



SUBMISSION TO THE UN SPECIAL RAPPORTEUR'S REPORT ON PROSTITUTION AND VIOLENCE AGAINST WOMEN AND GIRLS¹

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iProbono² submits this document in response to the call for input issued by the United Nations Special Rapporteur on Violence Against Women and Girls, Ms. Reem Alsalem, to inform their thematic report to the UN Human Rights Council at its 56th session in June 2024, on prostitution and violence against women and girls. This submission focuses on critical issues related to prostitution in India and provides insights hidden forms of prostitution, challenges faced by organisations, and meaningful consent in sex work. We conclude each section with thematic recommendations that advocate for evidence-based legislative reforms, comprehensive training programs, enhanced inter-agency collaboration, and a more proactive role for human rights bodies.

1. Hidden Forms of Prostitution – Recognition and Response

The first step in addressing the pervasive issue of human trafficking is to identify its prevalence, often underreported and conducted covertly;³ which is further hindered by a lack of reliable and consolidated government data. In India, the practice of *devadasi* is a hidden form of prostitution. '*Devadasi*' originates from a combination of words 'deva' (God) and 'dasi' (servant), signifying a servant of god or prostitution in the name of God. It is a practice linked to the Hindu religion where prepubescent/pubescent girls are offered to the deities as wives by their families.⁴ Their participation was limited to temple rituals initially, and later came to include intercourse with the priest as part of their 'religious duties'.⁵ This practice is deeply entrenched in socio-economic positions of women, often prevalent in families belonging to lower

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² i-Probono (India) Legal Services mission is to enable people to access their rights in pursuit of a just society. By promoting active citizenship and engaging a holistic model, we advance justice for all by representing people in need, strengthen the impact of civil society, and advocate for policies that promote social equity and end discrimination. iProbono provides holistic counsel with a strong, lean team that delivers strategic direction and execution, while also leveraging the expertise and commitment of a wide community of pro bono lawyers. Set up in 2013, we work on a wide variety of thematic areas, including child rights, housing rights, violence against women and girls, disability rights, and gender equality in India.

³ Usha Rana, *Understanding the Hidden Aspects of Sex Trafficking of Girl Children in Central India*, 22(9), JOURNAL OF INTERNATIONAL WOMEN'S STUDIES, 256, 257 (2021).

⁴ During the medieval period, devadasis were largely attached to temples which were wealthy due to the patronage they enjoyed at the time. Devadasis were considered auspicious, enjoyed a respectable status and were part of mainstream society as they could never be widowed. The devadasi practice carried out today no longer resembles either the original practice or what the concept initially signified.

⁵ BINCY WILSON, SHRUTHI RAMAN & ANUROOPA GILIYAL, A QUALITATIVE STUDY OF THE LEGAL DIMENSIONS OF 'DEVADASI' DEDICATION PHENOMENON (Centre for Child and the Law, National Law School of India University, Bengaluru) (2018), https://www.fighttrafficking.org/wp-content/uploads/2019/06/Devadasi-Dedication-Report_CCL-NLSIU.pdf.

castes experiencing extreme poverty, especially Dalits and Bahujans.⁶ The *devadasi* system epitomises a hidden form of prostitution in Indian society as it is essentially a form of “caste-sanctioned rape”,⁷ which due to religious sanction has gained socio-cultural acceptance.⁸ Forced into sex work, *devadasis* often become their families primary breadwinners, receiving “gifts” (clothes, groceries, etc.) in exchange for their services⁹. Factors like community and familial pressure, societal non-acceptance, lack of education, and limited alternative means of earning a livelihood sustain their involvement.

1.1. Existing Legal Framework

The primary law addressing trafficking and prostitution in India is the Immoral Traffic Prevention Act, 1956 (“ITP Act”).¹⁰ The Act prohibits activities associated with prostitution such as – maintaining a brothel,¹¹ living off a prostitute's earnings,¹² procuring or inducing,¹³ detaining a woman for prostitution,¹⁴ carrying out prostitution in public places or notified areas,¹⁵ and soliciting or seduction for prostitution.¹⁶ Other than the ITP Act, there are several other domestic laws at both central¹⁷ and state¹⁸ levels governing the practice in India.

Further, apart from the general criminal and child rights laws, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 addresses the practice of *devadasis*, however, its application is limited,

⁶ MAGGIE BLACK, WOMEN IN RITUAL SLAVERY, DEVADASI, JOGINI AND MATHAMMA IN KARNATAKA AND ANDHRA PRADESH, SOUTHERN INDIA (Anti-Slavery International) (2007), https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/India/WomeninRitualSlavery.pdf.

⁷ SMITA PREMCHANDER, V. PRAMEELA, SHIKHA SETHIA & COEN KOMPIER, DEVADASIS CULTURAL PRACTICE OR UNACCEPTABLE FORM OF WORK?, India Exclusion Report, Centre for Equity Studies (2015) at 231, https://www.commoncause.in/uploadimage/publication/1251431243text-final_India-Exclusion-Report-round2Final.pdf.

⁸ Wilson, *supra* note 5, at 2.

⁹ Vidheesha Kuntamalla, *The Gods Are Not Going To Save Us Just Because We Are Married To Them*, ARTICLE 14, (June 23, 2022), <https://article-14.com/post/-the-gods-are-not-going-to-save-us-just-because-we-are-married-to-them--62b3d18462703>.

¹⁰ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

¹¹ *Id.*, at § 3.

¹² The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 § 4 (India).

¹³ *Id.*, at § 5.

¹⁴ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 § 6 (India).

¹⁵ *Id.*, at § 7.

¹⁶ The Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 § 8 (India).

¹⁷ [Sections 370 and 373 of the Indian Penal Code, 1860 \(IPC\)](#) criminalise trafficking any person for exploitation, including sexual exploitation; [section 2 \(14\) of the Juvenile Justice \(Care and Protection of Children\) Act, 2015 \(JJ Act\)](#) covers minor girls pushed in the *devadasi* system under the category of a ‘child in need of care and protection’ and are entitled to safeguards under the JJ Act; [sections 4, 6, and 12 of the Protection of Children from Sexual Offences Act, 2012 \(POCSO\)](#) criminalise child abuse such as penetrative sexual assault, aggravated penetrative sexual assault, and sexual harassment which covers minor girls dedicated as *devadasis*; [section 3 of the Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989 \(Atrocities Act\)](#) criminalise dedicating a woman from a Scheduled Caste or a Scheduled Tribe to a deity, idol, object of worship, temple, or other religious institution as a devadasi or through similar practices by any person not belonging to a Scheduled Caste or Scheduled Tribe.

¹⁸ [The Karnataka Devadasis \(Prohibition of Dedication\) Act, 1982](#) enacted by the state of Karnataka to criminalise the dedication of a woman as a devadasi and to provide rehabilitation for devadasis; [The Andhra Pradesh Devadasis \(Prohibition of Dedication\) Act, 1988](#) enacted by the state of Andhra Pradesh to prohibit the dedication of women as devadasis in the state; [The Maharashtra Devdasi System \(Abolition\) Act, 2005](#) enacted by the state of Maharashtra to provide for a comprehensive law to abolish the practice of dedication of women as Devdasis; and the Madras Devadasi (Prevention of Dedication) Act, 1947.

as the section restricts the offence to individuals not belonging to the SC/ST community. This limitation leaves numerous incidents beyond its scope, particularly in cases where family compels the woman to engage in this practice.

1.2. Judicial Response

The Indian Supreme Court has condemned the practice and directed the relevant authorities to take speedy action under existing laws, set up Advisory committees, suggest measures to eradicate child prostitution, suggest social welfare programmes for *devadasis*, and take steps in providing rehabilitative homes manned by well-qualified professionals.¹⁹ In another case about the rights of children of sex workers, the Supreme Court described proponents of *devadasi* practice as 'constitutional criminals', deeming the practice a direct violation of Article 13 of the Constitution of India²⁰ and the Protection of Human Rights Act, 1993.²¹ In 2016, the Supreme Court directed states and Union Territories to strictly implement the directions of the central government²² on undertaking initiatives to identify and rehabilitate all victims of the practice, offering counselling, medical treatment, guidance, and support.²³

1.3. Recommendations

- Reform state laws to avoid unintentional criminalisation of *devadasis*, and ensure proper implementation of existing laws by framing rules;
- Collect and maintain reliable government data to better understand the scope and concentration of the *devadasi* practice;
- Human rights bodies such as the National Human Rights Commission (NHRC), the National Commission for Protection of Child Rights (NCPCR), the National Commission for Women (NCW) and other relevant institutions should play a proactive role in monitoring and addressing the *devadasi* system by conducting reviews, inquiries, and awareness programs; and
- Comprehensive rehabilitation efforts to rehabilitate *devadasis*, such as providing low-cost housing, economic assistance, efforts to increase literacy and levels of education, skill development and vocational training to provide alternative sources of income.

2. Obstacles Faced by Organisations and Frontline Service Providers in Supporting Victims and Survivors of Prostitution

Frontline service providers, including non-governmental organisations (NGOs), play a crucial role in addressing human trafficking, yet their efforts are often impeded by various obstacles and legal challenges, such as:

¹⁹ Vishal Jeet v. Union of India (1990) 3 SCC 318 (India).

²⁰ INDIA CONST. art. 13.

²¹ Gaurav Jain v. Union of India (1997) AIR SC 3021 (India).

²² Centre-State Division, Ministry of Home Affairs, Government of India, Abolition of Devadasi system, No. 24013/16/2015-SC/ST-W, Dec. 22, 2015, <https://www.mha.gov.in/sites/default/files/2022-12/22-12-2015%5B1%5D.PDF>.

²³ *Id.*, at 3.

- Pervasive non-compliance with the ITP Act, underscored by a lack of monitoring in ongoing implementation.
- Limited understanding of the ITP Act among officials.
- Lack of understanding, empathy, or awareness among stakeholders like law enforcement officials, frontline service providers, legal professionals, healthcare workers, and others who may come into contact with trafficking survivors regarding their unique needs and experiences.
- Insufficient coordination among law enforcement stakeholders due to limited understanding of human trafficking dynamics and agency roles, compounded by jurisdictional barriers and differing priorities. This results in gaps in information sharing, delayed responses, and inefficiencies, enabling traffickers to exploit weaknesses and hindering victims' access to vital support services.
- Victims treated as offenders under current laws. This issue often arises due to the complexities surrounding the issue of prostitution and sex trafficking. In these instances, law enforcement and legal authorities may misidentify individuals engaged in prostitution as offenders rather than recognising them as victims who may be compelled into such activities against their will.
- Lack of government rehabilitation and support facilities puts an excessive burden on civil society organisations and frontline service providers to provide care beyond their means.

2.1. Recommendations

Addressing the multifaceted challenges in combating human trafficking requires a comprehensive legal perspective and, in this context, iProbono makes the following recommendations:

- Frontline service providers must be trained in and have access to strict enforcement and accountability mechanisms as well as comprehensive oversight systems involving periodic reviews, audits, and collaboration with human rights organisations;
- Education, advocacy and ongoing professional development for frontline service providers and key stakeholders on issues affecting survivors and victims. Simultaneously, there's a need to counteract stigma around sex work, fostering empathy, and altering the attitudes of key stakeholders and state officials toward sex workers;
- Mandatory training on victim sensitivity, trauma-informed approaches, and fostering empathy in law enforcement and service providers. It's crucial to equip legal professionals with skills to recognise and respond to the unique needs of trafficking survivors;
- Legal frameworks must encourage inter-agency collaboration through establishment of task forces involving law enforcement, social services, healthcare professionals, legal experts, and relevant government agencies;
- Introducing victim-centric approaches such as clear identification protocols, alternative justice mechanisms like diversion programs, and targeted training for legal professionals to dispel common stereotypes;
- Aligning domestic laws with international human rights standards on prostitution, trafficking in persons, and forced migration to prevent unreasonable detention of victims in care/corrective institutions, etc. Laws must be amended to include reasonable timeframes for detention and

emphasise the presumption of liberty for victims, ensuring their treatment aligns with principles of care and support rather than punitive measures;

- Prioritising healthcare in line with international human rights standards for victims of trafficking through legislative and policy interventions.

3. Meaningful Consent in Sex Work

Prostitution and human trafficking are widely discussed topics in academic, advocacy, and policy circles, locally and globally.²⁴ There is a continuing debate about the significance of a woman's consent to engage in voluntary sex work as opposed to being forced into it. There are differing opinions on whether the presence of consent in sex work justifies distinct legal treatment. There are those who advocate that recognising voluntary sex work is essential to assert women's autonomy over their sexuality.²⁵ Critics argue that this perspective overlooks the diverse experiences and social contexts of women in prostitution, raising the question of whether woman's consent is truly a free and voluntary choice.²⁶ The opposing view argues that genuine consent is impossible in sex work due to inherent exploitation and existing societal gender inequalities influencing women's consent. If we protect a woman's voluntary participation in an institution built on exploitation, it will only sustain and perpetuate inequality.²⁷

3.1. Examining Legal Frameworks

The International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949,²⁸ criminalises actions such as procuring, enticing, leading away, and exploiting for prostitution, irrespective of the consent of prostitutes,²⁹ penalising brothel owners, and urging states to prioritise the prevention, rehabilitation, and social adjustment of victims.³⁰ However, it fails to emphasise that consent is not a defence against a charge of trafficking. The lack of emphasis on consent and the intention seems to favour a prohibitionist approach, while the absence of a mandate to criminalise sex workers or clients could signify acknowledgment of workers' autonomy. There is an intentional ambiguity that allows states with varying perspectives on sex work regulation to adopt their preferred frameworks and achieve broader ratification.³¹ Subsequent U.N. documents, including the most

²⁴ Kathleen Ratajczak & Ana S.Q. Liberato, *The Feminist Debate on Prostitution and Trafficking: Reflections for a unified and theory-driven approach*, 43(1) INTERNATIONAL REVIEW OF MODERN SOCIOLOGY (2017).

²⁵ Holly B. Fechner, *Three Stories of Prostitution in the West: Prostitutes' Groups, Law and Feminist "Truth,"* COLUM. J. Gender & L. 26 (1994).

²⁶ *Id.*, at 48.

²⁷ Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN'S L.J. 137, (2004).

²⁸ The International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, Mar., 21, 1950, 1342 U.N.T.S. 271.

²⁹ Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, arts. 38 & 39, Mar. 21, 1950, 96 U.N.T.S. 271.

³⁰ *Id.*, at art. 16.

³¹ Christine Forster & Jaya Sagade, *Recognising the Human Rights of Female Sex Workers in India: Moving from Prohibition to Decriminalisation and a Pro-work Model*, 25(1) INDIAN JOURNAL OF GENDER STUDIES 26, (2018).

recent Palermo Protocol, 2001³² examine the question of consent in prostitution and whether the absence of consent alone would constitute a human rights violation in trafficking and prostitution. In India, the ITP Act is ambiguous on the issue of consent. Prostitution is defined as sexual exploitation or abuse, thereby signifying lack of consent³³, but while spelling offences it conflates forced and voluntary sex-work by using the phrase ‘with or without consent’³⁴.

3.2. Evolution of Judicial Perspectives: Recognising Voluntary Sex Work in India

The Indian judiciary recognised voluntary sex work through a series of decisions. In 2013, the Supreme Court overturned the Maharashtra state ban on dance bars by bringing aspects of sex work within the ambit of the fundamental right to choose a profession. This laid the ground to recognise the right of a woman to choose a profession in the sex industry.³⁵ Almost a decade later, a Supreme Court constituted panel recommended that when an adult sex worker is participating with consent, the police must not interfere or take any criminal action.³⁶ This approach aimed to differentiate between forced and voluntary sex work and extend protection to those who have consented to engage in this profession. There is a growing body of jurisprudence serving as precedents for future legislation.³⁷

3.3. Contextualising Agency: Socio-Economic Realities in Indian Sex Work

Trafficking is defined under Section 370 of the Indian Penal Code³⁸ and proposed under the new 2018 Trafficking Bill³⁹ (which has since lapsed). Both use ‘threat’, ‘force’, ‘use of coercion’ and ‘abuse of power’ to define trafficking but fail to incorporate the element of ‘position of vulnerability’ as in 1949 Convention and 2001 protocol.⁴⁰ The phrase has expansive potential and refers to situation in which the person involved has no real alternative but to submit to the abuse involved⁴¹. The international definition also provides an opportunity to adopt a more nuanced approach to consent in sex work in India, which is lacking in the existing and is likely to be absent from the forthcoming laws as well.

³² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Dec. 12, 2000, 2237 U.N.T.S. 319, Doc. A/55/383.

³³ The Immoral Traffic (Prevention) Act, 1956, § 2(f) defines “prostitution” as the sexual exploitation or abuse of persons for commercial purpose, and the expression “prostitute” shall be construed accordingly.

³⁴ The Immoral Traffic (Prevention) Act, 1956, § 5 uses the phrase ‘with or without consent’.

³⁵ State of Maharashtra & Anr. v. Indian Hotel and Restaurants Association & Ors. 2013 (8) SCC 519.

³⁶ Sohini Chowdhury, *Police Should Not Abuse Sex Workers, Media Should Not Publish Their Pictures During Raid & Rescue Operations: Supreme Court Issues Directions*, LIVELAW (May 25, 2022, 1:26 PM), <https://www.livelaw.in/top-stories/supreme-court-guidelines-sex-workers-article-21-rehabilitation-prevention-of-trafficking-200041?infinitemscroll=1>.

³⁷ Varsha Nair, *Implications of the Recent Supreme Court Order on Sex Work*, CENTRE FOR LAW & POLICY RESEARCH BLOG, (June 25, 2022), <https://clpr.org.in/blog/implications-of-the-recent-supreme-court-order-on-sex-work/>.

³⁸ Pen. Cod. § 370.

³⁹ The Immoral Traffic (Prevention) Amendment Bill, 2018, Bill No. 66 of 2018 (India), <http://164.100.47.4/billtexts/lbills/asintroduced/4248LS%20As%20Int....pdf>.

⁴⁰ Protocol, *supra* note 32.

⁴¹ Rep. of the Ad Hoc Comm. on the Elaboration of a Convention Against Transnational Organized Crime on the Work of Its First to Eleventh Sessions, U.N. Doc. A/55/383/Add. 1 (2000).

The distinction between voluntary and coerced sex work is not easily delineated in binary terms. Merely acknowledging consent does not necessarily indicate free choice, particularly when considering the socio-economic circumstances that often compel women to enter the sex industry. In India, it becomes challenging to assert that engaging in prostitution is solely an occupational choice without delving into the broader implications of socio-economic marginalisation, which can substantially negate the possibility of genuine choice or agency. Judicial interpretations have attempted to address this nuance by interpreting “force” as “any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action”⁴², thereby laying foundation for more qualitative enquiry into whether the consent was free from any coercion, including extenuating socio-economic conditions and existing gender-hierarchies.

In India, women may opt for sex work as a profession due to factors such as familial poverty, coercion by family members, the absence of a male breadwinner, or violent or dysfunctional marriages.⁴³ Upon entering the profession, they are compelled to acquire necessary skills, later realising it has become their sole means of livelihood, to sustain themselves and their families. Interpreting consent in the context of sex work in India thus requires scrutiny to determine if a woman voluntarily consents or if her involvement is a result of implicit forces. The absence of well-defined benchmarks in the legislative framework leaves the feasibility of meaningful consent unanswered.

3.4. Recommendations:

- Support research on the socio-economic factors influencing women's entry into sex work in India and use findings as a foundational basis for informing and facilitating legislative reforms.
- Facilitate dialogues involving sex workers, advocacy groups, and legal experts to incorporate diverse perspectives in law and policy formulation;
- Review existing laws to update and clarify definitions of 'prostitution' under the ITP Act, and 'trafficking' as proposed in the 2018 amendment bill, and associate key elements such as 'force,' 'coercion,' and 'abuse of power' to enhance legal understanding;
- Consider incorporating international standards, including the 'position of vulnerability' into domestic legislation to refine the understanding of consent in sex work;
- Establish an evidence-based framework that clearly distinguishes between voluntary and coerced engagement in sex work, providing safeguards for the autonomy and protection of those involved voluntarily.

⁴² People's Union For Democratic Rights v. Union Of India & Others, 1982 AIR 1473.

⁴³ Roshni Patel, The Trafficking of Women in India: A Four-Dimensional Analysis, 14 GEO.J. GENDER & L. 159 (2013).

