op. cit.
108 Frances M. Shaver, op. cit
109 Jean D’ Cunha, op. cit.
Decriminalization is a way to protect worker’s right and to make the brothel owners responsible criminally. This approach of penalizing everyone involved in prostitution except for the sex worker works against her interest. Along with changes in maintenance of rehabilitative homes, the corrupt police and judicial authorities who demand sexual favours from sex workers have to be dealt with severely punished heavily.

Finally coming to Legalization or regulation as it is sometimes called, attempts are made to license or register prostitutes and brothels and to require that prostitutes be monitored and checked for venereal diseases. The underlying assumption being that prostitutes serves the different sexual needs of men and women and must be regulated so as to regulate its worst side- effects. “It permits for prostitution especially in ‘closed houses’, this system requires prostitutes to mandatorily register themselves with local authorities and submit themselves to periodic health check-ups and receive a police clearance to work professionally, generally in officially designated areas. Legislation is thus perceived as a means of ensuring “public health” through regulation and control of prostitutes and their health, while permitting unfettered male access to women. Prostitution as good economic development policy means prostitution on demand. The ILO suggests that by including prostitution as an economic sector, poor countries of South East Asia can benefit economically through the revenues generated by the industry.

There is a lot of criticism of the system of legalization. “It has been suggested by some feminists that licensing and monitoring may not help sex workers to live and work with dignity. They feel that regulation leads to a division between legal and illegal sex

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111. Id.
114. Ibid.
115. Ibid.
116. Ibid.
118. Ibid.
workers, leading to further marginalisation of the latter. Many sex workers would not desire regulation as it may mean they will be publicly seen as prostitutes and an increase in control over the lives of the prostitutes would be demeaning to them and also the aspect of compulsory medical testing\textsuperscript{119}. Many feel that legalizing prostitution is akin to legalizing child labour\textsuperscript{120} and tantamount to slavery. Some suggest that the social stigma regarding prostitution will fade away after legalization or decriminalization, yet the shame of those in prostitution remains after legalization or decriminalization. If brothels are to be legalized, the employees should be protected like any other workers under the appropriate provincial labor standards legislation. Regulation going beyond this minimum is likely to contribute to the continued stigmatization prostitutes and to the institutionalization of yet another working ghetto for women.

**Legal Framework: International & National**

**International Framework**

International conventions regarding trafficking of women and children lay down the standards, which have been agreed upon by almost all countries to reflect them in their respective domestic laws compatible to the international standards:

1. The Convention on the Rights of the child, 1989;


3. The Convention on the Elimination of All forms of discrimination against women (CEDAW), 1979


5. Principle relating to the Protection of children with reference to Adoption, 3\textsuperscript{rd} December 1986;

\textsuperscript{119} Ibid.

6. SAARC Convention for the Promotion of Child welfare, 2002;


However there is no dearth of critique studies on the subject matter of trafficking amongst women and children, sex shopping in terms of prostitution and call girls, and begging. The primary international treaty dealing with the sex workers is UN Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of others, 1949. This convention reflects the Abolitionists\textsuperscript{121} view to the point that it has failed adequately to recognize the human rights of sex workers and that it is based on the promise that sex work should end and that all sex workers should be regarded as victims who must be saved from themselves and must be rehabilitated\textsuperscript{122}. Under this convention, it is an offence to procure or entice another person even with their consent into prostitution,\textsuperscript{123} to exploit the prostitution of that person even with their consent,\textsuperscript{124} state parties shall agree to punish any person who keeps or manages of finances a brothel\textsuperscript{125} or knowingly rents or lets a building or other place for purpose of prostitution\textsuperscript{126}. The most recent international instrument on the issue of trafficking in human beings is the protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention against Transnational Organized Crime 2000. This “Trafficking Protocol” has not yet been ratified by India and not in force so far. This Protocol criminalizes acts of receipt, transportation, harbour, recruitment, and transfer of persons; by means of use of force, abduction, threat of use of force, frauds, deception, and abuse of position of vulnerability; for purpose of prostitution, forced labour or other forms of sexual exploitation\textsuperscript{127}. This protocol is couched in the language similar to 1949 Convention and does as little to respect the rights and interests of women

\textsuperscript{123} See, Article 1 (1), 1949 Trafficking Convention.
\textsuperscript{124} See, Article 1(2), Id.
\textsuperscript{125} See, Article 2(1), Id.
\textsuperscript{126} See, Article 2 (2), Id.
\textsuperscript{127} Id., Article 3 (a), Trafficking Protocol.
in the trafficking industry. It fails to draw a line between trafficking and forced prostitution on one hand and unforced prostitution on the other—providing justification for criminalization and denial of basic rights of these workers. Similarly, the Slavery Convention of 1926 and its Supplementary Convention of 1956 have some provisions relating to sex workers. Article 1 of the supplementary Convention as including debt bondage and other forms of tied labour, under which the working conditions of sex workers may fall. Apart from these the fundamental international framework on human rights protection is the Universal Declaration of Human Rights (UDHR) and the other instruments that have become synonymous with the protection of basic human rights of individuals are the International Covenant on Civil and Political rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which is perhaps the best basis for the protection of the sex workers. The preamble of UDHR affirms equal rights and dignities of men and women, right to life and liberty, equal protection before law and rights against all forms of slavery and servitude, protection against arbitrary interference with privacy, family, home, or correspondence and of particular importance to sex workers is right to work, to free choice of employment and to just and favourable working conditions. Also significant is the right of each person to a standard of living adequate to food, clothing, housing, medical care and necessary social services. Thus the UDHR outlines a series of very important rights and principles relevant to the protection of sex workers. ICCPR also reflects the similar rights with the emphasis on rights to freedom of association that needs to be in the interest of national security, public safety, the protection of public health and morals, or the protection of the rights of others and

128 Laya Medhini, et al., op.cit.
129 See, International Convention to Suppress the Slave Trade and Slavery, 1926.
132 Laya Medhini, et al.
133 See, Article 3, UDHR.
134 See, Article 4, UDHR.
135 See, Article 12, UDHR.
136 See, Article 23, UDHR.
137 See, Article 25, UDHR.
138 See, Article 22 (2), ICCPR.
effective protection against discrimination to be granted. Under CEDAW, there are provisions that deal specifically with trafficking and prostitution and the right of free choice of profession and employment. CEDAW acknowledges that poverty and unemployment can force many women into prostitution and that they are “especially vulnerable to violence because of their status, which may be unlawful, and it tends to marginalize them.”

The International Labour Organization has addressed the issues of discrimination in employment and occupation, forced labour, occupational safety and health and protection of workers health, United Nations has come out with a handbook of guidelines to provide examples of best practices do the legislation in relation to prostitution and contains many progressive provisions of relevance to the issue of sex work and also HIV. It says that regulation short of criminalization can also stigmatize the sex workers leading to human rights violations, by imposing restrictions on forced detention in rehabilitation inter alia. The handbook also criticizes prostitution laws as being founded on nineteenth century notion of morality, which were as ineffective as they are now in suppressing the industry. It recommends that an alternative approach of treating sex workers as a personal service industry, which is neither condemned nor condoned and also removal of a range of offences in fear of prosecution and harassment by the police. The first world congress against Commercial Sexual Exploitation of Children in Stockholm in 1996 placed the issue of commercial sexual exploitation of children (CSEC) high on the international agenda as a fundamental violation of their crime in international and national law. Since 1996, the exploitation of children in

139 See, Article 26, ICCPR
140 See, Article 6, CEDAW
141 See, Article 11 (1) (f), CEDAW
147 Id.
148 LayaMedhini, et.al, op.cit.
prostitution and pornography, and the sale of children’s sexual services to local clients, to men travelling with the intent of abusing children and across borders to people in other countries seeking children for sex, has been the focus of much study, consultation and action.

Regionally, India has ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution which acts as a combatant in prevention of trafficking and sexual exploitation but this has also been criticized.

**Indian Legal framework**

The Indian Legal framework governing sex workers is entailed in the Constitution of India, 1950; the Indian Penal Code, 1860 and Immoral Traffic (Prevention) Act, 1956. The Constitution apart from the equality provisions and provisions of freedom of association, right to life and personal liberty, guarantees prohibition of trafficking of human beings and forced labour. Under Part IV of the Directive Principles of State Policy: the State is required to direct its policies towards securing, inter alia, that both men and women have equal right to an adequate means of livelihood, that health and strength of workers not be abused, and that citizens are not forced by the necessity to enter avocations unsuited for their age and strength, promotion of the educational and economic interests of the weaker sections of the society, ensuring their protection from social injustice and exploitation, requirement of fostering respect for international law, treaty and obligations, obligation on the state to raise the levels of standard of living.
and the renunciation of the practices by citizens that are derogatory to the dignity of women\textsuperscript{160}.

The Indian Penal Code has at least 20 provisions\textsuperscript{161} that make trafficking punishable. Most of them deal with abduction for illicit intercourse\textsuperscript{162}, wrongful confinement after abduction\textsuperscript{163} inter alia. In spite of this virtuous commitment, the exploitation of this vulnerable section of the Indian society continues and perpetuates. Furthermore the Indian Penal Code, 1861 comes closer to the constitutional language of Article 23\textsuperscript{164}. A scanned glance at the provisions unequivocally presents the legal position that the transactions are confined to sale or purchase or let out for prostitution or illicit sexual intercourse with any person or for any unlawful and immoral purpose. This type of transaction by way of sale or purchase or let out or hire for women and children for consideration would not be regarded as a valid contract and hence, unenforceable contract. Recent criminal law amendment Act provided that section 370 of the Penal Code be substituted by new sections 370 and 370A\textsuperscript{165}. These provisions provide that whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—First.—using threats; or Secondly.—using force, or any other form of coercion; or Thirdly.—by abduction; or Fourthly.—by practicing fraud, or deception; or Fifthly.—by abuse of power; or Sixthly.—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. The expression “exploitation” shall include prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs. The consent of the victim is immaterial in a determination of the offence of trafficking. It further mandates that whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years,

\textsuperscript{160} See, Article 51 A (e) of the Constitution of India.
\textsuperscript{162} See, Section 366 B, Indian Penal Code.
\textsuperscript{163} See, Section 368, Indian Penal Code.
\textsuperscript{164} Sections 372 &373, Indian Penal Code.
\textsuperscript{165} See, Criminal Law (Amendment) Act, 2013
but which may extend to ten years, and shall also be liable to fine; Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine; where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life; where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life; when a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person’s natural life; if a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life. \(166\).

The Act further makes provisions for punishing the persons employing a trafficked person and provides that whoever, despite knowing, or having reason to believe that a child has been trafficked, employs such child in any form of labour, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and with fine; whoever, despite knowing or having reason to believe that an adult has been trafficked, employs such adult for labour, shall be punished with rigorous imprisonment for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine. \(167\).

In the background of the limited scope of the legal provisions, the Law Commission of India recommended the inclusion of Section 373 A, a new provision in the Indian Penal Code for broader coverage of trafficking amongst women and children. \(168\). The Law Commission, inter alia, also, recommended that the newly created offences should be (a) Cognizable (b) Non- Cognizable and (c) Triable exclusively by the Court of Session.

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\(166\) See, Section 370, Indian Penal Code.

\(167\) See, Section 370A, Criminal Amendment Act 2013.

Be that as it may, the Law Commission of India’s recommendations have been out of sight and out of mind of the legislatures, for the reasons best known to the polities of politicking. Besides, Suppression of Immoral Trafficking Act, 1956 (SITA) and its amended version, the Immoral Trafficking Prevention Act(PITA), 1986; Juvenile Justice (Care and Protection of Children) Act, 2000; Karnataka Devdasi (Prohibition of Dedication) Act, 1982; Andhra Pradesh Devdasi (Prohibiting Dedication) Act, 1989; Goa Children’s Act, 2003; offences against children Act, 2005; Prohibition of child marriage Act, 2006; Child Sexual abuse prevention Act, 2010; Commission of protection of children Act, 2005 deals with the problems of human trafficking.

These laws not only create rights of the victims of trafficking, but also permeate civil as well as criminal liability of those who create victims of human trafficking.

The primary piece of legislation dealing with sex works is the Immoral Traffic (Prevention) Act, 1956 (herein after ITPA). The Act mainly makes pimping and other activities punishable, which gives a commercial aspect to prostitution that is likely to exploit the persons of the prostitute\textsuperscript{169}. The Act does not prohibit prostitution per-se but if does prohibit commercial activities of the flesh trade\textsuperscript{170}.

**The Immoral Traffic (Prevention) Act, 1956**

On account of ratification of the international convention for the suppression of traffic in persons and of the exploitation of the prostitution of others by government of India in 1950; as well as to achieve the constitutional dictate under Article 23, the Parliament of India passed an Act known as Suppression of Immoral Traffic in Women and Girls Act, 1956, which was retitered as (the) Immoral Traffic (Prevention) Act, 1956.

The passing of this act was further necessitated because either the state had no law on the subject or laws lack uniformity. Therefore, a central law was desirable which will not only secure uniformity but will also be sufficiently deterrent. The principle object of the legislation is to arrest the commercialization of the flesh trade on account of the


\textsuperscript{170} Id.
adequacies felt during the implementation of the law, the law was amended in 1978 as well as 1986, and a bill concerning further amendment was proposed to be introduced in the Parliament in 2006.

The Act imposes the criminal liability on a person who allows or keeps or managed a brothel which includes any house, rooms, conveyance or place for the purposes of sexual exploitation or abuse for game. The person here includes the owner, lessor or land lord or their agent or tenant, lessee, occupier or person in charge who willingly or with the knowledge allows the place to be used as a brothel. Therefore, a wider definition has been given to the words person as well as brothel so that every activity of flesh trade by any human being in any place can be covered. Not only this the act imposes the criminal liability on the persons over the age of 18 years who knowingly lives on the earnings of any other person carrying on prostitution or who is habitually in the company of a prostitute or who aids, abets prostitution or who acts as a tout or a pimp for a prostitute. The liability is enhanced from two years to ten years where the earnings relate to prostitution of a child or minor.

Act further imposes criminal liability up to seven years if any person procures or attempt to procure a person for the purposes of prostitution or induces a person to become an inmate of or a part of a brothel or takes or attempt to take or causes a person to be taken from one place to another for engaging in prostitution or brings up the person for carrying on the prostitution or causes or induces a person to carry a prostitution. Therefore, an effective attempt has been made to rope in all the persons who are associated as a tout, supplier or promotes a flesh trading. The liability is further enhancing to life in case a child is introduced to prostitution by a person and to fourteen years and if a minor is introduced to prostitution. Child were means any person who has not completed the age of 16 years and minor here means who has completed the age of 16 years but has not completed the age of 18 years.

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171 See, Sec 3(1), (2), the Immoral Traffic (Prevention) Act, 1956.
172 Id; sec 4 (1)
173 Id; sec 5(1)
The Act further makes the detention of any person in any brothel or in or upon any premises with intent that such person may have sexual intercourse with a person other than the spouse, as a criminal offence. It affectively makes provision to take care of the forced introduction of a women or girl for the purpose of sexual exploitation \(^{174}\).

Though the Act incorporates deterrent provisions for managing a brothel for living on the earning of the prostitution; for inducing a person to take to prostitution for detaining a person for prostitution yet such deterrent punishment is not there, in cases of active act of prostitution in the vicinity of public places as well as the person associated with the management of the public places. This seems strange as to why the discriminatory treatment in terms of criminal liability is met out to management of public places. Moreover the actual prostitutes are given less punishment in comparison to the person associated with them \(^{175}\).

Furthermore the attempts by a person for the purpose of prostitution i.e. words, gesture, willful exposure of persons or solicitation etc. receives more penalty then actual act of prostitution of the reduction for prostitution is done by a person who is having the custody of any other person shall be punished with imprisonment ranging from seven years to life \(^{176}\).

Though the Act (ITPA) provides for detention and correction of female offender but the period of detention in a correctional institution is disproportionate to the period of sentence \(^{177}\). It also gives powers to police for arrest without warrant and search to police for arrest without warrant and search to police officers \(^{178}\). A magistrate also enjoys powers to order search and arrest of person on the basis of information received to regular police officers or special police officers. He can also assign the custody of such rescued persons to protective homes \(^{179}\).

\(^{174}\) Id; sec 6(1)  
\(^{175}\) Id; sec 7  
\(^{176}\) Id; sec 8  
\(^{177}\) Id; sec 10  
\(^{178}\) Id; sec 15  
\(^{179}\) Id; sec 16
Two amendments bills concerning the Immoral Trafficking were introduced in the Parliament i.e. *The Immoral Traffic (Prevention) Amendment, Act, 2006*\(^{180}\) and *The Prevention of Pushing and Forcing Girl Child into Flesh Trade and Immoral Traffic Bill, 2006*\(^{181}\).

The former bill aims at bringing about following changes in the Immoral Traffic (Prevention) Act, 1956.

i) The age determining child is to be enhanced from 16 to 18 years.

ii) Distinction as to major and minor was omitted.

iii) Definition of prostitution has been amended to mean the sexual exploitation or abuse of persons for consideration in money or in any other kind.

iv) The punishment for keeping or managing a brothel has been enhanced.

v) The recruitment, transportation, harboring or receiving a person for the purpose of prostitution by means of threat, force, coercion, abduction, fraud, deception, abuse of power has been made an offence. Even the attempt or abetment of the same has also been made as an offence. Even the visiting or presence in a brothel for the purpose of sexual pleasure has been made an offence.

vi) It envisages the constitution of an authority by preventing and combating trafficking in persons by the central as well as the state government.

The later bill provides deterrent punishment for pushing or forcing the girl child into flesh trade or prostitution and for immoral traffic of a girl child and for hiring or taking possession of a girl child prostitute by her client for promiscuous sexual activities and for the proper rehabilitation and welfare measures to be initiated by the state for such hapless girl child and for matters connected with and incidental thereto.

\(^{180}\) See, Act of 2006

\(^{181}\) See, Bill No. XXXV of 2006
i) This bill prohibits the pushing, forcing, abetting or procuring a girl child into flesh trade or prostitution or immoral traffic.

ii) It describes the girl child as a female human who is below the age of 18 years.

iii) It is believed to supersede the provisions of Indian Penal Code or the Immoral Traffic (Prevention) Act.

iv) It makes abetment or inducement or forcing a girl child in flesh trade, an offence with rigorous consequential penalty upto death.

v) It makes the owning or running of a brothel having girl child prostitute or hiring, procuring or obtaining possession of a girl child for promiscuous sexual intercourse an offence.

vi) It aims at creating special courts to try the offences relating to girl child prostitute and formulation of rehabilitation and welfare measures for the girl child prostitute.

Judicial Approach

The right against exploitation has been contentious before the Supreme Court in a number of cases. The status of women in India has swindled from prominence to insignificance from ancient to pre-independence era on account of social, cultural and political developments. Various contributory causes have been attributed to the degradation of the position of women by the historians, sociologists and jurists including foreign invasion, protection, division of labour, etc. Yet the prime concern remains that woman as a class has suffered a lot because of family, religious, social and legal strictures. The woman was made to suffocate and yearn for identity in the system where her personality was depersonified to anonymity. Be it the health, nutritional, educational, social, political and economic aspect of life, the woman had to compromise and take a

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back seat. The system was developed which created unfair and unequal distribution of the necessities of life amongst the sexes.

After independence special attention was paid to the woman issues and necessary safeguards were incorporated in the Indian Constitution to ameliorate the condition of females breaking the age old shackles. This attitudinal change was not brought about suddenly but was a result of long struggle undertaken by the feminists and reformists who brought the exploitation and harassment issues to the forefront. The legislature and the judiciary have made a significant contribution in striking a death blow to the perennial inequalities and have changed the mindset of people in relation to females.

In contemporary Indian society, the judiciary has made an impact on the overall development of India and the woman issues have received its considerations considerably. The judiciary has tried to strike the inequality against the women by taking recourse to the equality provisions of the Indian Constitution which forbid hostile discrimination.

The court has opined that the contents of the fundamental rights guaranteed in the Constitution are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment. In cases involving violation of human rights, the courts forever remain alive to the international conventions and instruments and give effect to the principles contained therein.¹⁸³ The court has come to the rescue of the non-regular female employees in providing them the maternity benefit which was being paid to the regular female employees. The court opined that there is no justification in denying the maternity benefits to the casual or daily wagers.¹⁸⁴ The attitude of the court concerning the perpetuation of injustice can be judged from the observation of the court in *Sheela Barse v. State of Maharashtra*¹⁸⁵ when the court opined that nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and the rule of law are merely slogans.

¹⁸⁵ AIR 1983 SC 378
or myths intended to perpetuate the domination of the rich and the powerful. In *Kamladevi Chattopadhyay v. State of Punjab*\(^\text{186}\) the court came to the rescue of the females and children lodged in jails in Punjab without any justification and ordered their release; whereas in *Gaurav Jain v. Union of India*\(^\text{187}\), it came to the rescue of the fallen women and their progeny.

In *State of Maharashtra v. Madhukar Narayan Mardikar*,\(^\text{188}\) a civil appeal was filed against the order of the High Court of Bombay. In this case the respondent was serving as a Police Inspector visited the hutment of one Banubi in uniform and demanded to have sexual intercourse with her. On her refusal he tried to have her by force. The respondent’s version was that he had raided her hutment on receipt of information that she was dealing in illicit liquor. It was also brought into notice that she was a woman of easy virtue and she was also known as an ‘awara’ in the locality. The respondent further contended that a woman with such antecedents could stoop to any level and it would be hazardous to rely on her version. The Hon’ble *Justice A.M. Ahmadi*, opined that even a women of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also it is not open to any and every person to violate her person as and she wishes. She is entitled to protect her person if there is an attempt to violate it against her with. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.

In *State of Kerala v. Pathuma*\(^\text{189}\) a man and a lady were found engaged in a sexual act in a rest house. The Police party arrested the persons as well as the watchman of the rest house and booked them under section 7 of the Act. The learned District Magistrate *Kozhikode* acquitted the watchman but convicted the others with a simple imprisonment for a period of two months. On appeal to session Judge, *Kazhikode*, the accused were acquitted of the charges on the ground that it was a solitary instance; hence it did not amount to prostitution. Against this order an appeal was filed in Kerala High Court which upheld the order of the additional session judge.

\(^{186}\) AIR 1984 SC 1895  
\(^{187}\) AIR 1990 SC 292  
\(^{188}\) AIR 1991 SC 207  
\(^{189}\) AIR 1978 SC 771
K. Sadasivan, J., relying upon observations of State of Mysore v. Susheela\textsuperscript{190}, re Rathamala\textsuperscript{191} and Bai Shanta v. State of Gujarat\textsuperscript{192} opined that for an act of prostitution, promiscuous sexual intercourse for hire needs to be established. The word ‘promiscuous’ signifies indiscriminate act. Therefore a solitary act of sexual intercourse with the single person cannot be classified as prostitution. Similar stance was taken by the court in State Mysore v. Sushella,\textsuperscript{193} and in T. Jacob v. State of Kerala\textsuperscript{194}.

In Shanta Bai v State of U.P.\textsuperscript{195} the constitutional validity of the Act and its various provisions was challenged by a female carrying on prostitution on the ground that the prostitution is here hereditary trade and means of livelihood. Moreover she was carrying on the trade to feed two younger brothers who were dependent on her. Her assertion was that the Act unreasonably prohibits her from carrying on the profession and imposes unreasonable and illegal restriction on the same.

J. Sahai, J. opined that hardship cannot be a ground for determining constitutional validity of an act. The enactment does not ban prostitution but only puts restriction on its since prostitution and accompanying evils of traffic in persons are incompatible with the dignity of person and is fatal to the welfare of an individual the family and the community. No doubt, the prostitutes have a fundamental right to the trade under Article 19 but the same is prohibited under Article 23. Therefore, the prohibition will prevail over the fundamental rights. The Hon’ble court was of the opinion that Section 4 of the Act provide uncertain powers to the Magistrate which may be classified as ultra virus but these sections can be severed without disturbing the balance of the Act.

In A.C. Aggarwal v. Mst. Ram Kali\textsuperscript{196} the Magistrate took an action of attachment of premises of a person whose house was being used as a brothel under section 18 of the Act. The person filed an appeal against the order on the ground that section 18 is ultra virus the Constitution as it provides a discriminatory procedure. The Division Bench of

\textsuperscript{190} AIR 1966 Mys. 194
\textsuperscript{191} AIR 1962 Mad. 31
\textsuperscript{192} AIR 1967 Guj. 211
\textsuperscript{193} AIR 1966 Mys 194
\textsuperscript{194} AIR 1971 Ker. 166
\textsuperscript{195} AIR 1959 All. 57
\textsuperscript{196} AIR 1968 SC 1.
High Court of Punjab allowed the appeals and quashed the order. The learned Judges Mahajan and Shamsher Bhadur, JJ observed that sec. 18 provides for two procedures.

(i) One, where action is initiated under section 7, then the order of attachment will depend upon outcome of the proceeding;

(ii) Another, where without taking recourse to section 7, the Magistrate can order attachment.

Since both sections 7 & 18 are identical. Therefore there seems no rational basis for discrimination between similarly situated persons. On appeal before honorable Apex Court, Hedge. J. upheld the order of High Court of Punjab but did not agree on the courts finding as to ultraviresness of section 18. The court opined that sections 3 & 7 and 18 are different as one deals with persons; whereas other deals with premises. In former, intention or knowledge needs to be proved; which is not required in the latter case. The distinctiveness of two classes of cases under sec. 18 has a reasonable relationship with the object to be achieved, hence non-discriminatory.

Yet the court ordered that in proceeding u/sec 18 the Magistrate must take recourse to sections 3 or 7, as Magistrate is a court too and is bound to take cognizance of a cognizable offence under section 190(1) (b) of Cr.P.C. The failure to observe this procedure will make the section 18 violative of Article 14.

In State of U.P. v. Kaushailiya\(^{197}\) the state filed an appeal against order of High Court which declared section 20 of the Act as ultra vires. SubbaRao J. opined that section 20 is not violative of Article 14 as the magistrate is not acting as an executive authority having unchannalised power but acting as a court. Moreover, the power is given to regulate the conduct of the more dangerous prostitutes in a busy locality rather than less dangerous prostitutes in a spouse population. In reference to Article 19(1) d & (e), the court opined that section 20 is intra-vires as it puts a reasonable restriction on the fundamental right of prostitutes of movement and settlement in any part of India and moreover the determination is left to the judicial process with a clear cut policy.

\(^{197}\) AIR 1964 SC 416
In *Bhula Mia v. State*\(^{198}\), the Police raided a premise and arrested the appellant along with Radhika, Sakina and Mira. The magistrate discharged other except appellant on police report during the investigation. The appellant was charged under section 3 and 7 and was held guilty by the magistrate for managing the brothel.

On appeal the Calcutta High Court held that the magistrate totally relied upon prosecution story and statements of accomplices who were either pimps or prostitutes. The statements of accomplices are tainted evidence and need corroboration. Tainted evidence cannot corroborate tainted evidence. Moreover there was nothing on record to prove beyond doubt that the appellant was associated with the management of the premises except being receiver of rents. Therefore, the court set aside the order passed by the magistrate.

A similar view was taken by B. Maukherji Justice in *Superintendent and Remembrancer of legal advisor, West Bengal v. Sardar Bahadur Singh*\(^ {199}\). In *Dr. Upendra Baxi v. U.P.*\(^ {200}\) a writ petition was entertained in the Apex Court concerning the dilapidated condition of a protective home meant to house prostitute. The court passed order time and again to give a face lift to the protective homes living conditions. During the pendency, the State Government shifted the protective home to another area on the outskirts. The Apex Court expressed its anguish over the shifting as there was no necessity of shifting.

Moreover, the Building in which protective home was shifted was not upto the standard and had no pucca approach. Therefore, the court gave directions to the state government to provide the basic conditions at the new seti as well as submit a rehabilitative programme for the inmates.

In *Guarav Jain v. Union of India*\(^ {201}\) It was held that society is responsible for a woman’s becoming victim of circumstances. The society should make reparation to prevent trafficking in women, rescue them from red light areas and other areas in which the women are driven or trapped in prostitution. Their rehabilitation by socio-economic

\(^{198}\) AIR 1969 Cal. 416  
\(^{199}\) AIR 1969 Cal 451.  
\(^{200}\) AIR 1987 SC 191  
\(^{201}\) AIR 1997 SC 3021
empowerment and justice is the constitutional duty of the state. Their economic empowerment and justice with dignity of person are the fundamental rights and the court and the government should positively endeavor to ensure them. The Andhra Pradesh High Court has also affirmed that these combined duties are placed on the state and a corresponding right is placed on citizens including sex workers\(^{202}\). It has been held in a couple of judgments that the ITPA did not aim to abolish prostitutes and prostitution as such, and did not make it per se a criminal offence for a woman to prostitute herself, but was rather intended to inhibit or abolish the commercialized vice of trafficking in women.\(^{203}\) The Gujarat High Court in another case refused to recognize prostitution as a legitimate means of livelihood, as that would give an open invitation for women to be trafficked and also that the right to prostitution in not a fundamental right of women or girls\(^{204}\).

Whatever may be the reasons for the existence of prostitution in all societies, this profession cannot be classified as a profession of dignity. In contemporary time, the emphasis on human rights put forth the view point that the dignity of an individual should be safeguarded in all its manifestations as warranted by the International Conventions and National efforts.

**Beggary**

Begging is not only a social evil but a social crime. Males, females, children (both boys and girls), females with infants in their arms or let out by the goons in this business/commerce, etc. are seen begging in public places. Beggars are victims of situational crisis and are subject to exploitation. Begging in India is associated with the problems of poverty, unemployment, and psychiatric illness addiction, poor attitude of family members, suicidal tendencies and anti social activities. Women, children as beggars are ever increasing who beg for livelihood. It seems that the alarming problem lies in the changing societal attitudes towards beggars. Visitors to religious places prefer to offer


alms to the beggars in the religious – psychosis of being rid off evil forces. The begging traders or businessman engage women and children in the begging and it seems an accepted way of life. Thus begging on the whole is a socio-legal economic issue problem.

**Meaning of Beggary**

Beggar is not a fresh class but they are existing in the world, especially India from times immemorial. They have many names e.g., bikshu, darvesh, faquir, sanyasi, sadhu, etc., appearing before the masses for soliciting alms. The solicitation is sought by striking the emotional chords of the people, or by inculcating fear in them of an unpleasant future happening. This class is omnipresent everywhere and every time beseeching alms. It has its roots in the age old traditions, but principally it has existed and flourished on account of the religious dictates for charity.

**Reasons behind the Profession**

There are specific reasons for the perpetuation of the profession in the society, i.e.

1. **By nature**
   
   No doubt, hard-work, self-respect, and industriousness are the extolled virtues for the human beings, but there always existed a class which believed in idle mongering unmindful of the virtues. Such persons, parasitic by nature follow non-conformist patterns of existence inspired by hedonistic motivations aiming at minimum efforts for the survival. These persons get involved in the undignified professions including begging\(^\text{205}\).

2. **Varna system**
   
   The Indian system is known for its varna system and out of four varnas, sudras was the most dejected class, devoid of right to work, feeding on the charity of the upper classes\(^\text{206}\). The begging in the later period, does not remain limited to the people belonging to the lower varna, but was admittedly adopted by the upper varnas\(^\text{207}\).

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\(^{207}\) Id. p. 308
One was permitted to solicit alms from his own varna or the other varnas except sudras which was allowed only in case of apad\textsuperscript{208}.

3. Ashrama system
The ancient Indian society was divided into ashramas and during the bramacharya ashrama, the disciples were expected to solicit alms for contributing towards the maintenance of the household of the teacher\textsuperscript{209}. If a student fails to beg, then he has to undergo severe penance\textsuperscript{210}. The people who enter sanyas ashrama were permitted to beg as they were supposed to survive through begging only\textsuperscript{211}.

4. Economic reasons
The economic disparity is the primary driving force behind the perpetuation of the non-conformist life styles amongst the masses. The people living with abject poverty adopt the profession of begging for survival. In the ancient times the sui generis system used to take care of the people in times of distress, but the modernity has made the system to crumble and the failure of the State to take care of the people leads them to resort to undignified professions for the survival. The problem of existence is further complicated by the industrialization on account of the gap between the vacancies and the job-seekers.

A vast majority either remains unemployed or under-employed or thus surrenders to the onslaught of begging\textsuperscript{212}. Karl Marx aptly describes that the proletariat created by the breaking up the ranks by feudal relations, and by the forcible expropriation of the people from the soil, this free proletariat could not possibly be absorbed by the nascent manufacturers as fast as it is thrown upon the world, on the other hand, these men suddenly dragged from their wanted mode of life, could not adapt themselves to the disciplines of their new conditions and are turned in masse into beggars and like other trade factors\textsuperscript{213}.

\textsuperscript{208} Id. p.310
\textsuperscript{209} Id. p. 308
\textsuperscript{210} See, Manu Samriti, p. 188; See also, BrhatParkara, p. 130
\textsuperscript{212} See, Report of Indian Famine Commission, 1880-1885; See also, Royal commission Report, 1930.
5. Religious Factors

In India the ancient varna and ashramic classification contributed to the creation of the class of beggar. The problem was further complicated by the formulation of the bikshu sanghas by the emergence of Buddhism. The religions exhibited a tolerance to begging and even supported it on account of religious grounds. The charity given by the rich and the kings gave a momentum to begging, and the same trend is exhibited even today especially on religious festivities. It is aptly remarked by Karl Marx that alongside decayed routes with dubious means of subsistence and dubious origin, alongside ruined and adventurous offshoots of the bourgeoisie, were vagabonds, slaves, beggars, etc., the whole indefinite class thrown hither and thither.\(^{214}\)

6. Social causes

The emergence of the class can also be attributed to the social causes like breakdown of the joint family system, cultural conflicts and community disorganisation. The joint family system used to take care of the individual in times of crisis, and the lack or absence of the crisis management system led people to fall prey to begging profession.\(^{215}\)

7. Biological causes

Sickness, disease, disability, infirmity and old-age are the other biological causes which contributed to the flourishing of begging.\(^{216}\) In the recent years, however it is the trafficking of people that has become the focus of attention, as governments, intergovernmental bodies and nongovernmental organizations (NGO’s) have highlighted and then attempted to deal with the increase in movement of human beings both within their own countries and across borders, and their exploitation not only in commercial sex but in many other forms of exploitative labour, including begging and hawking, agriculture, manufacturing, entertainment, fishing and domestic services. Trafficking is a complex phenomenon. It comprises a series

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\(^{214}\) B.B. Pandey, op. cit., p. 487.

\(^{215}\) Id., p. 501

of acts, not of all of which may be illegal in other circumstances. Fundamentally, it can be said to involve the movement of a child from his/her normal location to a new location, and the exploitation of that child at some stage in the process. It is the combination of movement and exploitation that characterizes trafficking, no matter when the matters of exploitation itself take place. It might, for example, occur at the very beginning of the journey, when a child, family or whole community is deceived the promises of a better life elsewhere, of greater work opportunities or rewards, or even safety from discrimination or conflict. It may occur if false documents are provided to the child or family, putting the child in debt bondage as well as a legally vulnerable situation. It may occur during the journey if the child or at times whole family or smuggled across a border or otherwise helped as a “irregular” migrants. It might happen only after the child as moved “willingly”, not knowing what awaited him/her at the end of the journey.

“Trafficking is generally described according to the “push” factors that lead to the child or adult leaving one place, and the “pull” factors that decides the place to which the trafficking victims move or are moved. Push factors typically includes poverty, family breakup, violence or other dysfunction, lack of job opportunities, low education levels or the wrong skills for the jobs that are available, family pressures or sense of responsibility to provide for the family, discrimination or marginalisation including the very fact of being female. Sometimes compelling push factor is simply the precipitation that life is better somewhere else, a precipitation often supported by the mass marketing and consumerism that has crept into even remote rural areas through increasing globalisation of communication of technology and advertising. Trafficked children are often separated from their families, isolated in towns or countries unknown to them further isolated if they are not able to speak the language of the community in which they end up into illegal and thus risky and frightening situations, incarcerated, badly fed, denied access to health and other services and, in many instances, exploited by means of coercion, violence or abuse of authority.

Indeed the beggars lead a life which cannot be classified as a dignified life by any stretch of imagination.
Legal Framework: International and National Framework

All the International conventions, Constitutional provisions and domestic laws enumerated above in the chapter are applicable to beggars also. Often it is pleaded that in the absence of affirmative State action, they should not be detached from their profession as it will further complicate their life. Moreover they are begging and using their right to free speech and the same has been expanded by the Indian Supreme Court, to various other categories of non-political speech and had given judicial recognition to conduct and commercial speech. Moreover, it is likely that other specific rights may be covered by that provision, since fundamental rights are flexible “empty vessels into which each generations must pour its content in the light of its experience.” However, the idea of begging is a reflection and manifestation of the “deeper social and political problems of poverty and homelessness.” There is an inevitably a communication of a message about “the failures of government housing and employment policies” and its disastrous effects viz. poverty, unemployment and homelessness. A beggar makes a claim of need and request for help, although there is an express demand or request for money. Begging being a “display of miserable plight by words or action,” necessarily involves a communicative or expressive activity, beggars in a given situation solicit alms through words spoken or actions expressed. In other words, the act of begging primarily constitutes expression since it involves communication to others by words spoken or action expressed and is worthy of Article 19(1) (a) protection. However every freedom within the domain of Article 19 is not absolute, therefore reasonable restrictions can be imposed on the exercise of it; be it may the freedom to speech or the freedom to profession. There are number of State laws concerning begging but the central law dealing with it and the protection of the children who are the victims and to save them from further indulgence in crime is The Juvenile Justice (Care and Protection of Children) Act. This Act defines begging” as - soliciting or receiving alms in a public

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219 See, People Union of Civil Liberties v. Union of India, AIR 1997 SC 568.
221 Id., p.44.
222 Act No. 56 of 2000
place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence; exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal all will amount to begging. By considering the above stated definition under this Act where in order to save the children from this heinous crime of begging under this Act various efforts has been made in order to protect them as they are the minors who are under the age of 12-18 years, and Act called them as juveniles where the Act defines the juvenile child as:

i) Who is found without any home or settled place or abode and without any ostensible means of subsistence,

ii) who resides with a person (whether a guardian of the child or not) and such person-
   a. has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
   b. has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable injury,

vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

viii) who is being or is likely to be abused for unconscionable gains.  

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223 Section 2 (b) of the Act.

224 Section 2 (d) of the Act.
Thus in order to protect and safeguard their rights there is an establishment of the Juvenile Justice Board. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman. No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

For the purpose of rehabilitation and resocialisation several reformatory homes have been established where these juveniles are to be kept under observation.

 Observation homes.- Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act. Where the State Government is of opinion that any institution other than a home established or maintained is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such institution as an observation home. The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn. Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.

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Special Homes.- Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law under this Act. Where the State Government is of opinion that any institution other than a home established or maintained, is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home. The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialization of a juvenile, and the circumstances under which and the manner in which, the certification of a special home may be granted or withdrawn.

The rules may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status. It is provided that the juveniles should be apprehended by the special juvenile police unit or designated police officer who shall immediately report the matter to a member of the Board\(^\text{225}\). Any person in whose charge a juvenile is placed in pursuance of this Act shall, while the order is in force have the control over the juvenile as he would have if he were his parents, and shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person\(^\text{226}\). When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice\(^\text{227}\). Where a Board is satisfied on inquiry that a juvenile has committed an offence, the Board may, if it thinks so fit,- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and

\(^{225}\) Section 10 of the Act.
\(^{226}\) Section 11 of the Act.
\(^{227}\) Section 12 of the Act.
counselling to the parent or the guardian and the juvenile; (b) direct the juvenile to participate in group counselling and similar activities; (c) order the juvenile to perform community service; (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

The Act further provides whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both. In case of begging, the Act provides whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

It seems the rationale behind anti-beggary laws is the claim towards public safety in public places against unwanted encounters with “unhygienic anti-social elements” that is beggars and panhandlers. The main purpose of such laws is to give effect to the Directive Principles of State Policy which inter-alia requires the State to ensure public health and safety.

228 Section 23 of the Act.
229 Section 24 of the Act