

CHAPTER V

LAWS AND REGULATIONS FOR PROSTITUTION

Laws governing prostitution :

‘The prostitute is not at all a criminal. She does not violate anybody or anything, but is herself violated.’ - Jean D’ Cunha.¹

In Europe during the middle ages Church leaders attempted to rehabilitate penitent prostitutes and fund their dowries. Nevertheless, prostitution flourished : it was not merely tolerated but protected, licensed, and regulated by law, and it constituted a considerable source of public revenue. Public brothels were established in large cities throughout Europe, at Toulouse the profits were shared between the city and the university.²

Stricter controls were imposed during the 16th century, in part as a result of the new sexual morality that accompanied the Protestant Reformation and its Catholic dramatic part. Just as significant was the dramatic upsurge of sexually transmitted diseases. Sporadic attempts were made to suppress brothels and even to introduce medical inspections, but such measures were to little avail.

In the late 19th century, a variety of changes in western societies became visible. The people revived efforts to suppress prostitution. With the rise of feminism, many came to regard male libertinism as a threat to women’s status and physical health. Also a new religious value based moralism became influential in the protestant countries. Anti-prostitution campaigns gained ground from the 1860s, often in association with temperance and women’s suffrage movements. International co-operation to end the traffic in women for the purpose of prostitution began in 1899. In 1921 the League of Nations established the committee on the Traffic in Women and Children, and in 1949 the United Nations General Assembly adopted a convention for the suppression of prostitution.³

In the United States, prostitution was virtually uncontrolled until passage of the Mann Act (1910), which prohibited interstate transportation of women for ‘immoral purposes’. By 1915, nearly all states had passed laws banning brothels and regulating the profits of

prostitution. After World War II most large cities in western nations tolerated prostitution, and law enforcement agencies became more concerned with regulating the crimes associated with the practice. Prostitution was illegal in most part of the United States, though it is lawful in some countries in Nevada.⁴

In case of Asia and the Middle East, prostitution is illegal but widely in existence. Among Muslim nations, only Turkey has officially legalized prostitution, subject to a system of health checks for sex workers. In some Asian Countries, the involvement of children in prostitution has encouraged the risk of 'sex tourism' by men from wealthier nations.

Appearance of a deadly be-generating disease AIDS creates crisis for both the parties in sex trade. Since 1980s attitudes toward prostitution have changed radically for two major reasons. One is the worldwide spread of AIDS, that has increased concern for public health problems. In Africa especially, one factor in the rapid spread of AIDS has been the prostitution industry serving migrant labourers. A renewal of interest in feminism has also changed attitudes to prostitution; from this perspective, it is both a consequence and a symptom of gender-based exploitation.

In colonial America prostitution was not illegal, but a woman could be arrested for vagrancy if she was loitering on the streets. English law does not prohibit prostitution but does prohibit soliciting for prostitution in a public place, living on the earnings of prostitution, exercising control over prostitutes, or maintaining a brothel (defined as any premises where two or more prostitutes are employed). In some jurisdictions, notably in most countries in the U.S state of Nevada, prostitution is lawful and practiced openly subject only to health and related controls. In Netherlands, prostitution is legal, and money prostitutes have become members of a professional service union.⁵

When Solon was laying the foundation stone of a palatial public brothel in the very heart of Athens amidst a pompous state ceremony, it may be said to the credit of India that she was seriously thinking about the means and method of how best to combat this fallen pestilence of social life. It saw the operation of Immoral Traffic Laws in right earnest long before the Julian Law or Justinian codes were given birth to in another part

of the civilized world. Segregation in the modern sense of the term on the basis of regulation and conscription was unnecessary in India, as syphilis was unknown in any country of the world before the 15th century.⁶

The movement of segregation had its inception in Europe about the year 1878 not so much from a sense of morality as from the necessity of combating with the infection of that obnoxious disease. The ancient Indian savants, perhaps both from moral and hygienic considerations, were often in favour of exercising some sort of segregation in regard to the habitation of the prostitutes, and accordingly their quarters were frequently confined to the southern extremity of a town like the German *Kasernierung* or *Dirnenquartiere*.⁷

Most of the ancient law-makers upheld the ideology of chastity of body, on the other they practically made little efforts to penalize prostitution. It was far from their mind to cause it to disappear from the civil life of the *Aryan* society; they must have accepted it as a necessary and incurable evil to obviate greater ones.⁸

The *Smritis* have prescribed a set of rules governing the conduct and relationship of *ganikas* within and amongst themselves. *Narada* states : If a public woman probably identified with a prostitute declined to receive a man after having received her fee. The same fine shall be imposed on a man who does not pay the stipulated fee after having connection with a woman of this description.

It has been noticed that, from very early time, the state exercised control direct or indirect, on the lives and activities of the prostitutes. This profession was considered as source of state revenue. We get reference to prostitution in *Kautilya's Arthasatra*. *Vatsayana* lays down a strict rule that no one should seek hospitality under the roof and take foods from the hands of a man who tolerates a paramour of his wife for sordid gain or sells his daughter for immoral purposes. *Yajnavalkya* endorses this section by adding pimps to it and all people who live on the earnings of the strumpets. *Gautama* predicts horrible consequences in this life and that hereafter for those who force their legally married wives into fornication and who enter into liaison with their nearest relatives, prostitutes and a bald-headed man or woman. From this statement it is evident

that immoral traffic was obtaining ground at the time, though not in such an extensive scale as in the present day.

There is clear reference that the *ganika*, *rupajiva*, *veshya* and *vandhki* had to pay taxes to the state but a careful study leads to the conclusion that almost all categories had an actual or potential obligation for paying taxes; the collection, however, depended on the degree and nature of the organization. Organized red light areas paid taxes regularly, at a fixed rate, while it was much more difficult to ascertain the income of the women 'kept' in seclusion by a man or of the unorganized individual women plying the trade in isolated pockets or even, like the *vandhaki*, at home. Similarly, organized brothels enjoyed greater security from the state in lieu of the taxes they paid while individuals who paid 'hush-money' to extortionist officers could hardly demand any protection from injustice, mal-handling, coercion and cheating. The *Nammayasundarikatha*, a twelfth century text, says that the state received 25 per cent to 30 per cent of the prostitute's income.⁹

With the passage of time, changes are noticed in the attitude of the people and social values. In recent past it happened that for economic development programme in Thailand, the king advocated in favour of prostitution for the welfare of the society as well as the god. The real aim being to import foreign exchange.¹⁰

Category of Legal Systems Governing Prostitution :

Social scientists have categorized the prostitution laws under the following heads : (1) **The Prohibitionist System**, (2) **The Tolerationist System** and (3) **The System of Legalized prostitution**.¹¹

The prohibitionist System :

United States (except Nevada) adopted the Prohibitionist System. It considers prostitution as an immoral activity and talks about the eradication of such an evil practice. Prohibition is system considers the activities of all categories of people related to sex trade such as of pimps, brothel-keepers and clients as criminal activities.

The Tolerationist System :

The assumption of the tolerationist system is that it is the universal and inevitable social evil. It is necessary to satiate the natural aggressive male sexuality. This system does not speak about its abolition or eradication but speaks for their (prostitutes) same rights as that of other citizens. The United Nations Convention for the suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) adopted this system. Many countries like Britain, India and France have embodied the tolerationist system.

The System of Legalized Prostitution :

To some extent there is a similarity between the tolerationist system and the system of legalized prostitution. The third system also regards prostitution as the ancient inevitable social stigma. It is required for the safeguard of 'straight women' against the male sexual aggression. The profession virtually protects the family structure. Prostitution should be legalized according to the view of 19th century England and British India. Prostitution is legal in Germany, Nevada in US, Vienna in Austria and Switzerland. The system of legalized prostitution permits the 'brothel' as 'closed house' or 'eros' centres for prostitution. It says the compulsory registration and periodic health check ups for VD clearance of the prostitutes. After the VD clearance, a prostitute is issued a police clearance also to work professionally. On the whole, it can be said that this system, seeks to organize prostitution as a legitimate business with the owners and the managers of the prostitution establishments subjected to labour laws and not to criminal laws. It likewise advocates the removal of all criminal sanctions against the prostitutes.

As the imperial authority of the British rested on the British soldier, and more dependently after the mutiny of 1857, the government accorded top priority to their needs and even biological desires, even if these be morally repugnant and de-humanizing. The government gradually evolved a policy of providing Indian women to satiate the sexual lust of the soldiers, who were natively described as 'our young soldiers' or as 'our boy soldiers'. For their 'young boys', the military authorities regulated prostitution, first, locally and later, on a general and systematic basis. Regimental brothels or

lalbazzars and lock hospitals consequently, came to be maintained to serve the twin purposes of the *Raj*. On the one it facilitated mercenary sex and on the other protected the young soldiers from being infected with VD i.e. venereal diseases.

Laws made in Colonial Period :

The Cantonment Act :

In this phase of the British rule the first measure was taken by legalization of prostitution. The British government promulgated in 1864 Act XXII - popularly known as the Cantonment Act - clauses 7 and 25 of Section 19 of which, provided that rules might be made for cantonments by the local governments with the object of securing the 'inspection and control of houses of all - fame, and of preventing the spread of VD'.

A committee appointed under the Act divided prostitutes into two classes, (1) those frequented by European soldiers and (2) those outside the category. Only the first class was subjected to the regulations provided by the Act, the sole object being the protection of the British troops. Army authorities set up brothels in the regimental *bazzars* and other appointed places within the cantonments. They were known as *chaklas* (or 'rags' in the parlance of the British Tommy).¹²

The women managers of the *chaklas*¹³ were known as *mahaldarnis*. An official document defines a *mahaldarni* as a 'forewoman of prostitutes' who performed for them the duties which a foreman performed for workmen. She was a 'paid government servant' according to this document. Her duty it was to ensure that the prostitutes were healthy and those VD infected were either expelled or sent to hospital.

The designation as well as the assigned responsibilities of a *mahaldarini* points not only to the proper hygiene of the soldiers but at the same time it indicates that the British government was well convinced of setting up of an organized and Legalized mechanism for satisfying the natural sexual desire of the soldiers with all safety which would lessen the anxiety of the authority hitherto suffered from.

Chaklas were divided into three categories : *gora chakla*, which is reserved for the white army officers; *lalkurty chakla* for the white infantry ranks who wore red coats and

kala chakla for the Indian soldiers. The last two were not allowed to enter the *chaklas* reserved for the superiors i.e. the whites. If they attempted to do so, the military police threw them out.¹⁴ This categorization reveals the racist as well as hierarchical attitude in the prostitution management system.

Those women who were reserved for the white soldiers used to be registered by the cantonment managers. A typical *chakla* was an extension of the familiar caravanserai that used to do the ancient highways in India. It consisted of a high wall enclosing a larger or smaller area, to which a strong gate gave access. The middle of the interior was occupied an open space, while round all four sides were ranged numbers of small rooms or quarters where the prostitutes lived and entertained their customers.

CDA or Contagious Diseases Act :

CDA or Contagious Diseases Act of 1868 which was enacted following the failure of the Cantonments Act. It sought to bring the entire profession under strict state supervision and surveillance. Ironically, the CDA also suffered a fate similar to that of the Cantonment Act - ending up as a non - success, which had to be finally revoked after twenty years.

The two important clauses of the CDA are : All common prostitutes and brothel keepers are by section 4 of the Act, bound to register themselves, but the police are not authorized to compel registration or to register any prostitute or brothel keeper except at the request of the parties themselves.

Any woman carrying on the business of a common prostitute and any person carrying on the business of a brothel keeper, without having been registered, is liable to be arrested without warrant, by any police officer.

The order of CDA was circulated by the Deputy Commissioner of police, Calcutta. The following circulars, show the remarks which were thought fit to make the Rules for the administration of the Contagious Diseases Act more effective¹⁵:

‘Act XIV of 1868 having become law and been extended to Calcutta and its suburbs, with effect from the 1st instant, the following orders are passed for the guidance of police officers in carrying out the provision of the same.’

A copy of the Rules already passed and which have received the sanction of Government and of Act XIV of 1868 is also circulated to each officer for information, guidance, and office record.

The Commissioner is anxious to impress upon all Police Officers that it is his wish to render the scheme as little vexatious as is compatible with insuring the attainment of the object in view, and that he trusts to the discretion of the Inspector to aid him in doing so.

They should endeavor to impress upon the women attending for registration, that no fees are exacted and that no hardship is imposed; that the examinations will be conducted in as private a manner as possible, every regard being paid to the feelings of those subjected to them; and further, that they will themselves benefit by the sanitary arrangements introduced as symptoms of disease are when early detected, more easily checked and at less personal inconvenience to the women themselves.

They should also distinctly impress upon their subordinates that the Commissioner will punish with the utmost severity, any Police Officer who may be proved to have been guilty of any unnecessarily harsh treatment of women presenting themselves at the respective section exists of his having demanded or exacted any gratification whatever.

The Commissioner trusts that the Inspectors will use all vigilance to insure that every woman exercising the profession of a common prostitute within their sections is duly registered, and that the periodical examinations required by the law are carried out.

It must be understood that the term ‘common prostitute’ is intended to refer to all women who openly follow this profession with little or no distinction of persons, and to those desire to be known publicly as prostitutes.

Those women who do not court notoriety and admit but a few visitors in secret, should not at present be treated as ‘common prostitutes’ within the meaning of the Act,

as it is rather the intention of the Act to bring only under such direct surveillance and examination persons, who are by their own desire recognized as prostitutes.

As the distinction may frequently be difficult, Inspectors are directed to refer all doubtful cases for the order of the Deputy Commissioner.

As regards the examination at Lock Hospitals, Inspectors are informed that the town and suburbs, have for the present been divided into two Divisions, the Northern and Southern, the dividing line being Bow-Bazar Street, Lock Hospital formerly known as the 'Sailor's Home' in Bow-Bazar Street and all to the South at the Sealdah buildings, known as the [Pauner] Hospital.

W. B. BIRCH, Lieut.,

Deputy Commissioner of Police

The Memorandum from Lieutenant Colonel F. Roberts, First Assistant Quarter Master General, to the Secretary to the Government of Bengal regarding the issue of registration for prostitutes is given here :

Proceeding No. 112. Submitted for the information of His Honor the Lieutenant Government.

Circular Memorandum from Lieutenant - Colonel P. S. LUMSDEN, Quarter Master General to the Officers Commanding Divisions and Districts, - (No 89, dated Simla, the 20th December 1869)

Under instructions from the Government of India in the Military Department, His Excellency the Commander-in-Chief directs the attention of officers commanding stations in which the rules passed as Chapter V. of Section 19 of Act XXII of 1864 are in force, to the following points, in view to the usefulness of the rules being extended.

I.- In all cases the sub-committee provided for in rule 1 is to be invariably appointed to inspect the hospital from time to time, and to devote special attention to the carrying out of the rules; also to satisfy themselves that the necessary attention is being devoted to it, and that the proper records are being kept up.

II.- Instead of only Public Prostitutes of the first of the two classes mentioned in rule 3, all public prostitutes of the lower classes are to be registered.

III.- The terms of rules 16 and 18 are to be more stringently enforced, and a fine levied in every case of non attendance for examination which can not be satisfactorily accounted for, and for breach of rules.

IV.- The levying of fees from registered women under rule 13 is to be suspended for a year, but it is to be explained to the women that in the event of their irregular attendance or misconduct, they will be certainly re-imposed at the end of the time.

V.- In addition to this duties required from matrons or *dhaies*, they should be held responsible for exercising a constant supervision over the health of the women under their charge for insisting upon the dwellings, persons, and clothes of the women being kept in a proper state of cleanliness; for immediately reporting to the cantonment magistrate, the arrival or departure, or change of residence of any prostitutes; for collecting the women when necessary for medical inspection; for reporting to the officer in charge of the Lock Hospital any cases of disease that came to their notice; and generally, they should be the medium of communication between the medical authorities and the women for the efficient carrying out of the regulations.

VI.- It is indispensable that the medical officer in charge of the Lock Hospital should carefully keep up to date a register of public prostitutes, and record all changes in the list which may be communicated to him by the cantonment magistrate, in order that he may know how many women ought to present themselves for examination. In addition to the register, schedule A, Chapter V., the register, schedule D, Chapter V., should be kept up and for this purpose a separate page will be required for each name borne on the roll; and further, a statement in the annexed form I should be attached to the book containing schedule D.

The returned referred to in Rule 7 of the duties of medical officers, will in future be the same as the annual return required by the Government, the information being for the month instead of the year (form ii), A copy of this return should be regularly submitted to the sub-committee.

VII.- A weekly return in form III. of the admissions to hospital from venereal disease among the European troops will be furnished by the senior medical officer, British troops, to the sub-committee, who will forward it, with any remark they may deem advisable, to the medical officer in charge of the Lock Hospital.

VIII.- Annual statements in the annexed forms IV and V, with a concise report by the medical officers in charge, are to be prepared immediately after the close of the year to which they refer, and forwarded, with the opinions of the officers through whom they are sent, to local governments.

IX.- Lock Hospitals will hereafter be considered first or second class, according to the number of prostitutes borne on the register and periodically examined.

Proceeding No. 114. From the HON'BLE A. EDEN, Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Home Department, - (No. 1327, dated Fort William, the 15th March 1870)

I am directed to invite the attention of the Governor General in council to a set of rules (copy attached) recently promulgated by his Excellency the Commander-in-Chief, in regard to the registration of prostitutes, which under His Excellency's orders, have been forwarded to this Government for information. It appears probable to the Lieutenant - Government that this has been done in inadvertence, for it will be seen that in some material points the rules differ from those already in force, which were made by the local Government with the sanction of the Government of India, and the Lieutenant - Governor thinks it scarcely necessary to point out the inconvenience which is likely to arise from conflicting orders emanating from two authorities in reference to the same subject.

2. Under the orders of the Government of India passed from time to time, the working of the rules for the supervision of prostitutes, and the sending them to Lock Hospitals, has hitherto been understood to be left with the local Government; and even if there be any doubt in regard to the meaning of those orders, it is obvious that such rules as Nos. 2, 3, 4, and 5 of those sent herewith, can only be legally made by the Government under section 17 of Act XXII of 1864. These rules,

however, are apparently based on the suggestions of Sanitary Commissioner, and the Lieutenant - Governor is perfectly willing to adopt them if they are confirmed by the Government of India.

3. I am at the same time to observe that the numbers of the rules quoted in the Commander-in-Chief's new rules 2, 3 and 4 are evidently those of the original draft rules framed by the Simla Committee in 1865, and not of the amended rules which were forwarded to the Government of India, in the Military Department, with the letter from this office, No. 4045 of the 27th July 1866, and sanctioned in the letter from that department, No. 472 of 21st September following. A copy of these rules is also transmitted herewith for ready reference.

(Source : Judicial, March 1870, Proceeding 112 – 114)

The main aim of the CDA was to counteract the spread of venereal diseases among British troops posted in India. The two main features of the Act that were to become controversial were, first the provision of compulsory registration of all prostitutes and secondly, the compulsory treatment of all prostitutes in lock hospitals.

Any talk of abolishing prostitution in the regiments was seen to be hazardous and replete with dire consequences. Not only that the reckless soldiers would broil into the *bazars* risking their masculinity but the prospect of homosexuality would lead to the most devastating sort of degeneration. Prostitutes were seen as necessary and hence there was no attempt to reform them in lock hospitals.

To maintain physical and mental fitness of the army, the main pillar of British paramount in this country, the introduction of the CDA was a well thought out measure of the Govt. of India. To spend a monotonous and tough life in the cantonment for young boys of the troops was obviously unpleasant. CDA was enacted thus not only to remove the possibility of infection of VD but it also aimed at satisfying the natural desire of the young soldiers in the company of medically fit sex workers. It may be remembered in this connection that behind all these legislative measures lay one purpose i.e. the protection of the interests of the British *Raj*.

An article published in a contemporary news paper, is relevant to mention in this context. Here it is :

“From the 1st instant the Contagious Diseases Act has come into operation Calcutta. The government of Bengal has appointed Dr. Payne of the Insane Asylum to the medical charge of the Lock Hospitals to be established under Act XIV of 1868 and generally to supervise all medical arrangements connected with the working of the Act. We believe the general administration of the Act will be left to the Commissioner of Police, but no notification has yet been issued on the subject, nor have the Rules, which the local Government is authorized to make for the enforcement of the law, been issued. Steps have however been already taken by the Commissioner of Police for the inauguration of the law. A proclamation has been issued by beat of drum calling upon the common prostitutes of the town to register their names. As the law is of an extraordinary nature, the very idea of which is repugnant to native feeling, every necessary precaution ought to be taken to familiarize the people with its provisions and to remove as much as possible their aversion to it.

The leading provisions of the law are as follows : Section 3 gives power to the local Government to extend the Act to such places as it may think proper. Section 4 declares that in any place to which this Act applies, no woman shall carry on this business of a common prostitute, and no person shall carry on the business of a brothel-keeper, without being registered, and without having in her or his possession evidence of registration. If such woman or brothel-keeper cannot produce evidence of registration he or she shall on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one month, or with fine not exceeding one hundred rupees, or with both. Now, the words ‘common prostitute’ and ‘brothel-keeper’ leave a wide opening to legal quibbling and dispute. We remember Mr. Roberts at a meeting of the Justices complaint that the Legislature had thrown upon the Magistrate the ungracious task of deciding as to what would constitute a ‘common prostitute’ and what not. A definition of a ‘brothel-keeper’ has however been given in the Act. The ‘brothel-keeper’ is stated to ‘mean the occupier of any house, room, or place or to in which women resort or are for the purpose of prostitution and every person managing or assisting in

the management of any such house, room or place.’ Now, the question is whether the fact of a person occupying a house to or in which women resort or are for the purpose of prostitution constitute the ‘business’ of a ‘brothel-keeper’? In this town men of low feeling are known to take up quarters in house of ill-fame; they live there as lodgers and have no connection whatever with the ‘business’ or ‘brothel-keeper’, but according to the definition given they may well be called upon to register their names. The again there are many instances of persons holding stalls or shops on the first floor of a house on the road side, occupied by courtesans and occupying the same, and are they to come under the definition of ‘brothel-keeper’. Being ‘occupiers’ of the house we do not see how they can escape the penalty of the law. Then again what is the business of a brothel-keeper? Traffic in vice is not carried on in the same manner here as it is in some of the towns of Europe. The *bariwallis* as they are called do not necessary manage or assist in the management of a house of prostitution. They are generally old women of the same unfortunate profession, who eke out their existence in the decline of life by letting out the huts or rooms which they engage for the purpose. They often live in the same house, but as a rule do not go in shares with the wages of sin raised therein and cannot consequently be considered to carry on the business of a brothel keeper.”¹⁶

Penal measures imposed on women and their suffering :

“The local Government shall provide rules for the registration of prostitutes and brothel-keepers. The names, age, caste (if any) and residence of every woman, and other particulars shall be entered on a book to be kept for that purpose. Whenever only woman, on change of residence, shall on conviction before Magistrate be punished with imprisonment not exceeding fourteen days or with fine not exceeding one hundred Rupees, or with both. A special penalty, extending to imprisonment not exceeding six months or to a fine not exceeding one thousand rupees, or both, is prescribed for a brothel-keeper, who may permit unregistered prostitutes to resort to his house. The local Government shall makes rules and appoint officers for the examination of prostitutes. The provision on the subject of the medical treatment of the women are as follows :

‘Any woman registered under the Act shall, on receiving notice from any such officer as the Local Government shall from time to time appoint in this behalf, proceed to the certified Hospital named in such notice and place herself there for medical treatment. If after the notice is delivered to her, she neglects or refuses to proceed to the said Hospital within the time specified in this said notice, an officer of police shall apprehend her and convey her with all practicable [speed] to such Hospital, and place her there for medical treatment. Whenever any such woman affected with contagious disease places herself or is placed as aforesaid in a certified Hospital for medical treatment, she shall be detained there for that purpose by such medical officer of the Hospital as the Local Government shall from time to time appoint in this behalf until discharged by him by writing under his hand. Medical treatment, lodging, clothing and food shall be provided gratis for every such woman during her detention in the Hospital. If any woman authorized by such medical officer to be detained in a certified Hospital for medical treatment, [quits] the Hospital without being discharged there from by the chief medical officer thereof, by writing under his hand (the proof where of shall lie on the accused), or if any woman authorized by this Act to be detained in a certified Hospital for medical treatment, or any woman being in a certified Hospital under medical treatment for a contagious disease, refuses or willfully neglects while in the Hospital to conform to the regulations, thereof approved under this Act, then in every such case such woman shall, on conviction, before, a Magistrate, be punished with imprisonment, in the case of a first offence, for any term not exceeding one month, and in the case of second or any subsequent offences, for any term not exceeding three months, and in case she quits the Hospital without being discharged as aforesaid, she may be taken into custody without being discharged as aforesaid, she may be taken into custody without warrant by any officer of police. On the expiration of her term of imprisonment under this section, such woman shall be sent back from the prison to the certified Hospital, and shall be detained there unless the medical officer of the prison at the time of her discharge from imprisonment certifies in writing that she is free from contagious disease (the proof of which certificate shall lie on her).”¹⁷

Some provisions have been made for the outdoor treatment of prostitutes, which are :

“It shall be lawful for the Local Government to empower such Surgeons or other persons as it shall from time to time appoint, to prescribe, by order to be served on any woman registered under this Act, who has not received a notice under section fourteen, the times and places at which she shall attend for medical treatment, and, if necessary, the medical treatment to which she shall submit. Every such woman disobeying or failing to comply with any such order, shall, on conviction before a Magistrate be punished with imprisonment for a term which may extend to a month, or with fine not exceeding one hundred Rupees, or with both. If any registered woman on whom such order as last aforesaid shall have been served, conducts herself as a common prostitute before such surgeon or other person empowered as last aforesaid certifies in writing to the effect that she is then free from a contagious disease (the proof of which certificate shall lie on her), she shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred Rupees, or with both. During the interval between the service such order upon any registered woman and the granting of such certificate, all allowance for the subsistence shall be provided of such amount and in such manner as the Local Government shall from time to time prescribe.

By far the most important provision as regards public morality is that which relates to the segregation of prostitutes. It runs as follows :

In any place to which the Local Government shall by notification in the official Gazette, have specially extended this section, it shall be lawful for such officer as the Local Government shall from time to time appoint in this behalf, to cause a notice to be served on any registered woman requiring her, after, an interval of not less than seven days to be mentioned in the notice, not to reside in any street or place therein specified.

Any registered woman on whom such notice shall have been served disobeying the requisition therein contained shall, on conviction, before a Magistrate, be punished with imprisonment, in the case of a first offence for any term not exceeding one month, and in the case of a second or any subsequent offence, for any term not exceeding three months.

We sincerely hope that this provision will be enforced by the Government in the interest of public morality. We can imagine that such a move will be stoutly opposed by house-owners, but the scene in certain parts of the town have become so tainted, that it is not safe for respectable people to reside there and the sooner such scenes are suppressed the better.

The subject of this article is painful and sad, but it cannot be ignored the Legislature has though it necessary to interfere, and it cannot therefore be right from an over-delicate feeling to leave out of the pole of newspaper discussion. The very mention of the law has spread great consternation among the poor unfortunate who live by the sale of their charms. Many of them it is stated have already deserted the town. Great oppression is apprehended, but we hope Dr. Payne, who is a considerate man, will not allow this law to be converted into an engine of extortion and oppression. We need hardly observe that both he and the Commissioner of Police cannot be too cautious in selecting the agents for the administration of the law. Regard we trust will be had to the private character of the doctors as well as the inspectors in whose hands will chiefly rest the administration of the law. The Rules by the local Government have not yet been issued, but we hope no unnecessary annoyance will be given to the unfortunate women. We have been told that some of them have been asked to give the names of their parents, but they justly protest against such queries. They are fully alive to the disgrace they have brought on their parents by their shameless life, and they do not wish to add to it by publishing their names. This is an honorable feeling which the police ought not be allowed to outrage.”¹⁸

Lock Hospitals :

The beginnings of the lock hospitals could be traced to four hospitals set up before the end of the 18th century at Berhampur, Kanpur, Dinapur and Fategarh for the reception of diseased women. This was followed by the establishment of regular lock hospitals by the mid-19th century in major towns and cantonment areas, where registration and inspection of prostitutes suffering from venereal diseases were made obligatory. Those prostitutes suffering from STD were confined to special lock hospitals

until they were cured. They were taken there forcibly if they refused to go, resulting in many women going underground or evading registration.

It is quite evident and must be mentioned that venereal diseases were prevalent in England before her soldiers arrived in India. But there appears to be a definite attempt by the 19th century British administrators in India to trace the roots of venereal diseases to Indian prostitutes, and stress the danger of these diseases being imported into England by British troops who got afflicted by them while posted in India.

An important feature of the medical policy regarding the lock hospitals, frequently resorted to from 1805 to 1897, was that when the ratio of prevalence of venereal diseases among the soldiers did not decline for a considerable period, some of the hospitals were abolished considering them a wasteful expenditure. But again, even after the closure, as the ratio of venereal diseases kept on increasing, more and more of lock hospitals were opened. Venereal diseases were prevalent among the British soldiers on a wide scale and roughly varied between 29 to 43 per cent during the course of the nineteenth century. As a social experiment the lock hospitals were closed from 1830 onwards. But the growth in venereal diseases continued to rise, and lock hospitals were re-opened, first locally and from 1864 as a matter of an all India policy. Again in 1888, they were in principle abolished as moral reformers began to apply pressure. But they had to be re-established in 1897 as the disease continued and unabated affecting the soldiers. Moreover, every closure, almost immediately, aroused protests in military circles.¹⁹

Meanwhile in India, the 1864 Cantonment Act was failing in its aims, since soldiers tended to move out of their cantonments (either due to paucity of prostitutes in the regimental *chaklas* or because of troop movements) and consort with 'common prostitutes' outside, and get afflicted with venereal diseases as a result. The authorities, therefore, planned to extend their operations beyond the cantonments and impose control over those prostitutes playing their trade outside.²⁰

A more comprehensive legislation to bring prostitution (outside the cantonments) under state control came in 1868, when taking the cue from the Contagious Diseases Acts in

operation in England, the colonial authorities in India enacted the Indian Contagious Disease Act (Act XIV - or *Choudda Ain* - the dreaded term by which it came to be known among the prostitutes of Bengal at that time). The main objective of the legislation was to protect British soldiers and sailors from venereal diseases that they might counteract from 'common prostitutes' outside the regimental bazaars.²¹

There is perhaps not a military station in India in which prostitutes, under the guise of day-labourers employed by the Department Public Works, or others, do not infest European barracks and give disease to the soldiers. This suspicious and hostile attitude towards female laboureres continued among the British bureaucrats in the 1880s also, as is evident from the annual report of medical transaction of the lock hospital in Darjeeling in Bengal, which, while explaining the persistence of venereal diseases among the British soldiers, added among other causes, the following : 'There was also a large number of coolie women belonging to the hill tribes notoriously dirty in their habits and persons, employed in and about cantonments; some of whom undoubtedly added to their gains by prostitution.'²²

Under the Act, the prostitutes were required to (i) compulsorily register themselves (ii) subject themselves to periodical medical examination (iii) compulsory treatment and were (iv) forbidden to live in special areas. C. Fabre Tonnerre, the brain behind the Act, insisted that every woman registered under the Act must be provided with a ticket bearing her name, caste and residence, and must be compelled to exhibit such tickets on being required to do so by a Superintendent of the police.

In the case of registration, the number of admissions to the lock hospital, also, did not necessarily reflect the actual extent of the spread of venereal diseases - since a large number of prostitutes remained outside the scope of the lock hospitals. Official reports from the **lock hospitals outside Calcutta – Hoogly, Berhampore, Dumdum, Barackpore and Darjeeling** (where British troops were stationed) - repeatedly complained about the difficulty of making the prostitutes attend the lock hospitals twice every month, even under police pressure, and about prostitutes leaving the hospitals before completion of treatment.²³

Government taxed and fined the prostitutes to finance their treatment in the Lock Hospitals and thereby made itself more vulnerable to accusations of legitimizing prostitution. The argument that in India prostitution was already legitimate was rejected by the repealers, missionaries and educated Indian opinion. However, they all accepted the broadly co-optive definition of 'the prostitute' which drew under its umbrella a wide variety of social practices. What they merely did was to turn the Government's logic on its head. The prostitute was now to be a victim, not a criminal - a victim of the Government's double standards of morality, of the brutal police, of greedy husbands and lascivious men.

Prohibitive measures to stop the use of under-aged child :

Use of girl child under-aged became a big issue. British government tried to stop the use of girl child in sex business. They had taken strict measures to stop that business. The following correspondences, regarding this issue calling upon the Divisional Commissioners and the Commissioner of Police, Calcutta, for their opinion on the inquiry made by the Government of India as to whether it would be possible for forbid the possession of girls under the years of age by prostitutes and brothel keepers, are very crucial in this context :

No. 233, dated Fort William, the 9th April 1872

From – E. C. BAYLEY, Esq., C.S.I, Secy to the Govt. of India, Home Dept.

To, The offg - Secy to the Govt. of Bengal, Judicial Dept.

With reference to a correspondence upon the subject of the kidnapping and abduction of girls for immoral purposes, I am desired to ask whether it would not be possible, in the opinion of His Honour the Lieutenant - Governor, to forbid altogether the possession of girls of say ten years of age and under by professional prostitutes and by the keepers of brothels, or other similar establishments.

2. It seems to the Governor General in Council wrong that girls should be practically committed to an immoral course of life at an age when they can not possibly be supposed capable of any independent volition on the subject.

3. At the same time His Excellency in Council is not insensible to the difficulties which attend the question with reference to the customs of the country, and to the fact that, especially in Southern India, many such girls are dedicated at an early age to the service of temples.

4. Even it be found practicable to devise a remedy, the Governor General in Council would not in any case think it right to do more than forbid the practice prospectively, and for the present would at most merely provide that such girls already so circumstanced, and below the age, say of ten years, should be registered, without interfering in any way with their custody, unless the children are proved to have been unlawfully obtained.

5. But the main question is, whether it might not be made penal in future for persons for specified classes to retain possession of girls of and under ten years of age, not being their own children, however acquired, except such as may have been entered in the list above proposed.

6. It would be of course not very difficult to evade such a law, on the other hand, it may be urged that its enactment might possibly do something to check a practice which it is believed, is revolting to many natives of character and intelligence.

7. I am to request that, after obtaining the opinion of such officers as His Honour the Lieutenant - Governor may consider it expedient to consult, especially natives and persons acquainted with native feeling a report may be furnished to this office confidentially on the point whether any such measures, or other measure with the same object, is practicable and expedient.

No. 2508 - 9, dated Calcutta, the 19th April 1872

From - C. BERNARD, Esq., Offg. Secy to the Govt. of Bengal in the Judl. Dept.

To - All Divisional Commissioners, and to the Offg. Commr of Police, Calcutta

I am to directed to forward copy of a letter in which the Government of India enquire whether it would be possible to forbid the possession of girls under ten years of age by prostitutes and brothel keepers.

2. There can be no manner of doubt that it is highly desirable to prevent little girls being educated and apprenticed to a prostitute's life before they are old enough to think and act for themselves. But before the Lieutenant - Governor can advise the supreme Government on the subject, he would wish to learn from officers and respectable natives whether the evil against which the proposed prohibition would be directed, exists largely; and whether there are any insurmountable difficulties in the way of the course proposed by the Government of India and which commends itself to the Lieutenant - Governor. I am to ask you to be so good as to obtain the opinion of selected officers (European and Native) in your division on this reference, and to forward their replies, together with your own, by the 30th June at latest.

3. Any information which may be available regarding the caste of young girls who are apprenticed to prostitution, the circumstances under which they usually fall into the hands of prostitutes, and their ultimate fate after some years of prostitution, would be useful. The Lieutenant - Governor noticed with some surprise that the great majority of the registered prostitutes in Calcutta are Hindoos, and but comparatively few Mohamedans. He would like to know how this is accounted for, and whether the Hindoo registered women are of hereditary prostitute castes, or what is their origin and condition. The Lieutenant - Governor is aware that in some parts of India consignments of young girls have been found in railway carriages under the charge of men or women who had enticed or kidnapped the children and were taking them to a distant district, he would be glad to learn whether any authentic cases of a similar kind had occurred within your knowledge. Any suggestions regarding the limit of age (ten years) within which the proposed prohibition is to apply, or regarding the disposal of young girls who may be found in the possession of prostitutes after the prohibition, will have His Honour the Lieutenant - Governor's consideration.

(Source : Judicial, April 1872, Proceeding No. 68- 69)

The first reform legislation affecting prostitutes was the 1923 prostitution Act which made it illegal for a male, but not a female, to manage a brothel. Concern with public health and morality, combined with an international interest in the traffic in women and girls led to further amendments of this Act, in 1926 and 1927.²⁴

Laws regarding the issue of temple prostitution :

It has been already mentioned that *devdasi* system or temple prostitution was another form of prostitution prevailed in our country. At the beginning of 20th century the *devdasis* converted into *patitas* or prostitutes in South India. Various laws were passed to eradicate '*devdasi pratha*'. British Govt. had also taken initiative to stop temple prostitution.

An important correspondence of British Government should be mentioned here regarding the issue of temple prostitution :

dated London, the 3rd March, 1911

From – His Majesty's Secretary of State for India,

To - His Excellency the Right Hon'ble the Governor General of India in the Council.

My attention in Council has lately been called to the various methods by which female children in India are condemned to a life of prostitution, whether by enrolment in a body of dancing girls attached to a Hindu temple; by symbolical marriage to an idol, a flower, a sword, or some other material object; or by adoption by a prostitute whose profession the child is brought up to follow. I observe with satisfaction of Hindu society regards the association of religious ceremonies with the practice of prostitution with strong disapproval. In Madras where the institution of temple dancing girls still survives, an Indian Magistrate, Mr. Ramchandra Rao, has expressed the opinion that temple servants have been degraded from their original status to perform function "abhorrent to strict Hindu religion", and in Bombay a society for the protection of children has been formed with the co-operation of leading Hindu citizens.

2. I desire to be informed of the probable extent of the evil, how far the provisions of the penal code, sections 372 and 373 are in themselves sufficient to deal with it effectually, and whether, in your opinion, or that of the local Govt., adequate steps are being taken to enforce the law as it at present stands; or whether any, or if so, what amendments of the law are required to give reasonable encouragement and support to those who are endeavouring to suppress a grave abuse. The matter is one in which the weight of public authority may well be lent to the furtherance of reforms advocated by the enlightened leaders of the communities to which the children belong whom the law was intended to protect.

(Source : Political Department [Police], September 1912, Proceeding No. 45)

Laws in Post - Colonial Period :

During these years Indian accepted the various measures suggested by the League of Nations to suppress immoral traffic and prevent people from living on the earnings of prostitutes. The women's organizations became more involved with the abolition of *devdasis* than with abolition of prostitution.

The Andhrapradesh Devdasis Prevention of Dedication Act, 1947 and The Andhrapradesh Devdasis Prohibition of Dedication Act, 1988 were passed to stop *devdasi* system. The 1947 Act abolished dedication of girls to temple service, barred temple dancing, and declared that any *bogam, kalavanthulu, sani, nagavasulu, devdasi* or *kurmapuvalu* woman who danced was a prostitute.²⁵

Suppression of the Traffic in Persons and of the exploitation of the Prostitution of others :

The Convention for the Suppression of the Traffic in Persons and of the exploitation of the prostitution of others held on 2nd December, 1949. The preamble is as follows²⁶:

Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community.

Some important **Articles** should be mentioned :

Article 1

The parties to the present convention agree to punish any person who, to gratify the passions of another :

1. Procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person;
2. Exploits the prostitution of another person, even with the consent of the person.

Article 2

The parties to the present convention further agree to punish any person who :

1. Keeps or manages, or knowingly finances or takes in the financing of a brothel;
2. Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

Article 3

To the extent permitted by domestic law, attempts to commit any of the offences referred to in article 1 and 2, and acts preparatory to the commission thereof, shall also be punished.

Article 4

To the extent permitted by domestic law, international participation in the acts referred to in articles 1 and 2 above shall also be punishable. To the extent permitted by domestic law, acts of participation shall be treated as separate offences whenever this is necessary to prevent impunity.

Article 6

Each party to the present convention agrees to take all the necessary measures to repeal or abolish any existing law, regulation or administrative provision by virtue of which persons who engage in or are suspected of engaging in prostitution are subject

either to special registration or to the possession of a special document or to any exceptional requirements for supervision or notification.

Article 16

The parties to the present convention agree to take or to encourage, through their public and private educational, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution and of the offences referred to in the present convention.

Article 17

The parties to the present convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present convention, to check the traffic in persons of either sex for the purpose of prostitution.

Article 18

The parties to the present convention undertake, in accordance with the conditions laid down by domestic law, to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State. The information obtained shall be communicated to the authorities of the State of origin of the said persons with a view to their eventual repatriation.

Article 19

The parties to the present convention undertake in accordance with the conditions laid down by domestic law and without prejudice to prosecution or other action for violations there under and so far as possible.

Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance.

Article 20

The parties to the present convention shall, if they have not already done so, take the necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

Final Protocol

Nothing in the present convention shall be deemed to prejudice any legislation which ensures, for the enforcement of the provisions for securing the suppression of the traffic in persons and of the exploitation of others for purposes of prostitution, stricter conditions than those provided by the present convention.

Prostitution is to be seen in the background of the prostitutes, procurer, client and society without which the problem cannot be understood. Thus SITA which considers prostitution as a crime committed by a female earning money through the sale of her body is ineffective.

SITA & PITA :

The two principal Indian laws that addressed trafficking and prostitution in particular are the **Suppression of Immoral Traffic in Women and Girls Act of 1956 (SITA)** and the **Immoral Traffic (prevention) Act of 1986 (ITPA)**, colloquially called **PITA**, an amendment to SITA. The Suppression of Immoral Traffic in Women and Girls Act (SITA) 1956 repeals all previous enactments passed by the State and brought uniformity in the law. 'The Act aimed at the suppression of commercialized vice and not at the penalization of the individual prostitute or of prostitution itself'. In one case, the individual prostitute can be penalized. It is where she carries on prostitution 'within a distance of 200 yards of any place of public, religious worship, educational institutions hostel, hospital, nursing home.'²⁷

Table No. 5:1

Some Useful Provisions of Immoral Trafficking Prevention Act, 1956 - ITPA :

Offence	Punishment	Punishment
	If crime against women	If crime against minor
Running or managing a brothel or allowing premises to be used as a brothel or allowing property to be used as a brothel [Sec. 3].	1 year to 5 years imprisonment and fine Rs. 2000/.	1 year to 5 years imprisonment and fine Rs. 2000/.
Living on the earning of prostitution [Sec.4].	2 years imprisonment.	7 years to 10 years imprisonment and fine Rs. 1000/.
Procuring including or taking person for the sake of prostitution [Sec.5] (Buying or selling of Human beings). (Illegal transportation of people across the border).	3 years to 7 years imprisonment and fine Rs. 2000/.	7 years to 14 years imprisonment and fine Rs. 1000/.
Detaining of person at a place I where prostitution is being carried out [Sec. 6].	7 years to 14 years imprisonment and fine.	7 years to 14 years imprisonment and fine.
Kidnapping, abduction, including procuring, importing humans for the purpose of illicit sexual intercourse [Sec. 5].	3 years to 7 years imprisonment and fine Rs. 2000/.	7 years to 14 years imprisonment.

Source : *The Status of Women in India : From Antiquity to Modernity* by Manjari Biswas Bhaumik, p. 109

{Note : Trafficking victims who are framed as prostitutes and charged with offence of soliciting cannot be punished with imprisonment more than 6 months to one year, and cannot be fined more than Rs. 500/ [Sec. 8]}.

Neither law prohibits prostitution per se, but both forbid commercialized vice and soliciting. Aside from lack of enforcement, SITA is problematic in several ways. One of its chief drawbacks is that the prescribed penalties discriminate on the basis of sex; a prostitute, defined under SITA as always a woman, who is arrested for soliciting under SITA could be imprisoned for up to a year, but a pimp faces only three months. SITA allowed prosecution of persons other than the prostitutes only if the persons involved 'knowingly' or 'willingly' made women engage in prostitution. Accordingly, pimps, brothel owners, madams and procurers could feign ignorance of prostitution and escape punishment. The client, moreover, was not viewed as an offender and could not be sanctioned under SITA. Finally, SITA only addressed street prostitution; prostitution behind closed doors was left alone - a loophole that actually promoted the establishment of brothels.

The Immoral Traffic (Prevention) Act of 1986 (ITPA) amended the 1956 SITA in important ways. However, its basic goals and premises remain much the same as those of SITA. Although prostitution as such is not prohibited under ITPA, this statute contains nine punishable offences, including operating a brothel, abetting in brothel keeping, living off brothel earnings, procuring, detaining, activity in vicinity of public places, seducing or soliciting. Ironically, ITPA does not authorize the police actually to close brothels. Unlike SITA, ITPA recognizes that men and children can also be sexually exploited for commercial purposes, and introduces stiff penalties against those who profit from the prostitution of minors and children.²⁸

ITPA also expands police power to prevent trafficking, but at the same time attempts to curb the potential abuse of power by the police during raids, such as verbal, physical and sexual harassment. Whereas SITA empowered a special police officer to conduct a search of any premises without a warrant, ITPA extends these powers to the accompanying trafficking police officers who enter the premises. However, ITPA prohibits male police officers from conducting a search unless accompanied by two female police

officers. Interrogation of women and girls also has to be undertaken by female police officers.²⁹

The spirit and objectives of SITA were maintained in the 1986 PITA amendment and various technical changes were introduced. For example, the definition of prostitution was changed from when a girl or woman 'offers her body for promiscuous intercourse for hire to the sexual exploitation or abuse of persons for commercial purposes'. PITA also takes a more serious view of the prostitution of minors, and introduces the requirement that two female police officers must be present on brothel-raids. Only women police officers are now supposed to interrogate women and girls who have been removed from brothels.³⁰

The legal status of prostitution in India not only has a significant impact on the lives of those involved in the sex trade, but also reflects the current attitudes of the state and of mainstream society towards prostitution. The extent of women's involvement in illegal activities is significantly affected by whether or not prostitution is considered an offence. In India, among female offenders, the majority are involved in the sex trade. In 1989 arrests under PITA were only 0.4 percent of all crimes, yet the highest number of women arrested in this category of local and special laws was under this act. In the same year, the highest number of women arrested under the Indian Penal Code was for the trafficking of women and girls.³¹

The points of the current PITA legislation are as follows :

Sex Workers - carrying on prostitution in or within 200 metres of a public place or within a notified area, and soliciting or seduction in public, or in sight or sound of a public place for the purpose of prostitution are offences under Section 7 and 8. Public place is defined as any place intended for use by, or accessible to, the public and includes any public conveyance. Working privately and independently as a prostitute is not an offence. However, a sex workers can be removed from any place at the request of a Magistrate, and a brothel containing two or more sex workers can be closed down.

Clients - The client commits an offence if he carries on prostitution with a sex worker in or within 200 metres of a public place, or in a notified area. (Under the Indian Penal Code, if the sex worker is below sixteen the client can be charged with rape.)

Babus - Live in *babus* or lovers are committing an offence by living off the earnings of prostitution. If any *babu* who is proved to be living with a sex worker is arrested under these charges, he is assumed to be living off her earnings unless he can prove otherwise.

Brothel Keepers - A brothel is defined as any place 'used for sexual exploitation or abuse, for the gain of another person or for the mutual gain of two or more prostitutes.' Land lords, brothel keepers and those who abet brothel - keeping can be punished under Section 3 of the act. Detaining a person for prostitution is also an offence. A Magistrate can order the closure of a brothel that is within 200 metres of a public place. Hotels that are being used as brothels can have their licenses suspended or cancelled if any of the sex workers are minors.

Landlords - Knowingly renting out property which is being used for prostitution is an offence under Section 7.

Traffickers - Procuring, inducing, taking or detaining a person for prostitution are offences under Section 5. If the person is a minor or a child, or if the person was procured against her will, the sentence is more severe.

Pimps - Pimping and touting is an offence under Section 4. It is assumed, unless proved otherwise, that a pimp is living wholly or partially on the earnings of a sex worker.

Rescued Girls - The government is bound to provide rehabilitation in a protective institution, or under the supervision of a person appointed by the Magistrate, for women and girls rescued from prostitution.

Under the Juvenile Justice Act children of sex workers and minors, classified as vulnerable because they associate with sex workers, can be removed to a registered Juvenile Home (Government or NGO) until they come of age.

SOME LAWS AND VERDICTS RELEVANT TO SEX WORKERS IN SHORT :

1860 Indian Penal Code introduced, with sections covering procuring and trafficking of Women.

1864 Contagious Disease Act passed in Britain, also applies to India, requires sex workers to be registered and examined weekly for sexually transmitted diseases.

1868 Contagious Diseases Act applies in all major cities in India.

1883 Contagious Diseases Act suspended as seen as state participation in the 'immoral' sex industry.

1886 Cantonment Acts for regulation of prostitutes and British soldiers.

1907 East Bengal and Assam Disorderly Houses Act passed for Suppression of brothels.

1933 Bengal Suppression of Immoral Traffic Act passed.

1950 India signatory to UN Conference Declaration for the Suppression of Traffic in Women and Girls.

1956 Suppression of Immoral Traffic Act (SITA) passed.

1976 Bonded Labour (Abolition) Act passed.

1984 Dedication Prevention Act bans system of dedicating *devdasis* or temple dancers to temple.

1986 Immoral Traffic in Persons (Prevention) Act (PITA) passed (amendment to SITA, 1956).

1990 Juvenile Welfare Boards set up in West Bengal. National Commission on Women Act passed to monitor legislation and tighten laws.

1992 Supreme Court ruling that children of sex workers are not required to give father's name for school admission. West Bengal Commission for Women Act passed. Autonomous investigative body with powers of a civil court.

India's legal approach towards the sex business upholds it double standard. Their profession is considered as committing crime. The sex workers are regarded as criminal if they are found to soliciting or practicing within or near the public place. They may be uprooted from anywhere, they can lose their children or can be evicted at any time at the request of a Magistrate. The police haul off sex workers periodically, keep them in lock up and do not release them until or unless extract money from them. Under the law the client, however, only commits a crime if he is practicing with a sex worker in a public place or is having sex with a girl under sixteen. The Sixty Fourth Law Commission Report investigating prostitution laws argued against the punishment of male clients, quoting the following in support of its argument :

'The professional prostitute, being a social outcast, may periodically be punished without disturbing the usual course of society ... the man, however, is something more than a partner in an immoral act; he discharges important social and business relations, is a father or brother responsible for the maintenance of others, has commercial or industrial duties to meet. He cannot be imprisoned without damaging society.'³²

Many countries, including India, have thus enacted special purpose legislations such as the Immoral Traffic Prevention Act (ITPA) 1956, the Juvenile Justice Act, 2000 etc. in order to strengthen the legal steps that can be undertaken to root out the crimes like prostitution, trafficking and sexual exploitation of women.³³

From the above mentioned prostitution related laws, it has become clear that all the systems more or less accept prostitution as an inevitable profession of the society. In this context the well-known Immoral Prevention Act (ITPA) is remarkable. According to an interview of the sex workers (by the present writer) this PITA Act (ITPA) is not appropriate for their welfare. It has some inner contradictions. The law nos. 8 and 20 of ITPA have been repealed by the initiative of Smt. Reba Nayer (the Secretary of the Women and Child Development, Govt. of India). Now the repealed laws allow prostitutes

to soliciting with their clients and also banned the right of the Magistrate to uproot the brothels of his locality without notice. On the other hand, the Act nos. 3, 4 and 5/C of ITPA are not in favour of the sex workers. These Acts prohibit to let at rent houses, hotels for prostitution, do not allow the sex worker's children above 18 years to live on their mother's income, sanction the right to arrest the clients respectively.³⁴

Implementation of Laws and Reaction :

Under tremendous pressure, primarily from the health concerns for the British soldiers posted in India, and secondly from the reformist zeal of certain social and political circles in England in the 1860s and 1870s, the British administration in Bengal contemplated from time to time measures to re-structure the system of prostitution, and bring it under some form of control.

A dynamic change has been seen in the terms of definition of practice of prostitution in Bengal, from its earlier socio-religious interpretation as a 'sin' to the colonial socio-legal codification as a crime.

The primary goal of the both act i.e. The Cantonment Act of 1864 and The Contagious Disease Act of 1868 was to giving protection the British troops from venereal diseases. But their implications varied from one strata of prostitutes to another. Sumanta Banerjee explained in this way -“The Cantonment Act was geared to groom a breed of Indian prostitutes who were to be trained exclusively for the British Tommies, and kept captive in the *chaklas* in the cantonments. The Contagious Diseases Act was meant to control the movements and operations of the 'common prostitutes' who dominated the wider spectrum of the profession, so that the Tommies did not have access to them, and to put them under medical surveillance so that if some errant Tommy did visit them, he would be protected against the diseases.”³⁵

Under The Contagious Diseases Act, the prostitutes were required to (i) compulsorily register themselves; (ii) subject themselves to periodical medical examination; and (iii) compulsory treatment; and were (iv) forbidden to live in specified areas. C. Fabre - Tonnerre, the brain behind the Act, insisted that every woman registered under the Act must be provided with 'a ticket bearing her name, caste and residence', and must be

compelled to exhibit such tickets on being required to do so by a Superintendent of Police.³⁶ The only destination of violation of the provisions of the Act by the offender, was prison. Her (offender) imprisonment with or without hard labour for any term was extended three months.

The procedure of medical examination was terrible. The prostitutes came for examination had to sit on a tub, which was full of water with vexation. Forcefully the syringe of that water push to their vagina. Some of them were died at the time of medical examination due to uncontrolled bleeding. Others confessed their disease to escape from the examination.³⁷

Nistarini, a prostitute is sharing her bitter experience to the neighbours after returning from medical test. In her filthy language : *“pora choddo aiyener sraddha kotte gechhila. Amake dhore ne gelo, sekhane ge dekhi charidike peyada pak gis gis kochhe, aar jon duchar bangalee royeche agute dekhei voye amar buk gur gur kotte laglo. Mone kori na jani ki kore, abar sunechi naki aroker tobe bosay, eisokol vabnay kapore okormo (moote phela) korechi. Tader ekjon ese bolle tor bamo ache? Ami voye kapite kapite bolilam na. Pore kohile sore aay ... tokhon bolilo na tomake nangto hoite hoibe, Jodi odhik lojja hoy tobe mukhe chokhe kapor bandho. Jodio amar lojjate poran jachhe, tobu voyete ja bolche tai kochchi noile marbe na dhorbe ei vebe haatkhani chokhe diye chup kore dariye roilam. ... Tarpur aar matha mundu ki bolbo, ekti bhadrolok (olpo boyos bote) nikote asiya bole nangta hou, ami chokh dutite haat diye darie achhi. Se bar dui bole apnei amake nangto korle. Tarpur atkurir beta bole, paa faank kore dara. Ki kori tai darailam. Paa faank kore darale haatu gere bose ghete ghute dekhle.”*³⁸

Nistarini went for medical test. She was caught. There were a few Bengalee among the sepoys (police). She was shaking in fear as she heard about the tub of tincture. One of them came to her and ask if was she infected or not. She replied, ‘No’. She was moved, no body asked her for unclothed. But after some while she was ordered for unclothed by a young policeman. She felt ashamed and covered her eyes with hand. The policeman repeated twice and unclothed her. Then he sat before her and started to examine her body (free translation).

It had been seen that prostitutes used to bribe the medical authority to escape rid from the medical check up.³⁹

There was a vivid discrimination among the Indian prostitutes which could not be ignored. The regimental prostitutes were the 'labour aristocracy' among the Indian prostitutes. It is better to call them high profile prostitutes which is popularly known in red light areas now-a-days. They earned more than the other women of this business outside, and other labourers. Their houses were quite well furnished, decorated and they enjoyed better food and standards living. But, being captive and subjected to forcible medical examination, all regimental prostitutes were apparently not happy. Two American women social workers who travelled through India in 1891-92, visiting different military stations to study the plight of prostitutes there, came across residents of *chaklas* who appealed to the foreign women to rescue them from the cantonments.

Medical examination was one of the main causes of discontent among the regimental prostitutes. The cantonment authorities induced the soldiers suffering from venereal diseases to identify the women from whom they had caught them. These women were then forcibly dragged away and detained in lock hospitals.

The Contagious Diseases Act of 1868 was an administrative intervention in the practice of their occupation. While allowing them to pursue their occupation and retain their unorganized structure, the Act sought to curb their free movement by imposing regulations like compulsory registration at police stations, medical examination at certified areas of the cities and towns, and heavy penalties for violation of these regulations.

The Contagious Diseases Act did not confined within the pros-quarters of cantonment, beside, it applied for the prostitutes of red light areas outside of cantonment. As it is already clear that there was a distinct difference between the common prostitutes and the regimental prostitutes. There remained still the fear that the British soldiers could get infected by the common prostitutes. That was why the British administration build up an elaborate machinery of surveillance under the Contagious Diseases Act that not only affected the business of these prostitutes (by driving away their regular customers, the

local indigenous clients who were put off by the sudden police raids), but also subjected them to the most horrible medical examination.

At the first phase the intellectuals preferably called the *bhadroloks* in Bengal welcomed the CDA as a measure to control over the spread of prostitution and several venereal diseases. But the scenario had been changed at the end of the 19th century because of the indiscriminate powers enjoyed by the police to harass and persecute any women under the catch-all provisions of the act. The ostensible plea of controlling the spread of venereal diseases became a cover of police atrocity. Not only the common prostitutes and women from poorer classes like female labourers working near the cantonments, but also the members of the upper strata of the prostitute community, like the *baijis* or the dancing girls and singers and mistresses maintained by the rich Bengalis or the sex workers of red light areas did not get relief from the tyrannical examination of CDA and police harassment.

Protests against the implication and functioning of the CDA had been started beyond Bengal, in all over India and England. The colonial administrative and military authorities in India got realize that the Act had failed to serve its purpose of the prevention of the spread of venereal disease among the British soldiers. Finally It led to the repeal of the CDA in 1888. The official explanation for the repeal was : 'It certainly has not had the anticipated result of extirpating disease ... The Government of India recommended the repeal of the Act on the grounds that it did not effect appreciable good and was liable to abuse (24 June, 1888).' The government, however, retained the regulations which enforced compulsory medical examination under the Cantonment Act, thus keeping the regimental prostitutes who served the British soldiers under firm control.⁴⁰

The immediate reaction to the proposal of the CDA in Bengal both among the Bengalee *bhadrolok* society and in the red light areas indicated the prevalence of a variety of social interests and concerns, sometimes converging, and at other times conflicting with each other. The two main features of the CDA became controversial in India. The first one was the provision of compulsory registration of all the prostitutes and the second was the compulsory medical treatment of them in lock hospitals. The

procedure of compulsory medical treatment was so dangerous that a large number of prostitutes committed suicide or forced to leave their shelter.⁴¹

The contemporary popular songs and chapbooks those were published by the cheap presses in *Bat-tala* in North Calcutta, documented the wake of the CDA. The poetasters of *Bat-tala Sahitya* were usually neo-literate people of humble origins narrated in a droll style the implication and reaction of CDA in society. Two chapbooks are mentionable in this context. The first one namely '*Badmaesh Jabdo*' (the Taming of the Profligate) by Prankrishna Dutta came out on 31 March 1869, a day before the CDA of 1868 was actually implemented. It welcomed the CDA as a gift of the British government to punish both the prostitutes and the lechers who patronized them. The second was entitled '*Panchali Kamalkoli : Choudda Ain*' (A poem about a Lotus bud : Act XIV). Aghar Chandra Ghosh, the author narrated how fast *gormi rog* (venereal diseases) spread all over the city and how the CDA victimizing the prostitutes.

The grievances of the prostitutes has been reflected in the following song of Prankrishna Dutta :

“ *Amader prati aain bikot, nahi putra nahi pati nahi pita mata,*
Neech britti proti bad sadhilo bidhata.”⁴²

It means, the law was not in our favour, we have no son or husband or parents, god makes problem in our profession (free translation).

In this context Ratnabali Chatterjee had said - 'Female sexuality became the subject of discourse in medicine, law and morality in 19th century mainly during the debates on Contagious Disease Act.'⁴³ The British missionary non-conformists and the evangelicals protested against this law. In 1893 the 'Calcutta Social Purity Activities (organization of the Anglican Churchmen and Bengalee social Reformers) demanded for the cease of brothels. But according to the contemporary law the police could cease the brothel only on the basis of the complain of any neighbor of that area. On the basis of such complain a few brothels were banned. Although, in the name of abolishment those brothels were shifted to another place. In 1859 the British Government gave extra power

to the police. On the basis of that power a policeman could arrest any woman for general queries without any prove. Surendranath Banerjee protested against the extra power of the police. He said the extra power enjoyed by the police would violate the liberty of human.

Prankrishna Dutta reported the rumours about the medical examination that were doing the rounds of the town: ‘ some people are saying that they (the medical examiners) use syringe, others claim that it is a lath, and these rumours are making all shake in fear...’⁴⁴

Many prostitutes used to bribe police and thus escape the law, while the poor women could not have enough money to bribe police and they were harassed by them and compelled to seek registration. One thing should be mentioned, there was a certain thought that if the diseased prostitutes were kept in lock hospitals and only the healthy prostitutes were allowed to practice, men would visit them more frequently, their fear of imbibing venereal diseases being removed.

The CDA or the *Choudda Ain* as it was known (the Bengali translation of the words ‘Act XIV’) among the prostitutes, created a terror. It forced prostitutes scurrying for shelter outside the cities. A large number of native public prostitutes had left the cities and shifted to the suburbs and further away. The prostitutes of Calcutta took shelter in Phorasdanga i.e. Chandernagore (Chandannagore). It was said the land lords of rented houses suddenly increases the rent of houses in Chandernagore.

Sumanta Banerjee had given the reference (in ‘Dangerous Outcaste’) of Mukta Bewa, a prostitute was convicted under CDA for failing to appear for the required medical examination, inspite of registering herself as a prostitute under the Act. She appealed against the conviction. The judge quashed the conviction and sentence on the grounds that the evidence for the prosecution was insufficient, and that no evidence was heard for when the sentence was passed.

The rate of admission of soldiers suffering from venereal diseases rose from 249.7 per 1000 to 342.7 per 1000 between 1880 and 1885.⁴⁵ The increased was caused by the policies of the colonial administrators. The cause which was responsible for that

increased ratio, the recruitment of young in-experienced men into army. They according to the report fell an easy prey to the prostitutes of the country, among whom venereal disease is well known to be rife.⁴⁶ Due to the reluctance of prostitutes to register themselves, the number of registered women in most of the cantonment areas was absurdly inadequate.

A comparison of the average strength of British troops in the following mentioned three major cantonments in Bengal with the average number of registered prostitutes in 1884 stated here. In Barrackpore, every one from among the 36 odd registered prostitutes there was required to serve daily some seven soldiers on an average. In Dumdum the ratio went up to one registered prostitutes per 24 soldiers. And lastly in **Darjeeling**, there were only 4 registered prostitutes to cater to the needs of 241 British Tommies.⁴⁷

The British government had started to amend the CDA. Lord Ripon, The Governor General, played an initial role in this aspect. He sent a dispatch on 16th June 1882 to Lord Hartington, Secretary for India, where he expressed the opinion that the CDA could be abolished and the money spent in carrying out the Act might, with greater advantage, be devoted to the construction of sanitary works and other measures much more likely to benefit the health of the community at large than any system of lock hospitals.⁴⁸

Attention soon turned to India. Keshub Chandra Sen sent a letter to the British feminist leader, describing the pathetic condition of the prostitutes in the name of medical examination. Josephine Butler, who led the Ladies' National Association in England. A few portion of the petition of complain send by Butler to British Government is - 'We, as Women, desire to protest in the strongest and most solemn manner possible against the wrong done to our sisters and fellow subjects in India.' In the agitation against the CDA there, mounted a vigorous campaign among parliamentarians and social activities in the UK (United Kingdom). A Liberal Party MP, James Stuart, collected information about harassment of women in the Indian cantonments, and presented the data before the House of Commons.⁴⁹ In 1875 Josephine Butler requested Keshub Chandra Sen to take membership in General Council of the Federation for the Abolition of Government Regulation of Prostitution. Receiving that invitation Keshub Chandra Sen was pleased.

Inspired and encouraged by the efforts of Ladies' National Association and MPs in England, the Bengali *Bhadrolok* or intellectuals, politicians also began to voice their opposition to the CDA and demand its repeal. In 1887, one of the major organizations in Calcutta, the British Indian Association, in a memorandum, to the Secretary to the Government of Bengal, observed: '.... the operation of the Contagious Diseases Act is wholly repugnant to the feelings of the entire Native Community, and ... it is attended with an incalculable amount of cruelty and oppression in this country.' Stating that out of the thousands of women hauled up for medical examination, only 14 to 34 per cent were found to be diseased in different years, the Association commented: 'No amount of sanitary benefit could compensate the outrage committed on the remaining women and through them on society. Nor is it at all a desirable state of things in a country where the police are virtually irresponsible as regards poor people.'⁵⁰

The Army's need to maintain the system of regimental prostitutes - a captive group of women exclusively serving British troops - came into conflict with the demands of the pro-repeal groups both in England and India which wanted an end to that system. The demand for repeal of the CDA posed a threat to the British army in India.

Finally the previous Cantonments Act was amended and incorporated the new policies. In 1889, the new Cantonments Act (XIII) was passed. This new Act didn't mention the contemporary venereal diseases specifically, rather it provided for the enactment of rules for the prevention of the spread of infections or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any diseases. The new rules were added in 1895 (under Act V). Regimental prostitution and compulsory examination were the two important features of old Cantonments Act. After the enactment of new rule these two features were not wholly discontinued in some cantonments. The new rules, therefore, specifically emphasized: 'No person known to be a prostitute shall, under any circumstances, be permitted to reside within the limits of any regimental bazaar.'⁵¹

After two years later, in 1897, another Cantonments Act was enacted - Act XV which one repealing the old one. According to the new act, the Commanding Officer of a

cantonment was empowered the right to issue notice to any suspected person who were suffering from any venereal diseases for appear the medical examination. If the suspected man or woman refused for medical examination, he or she would be expelled from the cantonment.

Here it is mentionable that before withdrawing the CDA, the British Government Officials proposed various measures to forbidding prostitution from bringing up small girls, who might join the profession once they grew up. Registration of those children, imposition of penalties on prostitutes who possessed small girls, and taking those girls away from the prostitutes - all these measures were suggested.

Role of the News Papers and Periodicals :

The reaction and the response of each and every govt. act had always been reflected through news papers and periodicals. News Papers also played a crucial role to expressing mass opinion. Same here, the reaction of the implementation of Cantonment Act and Contagious Act was came to the entire mass through news papers. Here some examples are reproduced :

A letter was published in '*Somprokash Patrika*', where the prostitutes of Chitpur raised their voice - why did the medical examination apply only for prostitutes but not for the customers?⁵²

Not only in India, the prostitutes of Bangladesh did not get relief from CDA. They had been suffered a lot to take disguise or shift their business elsewhere. Even they had to pay their savings for lawsuit to carry out their profession.

The police commissioner Stuart Hog predicted the CDA couldn't be popular. In 1870 he had written in a report : 'It is absurd to expect an enactment, of the character of Act XIV to be popular, and the measure of its unpopularity will probably by the stringency with which its provisions are enforced.'

A lot of songs were composed on the 'Choudda Ain'. A lady namely Bhawani had composed the following song :

'Valo aain kollo ebar company rajay
Veshyara sob sosobyasto paliye jabe ke kothay
Keho ba tyaje sonar ghor
Pare giye paliye gechhe hoye atantor
Kehoba dekhe sune beche kine sribrindabone jete chay
Raja valor jonno jay,
Heete biporit vebe (era) sokole polay
*Bole lajemori, ki jhokomari, mrityu hole pran juray.'*⁵³

It means, British company implemented CDA and the prostitutes started to run away elsewhere; few of them wished to die (free translation).

The '*Sambad Prabhakar*', of the 31st July, 1856, says that the Lieutenant - Governor, a bigoted Christian, has rejected the petition sent by the professors of certain colleges for the removed of the prostitutes' quarters from the vicinity of those institutions. The writer thinks that the public should not remain silent on the subject.⁵⁴

On 21st April, 1869, **National Paper** published : The Act XIV, though expressly got up for the prevention of the spread of the syphilitic diseases, is calculated in general to deal a most effective blow upon most of the evils of prostitution. The humiliation of being put to the test of medical examination, no less than twice a month, will serve both as a preventive and a curative recipe for the disease of prostitution. We need only look to the fact that numbers of infamous women are leaving the town, and the greater part of these, we are assured, are on the look out for a more honest employment, which would enable them to keep body and life together, without their being compelled to wade through the mire of wickedness and vice. We should however fail in our duty, if we here omit to mention that whatever might be the tendency of the rules for the

regulation of the Contagious Disease Act, to produce salutary results, they cannot but prove most oppressive and even unjust, so long as a reformatory asylum is not opened to the repentant fairs. Those who are familiar with the constitution of native society, must know how utterly beyond redemption is the fallen condition of an erring woman. A woman who has once stepped into the path of sin is regarded as an outcast, and will not, if her character be known, be admitted even into the most menial of services in a native household. Food and water are polluted if she touches them, and her society is shunned with abhorrence by the more honorable portion of her sex. Again among the abandoned wretches there are many who are the very off-springs of crime, and surely with respect to these we cannot be very hard. They are more like doomed creatures, who have never been told what a virtuous life is. The brothel is the school where they are graduated, and their preceptors are a class of viragoes whom a sense of delicacy forbids us to describe. No wonder that these unfortunate creatures should turn out no better than what they are. Under these circumstances a reformatory institution cannot only be of much practical utility, but absolutely necessary... We would not have complained of the stringency is in our opinion, necessary, if we had an institution wherein repentant guilt might find shelter from persecution and infamy, and find means for embracing a virtuous course life...⁵⁵

A letter written by a Hindu was send to the Editor of the **National Paper** (21.04.1869) is mentioned here :

Dear Sir,

As we thank our wise Government for the operation of Act XIV of 1868 which has been doubtless enacted to suppress the spread of contagious disease in Bengal, we are surprised on the other hand to see instances of genuine modesty among the unfortunate daughters of infamy, many of whom if I am rightly informed, have left the city of places for the shame of exposing their persons before the Doctor *Saheb* of Lock Hospital and have sheltered themselves in Foreshdanga, the well-known land of safety. Many have even gone so far as to bid a farewell adieu to their ignoble profession and contended themselves with accepting the humble but honorable office of maid servants for earning their livelihood...⁵⁶

'Rangpur Dikprakash' published on 22nd April, 1869 : The registration of the prostitutes has been started. Doct. A. G. Payne becomes the supervisor. Two sub assistant surgeons are appointed under his supervision. Some prostitutes has escaped from Kolkata in fear.

In an editorial of considerable length, the *'Rajsahi Sambad'* of the 15th September, 1874, earnestly beseeches Government not to allow prostitutes to live in quarters where respectable householders dwell, but not allot their dwelling place only in some public part of the city or town. The Editor complains of the great injury that is done to the morals of boys and females of respectable families by constantly having before them the pernicious example of these wicked women.⁵⁷

A proposal to replace lady doctors instead of male doctors for medical examination of prostitutes, was sent through *'Sambad Prabhakar'* (24.04.1869).

'Sambad Prabhakar' published (03.05.1869) another suggestion for the prostitutes who were admitted in the lock hospitals. Due to their confinement in hospitals they could not earn. If was there any provision to give them (prostitutes) the opportunity to earn money through any kind of remunerative job as the prisoners enjoy in jail, the prostitutes could save money for their future as well as they could manage their livelihood after release from lock hospitals.

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